

Senate Study Bill 1099 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON EDUCATION BILL BY
CHAIRPERSON SINCLAIR)

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. a. "Materially and substantially disrupts" means when
19 a person, with the intent to or with knowledge of doing so,
20 significantly hinders another person's expressive activity,
21 prevents the communication of another person's message, or
22 prevents the transaction of the business of a lawful meeting,
23 gathering, or procession by doing any of the following:

24 (1) Engaging in fighting or violent or seriously disruptive
25 behavior.

26 (2) Physically blocking or significantly hindering any
27 person from attending, listening to, viewing, or otherwise
28 participating in an expressive activity.

29 b. "Materially and substantially disrupts" does not include
30 conduct that is protected under the first amendment to the
31 Constitution of the United States, including but not limited
32 to lawful protests and counter-protests in the outdoor areas
33 of campus generally accessible to the members of the public,
34 except during times when those areas have been reserved
35 in advance for other events, and minor, brief, or fleeting

1 nonviolent disruptions of events that are isolated and short
2 in duration.

3 4. "*Outdoor areas of campus*" means the generally accessible
4 outside areas of campus where students, administrators,
5 faculty, and staff at a public institution of higher education
6 are commonly allowed, such as grassy areas, walkways, or other
7 similar common areas and does not include areas outside health
8 care facilities, veterinary medicine facilities, a facility
9 or outdoor area used by the institution's athletics program
10 or teams, or other outdoor areas where access is restricted
11 to a majority of the campus community. In recognition of the
12 healing environment that is essential to its clinical purposes,
13 the areas outside health care facilities are not a traditional
14 or designated public forum.

15 5. "*Public institution of higher education*" means a community
16 college established under chapter 260C or an institution of
17 higher learning governed by the state board of regents.

18 6. "*Student*" means an individual who is enrolled on a
19 full-time or part-time basis at a public institution of higher
20 education.

21 7. "*Student organization*" means a group officially
22 recognized at or officially registered by a public institution
23 of higher education, or a group seeking such official
24 recognition or official registration, comprised of students who
25 are admitted and in attendance at the public institution of
26 higher education, and who receive, or are seeking to receive,
27 student organization benefits or privileges through the public
28 institution of higher education.

29 Sec. 2. NEW SECTION. 261H.2 Policy adoption.

30 The state board of regents and the board of directors of each
31 community college shall adopt a policy that includes all of the
32 following statements:

33 1. That the primary function of an institution of higher
34 education is the discovery, improvement, transmission, and
35 dissemination of knowledge by means of research, teaching,

1 discussion, and debate. This statement shall provide that, to
2 fulfill this function, the institution must strive to ensure
3 the fullest degree of intellectual freedom and free expression
4 allowed under the first amendment to the Constitution of the
5 United States.

6 2. a. That it is not the proper role of an institution of
7 higher education to shield individuals from speech protected by
8 the first amendment to the Constitution of the United States,
9 which may include ideas and opinions the individual finds
10 unwelcome, disagreeable, or even offensive.

11 b. That it is the proper role of an institution of higher
12 education to encourage diversity of thoughts, ideas, and
13 opinions and to encourage, within the bounds of the first
14 amendment to the Constitution of the United States, the
15 peaceful, respectful, and safe exercise of first amendment
16 rights.

17 3. That students and faculty have the freedom to discuss
18 any problem that presents itself, assemble, and engage in
19 spontaneous expressive activity on campus, within the bounds
20 of established principles of the first amendment to the
21 Constitution of the United States, and subject to reasonable
22 time, place, and manner restrictions that are consistent with
23 established first amendment principles.

24 4. That the outdoor areas of campus of an institution
25 of higher education are traditional public forums, open on
26 the same terms to any invited speaker subject to reasonable
27 time, place, and manner restrictions that are consistent
28 with established principles of the first amendment to the
29 Constitution of the United States.

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

31 1. Noncommercial expressive activities protected under the
32 provisions of this chapter include any lawful oral or written
33 means by which members of the campus community may communicate
34 ideas to one another, including all forms of peaceful assembly,
35 protests, speeches including by invited speakers, distribution

1 of literature, circulating petitions, and publishing, including
2 publishing or streaming on an internet site, audio or video
3 recorded in outdoor areas of campus.

4 2. A member of the campus community who wishes to engage in
5 noncommercial expressive activity in outdoor areas of campus
6 shall be permitted to do so freely, subject to reasonable
7 time, place, and manner restrictions that are consistent
8 with established principles of the first amendment to the
9 Constitution of the United States, and as long as the member's
10 conduct is not unlawful and does not disrupt the functioning
11 of the public institution of higher education, subject to the
12 protections of subsection 1. The public institution of higher
13 education may designate other areas of campus available for
14 use by the campus community according to institutional policy,
15 but in all cases access to designated areas of campus must be
16 granted on a content-neutral and viewpoint-neutral basis within
17 the bounds of established first amendment principles.

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

30 4. This section shall not be interpreted as limiting the
31 right of student expression in a counter demonstration held on
32 campus as long as the conduct at the counter demonstration is
33 not unlawful and does not materially and substantially prohibit
34 the free expression rights of others on campus or disrupt the
35 functioning of the public institution of higher education,

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

4 5. This section shall not be interpreted as preventing
5 public institutions of higher education from prohibiting,
6 limiting, or restricting expression that the first amendment
7 of the Constitution of the United States does not protect,
8 including but not limited to a threat of serious harm and
9 expression directed or likely directed to provoke imminent
10 unlawful actions; or from prohibiting harassment, including
11 but not limited to expression which is so severe, pervasive,
12 and subjectively and objectively offensive that the expression
13 unreasonably interferes with an individual's access to
14 educational opportunities or benefits provided by a public
15 institution of higher education.

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

18 1. The outdoor areas of campuses of public institutions
19 of higher education in this state shall be deemed traditional
20 public forums. Public institutions of higher education
21 may maintain and enforce clear, published, reasonable
22 content-neutral and viewpoint-neutral time, place, and manner
23 restrictions that are narrowly tailored in furtherance of a
24 significant institutional interest, but shall allow members
25 of the campus community to engage in spontaneous expressive
26 activity and to distribute literature. Restrictions instituted
27 by a public institution of higher education under this section
28 shall provide for ample alternative means of expression.

29 2. Except as provided in this section, a public institution
30 of higher education shall not designate any area of campus
31 a free-speech zone or otherwise create policies restricting
32 expressive activities to a particular outdoor area of campus.

33 3. Nothing in this section shall be construed to grant
34 individuals the right to engage in conduct that intentionally,
35 materially, and substantially disrupts the expressive activity

1 of a person or student organization if the public institution
2 of higher education has reserved space in an outdoor area of
3 campus for activity by the person or student organization in
4 accordance with this chapter.

5 **Sec. 5. NEW SECTION. 261H.5 Remedies — statute of**
6 **limitations — immunity.**

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

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

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

18 4. This section shall not be interpreted to limit any other
19 remedies available to a member of the campus community.

20 5. Nothing in this section shall be construed to make
21 any administrator, officer, employee, or agent of a public
22 institution of higher education personally liable for acts
23 taken pursuant to the individual's official duties.

24 **Sec. 6. IMPLEMENTATION OF ACT.** Section 25B.2, subsection
25 3, shall not apply to this Act.

26 **Sec. 7. EFFECTIVE DATE.** This Act, being deemed of immediate
27 importance, takes effect upon enactment.

28 EXPLANATION

29 The inclusion of this explanation does not constitute agreement with
30 the explanation's substance by the members of the general assembly.

31 This bill relates to public forums, freedom of expression,
32 and freedom of association at community colleges and regents
33 universities.

34 **DEFINITIONS.** The bill defines "benefit", "campus
35 community", "materially and substantially disrupts", outdoor

1 areas of campus", "public institution of higher education",
2 "student", and "student organization" for purposes of the new
3 Code chapter established by the bill.

4 POLICY ADOPTION. The bill requires the boards governing
5 the public postsecondary institutions to adopt a policy that
6 includes statements describing the functions and roles of
7 institutions with regard to knowledge; protected speech;
8 the freedom to discuss within the bounds of the established
9 principles of the first amendment to the United States
10 Constitution; freedom to assemble and engage in spontaneous
11 expressive activities subject to reasonable time, place,
12 and manner restrictions; and public areas of campuses as
13 traditional public forums.

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

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

33 PUBLIC FORUMS ON CAMPUS — FREEDOM OF ASSOCIATION. The
34 bill requires that the outdoor areas of campuses of public
35 postsecondary institutions be deemed traditional public

1 forums. The institutions may maintain and enforce clear,
2 published, reasonable content-neutral and viewpoint-neutral
3 time, place, and manner restrictions that are narrowly tailored
4 in furtherance of a significant institutional interest,
5 shall allow members of the campus community to engage in
6 spontaneous expressive activity and to distribute literature,
7 shall provide for ample alternative means of expression, and
8 shall not designate any area of campus a free-speech zone or
9 otherwise create policies restricting expressive activities to
10 a particular outdoor area of campus. Such provisions shall
11 not be construed to grant individuals the right to disrupt the
12 expressive activity of a person or student organization if the
13 institution has reserved space in an outdoor area of campus for
14 the person's or organization's activity.

15 REMEDIES, STATUTE OF LIMITATIONS, AND IMMUNITY PROVISIONS.
16 An aggrieved member of the campus community may bring an action
17 against the institution responsible for a violation of the
18 Code chapter and seek appropriate relief, and may assert such
19 violation as a defense or counterclaim.

20 Such person has one year after the day the cause of action
21 accrues to bring a claim for violation of the Code chapter.
22 However, nothing in the bill shall be interpreted to limit any
23 other available remedies to a member of the campus community.

24 STATE MANDATE — INAPPLICABILITY PROVISION. The bill may
25 include a state mandate as defined in Code section 25B.3. The
26 bill makes inapplicable Code section 25B.2, subsection 3, which
27 would relieve a political subdivision from complying with a
28 state mandate if funding for the cost of the state mandate is
29 not provided or specified. Therefore, political subdivisions
30 are required to comply with any state mandate included in the
31 bill.

32 EFFECTIVE DATE. The bill takes effect upon enactment.