

2022 Regular Session

HOUSE BILL NO. 185

BY REPRESENTATIVE CHARLES OWEN

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

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

11 §3399.31. Definitions

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

14 (1) "Expressive activities" include but are not limited to any lawful verbal
15 or written means by which individuals or groups communicate ideas to one another,
16 as provided by the First Amendment of the Constitution of the United States of
17 America and by the Constitution of Louisiana, including all forms of peaceful
18 assembly, protest, speech, distribution of literature, carrying signs, and circulating
19 petitions. This expressly excludes commercial activities where individuals or groups

1 are being compensated or attempting to advertise, market, or accrue financial gain
2 to any individual, corporation, business, or organization.

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

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

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

11 ~~(2)~~ (3) "Outdoor areas" are outside areas generally accessible to the majority
12 of students, administrators, faculty, and staff, such as grassy areas, walkways, or
13 other similar common areas, and do not include areas where access is restricted.

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

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

21 ~~(3)~~ (6) "Student organization" means an officially recognized group at a
22 public postsecondary education institution, or a group seeking official recognition,
23 comprised of ~~admitted~~ enrolled students.

24 §3399.32. Expressive activities; public postsecondary education institutions;
25 protected

26 * * *

27 E.(1) A public postsecondary education institution may require a permit from
28 any individual or group as a condition of being granted exclusive control of a
29 location for expressive activity at a reserved time. Any such permitting process shall

1 not be overly burdensome, and applications for permits shall be evaluated solely
2 based on published content-neutral and viewpoint-neutral criteria. If a public
3 postsecondary education institution denies a permit, it shall provide a reason for
4 doing so in writing within two business days to the applicant and allow the applicant
5 to appeal the denial.

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

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

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

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

23 G.(1) Nothing in this Part shall be interpreted as preventing institutions from
24 prohibiting, limiting, or restricting expression that is unprotected by the First
25 Amendment of the Constitution of the United States of America ~~does not protect, or~~
26 Article I, Section 7 of the Constitution of Louisiana, such as true threats ~~and or~~
27 expressions directed to provoke and likely to produce imminent lawless actions; ~~or~~
28 ~~from prohibiting harassment.~~

1 (2) Nothing in this Part shall be interpreted as preventing institutions from
2 responding, through nonpunitive actions, to student expression that does not meet the
3 definition of student-on-student discriminatory harassment.

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

6 * * *

7 §3399.35. Management boards; policy on free expression

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

11 * * *

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

19 * * *

20 (5) A provision that any person lawfully present on a campus may protest or
21 demonstrate there. Protests and demonstrations that infringe upon the constitutional
22 rights of others to engage in or listen to expressive activity by creating a substantial
23 and material disruption to the functioning of the institution or to someone's
24 expressive activity in any location reserved for that expressive activity shall not be
25 permitted. No conduct shall be deemed a material and substantial disruption that is
26 protected under the First Amendment to the United States Constitution or Article I,
27 Section 7 of the Constitution of Louisiana. Such protected conduct includes but is
28 not limited to lawful protests and counter-protests in the outdoor areas of campus
29 generally accessible to the members of the public except during times when these

1 areas have been reserved in advance for other events or minor, brief, or fleeting
2 nonviolent disruptions of events that are isolated and short in duration.

3 * * *

4 §3399.38. Conflict with other laws

5 The provisions of this Part shall supersede and control to the extent of any
6 conflict with any other provision of law and shall govern a public postsecondary
7 education institution's obligation to address all forms of discriminatory harassment
8 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)]

HB 185 Original

2022 Regular Session

Charles Owen

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

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)