

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 340

As Amended by Senate Committee of the Whole

Brief*

SB 340, as amended, would establish the Campus Free Speech Protection Act.

Finding and Intent of the Legislature

The bill would establish the Legislature finds that postsecondary educational institutions (institutions) as defined in current law are not immune from the sweep of the First Amendment to the *U.S. Constitution* or Section 11 of the Bill of Rights of the *Kansas Constitution*, which guarantee the freedom of speech and expression.

The bill also would establish it is the intent of the Legislature that institutions:

- Continue to embrace a commitment to freedom of speech and expression for all students and faculty;
- Shall not require students or faculty to adopt or indicate adherence to any particular belief or orthodoxies on any subject, although the institutions could require conformity of conduct to the requirements of law and policy; and
- Not stifle freedom of speech and expression by implementing vague or overbroad speech codes, establishing free speech zones, imposing unconstitutional prior restraints on speech, or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

disinviting speakers based on the anticipated reaction or opposition to the content of the speech, except that institutions may require compliance with constitutional time, place, and manner restrictions.

Definitions (Sec. 1 and Sec. 3(b))

The bill would define in statute the terms “constitutional time, place, and manner restrictions,” “faculty” or “faculty member,” “free speech,” “student,” and “student-on-student harassment.”

Free Speech Policy (Sec. 2(a))

The bill would require the governing authority of every institution to adopt a policy that affirms various principles of free speech, outlined in the bill. The bill would declare these principles to be the public policy of the state.

Availability of Policy (Sec. 2(b))

The bill would require any meeting relating to the allocation of student activities fees of an institution or any group or committee thereof to be subject to the Kansas Open Meetings Act.

The bill would require the adopted policies to be available to students and faculty each year through one or more methods, including publication in the institution’s student and faculty handbook, prominent notice on the institution’s internet site, sent to students and employees through institutionally provided email addresses, or addressed at the institution’s orientation programs for new students and faculty. The bill also would require a public notice to be published in the student newspaper each year listing where the policies could be found.

Discipline Policy (Sec. 3(a))

The bill would require each institution to have a policy on student-on-student harassment, with respect to disciplining students for their speech, expression, or assemblies, and require defining student-on-student harassment consistent with and, except as required by law, no more expansively than the definition proposed by the bill.

Costs (Sec. 4)

The bill would not require an institution to fund costs associated with student speech or expression and would prohibit an institution from imposing costs on students or student organizations on the basis of the anticipated reaction or opposition to a person's speech by listeners.

Measures That Do Not Violate the First Amendment (Sec. 5)

The bill would not prohibit an institution from imposing measures that do not violate the First Amendment to the *U.S. Constitution* or Section 11 of the Bill of Rights of the *Kansas Constitution*, such as:

- Constitutional time, place, and manner restrictions;
- Reasonable and viewpoint-neutral restrictions in any forums;
- Restrictions on the use of the institution's property to protect free speech rights and preserve the use of the property for the advancement of the institution's mission;
- Prohibiting or limiting speech, expression, or assemblies that are not protected by the First Amendment to the *U.S. Constitution* or Section 11 of the Bill of Rights of the *Kansas Constitution*; or

- Content restrictions on speech that are reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by faculty.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs.

At the Senate Committee hearing, proponent testimony was provided by a University of Kansas (KU) student who currently serves as the Communications Director for the Kansas Federation of College Republicans and who provided her experience at KU regarding groups having their speech limited on the basis of the content of their speech. She also provided information on other universities' policies in the state that, she stated, limit freedom of speech for students. Written proponent testimony was submitted by Representative Humphries.

Opponent testimony was provided by a KU student, who stated the role of universities is to be institutions of knowledge and learning, with a responsibility to impart accurate information to students; perform peer-reviewed, tested research; and to teach students to think critically about the world in which they live. She stated the bill would require universities to allow speakers whose research and opinions are not well-founded and objections to those speakers would be breaking the law. Written opponent testimony was submitted by a representative of the Kansas National Education Association.

No neutral testimony was presented.

The Senate Committee amended the bill by adding clarifying language to the legislative intent in Section 1, adding clarifying language and additional public policy points in Section 2, and adding further clarifying language in Sections 3 and 5.

The Senate Committee of the Whole amended the bill to require any meeting relating to the allocation of student activities fees of an institution or any group or committee thereof to be subject to the Kansas Open Meetings Act and to require a public notice to be published in the student newspaper each year listing where the institution's policies could be found.

The fiscal note prepared by the Division of the Budget states the Kansas Board of Regents indicates the bill would have no fiscal effect on the Board office or any Kansas postsecondary educational institution.