SENATE FILE 274
BY COMMITTEE ON EDUCATION

(SUCCESSOR TO SSB 1099)

(As Amended and Passed by the Senate March 11, 2019)

_____ = New Language by the Senate

* = Language Stricken by the Senate

A BILL FOR

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

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

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

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

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

a. Recognition.

b. Registration.

c. Use of facilities for meetings or speaking purposes.

d. Use of channels of communication.

e. Access to funding sources that are otherwise available to other student groups.

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

3. *"Materially and substantially disrupts"* means when a person, with the intent to or with knowledge of doing so, engages in violent or other disorderly conduct that significantly hinders a previously scheduled or reserved activity occurring on university grounds, buildings, and facilities. *"Materially and substantially disrupts"* does not include conduct that is protected under the first amendment to the Constitution of the United States, including but not limited to lawful protests and counterprotests.

4. *"Outdoor areas of campus"* means the generally accessible outside areas of campus where students, administrators, faculty, and staff at a public institution of higher education are commonly allowed, such as grassy areas, walkways, or other similar common areas and does not include areas outside health care facilities including both stand-alone facilities and mixed-use facilities that are embedded within another facility, veterinary medicine facilities, a facility or outdoor area used by the institution's athletics program or teams, or other

outdoor areas where access is restricted to a majority of the campus community. In recognition of the healing environment that is essential to its clinical purposes, the areas outside health care facilities, including both stand-alone facilities and mixed-use facilities that are embedded within another facility, are not designated public forums.

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

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

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

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

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

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

2. *a.* That it is not the proper role of an institution of higher education to shield individuals from speech protected by the first amendment to the Constitution of the United States,

which may include ideas and opinions the individual finds unwelcome, disagreeable, or even offensive.

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

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

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

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

1. Noncommercial expressive activities protected under the provisions of this chapter include but are not limited to any lawful oral or written means by which members of the campus community may communicate ideas to one another, including but not limited to all forms of peaceful assembly, protests, speeches including by invited speakers, distribution of literature, circulating petitions, and publishing, including publishing or streaming on an internet site, audio or video recorded in outdoor areas of campus.

2. A member of the campus community who wishes to engage in noncommercial expressive activity in outdoor areas of campus shall be permitted to do so freely, subject to reasonable time, place, and manner restrictions, and as long as the

member's conduct is not unlawful, does not impede others' access to a facility or use of walkways, and does not disrupt the functioning of the public institution of higher education, subject to the protections of subsection 1. The public institution of higher education may designate other areas of campus available for use by the campus community according to institutional policy, but in all cases access to designated areas of campus must be granted on a viewpoint-neutral basis within the bounds of established first amendment principles.

3. A public institution of higher education shall not deny benefits or privileges available to student organizations based on the viewpoint of a student organization or the expression of the viewpoint of a student organization by the student organization or its members protected by the first amendment to the Constitution of the United States. In addition, a public institution of higher education shall not deny any benefit or privilege to a student organization based on the student organization's requirement that the leaders of the student organization agree to and support the student organization's beliefs, as those beliefs are interpreted and applied by the organization, and to further the student organization's mission.

4. This section shall not be interpreted as limiting the right of student expression in a counter demonstration held in an outdoor area of campus as long as the conduct at the counter demonstration is not unlawful, does not materially and substantially prohibit the free expression rights of others in an outdoor area of campus or disrupt the functioning of the public institution of higher education, and does not impede others' access to a facility or use of walkways, subject to reasonable time, place, and manner restrictions that are consistent with established principles of the first amendment to the Constitution of the United States.

5. This chapter shall not be interpreted as preventing public institutions of higher education from prohibiting,

limiting, or restricting expression that the first amendment of the Constitution of the United States does not protect, including but not limited to a threat of serious harm and expression directed or likely directed to provoke imminent unlawful actions; or from prohibiting harassment, including but not limited to expression which is so severe, pervasive, and subjectively and objectively offensive that the expression unreasonably interferes with an individual's access to educational opportunities or benefits provided by a public institution of higher education.

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

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

2. Except as provided in this chapter, and subject to reasonable time, place, and manner restrictions, a public institution of higher education shall not designate any area of campus a free-speech zone or otherwise create policies restricting expressive activities to a particular outdoor area of campus.

3. Nothing in this chapter shall be construed to grant individuals the right to engage in conduct that intentionally, materially, and substantially disrupts the expressive activity of a person or student organization if the public institution of higher education has reserved space in an outdoor area of campus for activity by the person or student organization in

accordance with this chapter.

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

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

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

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

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

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

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

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