



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3409

Introduced 2/22/2021, by Rep. Thomas Morrison

SYNOPSIS AS INTRODUCED:

New Act

Creates the Campus Free Speech Act. Requires the governing board of each public university and community college to develop and adopt a policy on free expression; sets forth what the policy must contain. Requires the Board of Higher Education to create a Committee on Free Expression to issue an annual report. Requires public institutions of higher education to include in their freshman orientation programs a section describing to all students the policies and rules regarding free expression that are consistent with the Act. Contains provisions concerning rules, construction of the Act, permitted restrictions, and enforcement.

LRB102 14947 CMG 20302 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Campus
5 Free Speech Act.

6 Section 5. Legislative findings. The General Assembly
7 finds the following:

8 (1) Section 4 of Article I of the Illinois
9 Constitution recognizes that "all persons may speak, write
10 and publish freely, being responsible for the abuse of
11 that liberty. In trials for libel, both civil and
12 criminal, the truth, when published with good motives and
13 for justifiable ends, shall be a sufficient defense".

14 (2) Public institutions of higher education have
15 historically embraced a commitment to freedom of
16 expression in policy.

17 (3) In recent years, public institutions of higher
18 education have abdicated their responsibility to uphold
19 free-speech principles, and these failures make it
20 appropriate for all public institutions of higher
21 education to restate and confirm their commitment in this
22 regard.

23 (4) In 1974, the Committee on Free Expression at Yale

1 University issued a statement known as the Woodward Report
2 that stands as a classic defense of free expression on
3 campuses; in 2015, the Committee on Freedom of Expression
4 at the University of Chicago issued a similar and widely
5 respected report; and in 1967, the Kalven Committee Report
6 of the University of Chicago articulated the principle of
7 institutional neutrality regarding political and social
8 issues and the essential role of such neutrality in
9 protecting freedom of thought and expression at
10 universities. The principles affirmed by these 3 highly
11 regarded reports are inspiring articulations of the
12 critical importance of free expression in higher
13 education.

14 (5) The General Assembly views freedom of expression
15 as being of critical importance and requires that each
16 public institution of higher education ensure free,
17 robust, and uninhibited debate and deliberation by
18 students of public institutions whether on or off campus.

19 (6) The General Assembly has determined that it is a
20 matter of statewide concern that all public institutions
21 of higher education officially recognize freedom of speech
22 as a fundamental right.

23 Section 10. Definition. In this Act, "public institution"
24 means a public university or public community college in this
25 State.

1 Section 15. Policy on free expression required. The board
2 of trustees of a public institution shall develop and adopt a
3 policy on free expression that contains, at least, the
4 following:

5 (1) A statement that the primary function of an
6 institution of higher education is the discovery,
7 improvement, transmission, and dissemination of knowledge
8 by means of research, teaching, discussion, and debate.
9 This statement shall provide that, to fulfill this
10 function, the institution must strive to ensure the
11 fullest degree of intellectual freedom and free
12 expression.

13 (2) A statement that it is not the proper role of the
14 institution to shield individuals from speech protected by
15 the First Amendment, including, without limitation, ideas
16 and opinions they find unwelcome, disagreeable, or even
17 deeply offensive.

18 (3) A statement that students and faculty have the
19 freedom to discuss any problem that presents itself, as
20 the First Amendment permits and within the limits of
21 reasonable viewpoint and content-neutral restrictions on
22 time, place, and manner of expression that are consistent
23 with this Act and that are necessary to achieve a
24 significant institutional interest; provided that these
25 restrictions are clear, published, and provide ample

1 alternative means of expression. Students and faculty
2 shall be permitted to assemble and engage in spontaneous
3 expressive activity as long as the activity is not
4 unlawful and does not materially and substantially disrupt
5 the functioning of the institution, subject to the
6 requirements of this Act.

7 (4) A statement that any person lawfully present on
8 campus may protest or demonstrate there. The statement
9 shall make clear that protests and demonstrations that
10 infringe upon the rights of others to engage in or listen
11 to expressive activity shall not be permitted and shall be
12 subject to sanction. This does not prohibit professors or
13 other instructors from maintaining order in the classroom.

14 (5) A statement that the campuses of the institution
15 are open to any speaker whom students, student groups, or
16 members of the faculty have invited.

17 (6) A statement that the public areas of campuses of
18 the institution are traditional public forums, open on the
19 same terms to any speaker.

20 (7) A range of disciplinary sanctions for anyone under
21 the jurisdiction of the institution who interferes with
22 the free expression of others.

23 (8) A provision that, in all disciplinary cases
24 involving expressive conduct, students are entitled to a
25 disciplinary hearing under published procedures,
26 including, at minimum:

1 (A) the right to receive advance written notice of
2 the charges;

3 (B) the right to review the evidence in support of
4 the charges;

5 (C) the right to confront witnesses against them;

6 (D) the right to present a defense;

7 (E) the right to call witnesses;

8 (F) a decision by an impartial arbiter or panel;

9 and

10 (G) the right of appeal.

11 When suspension for longer than 30 days or expulsion
12 are potential penalties, students are entitled to a
13 disciplinary hearing under published procedures,
14 including, at minimum, all of the procedures listed in
15 this subdivision (8), plus the right to active assistance
16 of counsel.

17 (9) A provision that any student who has twice been
18 found responsible for infringing on the expressive rights
19 of others will be suspended for a minimum of one year or
20 expelled.

21 (10) A statement that the institution (i) shall strive
22 to remain neutral, as an institution, on the public policy
23 controversies of the day and (ii) may not take action, as
24 an institution, on the public policy controversies of the
25 day in such a way as to require students or faculty to
26 publicly express a given view of social policy.

1 (11) A statement that this policy supersedes and
2 nullifies any prior provisions in the policies and
3 regulations of the institution that restrict speech on
4 campus and are, therefore, inconsistent with this policy
5 on free expression. The institution shall remove or revise
6 any such provisions in its policies and regulations to
7 ensure compatibility with this policy on free expression.

8 Section 20. Committee on Free Expression.

9 (a) The Board of Higher Education shall create a single
10 Committee on Free Expression consisting of all of the
11 following members, all of whom shall serve without
12 compensation but shall be reimbursed for their reasonable and
13 necessary expenses from funds appropriated for that purpose:

14 (1) One member representing the University of Illinois
15 at Urbana-Champaign, appointed by the university's board
16 of trustees.

17 (2) One member representing the University of Illinois
18 at Springfield, appointed by the university's board of
19 trustees.

20 (3) One member representing the University of Illinois
21 at Chicago, appointed by the university's board of
22 trustees.

23 (4) One member representing Southern Illinois
24 University at Carbondale, appointed by the university's
25 board of trustees.

1 (5) One member representing Southern Illinois
2 University at Edwardsville, appointed by the university's
3 board of trustees.

4 (6) One member representing Western Illinois
5 University, appointed by the university's board of
6 trustees.

7 (7) One member representing Eastern Illinois
8 University, appointed by the university's board of
9 trustees.

10 (8) One member representing Illinois State University,
11 appointed by the university's board of trustees.

12 (9) One member representing Northern Illinois
13 University, appointed by the university's board of
14 trustees.

15 (10) One member representing Chicago State University,
16 appointed by the university's board of trustees.

17 (11) One member representing Governors State
18 University, appointed by the university's board of
19 trustees.

20 (12) One member representing Northeastern Illinois
21 University, appointed by the university's board of
22 trustees.

23 (13) Three members representing public community
24 colleges, appointed by the Illinois Community College
25 Board at its discretion.

26 (b) The Committee on Free Expression shall meet initially

1 at the call of the Chairperson of the Board of Higher
2 Education, shall select one member as chairperson at its
3 initial meeting, and shall thereafter meet at the call of that
4 chairperson. The Board of Higher Education shall provide
5 administrative and other support to the Committee.

6 (c) The Committee on Free Expression shall report to the
7 public, the Board of Higher Education, the Governor, and the
8 General Assembly on September 1 of every year. The report
9 shall include all of the following:

10 (1) A description of any barriers to or disruptions of
11 free expression within public institutions.

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

14 (3) A description of substantial difficulties,
15 controversies, or successes in maintaining a posture of
16 administrative and institutional neutrality with regard to
17 political or social issues.

18 (4) Any assessments, criticisms, commendations, or
19 recommendations the committee sees fit to include.

20 Section 25. Freshman orientation information. Public
21 institutions shall include in their freshman orientation
22 programs a section describing to all students the policies and
23 rules regarding free expression that are consistent with this
24 Act.

1 Section 30. Rules; construction of Act; permitted
2 restrictions. The Board of Higher Education is authorized to
3 adopt rules to further the purposes of the policies adopted
4 pursuant to this Act. Nothing in this Act shall be construed to
5 prevent public institutions from regulating student speech or
6 activity that is prohibited by law. Except as further limited
7 by this Act, public institutions shall be allowed to restrict
8 student expression only for expressive activity not protected
9 by the First Amendment, including all of the following:

10 (1) Violations of State or federal law.

11 (2) Expression that a court has deemed unprotected
12 defamation.

13 (3) Harassment as follows:

14 (A) Peer-on-peer harassment, which is defined as
15 conduct directed by a student toward another
16 individual student, on the basis of that student's
17 membership or perceived membership in a protected
18 class, that is so severe, pervasive, and objectively
19 offensive that it effectively deprives the victim of
20 access to the educational opportunities or benefits
21 provided by the public institution.

22 (B) Quid pro quo sexual harassment, which is
23 defined as explicitly or implicitly conditioning a
24 student's participation in an education program or
25 activity or basing an educational decision on the
26 student's submission to unwelcome sexual advances,

1 requests for sexual favors, or other verbal,
2 nonverbal, or physical conduct of a sexual nature.

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

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

9 (6) An action that unlawfully disrupts the function of
10 the public institution.

11 (7) Reasonable time, place, and manner restrictions on
12 expressive activities consistent with subdivision (3) of
13 Section 15 of this Act.

14 Section 35. Restriction on expressive conduct;
15 enforcement.

16 (a) A public institution may restrict expressive conduct
17 in the public areas of campus only if it demonstrates that the
18 restriction:

19 (1) is necessary to achieve a compelling governmental
20 interest;

21 (2) is the least restrictive means of furthering that
22 compelling governmental interest;

23 (3) leaves open ample other opportunities to engage in
24 the expressive conduct; and

25 (4) provides for spontaneous assembly and the

1 distribution of literature.

2 (b) The following persons may bring an action in a court of
3 competent jurisdiction to enjoin any violation of this Section
4 or to recover reasonable court costs and reasonable attorney
5 fees:

6 (1) The Attorney General.

7 (2) A person whose expressive rights are violated by a
8 violation of this Section.

9 (c) In an action brought under subsection (b) of this
10 Section, if the court finds that a violation of this Section
11 occurred, the court shall award the aggrieved person
12 injunctive relief for the violation and shall award reasonable
13 court costs and reasonable attorney fees. The court shall also
14 award damages of \$1,000 or actual damages, whichever is
15 higher.

16 (d) A person shall bring an action for a violation of this
17 Section within one year after the date the cause of action
18 accrues. For the purpose of calculating the one-year
19 limitation period, each day that the violation persists or
20 each day that a policy in violation of this Section remains in
21 effect constitutes a new violation of this Section and shall
22 be considered a day that the cause of action has accrued.