

All Prefiled Amendments for: SB 18

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Amendment

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FLOOR AMENDMENT NO. _____ **2019 MAY 16 PM 8:51**

BY: Cair

HOUSE OF REPRESENTATIVES

1 Amend S.B. No. 18 (house committee report) by striking all
2 below the enacting clause and substituting the following:

3 SECTION 1. The legislature finds that:

4 (1) freedom of expression is of critical importance and
5 requires each public institution of higher education to ensure
6 free, robust, and uninhibited debate and deliberations by students
7 enrolled at the institution, regardless of whether the students
8 are on or off campus; and

9 (2) it is a matter of statewide concern that all public
10 institutions of higher education officially recognize freedom of
11 speech as a fundamental right.

12 SECTION 2. Subchapter Z, Chapter 51, Education Code, is
13 amended by adding Section 51.9315 to read as follows:

14 Sec. 51.9315. PROTECTED EXPRESSION ON CAMPUS. (a) In this
15 section:

16 (1) "Benefit" includes:

17 (A) recognition by or registration with an
18 institution of higher education;

19 (B) the use of an institution of higher
20 education's facilities for meetings or speaking purposes;

21 (C) the use of channels of communication
22 controlled by an institution of higher education; and

23 (D) funding sources made generally available to
24 student organizations at an institution of higher education.

25 (2) "Employee" has the meaning assigned by Section
26 51.934.

27 (3) "Expressive activities" means any speech or
28 expressive conduct protected by the First Amendment to the United
29 States Constitution or Section 8, Article I, Texas Constitution,

1 and includes assemblies, protests, speeches, the distribution of
2 written or visual material, the carrying of signs, and the
3 circulation of petitions. The term does not include commercial
4 speech.

5 (4) "Institution of higher education" has the meaning
6 assigned by Section 61.003.

7 (5) "Matter of public concern" means a statement or
8 activity related to:

9 (A) a public official, public figure, or other
10 person who has drawn substantial public attention due to the
11 person's official acts, fame, notoriety, or celebrity;

12 (B) a matter of political, governmental, social,
13 or other concern to the community; or

14 (C) a subject of general interest and of value and
15 concern to the public.

16 (6) "Student organization" includes any organization
17 that is composed mostly of students enrolled at an institution of
18 higher education and that receives a benefit from the institution.

19 (b) It is the policy of this state and the purpose of this
20 section to protect the expressive rights of persons guaranteed by
21 the constitutions of the United States and of this state by
22 ensuring that:

23 (1) all persons lawfully present on the campus of an
24 institution of higher education may engage in, observe, or listen
25 to expressive activities; and

26 (2) the expressive rights of persons lawfully present
27 on the campus of an institution of higher education are not
28 unnecessarily restricted or impeded by rules or policies adopted
29 by the institution.

30 (c) An institution of higher education shall:

31 (1) ensure that the common outdoor areas of the

1 institution's campus are deemed traditional public forums; and

2 (2) permit any person lawfully present to engage in,
3 observe, or listen to expressive activities in those areas of the
4 institution's campus freely, as long as the person's conduct:

5 (A) is not unlawful; and

6 (B) does not materially and substantially:

7 (i) disrupt the functioning of the
8 institution; or

9 (ii) interfere with the rights of others to
10 engage in, observe, or listen to expressive activities.

11 (d) Notwithstanding Subsection (c), an institution of higher
12 education by rule may maintain and enforce reasonable restrictions
13 on the time, place, and manner of expressive activities in the
14 common outdoor areas of the institution's campus if those
15 restrictions:

16 (1) are narrowly tailored to serve a significant
17 institutional interest;

18 (2) employ clear, published, content-neutral, and
19 viewpoint-neutral criteria;

20 (3) leave open ample alternative means of expression;
21 and

22 (4) allow students enrolled at and employees of the
23 institution to spontaneously and contemporaneously assemble or
24 distribute written material without a permit or other permission
25 from the institution.

26 (e) Subsections (c) and (d) do not:

27 (1) limit the right of student expression at other
28 campus locations; or

29 (2) prohibit faculty members from maintaining order in
30 the classroom.

31 (f) The protections under this section apply equally to

1 students and to student groups and organizations, regardless of
2 whether the group or organization receives a benefit from, is
3 recognized by, or is registered with the institution.

4 (g) An institution of higher education may not take action
5 against a student organization or deny the organization any benefit
6 generally available to other student organizations at the
7 institution on the basis of a political, religious, philosophical,
8 ideological, or academic viewpoint expressed by the organization
9 or of any expressive activities of the organization.

10 (h) Each institution of higher education shall adopt a
11 policy detailing students' and employees' rights and
12 responsibilities regarding expressive activities at the
13 institution. The policy must:

14 (1) allow:

15 (A) any person to, subject to Subsection (c)(2)
16 and reasonable restrictions adopted under Subsection (d), engage
17 in, observe, or listen to expressive activities on campus,
18 including by responding to the expressive activities of others;
19 and

20 (B) students, student groups and organizations,
21 and employees to, subject to Subsection (k), invite speakers to
22 speak on campus;

23 (2) establish disciplinary sanctions for students or
24 student groups or organizations who materially and substantially
25 interfere with the rights of others to engage in, observe, or
26 listen to expressive activities on campus;

27 (3) include a grievance procedure for addressing
28 complaints of a violation of this section;

29 (4) encourage the free and open exchange of ideas,
30 regardless of the content or viewpoint expressed, in classrooms
31 and all other campus locations;

1 (5) prohibit the institution or any employee of the
2 institution from punishing a student or employee in any manner for
3 engaging in, observing, or listening to expressive activities;

4 (6) prohibit the institution from taking official
5 action on a matter of public concern in a manner that requires a
6 student or employee to publicly express a particular viewpoint on
7 that matter;

8 (7) prohibit any institution official or employee from
9 disinviting a speaker who has been approved by the institution to
10 speak on campus and has been invited to speak on campus by a
11 student enrolled at the institution, a student group or
12 organization at the institution, or an employee of the institution;

13 (8) require the institution to strive to maintain an
14 official position of neutrality on matters of public concern except
15 as necessary for the institution's operations;

16 (9) to the extent consistent with state and federal
17 law, require the institution to permit a student group or
18 organization formed for the purpose of exercising expressive
19 rights to establish and maintain membership and leadership
20 qualifications for the group or organization that further the
21 group's or organization's purpose, including by requiring the
22 group's or organization's leaders or members to:

23 (A) adhere to or comply with the group's or
24 organization's sincerely held beliefs or sincere standards of
25 conduct; or

26 (B) be committed to furthering the group's or
27 organization's mission or purpose;

28 (10) contain statements that:

29 (A) it is not the proper role of the institution
30 to shield persons from speech or expressive conduct protected by
31 the First Amendment to the United States Constitution or Section

1 8, Article I, Texas Constitution, including, without limitation,
2 ideas or opinions that those persons may find unwelcome or
3 disagreeable; and

4 (B) subject to Subsection (c)(2) and reasonable
5 restrictions adopted under Subsection (d), students and employees
6 are entitled to:

7 (i) discuss any problem; and

8 (ii) spontaneously and contemporaneously
9 assemble or distribute written or visual material without a permit
10 or other permission from the institution;

11 (11) contain a statement that, pursuant to Section
12 51.935, a person commits an offense if the person, alone or in
13 concert with others, intentionally engages in disruptive activity
14 on the campus or property of an institution of higher education;

15 (12) be approved by a majority vote of the
16 institution's governing board before final adoption; and

17 (13) be posted on the institution's Internet website.

18 (i) Each institution of higher education shall adopt
19 procedures for the institution's disciplinary process regarding an
20 alleged violation of the institution's student code of conduct
21 involving expressive activities and provide notice of those
22 procedures to each student enrolled at the institution. At a
23 minimum, the procedures must entitle the student alleged to have
24 violated the institution's student code of conduct to:

25 (1) receive written notice of the allegation before the
26 initiation of the disciplinary process;

27 (2) review evidence supporting the allegation;

28 (3) present a defense, including by calling witnesses
29 for the student and confronting witnesses against the student;

30 (4) have the institution's determination of
31 responsibility made by an impartial arbiter or panel;

1 (5) appeal a determination finding the student
2 responsible for the violation; and

3 (6) if a potential sanction for the violation is
4 suspension for a period of more than 30 days or expulsion from the
5 institution, have assistance of counsel during each stage of the
6 disciplinary process.

7 (j) On the second or any subsequent determination by an
8 institution of higher education that a student is responsible for
9 violating the institution's student code of conduct by materially
10 and substantially interfering with the expressive activities of
11 others, the institution shall:

12 (1) suspend the student for at least one semester or
13 term; or

14 (2) not later than two weeks after resolving the
15 disciplinary process, provide to the committee on free expression
16 for the institution established under this section an explanation
17 of the reason the institution did not impose a sanction on the
18 student under Subdivision (1).

19 (k) In determining whether to approve a speaker to speak on
20 campus or in determining the amount of a fee to be charged for use
21 of the institution's facilities for purposes of engaging in
22 expressive activities, an institution of higher education may
23 consider only content-neutral and viewpoint-neutral criteria
24 related to the needs of the event, such as:

25 (1) the proposed venue and the expected size of the
26 audience;

27 (2) any anticipated need for campus security;

28 (3) any necessary accommodations; and

29 (4) any relevant history of compliance or noncompliance
30 by the requesting student, student group or organization, or
31 employee with the institution's policy adopted under Subsection

1 (h) and any other relevant policies.

2 (l) An institution of higher education shall make reasonable
3 efforts to ensure the safety of speakers invited to speak on campus
4 by a student enrolled at the institution, a student group or
5 organization at the institution, or an employee of the institution.

6 (m) Not later than the first anniversary of the date that a
7 violation of this section is alleged to have occurred at an
8 institution of higher education, the attorney general or a person
9 whose expressive rights have been violated under this section may
10 bring an action for injunctive relief to compel the institution to
11 comply with this section or to recover compensatory damages, court
12 costs, and reasonable attorney's fees. In an action for damages
13 brought under this subsection, the court:

14 (1) shall, if the court finds that an institution of
15 higher education has violated this section, award the aggrieved
16 person the greater of:

17 (A) the amount of the person's compensatory
18 damages; or

19 (B) \$1,000; and

20 (2) may award reasonable attorney's fees to the
21 prevailing party.

22 (n) For purposes of computing the limitation period under
23 Subsection (m), each day of a continuing violation of this section,
24 including each day that a rule or policy of an institution of
25 higher education that violates this section remains in effect,
26 constitutes a separate violation.

27 (o) In addition to the cause of action under Subsection (m),
28 a person whose expressive rights are affected by a rule or policy
29 adopted by an institution of higher education may file suit against
30 the institution for declaratory judgment in the manner provided by
31 Chapter 37, Civil Practice and Remedies Code.

1 (p) An institution of higher education's sovereign immunity
2 to suit and from liability is waived and abolished to the extent
3 of liability created under this section.

4 (q) Each institution of higher education shall make the
5 institution's policies adopted in accordance with this section
6 available to students enrolled at and employees of the institution
7 by:

8 (1) including the policies in the institution's student
9 handbook and personnel handbook;

10 (2) providing a copy of each policy to students during
11 the institution's freshman or transfer student orientation; and

12 (3) posting the policies on the institution's Internet
13 website.

14 (r) Each institution of higher education shall develop
15 materials, programs, and procedures to ensure that the
16 institution's employees responsible for educating or disciplining
17 students understand the requirements of this section and all
18 policies adopted by the institution in accordance with this
19 section.

20 (s) The governing board of each institution of higher
21 education or university system shall create a committee on free
22 expression to address free speech issues at the institution or
23 institutions governed by the board. The committee must consist of
24 at least five members. Not later than September 1 of each year,
25 the committee shall prepare and submit to the governor, the members
26 of the legislature, and the governing board a report on free speech
27 issues that arose at the institution or institutions during the
28 preceding academic year. The report must include, for each
29 institution governed by the board:

30 (1) a description of any barriers to or disruptions of
31 expressive activities at the institution;

1 (2) a summary of the institution's handling of free
2 speech issues, including any disciplinary action taken related to
3 the policies adopted under this section and any explanations
4 regarding those actions provided to the committee by the
5 institution as required under this section;

6 (3) an analysis of any substantial difficulties,
7 controversies, or successes in maintaining the institution's
8 official position of neutrality on matters of public concern; and

9 (4) any recommendations for legislative or other
10 action.

11 SECTION 3. Not later than September 1, 2019, the governing
12 board of each public institution of higher education or university
13 system shall create the committee on free expression required under
14 Section 51.9315, Education Code, as added by this Act. Each
15 governing board's committee shall prepare and submit its initial
16 report required under that section not later than September 1,
17 2020.

18 SECTION 4. Not later than August 1, 2020, each public
19 institution of higher education shall adopt the policy required
20 under Section 51.9315(h), Education Code, as added by this Act.

21 SECTION 5. This Act takes effect September 1, 2019.