

House File 276 - Introduced

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A BILL FOR

1 An Act relating to speech and expression at public institutions
2 of higher education, providing for remedies, and including
3 effective date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 261H.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Benefit*" with respect to a student organization at
5 a public institution of higher education means any of the
6 following:

- 7 a. Recognition.
- 8 b. Registration.
- 9 c. Use of facilities for meetings or speaking purposes.
- 10 d. Use of channels of communication.
- 11 e. Access to funding sources that are otherwise available
12 to other student groups.

13 2. "*Campus community*" means students, administrators,
14 faculty, and staff at a public institution of higher education
15 and guests invited to a public institution of higher education
16 by the institution's students, administrators, faculty, or
17 staff.

18 3. "*Outdoor areas of campus*" means the generally accessible
19 outside areas of campus where students, administrators,
20 faculty, and staff at a public institution of higher education
21 are commonly allowed, such as grassy areas, walkways, or other
22 similar common areas and does not include areas outside health
23 care facilities, veterinary medicine facilities, a facility
24 or outdoor area used by the institution's athletics program
25 or teams, or other outdoor areas where access is restricted
26 to a majority of the campus community. In recognition of the
27 healing environment that is essential to its clinical purposes,
28 the areas outside health care facilities are not a traditional
29 or designated public forum.

30 4. "*Public institution of higher education*" means a community
31 college established under chapter 260C or an institution of
32 higher learning governed by the state board of regents.

33 5. "*Student*" means an individual who is enrolled on a
34 full-time or part-time basis at a public institution of higher
35 education.

1 6. "*Student organization*" means a group officially
2 recognized at or officially registered by a public institution
3 of higher education, or a group seeking such official
4 recognition or official registration, comprised of students who
5 are admitted and in attendance at the public institution of
6 higher education, and who receive, or are seeking to receive,
7 student organization benefits or privileges through the public
8 institution of higher education.

9 Sec. 2. NEW SECTION. 261H.2 Policy — statements and
10 **disciplinary sanctions.**

11 1. The state board of regents and the board of directors of
12 each community college shall adopt a policy that includes all
13 of the following statements:

14 *a.* That the primary function of an institution of higher
15 education is the discovery, improvement, transmission, and
16 dissemination of knowledge by means of research, teaching,
17 discussion, and debate. This statement shall provide that, to
18 fulfill this function, the institution must strive to ensure
19 the fullest degree of intellectual freedom and free expression
20 allowed under the first amendment to the Constitution of the
21 United States.

22 *b.* (1) That it is not the proper role of an institution of
23 higher education to shield individuals from speech protected by
24 the first amendment to the Constitution of the United States,
25 which may include ideas and opinions the individual finds
26 unwelcome, disagreeable, or even offensive.

27 (2) That it is the proper role of an institution of higher
28 education to encourage diversity of thoughts, ideas, and
29 opinions and to encourage, within the bounds of the first
30 amendment to the Constitution of the United States, the
31 peaceful, respectful, and safe exercise of first amendment
32 rights.

33 *c.* That students and faculty have the freedom to discuss
34 any problem that presents itself, assemble, and engage in
35 spontaneous expressive activity on campus, within the bounds

1 of established principles of the first amendment to the
2 Constitution of the United States, and subject to reasonable
3 time, place, and manner restrictions that are consistent with
4 established first amendment principles.

5 *d.* That the public areas of campus of an institution
6 of higher education are traditional public forums, open on
7 the same terms to any invited speaker subject to reasonable
8 time, place, and manner restrictions that are consistent
9 with established principles of the first amendment to the
10 Constitution of the United States.

11 2. The policy shall include a range of disciplinary
12 sanctions for anyone who is under the jurisdiction of the
13 public institution of higher education and who materially and
14 substantially interferes with the free expression of others.

15 3. The policy shall establish that members of the campus
16 community are free to take positions on current public
17 controversial issues.

18 4. The policy shall require that the institution of higher
19 education attempt to remain neutral on current public policy
20 controversies, except insofar as administrative decisions on
21 such controversies are essential to the day-to-day functioning
22 of the institution, and shall prohibit the institution from
23 taking action on current public policy controversies in such a
24 way as to require members of the campus community to publicly
25 express a given view of a public policy controversy.

26 **Sec. 3. NEW SECTION. 261H.3 Protected activities.**

27 1. Noncommercial expressive activities protected under the
28 provisions of this chapter include any lawful oral or written
29 means by which members of the campus community may communicate
30 ideas to one another, including all forms of peaceful assembly,
31 protests, speeches including by invited speakers, distribution
32 of literature, and circulating petitions.

33 2. A member of the campus community who wishes to engage in
34 noncommercial expressive activity in outdoor areas of campus
35 shall be permitted to do so freely, subject to reasonable

1 time, place, and manner restrictions that are consistent
2 with established principles of the first amendment to the
3 Constitution of the United States, and as long as the member's
4 conduct is not unlawful and does not disrupt the functioning
5 of the public institution of higher education, subject to the
6 protections of subsection 1. The public institution of higher
7 education may designate other areas of campus available for
8 use by the campus community according to institutional policy,
9 but in all cases access to designated areas of campus must be
10 granted on a content-neutral and viewpoint-neutral basis within
11 the bounds of established first amendment principles.

12 3. A public institution of higher education shall not deny
13 benefits or privileges available to student organizations based
14 on the viewpoint of a student organization or the expression
15 of the viewpoint of a student organization by the student
16 organization or its members protected by the first amendment to
17 the Constitution of the United States. In addition, a public
18 institution of higher education shall not deny any benefit
19 or privilege to a student organization based on the student
20 organization's requirement that the leaders of the student
21 organization affirm or agree to the student organization's
22 beliefs or standards of conduct or further the student
23 organization's mission.

24 4. This section shall not be interpreted as limiting the
25 right of student expression in a counter demonstration held on
26 campus as long as the conduct at the counter demonstration is
27 not unlawful and does not materially and substantially prohibit
28 the free expression rights of others on campus or disrupt the
29 functioning of the public institution of higher education,
30 subject to reasonable time, place, and manner restrictions
31 that are consistent with established principles of the first
32 amendment to the Constitution of the United States.

33 5. Nothing in this chapter shall be interpreted as
34 preventing public institutions of higher education from
35 prohibiting, limiting, or restricting expression that is not

1 protected by the first amendment to the Constitution of the
2 United States.

3 Sec. 4. NEW SECTION. 261H.4 Public forums on campus —
4 freedom of association.

5 The outdoor areas of campuses of public institutions of
6 higher education in this state shall be deemed traditional
7 public forums. Public institutions of higher education
8 may maintain and enforce reasonable time, place, and manner
9 restrictions consistent with established principles of the
10 first amendment to the Constitution of the United States. Such
11 restrictions shall allow for members of the campus community
12 to engage in spontaneous expressive activity and to distribute
13 literature.

14 Sec. 5. NEW SECTION. 261H.5 Remedies — statute of
15 limitations — immunity.

16 1. A member of the campus community aggrieved by a violation
17 of this chapter may file a complaint with the governing body of
18 the public institution of higher education.

19 2. A member of the campus community who is the subject of
20 a complaint filed in accordance with subsection 1 is entitled
21 to a disciplinary hearing under procedures published by the
22 public institution of higher education on the institution's
23 internet site and the member of the campus community is further
24 entitled, at minimum, to the following:

25 a. The right to receive advanced written notice of the
26 charges.

27 b. The right to review the evidence in support of the
28 charges.

29 c. The right to confront any witness to the alleged
30 violation.

31 d. The right to present a defense.

32 e. The right to call witnesses.

33 f. The right to a decision by an impartial arbiter or panel.

34 g. The right to appeal a decision of the public institution
35 of higher education to the institution's governing body.

1 *h.* The right to active assistance of counsel if the
2 potentially applicable sanctions adopted pursuant to section
3 261H.2, subsection 2, include suspension for longer than thirty
4 days or expulsion.

5 3. If two or more disciplinary hearings conducted pursuant
6 to this section result in disciplinary actions against the same
7 student, the student shall be suspended for a minimum of one
8 year or expelled.

9 4. A member of the campus community aggrieved by a violation
10 of this chapter may assert such violation as a defense
11 or counterclaim in a disciplinary action or in a civil or
12 administrative proceeding brought against the member of the
13 campus community.

14 5. A member of the campus community shall bring a claim for
15 violation of this chapter pursuant to this section not later
16 than one year after the day the cause of action accrues.

17 6. If the court finds that a violation of this chapter
18 occurred, the court shall award the aggrieved person injunctive
19 relief for the violation; shall award reasonable court costs
20 and reasonable attorney fees; and shall also award damages of
21 one thousand dollars or actual damages, whichever is higher.

22 7. This section shall not be interpreted to limit any other
23 remedies available to a member of the campus community.

24 8. Nothing in this section shall be construed to make
25 any administrator, officer, employee, or agent of a public
26 institution of higher education personally liable for acts
27 taken pursuant to the individual's official duties.

28 Sec. 6. NEW SECTION. 261H.6 Committee on free expression
29 — annual report.

30 1. The state board of regents, in cooperation with the
31 Iowa association of community college trustees, shall annually
32 convene a committee on free expression to compile an annual
33 report that includes all of the following:

34 *a.* A description of any barriers to or disruptions of free
35 expression within public institutions of higher education.

1 to knowledge; protected speech; the freedom to discuss within
2 the bounds of the established principles of the first amendment
3 to the United States Constitution; freedom to assemble
4 and engage in spontaneous expressive activities subject to
5 reasonable time, place, and manner restrictions; and public
6 areas of campuses as traditional public forums.

7 The policy must also include a range of disciplinary
8 sanctions; establish that members of the campus community are
9 free to take positions on current public controversial issues;
10 require that the institutions attempt to remain neutral; and
11 prohibit the institution from taking action on current public
12 policy controversies in such a way as to require members of the
13 campus community to publicly express a given view of a public
14 policy controversy.

15 PROTECTED ACTIVITIES. Protected activities include
16 noncommercial expressive activities including oral or written
17 means to communicate ideas, including all forms of peaceful
18 assembly, protests, speeches including by invited speakers,
19 distribution of literature, and circulating petitions. A
20 member of the campus community who wishes to engage in
21 noncommercial expressive activity on campus shall be permitted
22 to do so freely subject to reasonable time, place, and
23 manner restrictions. However, nothing in the bill shall be
24 interpreted as preventing the institutions from prohibiting,
25 limiting, or restricting unprotected expression.

26 A public postsecondary institution shall not deny a student
27 organization any benefit or privilege available to any other
28 student organization. However, nothing in the bill shall be
29 interpreted as limiting the right of student expression in a
30 counter demonstration held on campus so long as the conduct
31 at the counter demonstration is not unlawful and does not
32 materially and substantially prohibit the free expression
33 rights of others or disrupt the functioning of the institution.

34 PUBLIC FORUMS ON CAMPUS — FREEDOM OF ASSOCIATION. The
35 bill requires that the outdoor areas of campuses of public

1 postsecondary institutions be deemed traditional public forums.
2 The institutions may maintain and enforce reasonable time,
3 place, and manner restrictions consistent with first amendment
4 established principles.

5 REMEDIES, STATUTE OF LIMITATIONS, AND IMMUNITY PROVISIONS.

6 An aggrieved member of the campus community may bring an action
7 against the institution responsible for a violation of the
8 Code chapter and seek appropriate relief, and may assert such
9 violation as a defense or counterclaim. Such person has one
10 year after the day the cause of action accrues to bring a claim
11 for violation of the Code chapter.

12 A member of the campus community who is the subject of a
13 complaint is entitled to a disciplinary hearing and to certain
14 rights established by the bill, including the right to counsel
15 if suspension for more than 30 days or expulsion are potential
16 sanctions. If two or more disciplinary hearings result in
17 disciplinary actions against the same student, the student
18 shall be suspended for a minimum of one year or expelled.
19 Procedures for the hearing must be published by the institution
20 on its internet site.

21 If the court finds that a violation occurred, the court shall
22 award the aggrieved person injunctive relief; reasonable court
23 costs and reasonable attorney fees; and damages of \$1,000 or
24 actual damages, whichever is higher.

25 Nothing in the bill shall be interpreted to limit any other
26 available remedies to a member of the campus community.

27 COMMITTEE ON FREE EXPRESSION — ANNUAL REPORT. The state
28 board of regents, in cooperation with the Iowa association of
29 community college trustees, shall annually convene a committee
30 on free expression to compile an annual report that includes
31 descriptions of barriers to or disruptions of free expression
32 within public postsecondary institutions and the administrative
33 handling and discipline of such disruptions or barriers; and
34 the substantial difficulties, controversies, or successes in
35 maintaining a posture of administrative and institutional

1 neutrality with regard to political or social issues. Any
2 assessments, criticisms, commendations, or recommendations the
3 committee deems appropriate may be included in the report.

4 Members of the committee are appointed at the discretion
5 of the president of the state board of regents and the board
6 chair of the Iowa association of community college trustees.
7 However, a public postsecondary institution shall not be
8 represented by more than one person appointed to the committee.
9 The first report must be submitted by September 1, 2020, and
10 subsequent reports by September 1 annually thereafter, to the
11 governor, the general assembly, the state board of regents, and
12 the Iowa association of community college trustees.

13 STATE MANDATE — INAPPLICABILITY PROVISION. The bill may
14 include a state mandate as defined in Code section 25B.3. The
15 bill makes inapplicable Code section 25B.2, subsection 3, which
16 would relieve a political subdivision from complying with a
17 state mandate if funding for the cost of the state mandate is
18 not provided or specified. Therefore, political subdivisions
19 are required to comply with any state mandate included in the
20 bill.

21 EFFECTIVE DATE. The bill takes effect upon enactment.