

HOUSE BILL 2063

By Daniel

AN ACT to amend Tennessee Code Annotated, Title 49,
Chapter 7, Part 1, relative to freedom of speech on
campuses of state institutions of higher education.

WHEREAS, Article I, § 19, of the Tennessee Constitution recognizes "[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty."; and

WHEREAS, the state institutions of higher education in Tennessee have historically embraced a commitment to freedom of expression in policy; and

WHEREAS, in recent years, state institutions of higher education have abdicated their responsibility to uphold free speech principles, and these failures make it appropriate for all state institutions of higher education to restate and confirm their commitment in this regard; and

WHEREAS, earlier this year, the Committee on Freedom of Expression at the University of Chicago, an institution long known for its commitment to the ideals of free and open inquiry, academic freedom, and fair debate, released a statement on the importance of freedom of expression on campuses. These principles, the Chicago Principles, are an inspiring articulation of the critical importance of free expression in higher education; and

WHEREAS, the general assembly views freedom of expression by students in higher education as being of critical importance and requires that each institution of higher education ensure free, robust, and uninhibited debate and deliberations by students of Tennessee institutions whether on or off campus; and

WHEREAS, the general assembly has determined that it is in the best interests of the state and of all state institutions of higher education to officially confirm freedom of speech by students as a fundamental right; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Student Free Speech Protection Act."

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following language as a new section:

(a) As used in this section:

(1) "Free speech" means the clauses of Article I, § 19, of the Tennessee Constitution and of the first amendment to the United States Constitution that protects freedom of speech and forbids laws abridging the freedom of speech;

(2) "Harassment" means conduct directed toward a person that is so severe, pervasive, and objectively offensive that it could be said to deprive the student of access to the educational opportunities or benefits provided by the institution. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

(3) "Mere bias" means a predisposition or a preconceived opinion that prevents a person from impartially evaluating facts that have been presented for determination;

(4) "Microaggression" means the casual degradation of any socially marginalized group;

(5) "Safe zone" is an area set aside to restrict the ability for citizens to exercise their right of free speech;

(6) "Semester" means a one-half-year term at a college of university, typically lasting fifteen (15) to eighteen (18) weeks;

(7) "Student"

(A) Means any person enrolled in a course of study in a state institution of higher education; and

(B) Includes organizations that are composed of students currently enrolled at the institution of higher education; and

(8) "Trigger warning" means statements that warn persons of potentially upsetting content.

(b) The governing board of each state institution of higher education shall adopt a policy on freedom of speech and expression for students of the institution and include such policy in the institution's student code of conduct that:

(1) Confirms that freedom of speech is a fundamental right and that institutions are committed to free and open inquiry by students in all matters;

(2) Guarantees students the broadest possible latitude to speak, write, listen, challenge and learn to discuss any issue that presents itself on campus;

(3) Does not:

(A) Shield individuals from ideas and opinions considered unwelcome, disagreeable, or even deeply offensive; or

(B) Discourage or prohibit any type of speech or expressive activity, except as provided in this section;

(4) Promotes a climate of mutual respect and concerns about civility; provided, that lack of mutual respect or civility shall not be a justification for closing off the discussion of ideas no matter how offensive or disagreeable the ideas may be to members of the community;

(5) Allows the institutions to restrict expression only for instances that include:

(A) Violations of state or federal law;

(B) Expression that a court has deemed defamation;
(C) Genuine threats or harassment;
(D) An unjustifiable invasion of privacy or confidentiality;
(E) An action that directly conflicts with the function of the university; or

(F) Reasonable viewpoint and content-neutral restrictions on the time, place, and manner of expression, consistent with this act and in service of a significant institutional interest; provided, that these restrictions are clear, published, and provide ample alternative means for expression;

(6) Does not allow the institution to suppress debate or deliberation because the ideas being debated or deliberated upon are considered to be offensive, unwise, immoral, or wrong;

(7) Allows students to openly and vigorously contest ideas that the institution or members of the institution's community may oppose;

(8) Permits students to engage in debate and deliberation as part of the mission of the institution;

(9) Authorizes a student to criticize and contest the views of the institution's community; provided, that the student shall not obstruct or otherwise interfere with the freedom of others to express views contrary to the student; and

(10) Promotes a lively and fearless freedom of debate and deliberation while protecting free speech when the institution or members of the institution condemn or attempt to restrict speech.

(c) The policy in subsection (b) shall include a bill of student rights that:

(1) Recognizes that in state institutions of higher education there are certain fundamental and indisputable rights to freedom of inquiry, freedom of thought, and freedom of expression;

(2) Encourages students to seek truth and knowledge and does not abridge searchers' rights to reveal their findings, by both spoken and written word, even if in so doing they might find themselves at variance with their peers as well as the lay community;

(3) Reassures students that to dissent or disagree with generally accepted truth and knowledge is acceptable and essential to free debate and inquiry and that students shall not be punished, disciplined, or censored by the institution for the content of the students' lawful speech;

(4) Allows students to be free to discuss and express any views that are relevant to the subject matter presented by the instructor or other class members;

(5) Recognizes that, in exercising this freedom, the student shall not interfere with the academic process of the class by speaking to or behaving toward others in a manner constituting unwelcome, targeted conduct that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the educational experience of those to whom the speech or behavior is targeted, that the targeted person is effectively denied equal access to the resources and opportunities of state institutions of higher education; and

(6) Gives faculty the right to regulate class speech; provided, that the faculty regulates the speech in a viewpoint- and content-neutral manner.

(d) In order to facilitate robust debate and the free exchange of ideas, the institutions shall allow peaceful assembly and the expression of ideas and opinions.

(e)

(1)

(A) The outdoor campus areas on institutions of higher education shall be deemed traditional public forums. Institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions in service of a significant institutional interest only when such restrictions employ clear, published, content- and viewpoint-neutral criteria, and provide for ample alternative means of expression. Any such restrictions shall allow for members of the institution's community to spontaneously and contemporaneously assemble.

(B) A member of the public, who is not employed by the institution or enrolled at the institution as a student, may be required to obtain prior permission or a permit from the institution. If prior permission from the institution is required by the institution, then the appropriate administrator shall process the request within seventy-two (72) hours of receipt of the request.

(C) Any requirements applied by the institution to an individual or group shall be reasonable content- and viewpoint-neutral, time, place, and manner restrictions; provided, that the restriction is necessary and narrowly tailored to serve a significant state interest and provides ample alternative means of expression, and is consistent with the provisions of this section.

(2) Nothing in this section shall limit the right to student expression at any public place on the premises of the institution; provided, that the expressive

activity or related student conduct shall not substantially disrupt essential activities and functions of the institution.

(3) As used in this subsection, "disrupting activities and functions of the institution" includes:

(A) Substantially obstructing building entrances, walkways, and rights-of-way;

(B) Obstructing vehicular or pedestrian traffic on or adjacent to the institution; or

(C) Interfering with classes, meetings, events, or ceremonies or with other essential processes of the institution.

(f) The governing boards of the institutions shall prohibit an institution from:

(1) Establishing safe zones;

(2) Requiring or encouraging the issuance of trigger warnings;

(3) Establishing a system for students or other persons to report incidents of mere bias, where no threats or harassment occurred;

(4) Disciplining students for microaggressions;

(5) Discouraging lawful speech; and

(6) Punishing, disciplining, or censuring students for the content of students' lawful speech by way of or through any of the faculty, employees, or organizations of the institution.

(g)

(1) The governing boards of each institution shall cause the institution to provide periodic notice of the free speech protections created pursuant to this section to students of the institution.

(2) Notice of the free speech protections of this section shall be:

(A) Published prominently in the newspaper of the institution; provided, that the notice in the newspaper shall be no less than one-half (1/2) the size of the newspaper page; and

(B) Communicated to the students by e-mail or other type of electronic communication.

(3) The notice shall be provided to the students:

(A) No later than seven (7) days after the commencement of the academic semester; and

(B) At least one (1) time each semester.

(4) The notice shall provide:

"Whereas, the Tennessee Constitution provides that "[t]he free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject."

The (insert name of institution) _____ is committed to the free speech rights of all of students. Indeed, the right to freedom of speech is a fundamental value at _____, and to that end, the _____ hereby informs you of your free speech rights. These rights are incorporated into the Student Code of Conduct.

It is our responsibility as _____ to develop critical thinkers and this responsibility cannot be accomplished if the institution acts to silence speech that others find disagreeable or offensive.

The right to free inquiry and expression is fundamental and is indispensable to the functioning of the _____ and as such, all students have the broadest latitude to speak, write, listen, challenge, and learn. The complete freedom of speech on all subjects will not be questioned or abridged by

_____ now or in the future. The ideas of different persons within the _____ community will often and naturally conflict, but it is not the responsibility of the _____, nor will it undertake, to shield individuals from opinions that they disagree with. Open discourse on any topic may not be suppressed simply because the ideas presented are disagreeable to some or even most of the _____ community.

As free speech is a fundamental right, the _____ shall not discourage lawful speech, and by way of or through any of its faculty, employees, or organizations will not censure, punish, or discipline students for the content of their lawful speech.

The freedom of speech promised by _____, while wide-sweeping, shall not be absolute. The _____ reserves the right to restrict expression that violates the law, is objectively threatening in nature or defamatory, constitutes harassment or invades the substantial privacy or confidentiality interests of another, or interferes with the essential functions of the _____. The _____ may discipline students who engage in such types of speech. Nevertheless, these are narrow exceptions to the general principle of freedom of speech and shall never be used in a way that compromises _____'s overriding commitment to the principle."

(h) If an institution of higher education is found to be in violation of this section, a student may file a complaint or a petition for injunctive relief in chancery court in the county in which the school is located. The prevailing plaintiff shall be awarded actual damages and injunctive relief, plus reasonable attorney's fees and court costs.

(i) Nothing in this section shall require the institutions of higher education to fund expenses associated with student speech or expression.

SECTION 3. The governing body of each institution of higher education is authorized to promulgate rules to effectuate the purposes of this act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. This act shall take effect July 1, 2016, the public welfare requiring it.