

Session of 2018

SENATE BILL No. 340

By Committee on Federal and State Affairs

1-30

1 AN ACT concerning postsecondary educational institutions; establishing
2 the campus free speech protection act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) This act shall be known and may be cited as the campus
6 free speech protection act.

7 (b) The legislature finds that postsecondary educational institutions as
8 defined in K.S.A. 74-3201b, and amendments thereto, are not immune
9 from the sweep of the first amendment to the constitution of the United
10 States or section 11 of the bill of rights of the constitution of the state of
11 Kansas, which guarantees freedom of speech and expression.

12 (c) It is the intent of the legislature:

13 (1) That the postsecondary educational institutions embrace a
14 commitment to the freedom of speech and expression for all students and
15 all faculty;

16 (2) that postsecondary educational institutions, including their faculty,
17 shall not require students ~~or other faculty~~ to adopt or to indicate their
18 adherence to beliefs or orthodoxies on any particular political,
19 philosophical, religious, social, or other such subject, although institutions
20 may require students ~~and faculty~~ to conform their conduct to the
21 requirements of law and policy; and

22 (3) that postsecondary educational institutions not stifle freedom of
23 speech and expression by implementing vague or overbroad speech codes,
24 establishing free speech zones, imposing unconstitutional prior restraints
25 on speech, or disinviting speakers based on the anticipated reaction or
26 opposition of others to the content of speech.

27 (d) As used in this act:

28 (1) "Constitutional time, place, and manner restrictions" means
29 restrictions on the time, place, and manner of free speech that do not
30 violate the first amendment to the constitution of the United States or
31 section 11 of the bill of rights of the constitution of the state of Kansas that
32 are reasonable, content- and viewpoint-neutral, narrowly tailored to satisfy
33 a significant institutional interest, and leave open ample alternative
34 channels for the communication of the information or message to its
35 intended audience;

36 (2) "faculty" or "faculty member" means any person, whether or not

continue to

, except that institutions may
require compliance with
constitutional time, place and
manner restrictions

1 the person is compensated by a public institution of higher education,
2 regardless of political affiliation, who is tasked with providing scholarship,
3 academic research or teaching. For purposes of this paragraph, the term
4 "faculty" shall include tenured and non-tenured professors, adjunct
5 professors, visiting professors, lecturers, graduate student instructors and
6 those in comparable positions, however titled. For purposes of this
7 paragraph, the term "faculty" shall not include persons whose primary
8 responsibilities are administrative or managerial;

9 (3) "free speech" means speech, expression or assemblies protected
10 by the first amendment to the constitution of the United States or section
11 11 of the bill of rights of the constitution of the state of Kansas, verbal or
12 written, including, but not limited to, all forms of peaceful assembly,
13 protests, demonstrations, rallies, vigils, marches, public speaking,
14 distribution of printed materials, carrying signs, displays or circulating
15 petitions. "Free speech" does not include the promotion, sale or
16 distribution of any product or service; and

17 (4) "Student" means an individual currently enrolled in a course of
18 study at the institution.

19 Sec. 2. (a) The governing authority of every postsecondary
20 educational institution shall adopt a policy that affirms the following
21 principles of free speech, which are the public policy of this state:

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

23 (2) an institution shall be committed to giving students the broadest
24 possible latitude to speak, write, listen, challenge, learn and discuss any
25 issue, subject to this act, and amendments thereto;

26 (3) an institution shall be committed to maintaining a campus as a
27 marketplace of ideas for all students and all faculty in which the free
28 exchange of ideas is not to be suppressed because the ideas put forth are
29 thought by some or even by most members of the institution's community
30 to be offensive, unwise, immoral, indecent, disagreeable, conservative,
31 liberal, traditional, radical or wrong-headed;

32 (4) it is for an institution's individual students ~~and faculty~~ to make
33 judgments about ideas for themselves and to act on those judgments not by
34 seeking to suppress free speech, but by openly and vigorously contesting
35 the ideas that they oppose;

36 (5) it is not the proper role of an institution to attempt to shield
37 individuals from free speech, including ideas and opinions they find
38 offensive, unwise, immoral, indecent, disagreeable, conservative, liberal,
39 traditional, radical or wrong-headed;

40 (6) although an institution should greatly value civility and mutual
41 respect, concerns about civility and mutual respect shall never be used by
42 an institution as a justification for closing off the discussion of ideas,
43 however offensive, unwise, immoral, indecent, disagreeable, conservative,

established constitutional
limitations and

1 liberal, traditional, radical or wrong-headed those ideas may be to some
2 ~~students or faculty;~~

3 (7) although all students ~~and faculty~~ are free to state their own views
4 about and contest the views expressed on campus, and to state their own
5 views about and contest speakers who are invited to express their views on
6 the institution's campus, they may not substantially obstruct or otherwise
7 substantially interfere with the freedom of others to express views they
8 reject or even loathe. To this end, an institution has a responsibility to
9 promote a lively and fearless freedom of debate and deliberation and
10 protect that freedom;

11 (8) an institution shall be committed to providing an atmosphere that
12 is most conducive to speculation, experimentation and creation by all
13 students ~~and faculty~~, who shall always remain free to inquire, to study, to
14 evaluate and to gain new understanding;

15 (9) ~~the primary responsibility of faculty is to engage an honest,~~
16 ~~courageous and persistent effort to search out and communicate the truth~~
17 ~~that lies in the areas of their competence;~~

18 (10) ~~an institution shall maintain the generally accessible, open,~~
19 ~~outdoor areas of its campus as traditional public forums for free speech by~~
20 ~~students;~~

21 (11) an institution shall not restrict students' free speech only to
22 particular areas of the campus, sometimes known as "free speech zones";

23 (12) an institution shall not deny student activity fee funding to a
24 student organization based on the viewpoints that the student organization
25 advocates;

26 (13) an institution shall not establish permitting requirements that
27 prohibit spontaneous outdoor assemblies or outdoor distribution of
28 literature, although an institution may maintain a policy that grants
29 members of the college or university community the right to reserve
30 certain outdoor spaces in advance;

31 (14) an institution shall not charge students security fees based on the
32 content of their speech, the content of the speech of guest speakers invited
33 by students, or the anticipated reaction or opposition of listeners to speech;

34 (15) an institution shall allow all students ~~and faculty~~ to invite guest
35 speakers to campus to engage in free speech regardless of the views of
36 guest speakers; ~~and~~

37 (16) ~~an institution shall not disinvite a speaker invited by a student,~~
38 ~~student organization or faculty member because the speaker's anticipated~~
39 ~~speech may be considered offensive, unwise, immoral, indecent,~~
40 ~~disagreeable, conservative, liberal, traditional, radical or wrong-headed by~~
41 ~~students, faculty, administrators, government officials or members of the~~
42 ~~public.~~

43 (b) The policies adopted pursuant to subsection (a) shall be made

subject to
reasonable
constitutional time,
place and manner
restrictions,

redesignating remaining
subsections

for event requests or activism projects, an
institution shall provide a written explanation to
inform the student or faculty group why such
event request or activism project was tabled or
denied; and
(17)

1 available to students and faculty annually through one or more of the
2 following methods:

3 (1) Publishing, annually, in the institution's student handbook and
4 faculty handbook, whether paper or electronic;

5 (2) making available to students and faculty by way of a prominent
6 notice on the institution's internet site other than through the electronic
7 publication of the policy in the student handbook and faculty handbook;

8 (3) sending, annually, to students and employees through their
9 institutionally provided email addresses; or

10 (4) addressing the policies in the institution's orientation programs for
11 new students and new faculty.

12 (c) Nothing in this section shall be construed to grant students the
13 right to disrupt previously scheduled or reserved activities occurring in a
14 traditional public forum.

15 Sec. 3. (a) With respect to disciplining students for their speech,
16 expression or assemblies, an institution shall ~~adopt~~ a policy on student-on-
17 student harassment, defining the term consistent with and ~~no~~ more
18 expansively than the language contained in subsection (b).

19 (b) As used in this section, "student-on-student harassment" means
20 unwelcome conduct directed toward a person that is discriminatory on a
21 basis prohibited by federal, state or local law and that is so severe,
22 pervasive and objectively offensive that it effectively bars the victim's
23 access to an educational opportunity or benefit.

24 Sec. 4. Nothing in this act shall require an institution to fund costs
25 associated with student speech or expression. An institution shall not
26 impose costs on students or student organizations on the basis of the
27 anticipated reaction or opposition to a person's speech by listeners.

28 Sec. 5. Nothing contained in this act shall be construed as prohibiting
29 an institution from imposing measures that do not violate the first
30 amendment to the constitution of the United States or section 11 of the bill
31 of rights of the constitution of the state of Kansas, such as:

32 (1) Constitutional time, place and manner restrictions;

33 (2) reasonable and viewpoint-neutral restrictions in ~~nonpublic~~
34 forums;

35 (3) restrictions on the use of the institution's property to protect the
36 free speech rights of students and faculty and preserve the use of the
37 property for the advancement of the institution's mission;

38 (4) prohibition or limitation of speech, expression or assemblies that
39 are not protected by the first amendment to the constitution of the United
40 States or section 11 of the bill of rights of the constitution of the state of
41 Kansas; or

42 (5) content restrictions on speech that are reasonably related to a
43 legitimate pedagogical purpose, such as classroom rules enacted by

have

, except as
required by law,

any

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5

- 1 faculty.
- 2 Sec. 6. This act shall take effect and be in force from and after its
- 3 publication in the statute book.