

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 ENROLLED ACT No. 1190

AN ACT to amend the Indiana Code concerning higher education.

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

SECTION 1. IC 21-18-6-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2.5. The commission shall create a form for use by a state educational institution to submit the information required by IC 21-39-8-13(a).**

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

Chapter 8. Speech and Expression on Campus

Sec. 1. As used in this chapter, "benefit" means any of the following:

- (1) Recognition by a state educational institution.**
- (2) Registration by a state educational institution.**
- (3) The use of a state educational institution facility for a meeting or speaking purposes.**
- (4) The use of communication channels.**
- (5) Funding sources that are otherwise available to other student organizations at the state educational institution.**

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

- (1) a state educational institution's:**
 - (A) students;**
 - (B) administrators;**

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(C) faculty; and

(D) staff; and

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

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

(1) unwelcome;

(2) severe;

(3) pervasive; and

(4) subjectively and objectively offensive;

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

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

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

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

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

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

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

(b) The term does not include the following:

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

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

Sec. 5. As used in this chapter, "protected expressive activity" includes the following:

(1) Participating in speech or conduct protected by the First Amendment to the Constitution of the United States.

(2) Communicating by any lawful verbal, written, audio visual, or electronic means.



- (3) Participating in peaceful assembly.
- (4) Protesting.
- (5) Making speeches, including speeches of guest speakers.
- (6) Distributing literature.
- (7) Carrying signs.
- (8) Circulating petitions.

Sec. 6. (a) As used in this chapter, "outdoor area of a campus" means an outside area of the campus of a state educational institution where members of the campus community are commonly allowed.

(b) The term includes grassy areas, walkways, and similar common areas.

(c) The term does not include outdoor areas where access is restricted from a majority of the campus community.

Sec. 7. As used in this chapter, "student" means an individual who is enrolled on a full-time or part-time basis at a state educational institution.

Sec. 8. As used in this chapter, "student organization" means a group that is:

- (1) officially recognized, or seeking official recognition, by a state educational institution; and
- (2) comprised of students that receive, or are seeking to receive, benefits from the state educational institution.

Sec. 9. (a) A state educational institution may not designate an outdoor area of campus as an area where protected expressive activities are prohibited.

(b) Subject to subsection (a), a state educational institution may enforce reasonable time, place, and manner restrictions on campus or in the state educational institution's domain that meet the following requirements:

- (1) The restrictions are narrowly tailored in service of a significant state educational institution's interest.
- (2) The restrictions employ criteria that are clear, published, and content and viewpoint neutral.
- (3) The restrictions provide ample alternative means of expression.
- (4) The restrictions allow members of the campus community to spontaneously and contemporaneously assemble and distribute literature.

Sec. 10. (a) Subject to section 9 of this chapter, an individual may, on any outdoor area of campus, freely engage in noncommercial protected expressive activity that:



- (1) is lawful; and
 - (2) does not materially and substantially disrupt the functioning of the state educational institution.
- (b) This section does not:
- (1) prevent a state educational institution from prohibiting, limiting, or restricting expression that is not protected by the First Amendment to the Constitution of the United States, including threats, expression directed to provoke imminent lawless action and likely to produce imminent lawless action;
 - (2) prevent a state educational institution from prohibiting harassment; or
 - (3) allow an individual to engage in conduct that intentionally, materially, and substantially disrupts the protected expressive activity of another individual occurring in a space on campus reserved for the other individual's protected expressive activity under the exclusive use or control of a particular group or student organization.

Sec. 11. (a) A state educational institution may not:

- (1) deny any benefit or privilege that is available to any student organization to; or
- (2) discriminate against;
a religious, political, or ideological student organization on the basis of protected expressive activity of the student organization.

(b) A state educational institution may not deny a benefit to or discriminate against a religious, political, or ideological student organization based on protected expressive activity or a requirement of the student organization, including a requirement that a leader or member of a student organization do any of the following:

- (1) Affirm or adhere to the sincerely held beliefs of the student organization.
- (2) Comply with a standard of conduct of the student organization.
- (3) Further the mission or purpose of the student organization.

Sec. 12. A state educational institution shall:

- (1) create student protected expressive activity policies that are consistent with this chapter;
- (2) make protected expressive activity policies public in the state educational institution's handbooks, on the state educational institution's Internet web site, and at the state educational institution's student orientation programs; and



(3) develop materials, programs, and procedures to ensure that individuals who are responsible for disciplining and educating students, including administrators, campus police officers, residence life officials, and professors, understand the policies, regulations, and duties of the state educational institution regarding protected expressive activity on campus.

Sec. 13. (a) If a claim is filed against a state educational institution for an unconditional limitation on protected expressive activity, the state educational institution shall submit to the commission for higher education nonprivileged and otherwise legally nonconfidential information concerning the claim on a form prescribed by the commission.

(b) Not later than June 1 each year, the commission shall create a report compiling the information received under subsection (a) and submit the report to the:

- (1) governor; and
- (2) general assembly.

A report submitted to the general assembly under this subsection must be in an electronic format under IC 5-14-6.

Sec. 14. (a) Any student or student organization may bring an action for a violation of the student's or student organization's rights under this chapter.

(b) If the court in an action under this section finds that a state educational institution has violated the rights of a student or student organization under this chapter, the court may award the following:

- (1) Injunctive relief.
- (2) Compensatory damages not to exceed fifty thousand dollars (\$50,000).
- (3) Reasonable court costs.
- (4) Attorney's fees.

Sec. 15. A state educational institution that violates this chapter is not immune from civil liability under this chapter.

Sec. 16. An action for a violation under this chapter must be filed not later than two (2) years after the date the alleged violation occurs.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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