2022 Regular Session

HOUSE BILL NO. 185

BY REPRESENTATIVE CHARLES OWEN

COLLEGES/UNIVERSITIES: Provides relative to expressive activities at public postsecondary education institutions

AN ACT

To amend and reenact R.S. 17:3399.31, 3399.32(E), and 3399.35(3) and (5) and to enact R.S. 17:3399.32(F) and (G) and 3399.38, relative to expressive activities at public postsecondary education institutions; to authorize institutions to require permits for expressive activities and to charge fees associated with such permits; to provide for policies and definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:3399.31, 3399.32(E), and 3399.35(3) and (5) are hereby amended and reenacted and R.S. 17:3399.32(F) and (G) and 3399.38 are hereby enacted to read as follows:

§3399.31. Definitions

For the purposes of this Part, the following words, terms, and phrases shall have the following meanings, unless the context clearly requires otherwise:

(1) "Expressive activities" include but are not limited to any lawful verbal or written means by which individuals or groups communicate ideas to one another, as provided by the First Amendment of the Constitution of the United States of America and by the Constitution of Louisiana, including all forms of peaceful assembly, protest, speech, distribution of literature, carrying signs, and circulating petitions. This expressly excludes commercial activities where individuals or groups...
are being compensated or attempting to advertise, market, or accrue financial gain
to any individual, corporation, business, or organization.

(2) "Material and substantial disruption" means when a person, with the
intent and knowledge of doing so, significantly hinders expressive activity, prevents
the communication of the message, or prevents the transaction of the business of a
lawful meeting, gathering, or procession by either of the following:

(a) Engaging in fighting, violence, or similar unlawful behavior.

(b) Physically blocking or using threats of violence to prevent any person
from attending, listening to, viewing, or otherwise participating in an expressive
activity.

(3) "Outdoor areas" are outside areas generally accessible to the majority
of students, administrators, faculty, and staff, such as grassy areas, walkways, or
other similar common areas, and do not include areas where access is restricted.

(4) "Student" means any person who is enrolled on a full-time or part-time
basis in a public postsecondary education institution.

(5) "Student-on-student discriminatory harassment" means unwelcome
conduct that targets its victim on the basis of a class protected under federal, state,
or local law and that is so severe, pervasive, and objectively offensive and so
undermines and detracts from the victim's educational experience that the victim is
effectively denied equal access to an institution's resources and opportunities.

(6) "Student organization" means an officially recognized group at a
public postsecondary education institution, or a group seeking official recognition,
comprised of admitted enrolled students.

§3399.32. Expressive activities; public postsecondary education institutions;
protected

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E.1 A public postsecondary education institution may require a permit from
any individual or group as a condition of being granted exclusive control of a
location for expressive activity at a reserved time. Any such permitting process shall
not be overly burdensome, and applications for permits shall be evaluated solely based on published content-neutral and viewpoint-neutral criteria. If a public postsecondary education institution denies a permit, it shall provide a reason for doing so in writing within two business days to the applicant and allow the applicant to appeal the denial.

(2)(a) A public postsecondary education institution may charge a security fee to a student or student organization as part of an application for such a permit; however, no public postsecondary education institution shall charge security fees based on the content of the expression of the student or student organization, the content of the expression of an invited guest, or the anticipated reaction to any such content.

(b) The determination of whether or not the security fee is required and the amount of the fee shall be based solely on published content-neutral and viewpoint-neutral criteria, including but not limited to the time of the event, the location of the event, the anticipated size of the invited audience, and whether or not alcohol will be served.

(c) Any institution charging security fees pursuant to this Paragraph shall publish the criteria it uses for assessing the fees.

F. Each public postsecondary education institution shall prohibit student-on-student discriminatory harassment. An institution may not sanction or discipline a student's expression as student-on-student discriminatory harassment unless the expression meets the definition provided by this Part.

G.(1) Nothing in this Part shall be interpreted as preventing institutions from prohibiting, limiting, or restricting expression that is unprotected by the First Amendment of the Constitution of the United States of America does not protect, or Article I, Section 7 of the Constitution of Louisiana, such as true threats and or expressions directed to provoke and likely to produce imminent lawless actions, or from prohibiting harassment.
(2) Nothing in this Part shall be interpreted as preventing institutions from responding, through nonpunitive actions, to student expression that does not meet the definition of student-on-student discriminatory harassment.

(3) Nothing in this Part shall be interpreted as preventing institutions from maintaining policies prohibiting stalking or other criminal activity.

§3399.35. Management boards; policy on free expression

Each public postsecondary education management board, in collaboration with the Board of Regents, shall develop and adopt policies on free expression that contain at least the following:

(3) A provision that students and faculty have the freedom to discuss any topic that presents itself, as provided under the First Amendment of the Constitution of the United States of America and Article I, Section 7 of the Constitution of Louisiana and other applicable laws permit and within the limits on time, place, and manner of expression that are consistent with this Part and that are necessary to achieve in furtherance of a significant institutional interest; such restrictions shall be published and provide ample alternative means of expression.

(5) A provision that any person lawfully present on a campus may protest or demonstrate there. Protests and demonstrations that infringe upon the constitutional rights of others to engage in or listen to expressive activity by creating a substantial and material disruption to the functioning of the institution or to someone's expressive activity in any location reserved for that expressive activity shall not be permitted. No conduct shall be deemed a material and substantial disruption that is protected under the First Amendment to the United States Constitution or Article I, Section 7 of the Constitution of Louisiana. Such protected conduct includes but is not limited to lawful protests and counter-protests in the outdoor areas of campus generally accessible to the members of the public except during times when these
areas have been reserved in advance for other events or minor, brief, or fleeting
nonviolent disruptions of events that are isolated and short in duration.

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§3399.38. Conflict with other laws

The provisions of this Part shall supersede and control to the extent of any
conflict with any other provision of law and shall govern a public postsecondary
education institution's obligation to address all forms of discriminatory harassment
perpetrated by one student on another, including sexual harassment.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part
of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute
part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Abstract: Revises provisions relative to expressive activities on college campuses.

Present law provides for the protection of expressive activities at public postsecondary
education institutions. Requires public postsecondary education management boards to
adopt policies on free expression, including prohibiting protests and demonstrations that
infringe upon the constitutional rights of others to engage in or listen to expressive activity
by creating a "substantial and material disruption" to the functioning of the institution or to
someone's expressive activity.

Proposed law adds that "substantial and material disruption" means when a person, with the
intent and knowledge of doing so, significantly hinders expressive activity; prevents the
communication of the message; or prevents the transaction of the business of a lawful
meeting, gathering, or procession by either of the following:

(1) Engaging in fighting, violence, or similar unlawful behavior.

(2) Physically blocking or using threats of violence to prevent any person from
attending, listening to, viewing, or otherwise participating in an expressive activity.

Proposed law provides that no conduct shall be deemed a material and substantial disruption
that is protected under the federal or state constitution and further revises present law as
follows:

(1) Adds that an institution may require a permit as a condition of being granted
exclusive control of a location and time for expressive activity.

(2) Adds that an institution may charge security fees as part of an application for such
a permit.

(3) Requires institutions to maintain a policy prohibiting "student-on-student
discriminatory harassment", which proposed law defines as unwelcome conduct that
targets its victim on the basis of a class protected under federal, state, or local law
and that is so severe, pervasive, and objectively offensive and so undermines and

CODING: Words in struck through type are deletions from existing law; words underscored
are additions.
detracts from the victim's educational experience that the victim is effectively denied equal access to an institution's resources and opportunities. 

(4) Provides that nothing in proposed law shall be interpreted to prevent institutions from:

(a) Responding through nonpunitive actions to student expression that does not meet the definition of student-on-student discriminatory harassment.

(b) Maintaining policies prohibiting stalking or other criminal activity.

(5) Provides that present law and proposed law shall supersede and control to the extent of any conflict with other present law and shall govern a public postsecondary education institution's obligation to address all forms of discriminatory harassment perpetrated by one student on another, including sexual harassment.

(Amends R.S. 17:3399.31, 3399.32(E), and 3399.35(3) and (5); Adds R.S. 17:3399.32(F) and (G) and 3399.38)