

# HOUSE BILL No. 1190

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 21-18-6-2.5; IC 21-39-8.

**Synopsis:** Free speech at state educational institutions. Provides that a state educational institution may not: (1) designate an area on campus as an area where protected expressive activities are prohibited; (2) deny any benefit or privilege to, or discriminate against, a religious, political, or ideological student organization for its free expression; and (3) deny a benefit to or discriminate against a religious, political, or ideological student organization based on the expression or a requirement of the student organization. Allows a state educational institution to enforce reasonable time, place, and manner restrictions that comply with certain requirements. Requires a state educational institution to: (1) create and publish free expression policies; (2) submit certain reports to the governor and general assembly; and (3) make certain reports accessible on its Internet web site. Provides that a student or student organization may bring a cause of action for a violation of free speech rights. Allows a court to award compensatory damages, reasonable court costs, and attorney's fees to an aggrieved student or student organization if the court finds that a violation occurred. Provides that a state educational institution is not immune from certain liability. Requires the commission for higher education to create a form for a state educational institution to submit information on an alleged violation of this chapter. Makes conforming changes.

**Effective:** July 1, 2022.

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## Jordan, Jeter

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January 6, 2022, read first time and referred to Committee on Education.

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Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

# HOUSE BILL No. 1190

A BILL FOR AN ACT to amend the Indiana Code concerning higher education.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 21-18-6-2.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2022]: **Sec. 2.5. The commission shall create a form for a state  
4 educational institution to submit the information required by  
5 IC 21-39-8-14(a).**

6 SECTION 2. IC 21-39-8 IS ADDED TO THE INDIANA CODE AS  
7 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2022]:

9 **Chapter 8. Speech and Expression on Campus**  
10 **Sec. 1. As used in this chapter, "benefit" means any of the  
11 following:**

- 12 **(1) Recognition by a state educational institution.**
- 13 **(2) Registration by a state educational institution.**
- 14 **(3) The use of a state educational institution facility for a  
15 meeting or speaking purposes.**
- 16 **(4) The use of communication channels.**
- 17 **(5) Funding sources that are otherwise available to other**



1 student organizations at the state educational institution.

2 **Sec. 2. As used in this chapter, "campus community" means:**

3 **(1) a state educational institution's:**

4 **(A) students;**

5 **(B) administrators;**

6 **(C) faculty; and**

7 **(D) staff; and**

8 **(2) a guest invited by the individuals listed in subdivision (1).**

9 **Sec. 3. As used in this chapter, "harassment" means speech or**  
 10 **conduct that is:**

11 **(1) unwelcome;**

12 **(2) severe;**

13 **(3) pervasive; and**

14 **(4) subjectively and objectively offensive;**

15 **and results in a student being denied equal access to educational**  
 16 **opportunities or benefits provided by a state educational**  
 17 **institution.**

18 **Sec. 4. (a) As used in this chapter, "materially and substantially**  
 19 **disrupts" means the act of knowingly or intentionally doing one (1)**  
 20 **or more of the following:**

21 **(1) Significantly hindering the protected expressive activity of**  
 22 **another individual or group.**

23 **(2) Preventing the communication of a message of another**  
 24 **individual or group.**

25 **(3) Preventing the transaction of the business of a lawful**  
 26 **meeting, gathering, or procession by:**

27 **(A) engaging in fighting, violence, or other unlawful**  
 28 **behavior; or**

29 **(B) physically blocking or threatening violence to prevent**  
 30 **an individual from attending, listening to, viewing, or**  
 31 **participating in a protected expressive activity.**

32 **(b) The term does not include the following:**

33 **(1) Conduct that is protected under the First Amendment to**  
 34 **the Constitution of the United States or Article 1, Section 9 of**  
 35 **the Constitution of the State of Indiana. Except when an**  
 36 **outdoor area of the campus has been reserved in advance of**  
 37 **another event, protected conduct under this subdivision**  
 38 **includes lawfully protesting in an outdoor area of campus that**  
 39 **is generally accessible to the public.**

40 **(2) A minor, brief, or fleeting nonviolent disruption of an**  
 41 **event that is isolated and short in duration.**

42 **Sec. 5. As used in this chapter, "protected expressive activity"**



- 1 includes the following:
- 2 (1) Participating in speech or conduct protected by the First
- 3 Amendment to the Constitution of the United States.
- 4 (2) Communicating by any lawful verbal, written, audio
- 5 visual, or electronic means.
- 6 (3) Participating in peaceful assembly.
- 7 (4) Protesting.
- 8 (5) Making speeches, including speeches of guest speakers.
- 9 (6) Distributing literature.
- 10 (7) Carrying signs.
- 11 (8) Circulating petitions.
- 12 Sec. 6. (a) As used in this chapter, "outdoor areas of the
- 13 campus" means an area of the campus of a state educational
- 14 institutional where members of the campus community are
- 15 commonly allowed and that is outside.
- 16 (b) The term includes grassy areas, walkways, and similar
- 17 common areas.
- 18 (c) The term does not include outdoor areas where access is
- 19 restricted from a majority of the campus community.
- 20 Sec. 7. As used in this chapter, "student" means an individual
- 21 who is enrolled on a full-time or part-time basis at a state
- 22 educational institution.
- 23 Sec. 8. As used in this chapter, "student organization" means a
- 24 group that is:
- 25 (1) officially recognized, or seeking official recognition, by a
- 26 state educational institution; and
- 27 (2) comprised of students that receive, or are seeking to
- 28 receive, benefits from the state educational institution.
- 29 Sec. 9. (a) A state educational institution may not designate an
- 30 area of campus as an area where protected expressive activities are
- 31 prohibited.
- 32 (b) Subject to subsection (a), a state educational institution may
- 33 enforce reasonable time, place, and manner restrictions on campus
- 34 or in its domain that meet the following:
- 35 (1) The restrictions are narrowly tailored in service of a
- 36 significant state educational institutional interest.
- 37 (2) The restrictions employ criteria that are clear, published,
- 38 and content and viewpoint neutral.
- 39 (3) The restrictions provide ample alternative means of
- 40 expression.
- 41 (4) The restrictions allow members of the campus community
- 42 to spontaneously and contemporaneously assemble and



- 1           **distribute literature.**
- 2           **Sec. 10. (a) Subject to section 9 of this chapter, an individual**
- 3 **may freely engage in noncommercial protected expressive activity,**
- 4 **on the campus of a state educational institution, that:**
- 5           **(1) is lawful; and**
- 6           **(2) does not materially and substantially disrupt the**
- 7 **functioning of the state educational institution.**
- 8           **(b) This section may not be construed to:**
- 9           **(1) prevent a state educational institution from prohibiting,**
- 10 **limiting, or restricting expression that is not protected by the**
- 11 **First Amendment to the Constitution of the United States,**
- 12 **including threats, expression directed to provoke imminent**
- 13 **lawless action and likely to produce it, or prohibiting**
- 14 **harassment; or**
- 15           **(2) allow an individual to engage in conduct that intentionally,**
- 16 **materially, and substantially disrupts the protected expressive**
- 17 **activity of another individual that is occurring in a space on**
- 18 **campus reserved for that activity under the exclusive use or**
- 19 **control of a particular group or student organization.**
- 20           **Sec. 11. (a) A state educational institution may not:**
- 21           **(1) deny any benefit or privilege that is available to any**
- 22 **student organization to; or**
- 23           **(2) discriminate against;**
- 24 **a religious, political, or ideological student organization on the**
- 25 **basis of the expression of the organization.**
- 26           **(b) A state educational institution may not deny a benefit to or**
- 27 **discriminate against a religious, political, or ideological student**
- 28 **organization based on the expression or a requirement of the**
- 29 **student organization, including a requirement that a leader or**
- 30 **member of a student organization do any of the following:**
- 31           **(1) Affirm or adhere to the sincerely held beliefs of the**
- 32 **organization.**
- 33           **(2) Comply with a standard of conduct of the organization.**
- 34           **(3) Further the mission or purpose of the organization.**
- 35           **Sec. 12. A state educational institution shall:**
- 36           **(1) create student free expression policies that are consistent**
- 37 **with this chapter;**
- 38           **(2) make free expression policies public in its handbooks, on**
- 39 **its Internet web site, and at its student orientation programs;**
- 40 **and**
- 41           **(3) develop materials, programs, and procedures to ensure**
- 42 **that individuals who are responsible for disciplining and**



1 educating students, including administrators, campus police  
 2 officers, residence life officials, and professors, understand the  
 3 policies, regulations, and duties of the state educational  
 4 institution regarding free expression on campus.

5 **Sec. 13. (a)** A state educational institution shall create a report  
 6 with the following information:

7 (1) The steps taken by the state educational institution to  
 8 comply with this chapter.

9 (2) Any barriers to or incidents of disruption of free  
 10 expression that occurred on campus in the previous calendar  
 11 year, including attempts to block or prohibit speakers and  
 12 investigations into students or student organizations for  
 13 disrupting speeches.

14 (3) The nature of each barrier or incident described in  
 15 subdivision (2).

16 (4) Any disciplinary action taken against a member of the  
 17 campus determined to be responsible for a barrier or incident,  
 18 without revealing any personally identifiable information,  
 19 described in subdivision (2).

20 (5) Any other information a state educational institution  
 21 determines is valuable to the public for the purpose of  
 22 evaluating the state educational institution's compliance with  
 23 this chapter.

24 (b) Not later than December 1 each year, a state educational  
 25 institution shall post the report required under subsection (a) on its  
 26 Internet web site and submit the report to the governor and the  
 27 general assembly.

28 (c) The report required under subsection (a) must be as follows:

29 (1) Discoverable from the state educational institution's main  
 30 Internet web site page.

31 (2) Searchable and intuitive to users.

32 (3) Accessible to the public without requiring registration or  
 33 use of a user name, password, or another user identification.

34 **Sec. 14. (a)** If a claim is filed against a state educational  
 35 institution for an alleged violation of the First Amendment to the  
 36 Constitution of the United States, the state educational institution  
 37 shall submit to the commission for higher education information  
 38 concerning the claim on a form prescribed by the commission.

39 (b) Not later than June 1 each year, the commission shall create  
 40 a report compiling the information received under subsection (a)  
 41 and submit the report to the governor and the general assembly.

42 **Sec. 15.** A report submitted to the general assembly under this



1 chapter must be in an electronic format under IC 5-14-6.  
2 Sec. 16. (a) Any student or student organization may bring an  
3 action for a violation of the student's or student organization's  
4 rights under this chapter.  
5 (b) If the court in an action under this section finds that a state  
6 educational institution has violated the rights of a student or  
7 student organization under this chapter, the court may award the  
8 following:  
9 (1) Compensatory damages.  
10 (2) Reasonable court costs.  
11 (3) Attorney's fees.  
12 Sec. 17. A state educational institution that violates this chapter  
13 is not immune from civil liability under this chapter.  
14 Sec. 18. An action for a violation under this chapter must begin  
15 not later than two (2) years after the date the alleged violation  
16 occurs.

