

SENATE BILL No. 340

By Committee on Federal and State Affairs

1-30

1 AN ACT concerning postsecondary educational institutions; establishing
2 the campus free speech protection act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) This act shall be known and may be cited as the campus
6 free speech protection act.

7 (b) The legislature finds that postsecondary educational institutions as
8 defined in K.S.A. 74-3201b, and amendments thereto, are not immune
9 from the sweep of the first amendment to the constitution of the United
10 States or section 11 of the bill of rights of the constitution of the state of
11 Kansas, which guarantees freedom of speech and expression.

12 (c) It is the intent of the legislature:

13 (1) That the postsecondary educational institutions *continue to*
14 embrace a commitment to the freedom of speech and expression for all
15 students and all faculty;

16 (2) that postsecondary educational institutions, including their faculty,
17 shall not require students—~~or other faculty~~ to adopt or to indicate their
18 adherence to beliefs or orthodoxies on any particular political,
19 philosophical, religious, social, or other such subject, although institutions
20 may require students—~~and faculty~~ to conform their conduct to the
21 requirements of law and policy; and

22 (3) that postsecondary educational institutions not stifle freedom of
23 speech and expression by implementing vague or overbroad speech codes,
24 establishing free speech zones, imposing unconstitutional prior restraints
25 on speech, or disinviting speakers based on the anticipated reaction or
26 opposition of others to the content of speech, *except that institutions may*
27 *require compliance with constitutional time, place and manner*
28 *restrictions.*

29 (d) As used in this act:

30 (1) "Constitutional time, place, and manner restrictions" means
31 restrictions on the time, place, and manner of free speech that do not
32 violate the first amendment to the constitution of the United States or
33 section 11 of the bill of rights of the constitution of the state of Kansas that
34 are reasonable, content- and viewpoint-neutral, narrowly tailored to satisfy

1 a significant institutional interest, and leave open ample alternative
2 channels for the communication of the information or message to its
3 intended audience;

4 (2) "faculty" or "faculty member" means any person, whether or not
5 the person is compensated by a public institution of higher education,
6 regardless of political affiliation, who is tasked with providing scholarship,
7 academic research or teaching. For purposes of this paragraph, the term
8 "faculty" shall include tenured and non-tenured professors, adjunct
9 professors, visiting professors, lecturers, graduate student instructors and
10 those in comparable positions, however titled. For purposes of this
11 paragraph, the term "faculty" shall not include persons whose primary
12 responsibilities are administrative or managerial;

13 (3) "free speech" means speech, expression or assemblies protected
14 by the first amendment to the constitution of the United States or section
15 11 of the bill of rights of the constitution of the state of Kansas, verbal or
16 written, including, but not limited to, all forms of peaceful assembly,
17 protests, demonstrations, rallies, vigils, marches, public speaking,
18 distribution of printed materials, carrying signs, displays or circulating
19 petitions. "Free speech" does not include the promotion, sale or
20 distribution of any product or service; and

21 (4) "Student" means an individual currently enrolled in a course of
22 study at the institution.

23 Sec. 2. (a) The governing authority of every postsecondary
24 educational institution shall adopt a policy that affirms the following
25 principles of free speech, which are the public policy of this state:

26 (1) Students have a fundamental constitutional right to free speech;

27 (2) an institution shall be committed to giving students the broadest
28 possible latitude to speak, write, listen, challenge, learn and discuss any
29 issue, subject to ***established constitutional limitations and*** this act, ~~and~~
30 ~~amendments thereto~~;

31 (3) an institution shall be committed to maintaining a campus as a
32 marketplace of ideas for all students and all faculty in which the free
33 exchange of ideas is not to be suppressed because the ideas put forth are
34 thought by some or even by most members of the institution's community
35 to be offensive, unwise, immoral, indecent, disagreeable, conservative,
36 liberal, traditional, radical or wrong-headed;

37 (4) it is for an institution's individual students and faculty to make
38 judgments about ideas for themselves and to act on those judgments not by
39 seeking to suppress free speech, but by openly and vigorously contesting
40 the ideas that they oppose;

41 (5) it is not the proper role of an institution to attempt to shield
42 individuals from free speech, including ideas and opinions they find
43 offensive, unwise, immoral, indecent, disagreeable, conservative, liberal,

1 traditional, radical or wrong-headed;

2 (6) although an institution should greatly value civility and mutual
3 respect, concerns about civility and mutual respect shall never be used by
4 an institution as a justification for closing off the discussion of ideas,
5 however offensive, unwise, immoral, indecent, disagreeable, conservative,
6 liberal, traditional, radical or wrong-headed those ideas may be to some
7 ~~students or faculty~~;

8 (7) although all ~~students and faculty~~ are free to state their own views
9 about and contest the views expressed on campus, and to state their own
10 views about and contest speakers who are invited to express their views on
11 the institution's campus, they may not substantially obstruct or otherwise
12 substantially interfere with the freedom of others to express views they
13 reject or even loathe. To this end, an institution has a responsibility to
14 promote a lively and fearless freedom of debate and deliberation and
15 protect that freedom;

16 (8) an institution shall be committed to providing an atmosphere that
17 is most conducive to speculation, experimentation and creation by all
18 ~~students and faculty~~, who shall always remain free to inquire, to study, to
19 evaluate and to gain new understanding;

20 ~~(9) the primary responsibility of faculty is to engage an honest,
21 courageous and persistent effort to search out and communicate the truth
22 that lies in the areas of their competence;~~

23 ~~(10)~~—***subject to reasonable constitutional time, place and manner***
24 ***restrictions***, an institution shall maintain the generally accessible, open,
25 outdoor areas of its campus as traditional public forums for free speech by
26 students;

27 ~~(11)~~**(10)** an institution shall not restrict students' free speech only to
28 particular areas of the campus, sometimes known as "free speech zones";

29 ~~(12)~~**(11)** an institution shall not deny student activity fee funding to a
30 student organization based on the viewpoints that the student organization
31 advocates. ***Any meeting of the postsecondary education institution or***
32 ***any group or committee thereof to discuss the allocation of student***
33 ***activities fees shall be subject to the Kansas open meetings act*};**

34 ~~(13)~~**(12)** an institution shall not establish permitting requirements that
35 prohibit spontaneous outdoor assemblies or outdoor distribution of
36 literature, although an institution may maintain a policy that grants
37 members of the college or university community the right to reserve
38 certain outdoor spaces in advance;

39 ~~(14)~~**(13)** an institution shall not charge students security fees based on
40 the content of their speech, the content of the speech of guest speakers
41 invited by students, or the anticipated reaction or opposition of listeners to
42 speech;

43 ~~(15)~~**(14)** an institution shall allow all ~~students and faculty~~ to invite

1 guest speakers to campus to engage in free speech regardless of the views
2 of guest speakers;~~and~~

3 ***(15) for event requests or activism projects, an institution shall***
4 ***provide a written explanation to inform the student or faculty group why***
5 ***such event request or activism project was tabled or denied; and***

6 (16) an institution shall not disinvite a speaker invited by a student,
7 student organization or faculty member because the speaker's anticipated
8 speech may be considered offensive, unwise, immoral, indecent,
9 disagreeable, conservative, liberal, traditional, radical or wrong-headed by
10 students, faculty, administrators, government officials or members of the
11 public.

12 (b) The policies adopted pursuant to subsection (a) shall be made
13 available to students and faculty annually ***{and a public notice shall be***
14 ***published in the student newspaper each year listing where the policy***
15 ***can be found}*** through one or more of the following methods:

16 (1) Publishing, annually, in the institution's student handbook and
17 faculty handbook, whether paper or electronic;

18 (2) making available to students and faculty by way of a prominent
19 notice on the institution's internet site other than through the electronic
20 publication of the policy in the student handbook and faculty handbook;

21 (3) sending, annually, to students and employees through their
22 institutionally provided email addresses; or

23 (4) addressing the policies in the institution's orientation programs for
24 new students and new faculty.

25 (c) Nothing in this section shall be construed to grant students the
26 right to disrupt previously scheduled or reserved activities occurring in a
27 traditional public forum.

28 Sec. 3. (a) With respect to disciplining students for their speech,
29 expression or assemblies, an institution shall ~~adopt~~ ***have*** a policy on
30 student-on-student harassment, defining the term consistent with and,
31 ***except as required by law,*** no more expansively than the language
32 contained in subsection (b).

33 (b) As used in this section, "student-on-student harassment" means
34 unwelcome conduct directed toward a person that is discriminatory on a
35 basis prohibited by federal, state or local law and that is so severe,
36 pervasive and objectively offensive that it effectively bars the victim's
37 access to an educational opportunity or benefit.

38 Sec. 4. Nothing in this act shall require an institution to fund costs
39 associated with student speech or expression. An institution shall not
40 impose costs on students or student organizations on the basis of the
41 anticipated reaction or opposition to a person's speech by listeners.

42 Sec. 5. Nothing contained in this act shall be construed as prohibiting
43 an institution from imposing measures that do not violate the first

- 1 amendment to the constitution of the United States or section 11 of the bill
2 of rights of the constitution of the state of Kansas, such as:
- 3 (1) Constitutional time, place and manner restrictions;
 - 4 (2) reasonable and viewpoint-neutral restrictions in ~~nonpublic~~ **any**
5 forums;
 - 6 (3) restrictions on the use of the institution's property to protect the
7 free speech rights of students and faculty and preserve the use of the
8 property for the advancement of the institution's mission;
 - 9 (4) prohibition or limitation of speech, expression or assemblies that
10 are not protected by the first amendment to the constitution of the United
11 States or section 11 of the bill of rights of the constitution of the state of
12 Kansas; or
 - 13 (5) content restrictions on speech that are reasonably related to a
14 legitimate pedagogical purpose, such as classroom rules enacted by
15 faculty.
- 16 Sec. 6. This act shall take effect and be in force from and after its
17 publication in the statute book.