

1 HB498
2 201607-4
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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature makes the following findings:

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

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

(3) The United States Supreme Court has called public universities "peculiarly the marketplace of ideas," *Healy v. James*, 408 U.S. 169, 180 (1972), where young adults learn to exercise those constitutional rights necessary to participate in our system of government and to tolerate the exercise of those rights by others, and there is "no room for the view that First Amendment protections should apply with

1 less force on college campuses than in the community at
2 large." Healy, 408 U.S. at 180.

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

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

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

21 (7) The 1974 Woodward Report, published by the
22 Committee on Free Expression at Yale, the 2015 report issued
23 by the Committee on Freedom of Expression at the University of
24 Chicago, and the 1967 Kalven Committee Report of the
25 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.

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

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

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

1 fleeting nonviolent disruptions of events that are isolated
2 and short in duration.

3 (6) OUTDOOR AREAS OF CAMPUS. The generally
4 accessible outside areas of the campus of a public institution
5 of higher education where members of the campus community are
6 commonly allowed including, without limitation, grassy areas,
7 walkways, and other similar common areas.

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

15 a. Communication through any lawful verbal, written,
16 or electronic means.

17 b. Participating in peaceful assembly.

18 c. Protesting.

19 d. Making speeches.

20 e. Distributing literature.

21 f. Making comments to the media.

22 g. Carrying signs or hanging posters.

23 h. Circulating petitions.

24 For purposes of this act, the phrase protected
25 expressive activity does not include expression that relates

1 solely to the economic interests of the speaker and its
2 audience and proposes an economic transaction.

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

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

7 (10) STUDENT ORGANIZATION. An officially recognized
8 group at a public institution of higher education or a group
9 seeking official recognition, composed of admitted students
10 that receive or are seeking to receive benefits through the
11 institution.

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

17 (1) That the primary function of the public
18 institution of higher education is the discovery, improvement,
19 transmission, and dissemination of knowledge by means of
20 research, teaching, discussion, and debate, and that, to
21 fulfill that function, the institution will strive to ensure
22 the fullest degree possible of intellectual freedom and free
23 expression.

24 (2) That it is not the proper role of the
25 institution to shield individuals from speech protected by the

1 First Amendment to the United States Constitution and Article
2 I, Section 4 of the Constitution of Alabama of 1901, including
3 without limitation, ideas and opinions they find unwelcome,
4 disagreeable, or offensive.

5 (3) That students, administrators, faculty, and
6 staff are free to take positions on public controversies and
7 to engage in protected expressive activity in outdoor areas of
8 the campus, and to spontaneously and contemporaneously
9 assemble, speak, and distribute literature.

10 (4) That the outdoor areas of a campus of a public
11 institution of higher education shall be deemed to be a forum
12 for members of the campus community, and the institution shall
13 not create free speech zones or other designated outdoor areas
14 of campus in order to limit or prohibit protected expressive
15 activities.

16 (5) That the campus of the public institution of
17 higher education shall be open to any speaker whom the
18 institution's student organizations or faculty have invited,
19 and the institution will make all reasonable efforts to make
20 available all reasonable resources to ensure the safety of the
21 campus community, and that the institution will not charge
22 security fees based on the protected expressive activity of
23 the member of the campus community or the member's
24 organization, or the content of the invited guest's speech, or

1 the anticipated reaction or opposition of the listeners to the
2 speech.

3 (6) That the public institution of higher education
4 shall not permit members of the campus community to engage in
5 conduct that materially and substantially disrupts another
6 person's protected expressive activity or infringes on the
7 rights of others to engage in or listen to a protected
8 expressive activity that is occurring in a location that has
9 been reserved for that protected expressive activity and shall
10 adopt a range of disciplinary sanctions for anyone under the
11 jurisdiction of the institution who materially and
12 substantially disrupts the free expression of others.

13 (7) That the public institution of higher education
14 may maintain and enforce constitutional time, place, and
15 manner restrictions for outdoor areas of campus only when they
16 are narrowly tailored to serve a significant institutional
17 interest and when the restrictions employ clear, published,
18 content-neutral, and viewpoint-neutral criteria, and provide
19 for ample alternative means of expression. All restrictions
20 shall allow for members of the university community to
21 spontaneously and contemporaneously assemble and distribute
22 literature.

23 (8) That the public institution of higher education
24 shall support free association and shall not deny a student
25 organization any benefit or privilege available to any other

1 student organization or otherwise discriminate against an
2 organization based on the expression of the organization,
3 including any requirement of the organization that the leaders
4 or members of the organization affirm and adhere to an
5 organization's sincerely held beliefs or statement of
6 principles, comply with the organization's standard of
7 conduct, or further the organization's mission or purpose, as
8 defined by the student organization.

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

16 (10) That the public institution of higher education
17 shall prohibit harassment in a manner consistent with the
18 definition provided in this act, and no more expansively than
19 provided herein.

20 (b) The policy developed pursuant to this section
21 shall supersede and nullify any prior provisions in the
22 policies of the institution that restrict speech on campus and
23 are, therefore, inconsistent with this policy. The institution
24 shall remove or revise any of these provisions in its policies
25 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. The boards of trustees of each public
10 institution of higher education shall submit to the Governor
11 and the Legislature a report that details both of the
12 following:

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

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

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

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

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

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

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

6 Each board of trustees shall cause the report to be
7 published in a prominent location on its institution's
8 website. In addition, each board of trustees shall submit a
9 copy of the report to the Alabama Commission on Higher
10 Education, which shall publish the report in a prominent
11 location on its website and notify the Governor and the
12 Legislature of its receipt of the report.

13 Section 6. Nothing in this act shall be construed to
14 prevent public institutions of higher education from
15 regulating and restricting speech, expression, or a protected
16 expressive activity that is not protected by the United States
17 Constitution or the Constitution of Alabama of 1901,
18 including, but not limited to, any of the following:

19 (1) Violations of state or federal law, including,
20 but not limited to, actions that damage institutional
21 property.

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

24 (3) Harassment.

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

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

7 (6) An action that unlawfully disrupts the function
8 or security of the institution.

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

12 (1) The Attorney General.

13 (2) A person whose expressive rights are violated by
14 a violation of this act or the policy adopted pursuant to this
15 act.

16 Section 8. It is the intent of the Legislature that
17 constitutionally created boards of trustees comply with the
18 requirement of this act.

19 Section 9. This act shall become effective on ~~the~~
20 ~~first day of the third month~~ July 1, 2020, following its
21 passage and approval by the Governor, or its otherwise
22 becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 22-MAY-19, as amended.

Jeff Woodard
Clerk

Senate	30-MAY-19	Amended and Passed
House	30-MAY-19	Concurred in Sen- ate Amendment