

1 HB498  
2 197380-4  
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

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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 and faculty,  
11 and would provide a cause of action for violations.

12  
13 A BILL  
14 TO BE ENTITLED  
15 AN ACT

16  
17 Relating to freedoms of expression; to require state  
18 two-year and four-year colleges and universities to protect  
19 and uphold free speech rights for students and faculty; and to  
20 provide a cause of action for violations.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 (1) Article I, Section 4 of the Constitution of  
25 Alabama of 1901, recognizes that all persons may speak, write,  
26 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 their invited guests.

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

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

15 (5) MATERIALLY AND SUBSTANTIALLY DISRUPTS. Means a  
16 disruption that occurs when a person a. significantly hinders  
17 the protected expressive activity of another person or group,  
18 prevents the communication of a message of another person or  
19 group, or prevents the transaction of the business of a lawful  
20 meeting, gathering, or procession by engaging in fighting,  
21 violence, or other unlawful behavior; or b. physically blocks  
22 or uses threats of violence to prevent any person from  
23 attending, listening to, viewing, or otherwise participating  
24 in an expressive activity.

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

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

23 (10) STUDENT ORGANIZATION. An officially recognized  
24 group at a public institution of higher education or a group  
25 seeking official recognition, composed of admitted students  
26 that receive or are seeking to receive benefits through the  
27 institution.

1           Section 3. (a) On or before January 1, 2020, the  
2 board of trustees of each public institution of higher  
3 education shall develop, adopt, and enforce a policy on free  
4 expression that is consistent with this act. The policy, at a  
5 minimum, shall adhere to the following provisions:

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

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

19           (3) That students and faculty are free to take  
20 positions on public controversies and to engage in protected  
21 expressive activity in outdoor areas of the campus, and to  
22 spontaneously and contemporaneously assemble, speak, and  
23 distribute literature.

24           (4) That the outdoor areas of a public institution  
25 of higher education shall be deemed to be a public forum for  
26 members of the campus community and their invited guests, and  
27 the institution shall not create free speech zones or other

1 designated outdoor areas of campus in order to limit or  
2 prohibit protected expressive activities.

3 (5) That the campus of the public institution of  
4 higher education shall be open to any speaker whom students,  
5 student groups, or members of the faculty have invited, and  
6 the institution will make all reasonable efforts to make  
7 available all reasonable resources to ensure the safety of the  
8 campus community and their invited guests, and that the  
9 institution will not charge security fees based on the  
10 protected expressive activity of the member of the campus  
11 community or the member's organization, or the content of the  
12 invited guest's speech, or the anticipated reaction or  
13 opposition of the listeners to the speech.

14 (6) That the public institution of higher education  
15 shall not permit members of the campus community to engage in  
16 conduct that materially and substantially disrupts another  
17 person's expressive activity or infringes on the rights of  
18 others to engage in or listen to expressive activity and shall  
19 adopt a range of disciplinary sanctions for anyone under the  
20 jurisdiction of the institution who materially and  
21 substantially disrupts the free expression of others.

22 (7) That the public institution of higher education  
23 may maintain and enforce reasonable constitutional time, place  
24 and manner restrictions for outdoor areas of campus only when  
25 they are narrowly tailored to serve a significant  
26 institutional interest and when such restrictions employ  
27 clear, published, content-neutral, and viewpoint-neutral



1 criteria, and provide for ample alternative means of  
2 expression.

3 (8) That the public institution of higher education  
4 shall support free association and shall not deny a student  
5 organization any benefit or privilege available to any other  
6 student organization or otherwise discriminate against an  
7 organization based on the expression of the organization,  
8 including any requirement of the organization that the leaders  
9 or members of the organization affirm and adhere to an  
10 organization's sincerely held beliefs or statement of  
11 principles, comply with the organization's standard of  
12 conduct, or further the organization's mission or purpose, as  
13 defined by the student organization.

14 (9) That the institution will strive to remain  
15 neutral, as an institution, on the public policy controversies  
16 of the day, except as far as administrative decisions on the  
17 issues are essential to the day-to-day functioning of the  
18 university, and that the institution will not require  
19 students, faculty, or staff to publicly express a given view  
20 of a public controversy.

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

1           (c) Public institutions of higher education shall  
2 include in the new student, new faculty, and new staff  
3 orientation programs a section describing to all members of  
4 the campus community the policy developed pursuant to this  
5 section. In addition, public institutions of higher education  
6 shall disseminate the policy to all members of the campus  
7 community and make the policy available in their handbooks and  
8 on the institutions' websites.

9           Section 4. It is the sense of the Legislature that  
10 if a member of the campus community has twice been determined  
11 to have materially and substantially disrupted the expressive  
12 rights of others as provided for in this act, a minimum  
13 punishment of a one-term suspension during the regular school  
14 year will in most cases be appropriate. If a lesser punishment  
15 than a one-term suspension is issued upon a second such  
16 offense, the institution shall submit an explanation in  
17 writing to the Committee on Free Expression within two weeks  
18 of the determination to impose the lesser punishment. The  
19 Committee on Free Expression provided for in this act shall  
20 comment on this explanation in its annual report.

21           Section 5. The boards of trustees of each public  
22 institution of higher education shall submit to the Governor  
23 and the Legislature a report that details both of the  
24 following:

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

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

3           Section 6. The board of trustees of each public  
4 institution of higher education shall appoint an independent  
5 Committee on Free Expression consisting of no less than five  
6 members. A minimum of 50 percent of the members of the  
7 Committee on Free Speech shall be selected from recognized  
8 alumni from each institution. On September 1 of each year, the  
9 Committee on Free Expression shall report to the board of  
10 trustees, the Governor, the Legislature, and the public, and  
11 publish on the institution's website, a report that includes  
12 the following:

13           (1) A description of any barriers to or disruptions  
14 of free expression within the institution.

15           (2) A description of the administrative handling and  
16 discipline relating to these disruptions or barriers.

17           (3) A description of substantial difficulties,  
18 controversies, or successes in maintaining a posture of  
19 administrative and institutional neutrality.

20           (4) Any assessments, criticism, commendations, or  
21 recommendations the committee sees fit to include.

22           Section 7. Nothing in this act shall be construed to  
23 prevent public institutions of higher education from  
24 regulating and restricting speech, expression, or expressive  
25 activity that is not protected by the United States  
26 Constitution or the Constitution of Alabama of 1901,  
27 including, but not limited to, the following:

1 (1) Violations of state or federal law.

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

4 (3) Harassment.

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

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

11 (6) An action that unlawfully disrupts the function  
12 of the university.

13 Section 8. The following persons may bring an action  
14 in a court of competent jurisdiction to enjoin any violation  
15 of this act or a policy adopted pursuant to this act:

16 (1) The Attorney General.

17 (2) A person whose expressive rights are violated by  
18 a violation of this act or the policy adopted pursuant to this  
19 act.

20 Section 9. It is the intent of the Legislature that  
21 constitutionally created boards of trustees comply with the  
22 requirement of this act.

23 Section 10. This act shall become effective on the  
24 first day of the third month following its passage and  
25 approval by the Governor, or its otherwise becoming law.