

A BILL

To designate outdoor areas of public post-secondary educational institutions as traditional public forums open to free speech, and for other purposes.

SEC. 1. SHORT TITLE.

This Act may be cited as the “Campus Free Expression Act.”

SEC. 2. RIGHT TO USE CAMPUS FOR FREE SPEECH ACTIVITIES.

- 1) Expressive activities protected under the provisions of this Act include, but are not limited to, all forms of peaceful assembly, protests, speeches, distribution of literature, carrying signs, circulating petitions, and the recording and lawful publication, including internet publication, of video and audio lawfully recorded in public outdoor areas of public institutions of higher education;
- 2) The publicly accessible outdoor areas of campuses of public institutions of higher education shall be deemed traditional public forums. Public institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions on expressive activity in the publicly accessible outdoor areas of campus and in indoor locations that the institutions have opened to the public for expressive activity, only if the restrictions are reasonable, in furtherance of a significant institutional interest, and only when such restrictions employ clear, published, content- and viewpoint-neutral criteria and provide for ample alternative means of expression. Any such restrictions must allow for members of the university community to spontaneously and contemporaneously distribute literature and assemble;
- 3) Any person who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as their conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution, subject to the requirements of Subsection 2 of this Section. No public institution of higher education shall designate any area of its campus as a “free speech zone” or otherwise create policies restricting expressive activities to particular areas of campus;
- 4) Nothing in this Act shall enable individuals to engage in conduct that intentionally, materially, and substantially disrupts another’s expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group. For purposes of this Act, “Materially and substantially disrupts” means when a person, with the intent to, or with knowledge of, doing so, significantly hinders another person’s or group’s expressive activity, prevents the communication of

the message, or prevents the transaction of the business of a lawful meeting, gathering or procession by:

- a) engaging in fighting, violent, or seriously disruptive behavior; or
 - b) physically blocking or significantly hindering any person from attending, listening to, viewing, or otherwise participating in an expressive activity.
- 5) Conduct that “materially and substantially disrupts” shall not include conduct that is protected under the First Amendment of the United States Constitution or [State Constitution citation]. Such protected conduct includes, but is not limited to, lawful protests and counter-protests in the outdoor areas of campus generally accessible to the members of the public (except during times when those areas have been reserved in advance for other events), or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.
- 6) Nothing in this Act shall be interpreted as limiting the right of student expression elsewhere on campus.
- 7) Nothing in this Act prohibits a public institution of higher education from requiring a permit from any individual or group as a condition of being granted exclusive control of a location for its expressive activity at a reserved time. Any such permitting process shall not be overly burdensome, and applications for permits shall be evaluated solely using published content- and viewpoint-neutral criteria;
- 8) A public institution of higher education may charge security fees to a student or student group as part of an application for those expressive activities that require a permit, provided that no public institution of higher education shall charge security fees to a student or a student group based on the content of their expression, the content of the expression of their invited guest, or the anticipated reaction to the student’s, student group’s, or invited guest’s expression. Whether the security fee is required and its amount may only be determined on the basis of content- and viewpoint-neutral criteria. Examples of content-and viewpoint-neutral criteria include: the time of the event, the location of the event, the anticipated size of the invited audience, and whether alcohol will be served. Any public institution of higher education charging security fees pursuant to this Section must publish the criteria it uses for assessing those charges.
- 9) Nothing in this Act prohibits an institution from providing resources to a student or students affected by speech that cannot be sanctioned under this subdivision or under the First Amendment, or other nonpunitive actions designed to foster resilience or achieve pedagogical goals.

SEC. 3. CAUSE OF ACTION.

1) The following persons may bring an action against a public institution of higher education, and its agents acting within their official capacities, in a State or Federal Court of competent jurisdiction to enjoin violation of this Act and to recover compensatory damages, reasonable court costs, and attorneys' fees:

- a) the attorney general;
- b) persons whose expressive rights were violated through the violation of this Act.

2) In an action brought under this Section, if the court finds a violation of this Act, the court shall award the aggrieved persons no less than \$500 for the initial violation plus \$50 for each day the violation remains ongoing, which shall accrue starting on the day after the complaint is served on the institution of higher education. The total damages, excluding court costs and attorney's fees, available to a plaintiff or set of plaintiffs, in a case or cases stemming from a single controversy shall not exceed \$100,000 in total. In violations harming multiple plaintiffs, the court shall divide the damages equitably among them until the maximum award is exhausted, if applicable.

SEC. 4. STATUTE OF LIMITATIONS.

1) ONE-YEAR LIMITATIONS PERIOD.

- a) A person must bring suit for a violation of this Act not later than one year after the day the cause of action accrues;
- b) For purposes of calculating the one-year limitation period, each day that the violation of this Act persists, and each day that a policy in violation of this Act remains in effect, shall constitute a new day that the cause of action has accrued.