

SECOND REGULAR SESSION

# HOUSE BILL NO. 2696

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOHRMAN.

4903H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To repeal section 173.1550, RSMo, and to enact in lieu thereof one new section 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Section A. Section 173.1550, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 173.1550, to read as follows:

173.1550. 1. **As used in this section, the following terms mean:**

(1) **"Constitutional time, place, and manner restrictions"**, restrictions on the time, place, and manner of free speech that do not violate the First Amendment to the United States Constitution or Article I, Sections 8 and 9 of the Constitution of Missouri that are reasonable, content- and viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and that leave open ample alternative channels for the communication of the information or message to its intended audience;

(2) **"Faculty" or "faculty member"**, any person, regardless of whether the person is compensated by a public institution of higher education, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching. **"Faculty"** shall include tenured and nontenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions, however titled. **"Faculty"** shall not include persons whose primary responsibilities are administrative or managerial;

(3) **"Free speech"**, speech, expression, or assemblies protected by the First Amendment to the United States Constitution or Article I, Sections 8 and 9 of the Constitution of Missouri, whether oral or written including, but not limited to, all forms

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 of lawful peaceful assembly, protests, demonstrations, rallies, vigils, marches, public  
19 speaking, distribution of printed materials, carrying of signs, displays, or circulating of  
20 petitions. "Free speech" does not include the promotion, sale, or distribution of any  
21 product or service;

22 (4) "Institution", any public institution of higher education in this state;

23 (5) "Materially and substantially disrupts":

24 (a) A disruption that occurs when a person, with the purpose or knowledge of  
25 significantly hindering the expressive activity of another person or group, prevents the  
26 communication of a message of another person or group, or prevents the transaction of the  
27 business of a lawful meeting, gathering, or procession by:

28 a. Engaging in fighting, violence, or other unlawful behavior; or

29 b. Physically blocking or using threats of violence to prevent any person from  
30 attending, listening to, viewing, or otherwise participating in an expressive activity;

31 (b) "Materially and substantially disrupts" shall not include conduct that is  
32 protected under the First Amendment to the United States Constitution or Article I,  
33 Sections 8 and 9 of the Constitution of Missouri, including without limitation:

34 a. Lawful protests in an outdoor area of campus that is generally accessible to  
35 members of the campus community, except when the area has been reserved in advance  
36 for another event; or

37 b. Minor, brief, or fleeting nonviolent disruptions of events that are isolated and  
38 short in duration;

39 (6) "Student":

40 (a) An individual currently enrolled in a course of study at an institution; and

41 (b) An organization that is comprised entirely of individuals currently enrolled in  
42 a course of study at an institution and that is registered with the institution in accordance  
43 with institutional rules.

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

48 [2-] 3. The outdoor areas of campuses of public institutions of higher education in this  
49 state shall be deemed traditional public forums. Public institutions of higher education may  
50 maintain and enforce reasonable time, place, and manner restrictions in service of a significant  
51 institutional interest only when such restrictions employ clear, published, ~~content~~ **content-**  
52 **neutral**, and viewpoint-neutral criteria, and provide for ample alternative means of expression.  
53 Any such restrictions shall allow for members of the university community to spontaneously and

54 contemporaneously assemble. **Public institutions of higher education shall not restrict**  
55 **students' free speech only to particular areas of campus, sometimes known as "free speech**  
56 **zones", or establish permitting requirements that prohibit spontaneous outdoor assemblies**  
57 **or outdoor distribution of literature. A public institution of higher education may**  
58 **maintain a policy that grants members of the institution's community the right to reserve**  
59 **certain outdoor spaces in advance.**

60 ~~[3-]~~ 4. Any person who wishes to engage in noncommercial expressive activity on  
61 campus shall be permitted to do so freely, as long as the person's conduct is not unlawful and  
62 does not materially and substantially disrupt the functioning of the institution subject to the  
63 requirements of subsection ~~[2]~~ 3 of this section.

64 ~~[4-]~~ 5. Nothing in this section shall be interpreted as limiting the right of student  
65 expression elsewhere on campus.

66 ~~[5-]~~ 6. **The governing board of each public institution of higher education in this**  
67 **state shall develop and adopt a policy on free expression prior to January 1, 2021, that**  
68 **includes, but is not limited to, the following principles of free speech, which are the public**  
69 **policy of this state:**

70 (1) **Students have a fundamental constitutional right to free speech;**

71 (2) **The institution shall be committed to giving students the broadest possible**  
72 **latitude to speak, write, listen, challenge, learn, and discuss any issue, subject to the**  
73 **provisions of subsection 12 of this section;**

74 (3) **The institution shall be committed to maintaining a campus as a marketplace**  
75 **of ideas for all students and all faculty in which the free exchange of ideas is not to be**  
76 **suppressed because ideas put forth are thought by some or even by most members of the**  
77 **institution's community to be offensive, unwise, disagreeable, conservative, liberal,**  
78 **traditional, or radical;**

79 (4) **It is for the institution's individual students and faculty to make judgments**  
80 **about ideas for themselves, and to act on those judgments not by seeking to suppress free**  
81 **speech, but by openly contesting the ideas that they oppose;**

82 (5) **It is not the proper role of the institution to attempt to shield individuals from**  
83 **free speech, including ideas and opinions they find offensive, unwise, disagreeable,**  
84 **conservative, liberal, traditional, or radical;**

85 (6) **Although the institution should greatly value civility and mutual respect,**  
86 **concerns about civility and mutual respect shall never be used by the institution as a**  
87 **justification for closing off the discussion of ideas, no matter how offensive, unwise,**  
88 **disagreeable, conservative, liberal, traditional, or radical those ideas may be to some**  
89 **students or faculty;**

90 (7) Although all students and all faculty are free to state their own views about and  
91 contest the views expressed on campus and to state their own views about and contest  
92 speakers who are invited to express their views on the institution's campus, the institution  
93 shall make reasonable efforts to ensure that, when expressive activity occurs in a campus  
94 indoor space reserved for that activity under the exclusive use or control of a particular  
95 group, no person can intentionally obstruct or otherwise materially and substantially  
96 disrupt or interfere with that activity. To this end, the institution has the responsibility to  
97 promote a lively and fearless freedom of debate and deliberation and to protect that  
98 freedom;

99 (8) The institution shall be committed to providing an atmosphere that is most  
100 conducive to speculation, experimentation, and creation by all students and all faculty, who  
101 shall always remain free to inquire, to study and evaluate, and to gain new understanding;

102 (9) Although faculty are free in the classroom to discuss subjects within areas of  
103 their competence, faculty should be cautious in expressing personal views in the classroom  
104 to persuade rather than illustrate or illuminate, and faculty should be careful not to  
105 introduce controversial matters that have no relationship to the subject taught, especially  
106 matters in which they have no special competence or training; provided that, no faculty  
107 shall face adverse employment action for classroom speech unless it is not reasonably  
108 germane to the subject matter of the class as broadly construed and comprises a substantial  
109 portion of classroom instruction;

110 (10) The institution shall not deny student activity fee funding to a student  
111 organization based on the viewpoints that the student organization advocates;

112 (11) The institution shall not charge students security fees based on the content of  
113 their speech, the content of the speech of guest speakers invited by students, or the  
114 anticipated reaction or opposition of listeners to such speech;

115 (12) The institution shall allow all students and all faculty to invite guest speakers  
116 to campus to engage in free speech regardless of the views of the speakers; and

117 (13) The institution shall not disinvite a speaker invited by a student, student  
118 organization, or faculty member because the speaker's anticipated speech may be  
119 considered offensive, unwise, disagreeable, conservative, liberal, traditional, or radical by  
120 students, faculty, administrators, government officials, or members of the public.

121 7. The policy required under subsection 6 of this section shall be made available to  
122 students and faculty annually through one or more of the following methods:

123 (1) Published annually in the institution's student handbook and faculty handbook,  
124 whether paper or electronic;

125           **(2) Made available to students and faculty by way of a prominent notice on the**  
126 **institution's website other than through the electronic publication of the policy in the**  
127 **student handbook or faculty handbook;**

128           **(3) Sent annually to students and employees to their institutionally provided email**  
129 **addresses; or**

130           **(4) Addressed by the institution in orientation programs for new students and new**  
131 **faculty.**

132           **8. Nothing contained in subsection 6 or 7 of this section shall be construed as**  
133 **granting anyone the right to materially and substantially disrupt previously scheduled or**  
134 **reserved activities occurring in a traditional public forum or locations reserved for those**  
135 **activities.**

136           **9. With respect to disciplining students for their speech, expression, or assemblies,**  
137 **each institution shall adopt a policy on "student-on-student harassment" defining the term**  
138 **consistently with, and no more expansively than, unwelcome conduct directed toward a**  
139 **person that is discriminatory as designated by the educational institution or on a basis**  
140 **provided by federal, state, or local law and that is so severe, pervasive, and objectively**  
141 **offensive that the victim is effectively denied equal access to the institution's resources and**  
142 **opportunities.**

143           **10. With respect to disciplining students for their speech, expression, or assemblies,**  
144 **each institution shall adopt a policy on "student-on-student bullying" defining the term**  
145 **consistently with, and no more expansively than, unwelcome conduct directed toward a**  
146 **person that is so severe, pervasive, and objectively offensive that the victim is effectively**  
147 **denied equal access to an institution's resources and opportunities.**

148           **11. An institution shall not impose costs on students or student organizations on the**  
149 **basis of the anticipated reaction or opposition to a person's speech by listeners.**

150           **12. Nothing contained in this section shall be interpreted as prohibiting an**  
151 **institution from imposing content restrictions on speech that are reasonably related to a**  
152 **legitimate pedagogical purpose, such as rules enacted by faculty for speech in the**  
153 **classroom environs.**

154           **13. The following persons may bring an action in a court of competent jurisdiction**  
155 **against an institution or its agents acting in their official capacities to enjoin any violation**  
156 **of this section or to recover compensatory damages, reasonable court costs, and attorney fees:**

157           **(1) The attorney general;**

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

159           ~~[6.]~~ **14.** In an action brought under subsection ~~[5]~~ **13** of this section, if the court finds  
160 a violation, the court shall award the aggrieved persons no less than five hundred dollars for the  
161 initial violation, plus fifty dollars for each day the violation remains ongoing.

162           ~~[7.]~~ **15.** A person shall be required to bring suit for violation of this section not later than  
163 one year after the day the cause of action accrues. For purposes of calculating the one-year  
164 limitation period, each day that the violation persists, and each day that a policy in violation of  
165 this section remains in effect, shall ~~[constitute a new violation of this section and, therefore, a~~  
166 ~~new day that the cause of action has accrued]~~ **reset the calculation of the statute of limitations.**

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