

Senate File 2344 - Reprinted

SENATE FILE 2344
BY COMMITTEE ON EDUCATION

(SUCCESSOR TO SSB 3120)

(As Amended and Passed by the Senate February 28, 2018)

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 adoption.**

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

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

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

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

32 3. That students and faculty have the freedom to discuss
33 any problem that presents itself, assemble, and engage in
34 spontaneous expressive activity on campus, within the bounds
35 of established principles of the first amendment to the

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

4 4. That the public areas of campus of an institution
5 of higher education are traditional public forums, open on
6 the same terms to any invited speaker 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.

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

11 1. Noncommercial expressive activities protected under the
12 provisions of this chapter include any lawful oral or written
13 means by which members of the campus community may communicate
14 ideas to one another, including all forms of peaceful assembly,
15 protests, speeches including by invited speakers, distribution
16 of literature, and circulating petitions.

17 2. A member of the campus community who wishes to engage in
18 noncommercial expressive activity in outdoor areas of campus
19 shall be permitted to do so freely, subject to reasonable
20 time, place, and manner restrictions that are consistent
21 with established principles of the first amendment to the
22 Constitution of the United States, and as long as the member's
23 conduct is not unlawful and does not disrupt the functioning
24 of the public institution of higher education, subject to the
25 protections of subsection 1. The public institution of higher
26 education may designate other areas of campus available for
27 use by the campus community according to institutional policy,
28 but in all cases access to designated areas of campus must be
29 granted on a content-neutral and viewpoint-neutral basis within
30 the bounds of established first amendment principles.

31 3. A public institution of higher education shall not deny
32 benefits or privileges available to student organizations based
33 on the viewpoint of a student organization or the expression
34 of the viewpoint of a student organization by the student
35 organization or its members protected by the first amendment to

1 the Constitution of the United States. In addition, a public
2 institution of higher education shall not deny any benefit
3 or privilege to a student organization based on the student
4 organization's requirement that the leaders of the student
5 organization affirm or agree to the student organization's
6 beliefs or standards of conduct or further the student
7 organization's mission.

8 4. This section shall not be interpreted as limiting the
9 right of student expression in a counter demonstration held on
10 campus as long as the conduct at the counter demonstration is
11 not unlawful and does not materially and substantially prohibit
12 the free expression rights of others on campus or disrupt the
13 functioning of the public institution of higher education,
14 subject to reasonable time, place, and manner restrictions
15 that are consistent with established principles of the first
16 amendment to the Constitution of the United States.

17 5. Nothing in this chapter shall be interpreted as
18 preventing public institutions of higher education from
19 prohibiting, limiting, or restricting expression that is not
20 protected by the first amendment to the Constitution of the
21 United States.

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

24 The outdoor areas of campuses of public institutions of
25 higher education in this state shall be deemed traditional
26 public forums. Public institutions of higher education
27 may maintain and enforce reasonable time, place, and manner
28 restrictions consistent with established principles of the
29 first amendment to the Constitution of the United States. Such
30 restrictions shall allow for members of the campus community
31 to engage in spontaneous expressive activity and to distribute
32 literature.

33 Sec. 5. NEW SECTION. 261H.5 Remedies — statute of
34 limitations — immunity.

35 1. A member of the campus community aggrieved by a violation

1 of this chapter may file a complaint with the governing body of
2 the public institution of higher education.

3 2. A member of the campus community aggrieved by a violation
4 of this chapter may assert such violation as a defense
5 or counterclaim in a disciplinary action or in a civil or
6 administrative proceeding brought against the member of the
7 campus community.

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

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

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

17 Sec. 6. IMPLEMENTATION OF ACT. Section 25B.2, subsection
18 3, shall not apply to this Act.

19 Sec. 7. EFFECTIVE DATE. This Act, being deemed of immediate
20 importance, takes effect upon enactment.