

FIRST REGULAR SESSION

HOUSE BILL NO. 442

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MOON.

0809H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 173.1550, RSMo, and to enact in lieu thereof two new sections relating to campus free expression.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 173.1550, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 173.1550 and 173.1557, to read as follows:

173.1550. 1. The provisions of this section shall be known and cited as the "Campus Free Expression Act". Expressive activities protected under the provisions of this section include, but are not limited to, all forms of peaceful assembly, protests, speeches, distribution of literature, carrying signs, and circulating petitions.

2. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed traditional public forums. Public institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions in service of a significant institutional interest only when such restrictions employ clear, published, ~~content~~ **content-neutral**, and viewpoint-neutral criteria, and provide for ample alternative means of expression. Any such restrictions shall allow for members of the university community to spontaneously and contemporaneously assemble.

3. Any person who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as the person's 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.

4. Nothing in this section shall be interpreted as limiting the right of student expression elsewhere on campus.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 5. The governing board of each public institution of higher education in this state
19 shall develop and adopt a policy on free expression prior to January 1, 2020, that includes,
20 but is not limited to, the following statements:

21 (1) The primary function of an institution of higher education is the discovery,
22 improvement, transmission, and dissemination of knowledge by means of research,
23 teaching, discussion, and debate. This statement shall provide that, to fulfill this function,
24 the institution shall strive to ensure the fullest degree of intellectual freedom and free
25 expression;

26 (2) It is not the proper role of the institution to shield individuals from speech
27 protected by the First Amendment including, but not limited to, ideas and opinions
28 individuals find unwelcome, disagreeable, or even deeply offensive;

29 (3) Any person lawfully present on campus may protest or demonstrate there. Such
30 statement shall make clear that protests and demonstrations that materially and
31 substantially infringe upon the rights of others to engage in or listen to expressive activity
32 shall not be permitted and shall be subject to sanction. This does not prohibit instructors
33 from maintaining order in the classroom;

34 (4) The campuses of the institution are open to any speaker whom students, student
35 groups, or members of the faculty have invited;

36 (5) The institution shall make all reasonable efforts and make available all
37 reasonable resources to ensure the safety of invited speakers. An institution shall not
38 charge security fees based on the content of the speech. The institution may restrict the use
39 of its nonpublic facilities to invited individuals;

40 (6) Any student who has twice been found responsible for infringing upon the
41 expressive rights of others shall be suspended for a minimum of one year or expelled;

42 (7) Individual students, faculty, and staff of the institution shall be free to take
43 positions on the public controversies of the day, but the institution itself shall attempt to
44 remain neutral, as an institution, on such controversies, except when administrative
45 decisions on such issues are essential to the day-to-day functioning of the institution. The
46 institution shall not take action, as an institution, on the public policy controversies of the
47 day in such a way as to require students, faculty, or staff to publicly express a given view
48 of a public controversy; and

49 (8) No institution shall deny a student organization any benefit or privilege
50 available to any other student organization, or otherwise discriminate against a student
51 organization, based on the content of the organization's expression, including any
52 requirement that the leaders or members of such organization:

53 (a) Affirm and adhere to the organization's sincerely held beliefs;

54 **(b) Comply with the organization's standards of conduct; or**
55 **(c) Further the organization's mission or purpose, as defined by the student**
56 **organization.**

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58 **If any of the statements required under this subsection conflict with any previous policies,**
59 **rules, or regulations of an institution, the institution shall revise any such provisions to**
60 **ensure compatibility with the statements required under this subsection.**

61 **6. Policies developed and implemented under subsection 5 of this section shall**
62 **include a range of disciplinary sanctions for anyone under the jurisdiction of the institution**
63 **who materially and substantially interferes with the free expression of others. In all**
64 **disciplinary cases involving expressive conduct, students shall be entitled to a disciplinary**
65 **hearing under published procedures including, at a minimum, the following:**

- 66 **(1) The right to receive advance written notice of the charges;**
67 **(2) The right to review the evidence in support of the charges;**
68 **(3) The right to confront witnesses against them;**
69 **(4) The right to present a defense;**
70 **(5) The right to call witnesses;**
71 **(6) A decision by an impartial arbiter or panel; and**
72 **(7) The right of appeal.**

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74 **If suspension for longer than thirty days or expulsion is a potential penalty, students shall**
75 **be entitled to the additional right to active assistance of counsel.**

76 **7. Public institutions of higher education shall include in their freshman orientation**
77 **programs a section describing to all students the policies regarding free expression**
78 **consistent with the provisions of this section.**

79 **8. Nothing contained in this section shall be construed to prevent public institutions**
80 **of higher education from regulating student speech or activity that is prohibited by law.**
81 **Except as further limited in this section, institutions shall be allowed to restrict student**
82 **expression only for expressive activity not protected by the First Amendment, including:**

- 83 **(1) Violations of state or federal law;**
84 **(2) Expression that a court has deemed unprotected defamation;**
85 **(3) Harassment, which is defined as peer-on-peer harassment or quid pro quo**
86 **sexual harassment. For purposes of this subdivision, the following terms mean:**

87 **(a) "Peer-on-peer harassment", conduct directed by a student towards another**
88 **individual student, on the basis of that student's membership or perceived membership in**
89 **a protected class, that is so severe, pervasive, and objectively offensive that it effectively**

90 deprives the victim of access to the educational opportunities or benefits provided by the
91 institution;

92 (b) "Quid pro quo sexual harassment", explicitly or implicitly conditioning a
93 student's participation in an education program or activity or basing an educational
94 decision on the student's submission to unwelcome sexual advances, requests for sexual
95 favors, or other verbal, nonverbal, or physical conduct of a sexual nature;

96 (4) True threats, which are statements meant by the speaker to communicate a
97 serious expression of an intent to commit an act of unlawful violence to a particular
98 individual or group of individuals;

99 (5) An unjustifiable invasion of privacy or confidentiality not involving a matter
100 of public concern;

101 (6) An action that unlawfully disrupts the function of an institution of higher
102 education; and

103 (7) Reasonable time, place, and manner restrictions consistent with subsection 2 of
104 this section.

105 **9. Public institutions of higher education may restrict expressive conduct in the**
106 **public areas of campus only if the institution demonstrates that the restriction:**

107 (1) Is necessary to achieve a compelling governmental interest;

108 (2) Is the least restrictive means of furthering a compelling governmental interest;

109 (3) Leaves open ample other opportunities to engage in the expressive conduct; and

110 (4) Provides for spontaneous assembly and distribution of literature.

111 **10.** The following persons may bring an action in a court of competent jurisdiction to
112 enjoin any violation of this section or to recover compensatory damages, reasonable court costs,
113 and attorney fees:

114 (1) The attorney general;

115 (2) Persons whose expressive rights were violated through the violation of this section.

116 ~~[6-]~~ **11.** In an action brought under subsection ~~[5]~~ **10** of this section, if the court finds
117 a violation, the court shall award the aggrieved persons no less than five hundred dollars for the
118 initial violation, plus fifty dollars for each day the violation remains ongoing.

119 ~~[7-]~~ **12.** A person shall be required to bring suit for violation of this section not later than
120 one year after the day the cause of action accrues. For purposes of calculating the one-year
121 limitation period, each day that the violation persists, and each day that a policy in violation of
122 this section remains in effect, shall constitute a new violation of this section and, therefore, a new
123 day that the cause of action has accrued.

124 **13. Notwithstanding any other provision of law, the state waives sovereign**
125 **immunity and consents to suit in state and federal court for lawsuits arising under this**

126 **section. A public institution of higher education that violates any of the provisions of this**
127 **section shall not be immune from suit or liability for any such violation.**

128 **14. The governing board of each public institution of higher education in this state**
129 **shall adopt policies for the administration of this section.**

173.1557. The governing board of each public institution of higher education shall
2 **issue an annual report on the administrative handling of free-speech issues within its**
3 **respective institution. Each governing board shall report to the public, the department of**
4 **higher education, and the general assembly on September first of each year. The report**
5 **shall include the following:**

6 **(1) A description of any barriers to or disruptions of free expression within the**
7 **public institution of higher education;**

8 **(2) A description of the administrative handling and discipline relating to barriers**
9 **to or disruptions of free expression within the public institution of higher education;**

10 **(3) A description of substantial difficulties, controversies, or successes in**
11 **maintaining a posture of administrative and institutional neutrality with regard to political**
12 **or social issues; and**

13 **(4) Any assessments, criticisms, commendations, or recommendations of the**
14 **governing board.**

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