

1 HB498
2 201607-2
3 By Representatives Fridy, Garrett, Moore (P), Kiel, Estes,
4 Mooney, Carns, Standridge, Drake, Wingo, Fincher, Ledbetter,
5 Simpson, McMillan, Brown (C), Shiver, Sells, Weaver, Dismukes,
6 Ingram, Kitchens, Hanes, Rich, Whorton, Sorrell, Allen,
7 Sorrells, Marques, Holmes and Faulkner
8 RFD: Education Policy
9 First Read: 23-APR-19

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to freedoms of expression; to require state
9 two-year and four-year colleges and universities to protect
10 and uphold free speech rights for students, faculty, and
11 staff; and to provide a cause of action for violations.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. The Legislature makes the following
14 findings:

15 (1) Article I, Section 4 of the Constitution of
16 Alabama of 1901, recognizes that all persons may speak, write,
17 and publish their sentiments on all subjects, and that "no law
18 shall ever be passed to curtail or restrain the liberty of
19 speech."

20 (2) Alabama's public institutions of higher
21 education have historically embraced a commitment to freedom
22 of speech and expression.

23 (3) The United States Supreme Court has called
24 public universities "peculiarly the marketplace of ideas,"
25 Healy v. James, 408 U.S. 169, 180 (1972), where young adults
26 learn to exercise those constitutional rights necessary to
27 participate in our system of government and to tolerate the

1 exercise of those rights by others, and there is "no room for
2 the view that First Amendment protections should apply with
3 less force on college campuses than in the community at
4 large." Healy, 408 U.S. at 180.

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

10 (5) A significant amount of taxpayer dollars is
11 appropriated to public institutions of higher education each
12 year, and all public institutions of higher education should
13 strive to ensure the fullest degree of intellectual and
14 academic freedom and free expression and recognize that it is
15 not their proper role to shield individuals from speech that
16 is protected by the First Amendment to the United States
17 Constitution, including ideas and opinions the individuals may
18 find unwelcome, disagreeable, or offensive.

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

23 (7) The 1974 Woodward Report, published by the
24 Committee on Free Expression at Yale, the 2015 report issued
25 by the Committee on Freedom of Expression at the University of
26 Chicago, and the 1967 Kalven Committee Report of the
27 University of Chicago articulate well the essential role of

1 free expression and the importance of neutrality at public
2 institutions of higher education to preserve freedom of
3 thought, speech, and expression on campus.

4 (8) It is a matter of statewide concern that all
5 public institutions of higher education provide adequate
6 safeguards for the First Amendment rights of students, and
7 promote, protect, and uphold these important Constitutional
8 freedoms through the re-examination, clarification, and
9 re-publication of their policies to ensure the fullest degree
10 possible of intellectual and academic freedom and free
11 expression.

12 Section 2. For the purposes of this act, the
13 following words have the following meanings:

14 (1) BENEFIT. Recognition, registration, the use of
15 facilities of a public institution of higher education for
16 meetings or speaking purposes, the use of channels of
17 communications, and funding sources that are available to
18 student organizations at the public institution of higher
19 education.

20 (2) CAMPUS COMMUNITY. A public institution of higher
21 education's students, administrators, faculty, and staff, as
22 well as the invited guests of the institution and the
23 institution's student organizations, administrators, faculty,
24 and staff.

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

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

5 (5) MATERIALLY AND SUBSTANTIALLY DISRUPTS. A
6 disruption that occurs when a person a. significantly hinders
7 the protected expressive activity of another person or group,
8 prevents the communication of a message of another person or
9 group, or prevents the transaction of the business of a lawful
10 meeting, gathering, or procession by engaging in fighting,
11 violence, or other unlawful behavior; or b. physically blocks
12 or uses threats of violence to prevent any person from
13 attending, listening to, viewing, or otherwise participating
14 in a protected expressive activity. Conduct that materially
15 and substantially disrupts shall not include conduct that is
16 protected under the First Amendment to the United States
17 Constitution or Article I, Section 4 of the Constitution of
18 Alabama of 1901. Such protected conduct includes, but is not
19 limited to, lawful protests and counter-protests in the
20 outdoor areas of campus generally accessible to members of the
21 public, except during times when those areas have been
22 reserved in advance for other events, or minor, brief, or
23 fleeting nonviolent disruptions of events that are isolated
24 and short in duration.

25 (6) OUTDOOR AREAS OF CAMPUS. The generally
26 accessible outside areas of the campus of a public institution
27 of higher education where members of the campus community are

1 commonly allowed including, without limitation, grassy areas,
2 walkways, and other similar common areas.

3 (7) PROTECTED EXPRESSIVE ACTIVITY. Speech and other
4 conduct protected by the First Amendment to the United States
5 Constitution, to the extent that the activity is lawful and
6 does not significantly and substantially disrupt the
7 functioning of the institution or materially and substantially
8 disrupt the rights of others to engage in or listen to the
9 expressive activity, including all of the following:

10 a. Communication through any lawful verbal, written,
11 or electronic means.

12 b. Participating in peaceful assembly.

13 c. Protesting.

14 d. Making speeches.

15 e. Distributing literature.

16 f. Making comments to the media.

17 g. Carrying signs or hanging posters.

18 h. Circulating petitions.

19 For purposes of this act, the phrase protected
20 expressive activity does not include expression that relates
21 solely to the economic interests of the speaker and its
22 audience and proposes an economic transaction.

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

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

1 (10) STUDENT ORGANIZATION. An officially recognized
2 group at a public institution of higher education or a group
3 seeking official recognition, composed of admitted students
4 that receive or are seeking to receive benefits through the
5 institution.

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

11 (1) That the primary function of the public
12 institution of higher education is the discovery, improvement,
13 transmission, and dissemination of knowledge by means of
14 research, teaching, discussion, and debate, and that, to
15 fulfill that function, the institution will strive to ensure
16 the fullest degree possible of intellectual freedom and free
17 expression.

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

24 (3) That students, administrators, faculty, and
25 staff are free to take positions on public controversies and
26 to engage in protected expressive activity in outdoor areas of

1 the campus, and to spontaneously and contemporaneously
2 assemble, speak, and distribute literature.

3 (4) That the outdoor areas of a campus of a public
4 institution of higher education shall be deemed to be a forum
5 for members of the campus community, and the institution shall
6 not create free speech zones or other designated outdoor areas
7 of campus in order to limit or prohibit protected expressive
8 activities.

9 (5) That the campus of the public institution of
10 higher education shall be open to any speaker whom the
11 institution's student organizations or faculty have invited,
12 and the institution will make all reasonable efforts to make
13 available all reasonable resources to ensure the safety of the
14 campus community, and that the institution will not charge
15 security fees based on the protected expressive activity of
16 the member of the campus community or the member's
17 organization, or the content of the invited guest's speech, or
18 the anticipated reaction or opposition of the listeners to the
19 speech.

20 (6) That the public institution of higher education
21 shall not permit members of the campus community to engage in
22 conduct that materially and substantially disrupts another
23 person's protected expressive activity or infringes on the
24 rights of others to engage in or listen to a protected
25 expressive activity that is occurring in a location that has
26 been reserved for that protected expressive activity and shall
27 adopt a range of disciplinary sanctions for anyone under the

1 jurisdiction of the institution who materially and
2 substantially disrupts the free expression of others.

3 (7) That the public institution of higher education
4 may maintain and enforce constitutional time, place, and
5 manner restrictions for outdoor areas of campus only when they
6 are narrowly tailored to serve a significant institutional
7 interest and when the restrictions employ clear, published,
8 content-neutral, and viewpoint-neutral criteria, and provide
9 for ample alternative means of expression. All restrictions
10 shall allow for members of the university community to
11 spontaneously and contemporaneously assemble and distribute
12 literature.

13 (8) That the public institution of higher education
14 shall support free association and shall not deny a student
15 organization any benefit or privilege available to any other
16 student organization or otherwise discriminate against an
17 organization based on the expression of the organization,
18 including any requirement of the organization that the leaders
19 or members of the organization affirm and adhere to an
20 organization's sincerely held beliefs or statement of
21 principles, comply with the organization's standard of
22 conduct, or further the organization's mission or purpose, as
23 defined by the student organization.

24 (9) That the institution should strive to remain
25 neutral, as an institution, on the public policy controversies
26 of the day, except as far as administrative decisions on the
27 issues are essential to the day-to-day functioning of the

1 university, and that the institution will not require
2 students, faculty, or staff to publicly express a given view
3 of a public controversy.

4 (10) That the public institution of higher education
5 shall prohibit harassment in a manner consistent with the
6 definition provided in this act, and no more expansively than
7 provided herein.

8 (b) The policy developed pursuant to this section
9 shall supersede and nullify any prior provisions in the
10 policies of the institution that restrict speech on campus and
11 are, therefore, inconsistent with this policy. The institution
12 shall remove or revise any of these provisions in its policies
13 to ensure compatibility with this policy.

14 (c) Public institutions of higher education shall
15 include in the new student, new faculty, and new staff
16 orientation programs a section describing to all members of
17 the campus community the policy developed pursuant to this
18 section. In addition, public institutions of higher education
19 shall disseminate the policy to all members of the campus
20 community and make the policy available in their handbooks and
21 on the institutions' websites.

22 Section 4. The boards of trustees of each public
23 institution of higher education shall submit to the Governor
24 and the Legislature a report that details both of the
25 following:

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

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

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

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

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

14 (3) A description of substantial difficulties,
15 controversies, or successes in maintaining a posture of
16 administrative and institutional neutrality.

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

19 Each board of trustees shall cause the report to be
20 published in a prominent location on its institution's
21 website. In addition, each board of trustees shall submit a
22 copy of the report to the Alabama Commission on Higher
23 Education, which shall publish the report in a prominent
24 location on its website and notify the Governor and the
25 Legislature of its receipt of the report.

26 Section 6. Nothing in this act shall be construed to
27 prevent public institutions of higher education from

1 regulating and restricting speech, expression, or a protected
2 expressive activity that is not protected by the United States
3 Constitution or the Constitution of Alabama of 1901,
4 including, but not limited to, any of the following:

5 (1) Violations of state or federal law, including,
6 but not limited to, actions that damage institutional
7 property.

8 (2) Expressions that a court has deemed unprotected
9 defamation.

10 (3) Harassment.

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

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

17 (6) An action that unlawfully disrupts the function
18 or security of the institution.

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

22 (1) The Attorney General.

23 (2) A person whose expressive rights are violated by
24 a violation of this act or the policy adopted pursuant to this
25 act.

1 Section 8. It is the intent of the Legislature that
2 constitutionally created boards of trustees comply with the
3 requirement of this act.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Education Policy
..... 23-APR-19

Read for the second time and placed
on the calendar 1 amendment 09-MAY-19

Read for the third time and passed
as amended..... 22-MAY-19

Yeas 62, Nays 27, Abstains 6

Jeff Woodard
Clerk