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3 SUBSTITUTE FOR HB498
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8 SYNOPSIS: This bill would require state two-year and
9 four-year colleges and universities to protect and
10 uphold free speech rights for students, faculty,
11 and staff, and would provide a cause of action for
12 violations.
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14 A BILL
15 TO BE ENTITLED
16 AN ACT
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18 Relating to freedoms of expression; to require state
19 two-year and four-year colleges and universities to protect
20 and uphold free speech rights for students, faculty, and
21 staff; and to provide a cause of action for violations.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. The Legislature makes the following
24 findings:

25 (1) Article I, Section 4 of the Constitution of
26 Alabama of 1901, recognizes that all persons may speak, write,
27 and publish their sentiments on all subjects, and that "no law

1 shall ever be passed to curtail or restrain the liberty of
2 speech."

3 (2) Alabama's public institutions of higher
4 education have historically embraced a commitment to freedom
5 of speech and expression.

6 (3) The United States Supreme Court has called
7 public universities "peculiarly the marketplace of ideas,"
8 *Healy v. James*, 408 U.S. 169, 180 (1972), where young adults
9 learn to exercise those constitutional rights necessary to
10 participate in our system of government and to tolerate the
11 exercise of those rights by others, and there is "no room for
12 the view that First Amendment protections should apply with
13 less force on college campuses than in the community at
14 large." *Healy*, 408 U.S. at 180.

15 (4) The United States Supreme Court has warned that
16 if state-supported institutions of higher education stifle
17 student speech and prevent the open exchange of ideas on
18 campus, "our civilization will stagnate and die." *Sweezy v.*
19 *New Hampshire*, 354 U.S. 234, 250 (1957).

20 (5) A significant amount of taxpayer dollars is
21 appropriated to public institutions of higher education each
22 year, and all public institutions of higher education should
23 strive to ensure the fullest degree of intellectual and
24 academic freedom and free expression and recognize that it is
25 not their proper role to shield individuals from speech that
26 is protected by the First Amendment to the United States

1 Constitution, including ideas and opinions the individuals may
2 find unwelcome, disagreeable, or offensive.

3 (6) Freedom of expression is critically important
4 during the education experience of students, and each public
5 institution of higher education should ensure free, robust,
6 and uninhibited debate and deliberation by students.

7 (7) The 1974 Woodward Report, published by the
8 Committee on Free Expression at Yale, the 2015 report issued
9 by the Committee on Freedom of Expression at the University of
10 Chicago, and the 1967 Kalven Committee Report of the
11 University of Chicago articulate well the essential role of
12 free expression and the importance of neutrality at public
13 institutions of higher education to preserve freedom of
14 thought, speech, and expression on campus.

15 (8) It is a matter of statewide concern that all
16 public institutions of higher education provide adequate
17 safeguards for the First Amendment rights of students, and
18 promote, protect, and uphold these important Constitutional
19 freedoms through the re-examination, clarification, and
20 re-publication of their policies to ensure the fullest degree
21 possible of intellectual and academic freedom and free
22 expression.

23 Section 2. For the purposes of this act, the
24 following words have the following meanings:

25 (1) BENEFIT. Recognition, registration, the use of
26 facilities of a public institution of higher education for
27 meetings or speaking purposes, the use of channels of

1 communications, and funding sources that are available to
2 student organizations at the public institution of higher
3 education.

4 (2) CAMPUS COMMUNITY. A public institution of higher
5 education's students, administrators, faculty, and staff, as
6 well as the invited guests of the institution and the
7 institution's student organizations, administrators, faculty,
8 and staff.

9 (3) FREE SPEECH ZONE. An area on campus of a public
10 institution of higher education that is designated for the
11 purpose of engaging in a protected expressive activity.

12 (4) HARASSMENT. Expression that is so severe,
13 pervasive, and objectively offensive that it effectively
14 denies access to an educational opportunity or benefit
15 provided by the public institution of higher education.

16 (5) MATERIALLY AND SUBSTANTIALLY DISRUPTS. A
17 disruption that occurs when a person a. significantly hinders
18 the protected expressive activity of another person or group,
19 prevents the communication of a message of another person or
20 group, or prevents the transaction of the business of a lawful
21 meeting, gathering, or procession by engaging in fighting,
22 violence, or other unlawful behavior; or b. physically blocks
23 or uses threats of violence to prevent any person from
24 attending, listening to, viewing, or otherwise participating
25 in a protected expressive activity. Conduct that materially
26 and substantially disrupts shall not include conduct that is
27 protected under the First Amendment to the United States

1 Constitution or Article I, Section 4 of the Constitution of
2 Alabama of 1901. Such protected conduct includes, but is not
3 limited to, lawful protests and counter-protests in the
4 outdoor areas of campus generally accessible to members of the
5 public, except during times when those areas have been
6 reserved in advance for other events, or minor, brief, or
7 fleeting nonviolent disruptions of events that are isolated
8 and short in duration.

9 (6) OUTDOOR AREAS OF CAMPUS. The generally
10 accessible outside areas of the campus of a public institution
11 of higher education where members of the campus community are
12 commonly allowed including, without limitation, grassy areas,
13 walkways, and other similar common areas.

14 (7) PROTECTED EXPRESSIVE ACTIVITY. Speech and other
15 conduct protected by the First Amendment to the United States
16 Constitution, to the extent that the activity is lawful and
17 does not significantly and substantially disrupt the
18 functioning of the institution or materially and substantially
19 disrupt the rights of others to engage in or listen to the
20 expressive activity, including all of the following:

21 a. Communication through any lawful verbal, written,
22 or electronic means.

23 b. Participating in peaceful assembly.

24 c. Protesting.

25 d. Making speeches.

26 e. Distributing literature.

27 f. Making comments to the media.

1 g. Carrying signs or hanging posters.

2 h. Circulating petitions.

3 For purposes of this act, the phrase protected
4 expressive activity does not include expression that relates
5 solely to the economic interests of the speaker and its
6 audience and proposes an economic transaction.

7 (8) PUBLIC INSTITUTIONS OF HIGHER EDUCATION. As
8 defined in Section 16-5-1, Code of Alabama 1975.

9 (9) STUDENT. Any person who is enrolled in a class
10 at a public institution of higher education.

11 (10) STUDENT ORGANIZATION. An officially recognized
12 group at a public institution of higher education or a group
13 seeking official recognition, composed of admitted students
14 that receive or are seeking to receive benefits through the
15 institution.

16 Section 3. (a) On or before January 1, 2020, the
17 board of trustees of each public institution of higher
18 education shall adopt a policy on free expression that is
19 consistent with this act. The policy, at a minimum, shall
20 adhere to all of the following provisions:

21 (1) That the primary function of the public
22 institution of higher education is the discovery, improvement,
23 transmission, and dissemination of knowledge by means of
24 research, teaching, discussion, and debate, and that, to
25 fulfill that function, the institution will strive to ensure
26 the fullest degree possible of intellectual freedom and free
27 expression.

1 (2) That it is not the proper role of the
2 institution to shield individuals from speech protected by the
3 First Amendment to the United States Constitution and Article
4 I, Section 4 of the Constitution of Alabama of 1901, including
5 without limitation, ideas and opinions they find unwelcome,
6 disagreeable, or offensive.

7 (3) That students, administrators, faculty, and
8 staff are free to take positions on public controversies and
9 to engage in protected expressive activity in outdoor areas of
10 the campus, and to spontaneously and contemporaneously
11 assemble, speak, and distribute literature.

12 (4) That the outdoor areas of a campus of a public
13 institution of higher education shall be deemed to be a forum
14 for members of the campus community, and the institution shall
15 not create free speech zones or other designated outdoor areas
16 of campus in order to limit or prohibit protected expressive
17 activities.

18 (5) That the campus of the public institution of
19 higher education shall be open to any speaker whom the
20 institution's student organizations or faculty have invited,
21 and the institution will make all reasonable efforts to make
22 available all reasonable resources to ensure the safety of the
23 campus community, and that the institution will not charge
24 security fees based on the protected expressive activity of
25 the member of the campus community or the member's
26 organization, or the content of the invited guest's speech, or

1 the anticipated reaction or opposition of the listeners to the
2 speech.

3 (6) That the public institution of higher education
4 shall not permit members of the campus community to engage in
5 conduct that materially and substantially disrupts another
6 person's protected expressive activity or infringes on the
7 rights of others to engage in or listen to a protected
8 expressive activity that is occurring in a location that has
9 been reserved for that protected expressive activity and shall
10 adopt a range of disciplinary sanctions for anyone under the
11 jurisdiction of the institution who materially and
12 substantially disrupts the free expression of others.

13 (7) That the public institution of higher education
14 may maintain and enforce constitutional time, place, and
15 manner restrictions for outdoor areas of campus only when they
16 are narrowly tailored to serve a significant institutional
17 interest and when the restrictions employ clear, published,
18 content-neutral, and viewpoint-neutral criteria, and provide
19 for ample alternative means of expression. All restrictions
20 shall allow for members of the university community to
21 spontaneously and contemporaneously assemble and distribute
22 literature.

23 (8) That the public institution of higher education
24 shall support free association and shall not deny a student
25 organization any benefit or privilege available to any other
26 student organization or otherwise discriminate against an
27 organization based on the expression of the organization,

1 including any requirement of the organization that the leaders
2 or members of the organization affirm and adhere to an
3 organization's sincerely held beliefs or statement of
4 principles, comply with the organization's standard of
5 conduct, or further the organization's mission or purpose, as
6 defined by the student organization.

7 (9) That the institution should strive to remain
8 neutral, as an institution, on the public policy controversies
9 of the day, except as far as administrative decisions on the
10 issues are essential to the day-to-day functioning of the
11 university, and that the institution will not require
12 students, faculty, or staff to publicly express a given view
13 of a public controversy.

14 (10) That the public institution of higher education
15 shall prohibit harassment in a manner consistent with the
16 definition provided in this act, and no more expansively than
17 provided herein.

18 (b) The policy developed pursuant to this section
19 shall supersede and nullify any prior provisions in the
20 policies of the institution that restrict speech on campus and
21 are, therefore, inconsistent with this policy. The institution
22 shall remove or revise any of these provisions in its policies
23 to ensure compatibility with this policy.

24 (c) Public institutions of higher education shall
25 include in the new student, new faculty, and new staff
26 orientation programs a section describing to all members of
27 the campus community the policy developed pursuant to this

1 section. In addition, public institutions of higher education
2 shall disseminate the policy to all members of the campus
3 community and make the policy available in their handbooks and
4 on the institutions' websites.

5 Section 4. The boards of trustees of each public
6 institution of higher education shall submit to the Governor
7 and the Legislature a report that details both of the
8 following:

9 (1) The course of action implemented to ensure
10 compliance with the requirements of this act within 90 days
11 after the effective date of this act.

12 (2) Any changes or updates to the chosen course of
13 action within 30 days after making the changes or updates.

14 Section 5. By September 1 of each year, the board of
15 trustees of each public institution of higher education shall
16 prepare and disseminate a report for the prior 12-month period
17 ending July 31, that includes all of the following:

18 (1) The date and description of each violation of
19 the policy adopted pursuant to this act.

20 (2) A description of the administrative handling and
21 discipline relating to each violation described.

22 (3) A description of substantial difficulties,
23 controversies, or successes in maintaining a posture of
24 administrative and institutional neutrality.

25 (4) Any assessments, criticism, commendations, or
26 recommendations the board of trustees sees fit to include.

1 Each board of trustees shall cause the report to be
2 published in a prominent location on its institution's
3 website. In addition, each board of trustees shall submit a
4 copy of the report to the Alabama Commission on Higher
5 Education, which shall publish the report in a prominent
6 location on its website and notify the Governor and the
7 Legislature of its receipt of the report.

8 Section 6. Nothing in this act shall be construed to
9 prevent public institutions of higher education from
10 regulating and restricting speech, expression, or a protected
11 expressive activity that is not protected by the United States
12 Constitution or the Constitution of Alabama of 1901,
13 including, but not limited to, any of the following:

14 (1) Violations of state or federal law, including,
15 but not limited to, actions that damage institutional
16 property.

17 (2) Expressions that a court has deemed unprotected
18 defamation.

19 (3) Harassment.

20 (4) True threats, which are defined as statements
21 meant by the speaker to communicate a serious expression of an
22 intent to commit an act of unlawful violence to a particular
23 individual or group of individuals.

24 (5) An unjustifiable invasion of privacy or
25 confidentiality not involving a matter of public concern.

26 (6) An action that unlawfully disrupts the function
27 or security of the institution.

1 Section 7. The following persons may bring an action
2 in a court of competent jurisdiction to enjoin any violation
3 of this act or a policy adopted pursuant to this act:

4 (1) The Attorney General.

5 (2) A person whose expressive rights are violated by
6 a violation of this act or the policy adopted pursuant to this
7 act.

8 Section 8. It is the intent of the Legislature that
9 constitutionally created boards of trustees comply with the
10 requirement of this act.

11 Section 9. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.