

HOUSE BILL No. 1370

DIGEST OF INTRODUCED BILL

Citations Affected: IC 21-18-16.5; IC 21-39.

Synopsis: Free speech on college campuses. Provides that each postsecondary educational institution that receives funding from the state may not: (1) exclude a student from participating in or receiving benefits from; or (2) subject a student to discrimination or an official sanction under; an educational program, activity, or division of the postsecondary educational institution on the basis of participating in a protected association. Describes the manner in which state and private postsecondary educational institutions must submit statements of compliance with freedom of speech and association rights to the commission for higher education (commission). Requires the commission to review and publish on the commission's Internet web site in a searchable data base the statements submitted and a list of state educational institutions and private postsecondary educational institutions that failed to submit a statement. Allows a person to engage in noncommercial expressive activity on a campus of a state educational institution when certain conditions are met. Defines expressive activity as: (1) all forms of peaceful assembly; (2) protests; (3) speeches; (4) distribution of literature; (5) carrying signs; (6) circulating petitions; and (7) the recording and publication, including Internet publication of video and audio lawfully recorded; in a public outdoor area of a state educational institution. Prohibits a person from materially disrupting a previously scheduled or reserved activity on campus. Defines a material and substantial disruption. Permits the attorney general or a person whose expressive rights were allegedly violated to bring a civil action in court. Awards \$500 for the first violation and \$50 for each day the plaintiff's rights remain violated
(Continued next page)

Effective: July 1, 2021.

Jordan, Lindauer, Payne

January 14, 2021, read first time and referred to Committee on Education.



when a violation of this chapter is found. Allows the court to award compensatory damages, reasonable court costs, and attorney's fees when a violation of this chapter is found. Prohibits total damages stemming from a single controversy to exceed \$100,000. Requires that a civil action for a violation must begin not later than one year after the date the alleged violation occurs. Prescribes the circumstance under which the statute of limitations is tolled. Provides that a college or university student who: (1) is accused of; or (2) accuses another student of; a violation of the college's or university's disciplinary or conduct rules has a right to representation, at the student's expense, in a disciplinary proceeding conducted by the college or university regarding the violation, if the violation carries a potential penalty of suspension for 10 or more days or expulsion. Provides that a college or university student organization that is accused of a violation of the college's or university's disciplinary or conduct rules has a right to representation, at the student organization's expense, in a disciplinary proceeding conducted by the college or university regarding the violation. Prescribes procedural requirements for college or university disciplinary proceedings. Creates a cause of action for a student or student organization whose right to representation is violated. Provides that a state university that accepts federal funds may not: (1) subject a student of the state university to a disciplinary sanction solely on the basis of the student's expressive activity or other communication that, when engaged in outside of the campus of the state university, is protected from governmental restriction by the First Amendment of the Constitution of the United States; (2) retaliate against an employee of a state university who acts to protect a student engaged in expressive activity or communication or refuses to infringe upon expressive activity or communication; or (3) subject state university campus media to prior restraint or prepublication approval, subject to certain exceptions. Provides a cause of action for a student or employee alleging a violation of these restrictions, and provides that the court: (1) may award the student or employee compensatory damages, reasonable court costs, attorney's fees, expert witness fees, any other relief in equity or law the court finds appropriate; and (2) shall award the student or employee not less than \$1,000; if the court finds the state university has violated these restrictions.



Introduced

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1370

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 21-18-16.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]:
4 **Chapter 16.5. College Student Free Speech and Association Act**
5 **Sec. 1. This chapter applies only to postsecondary educational**
6 **institutions that receive funding from the state.**
7 **Sec. 2. (a) As used in this chapter, "official sanction" means**
8 **expulsion, suspension, probation, censure, condemnation,**
9 **reprimand, or any other disciplinary, coercive, or adverse action**
10 **taken by a postsecondary educational institution or administrative**
11 **unit of the institution.**
12 **(b) The term includes an oral or written warning made by a**
13 **member of the faculty or staff of a postsecondary educational**
14 **institution acting in the person's official capacity.**
15 **Sec. 3. As used in this chapter, "protected association" has the**



1 meaning set forth in 20 U.S.C. 1011a(c)(2).

2 **Sec. 4. A postsecondary educational institution may not:**

3 (1) exclude a student from:

4 (A) participating in; or

5 (B) receiving benefits from; or

6 (2) subject a student to discrimination or an official sanction
7 under;

8 any educational program, activity, or division of the postsecondary
9 educational institution on the basis of participation in a protected
10 association regardless of whether the program, activity, or division
11 is sponsored or officially endorsed by the postsecondary
12 educational institution.

13 **Sec. 5. (a) Not later than July 1, 2022, and not later than July 1**
14 **each year thereafter:**

15 (1) each state educational institution shall annually submit a
16 statement to the commission certifying that the state
17 educational institution has reviewed its current policies and
18 that those policies are compliant with the state educational
19 institution's obligations under this chapter and under the
20 First Amendment to the Constitution of the United States; and

21 (2) each privately operated postsecondary educational
22 institution shall annually submit a statement to the
23 commission disclosing whether the institution guarantees its
24 students freedom of speech and association rights equivalent
25 to the rights guaranteed to students at state educational
26 institutions.

27 **(b) The commission shall do the following:**

28 (1) Review each statement submitted by a state educational
29 institution or privately operated postsecondary educational
30 institution under subsection (a).

31 **(2) Publish:**

32 (A) each statement described in subsection (a); and

33 (B) a list of all state educational institutions and private
34 postsecondary educational institutions that failed to
35 provide the statement described in subsection (a);

36 on the commission's Internet web site in a searchable data
37 base.

38 **Sec. 6. Nothing in this chapter shall be construed to:**

39 (1) discourage the imposition of an official sanction on a
40 student who has willfully participated in the material and
41 substantial disruption or attempted a material and substantial
42 disruption of a lecture, class, speech, presentation, or



performance made or scheduled to be made under the sponsorship or official endorsement of the postsecondary educational institution; or

(2) prevent a postsecondary educational institution from taking appropriate and effective action to:

(A) prevent violations of IC 7.1-5-7-7 (illegal possession of an alcoholic beverage);

(B) discourage binge drinking and other alcohol abuse;

(C) protect students from sexual harassment, including assault and date rape;

(D) prevent hazing; or

(E) regulate unsanitary or unsafe conditions in any student residence.

SECTION 2. IC 21-39-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 8. Campus Free Expression Act

Sec. 1. This chapter applies to state educational institutions.

Sec. 2. (a) Except as provided in this section, publicly accessible outdoor areas located on the campus of a state educational institution shall be considered a public forum.

(b) A state educational institution may maintain and enforce time, place, and manner restrictions only when the restrictions:

(1) are clear;

(2) are published;

(3) are context and viewpoint neutral;

(4) provide ample alternative means of expression; and

(5) are placed in service of a significant institutional interest.

However, any such restrictions must allow for members of the university community to spontaneously and contemporaneously distribute literature.

(c) A state educational institution may not create policies restricting expressive activities to particular areas of campus.

(d) Notwithstanding subsections (a) through (c), a person may not materially disrupt previously scheduled or reserved activities in a portion or section of the campus at that scheduled time.

Sec. 3. (a) A person shall be permitted to engage in noncommercial expressive activity on the campus of a state educational institution as long as the person's conduct:

(1) is lawful;

(2) does not materially and substantially disrupt, in the manner described in subsection (c), the functioning of the



state educational institution; and

(3) complies with section 2 of this chapter.

(b) An expressive activity protected under subsection (a) includes:

(1) all forms of peaceful assembly;

(2) protests;

(3) speeches;

(4) distribution of literature;

(5) carrying signs;

(6) circulating petitions; and

(7) the recording and publication, including Internet publication, of video and audio lawfully recorded; in a public outdoor area of a state educational institution.

(c) The term, "materially and substantially disrupt", as used in subsection (a), means that a person, with the intent to do so or with the knowledge of doing so:

(1) significantly hinders another person's or group's expressive activity;

(2) prevents communication of another person's or group's message; or

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

(A) engaging in fighting, violence, or seriously disruptive behavior; or

(B) physically blocking, or significantly hindering any person from attending, listening to, or otherwise participating in an expressive activity.

The term does not include conduct that is protected under the First Amendment of the Constitution of the United States or Article 1, Section 9 of the Constitution of the State of Indiana, such as lawful protests in the outdoor area of the campus of a state educational institution that is generally accessible to the public except during times when those 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.

Sec. 4. (a) The:

(1) attorney general; or

(2) person whose expressive rights were alleged to have been violated through the violation of section 2 of this chapter; may bring a civil action in a court of competent jurisdiction to enjoin an alleged violation under this chapter.

(b) When the court finds that the plaintiff's right to engage in



noncommercial expressive activity under section 2 of this chapter has been violated, the court must award the plaintiff an amount of at least:

- (1) five hundred dollars (\$500) for the first violation; and
- (2) fifty dollars (\$50) for each day the plaintiff's rights under section 2 of this chapter were violated by the state educational institution after the date the plaintiff's initial complaint is filed with the court.

(c) In addition to the relief provided by the court under subsection (b), a plaintiff who prevails in a civil action described in subsection (a) may be awarded:

- (1) compensatory damages;
- (2) reasonable court costs; and
- (3) attorney's fees.

(d) The total damages, excluding court costs and attorney's fees, available to a plaintiff or group of plaintiffs who bring a civil suit under this section may not exceed one hundred thousand dollars (\$100,000) stemming from a single controversy. If multiple plaintiffs were harmed, the court shall divide the damages equitably among the plaintiffs until the maximum award is exhausted.

Sec. 5. (a) An action for a violation under this chapter must begin not later than one (1) year after the date the alleged violation occurs.

(b) The statute of limitations described in subsection (a) is tolled one (1) day for each day the alleged violation under this chapter persists.

SECTION 3. IC 21-39-9.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 9.5. Student Procedural Protections

Sec. 1. (a) As used in this chapter, "disciplinary proceeding" means an investigatory interview, investigatory hearing, or other procedure:

- (1) that is conducted by a college or university regarding an alleged violation of the college's or university's disciplinary or conduct rules by a student or student organization of the college or university; and
- (2) that the student or student organization reasonably believes may result in disciplinary action against the student or student organization.

(b) The term does not include a proceeding regarding an



1 allegation of academic dishonesty, as defined by the college or
 2 university.

3 **Sec. 2. (a) A student enrolled at a college or university who:**

4 **(1) is accused; or**

5 **(2) accuses another student enrolled at the college or**
 6 **university;**

7 **of a violation of the college's or university's disciplinary or conduct**
 8 **rules has the right to be represented, at the student's expense, in a**
 9 **disciplinary proceeding concerning the violation if the violation**
 10 **carries a potential penalty of suspension for ten (10) or more days**
 11 **or expulsion.**

12 **(b) A student organization that:**

13 **(1) is officially recognized by a college or university; and**

14 **(2) is accused of a violation of the college's or university's**
 15 **disciplinary or conduct rules;**

16 **has the right to be represented, at the student organization's**
 17 **expense, in a disciplinary proceeding concerning the violation.**

18 **(c) A student may choose to be represented under subsection (a),**
 19 **and a student organization may choose to be represented under**
 20 **subsection (b), by an attorney or nonattorney advocate. A college**
 21 **or university may not limit a student's or student organization's**
 22 **choice of representative under this section.**

23 **(d) A college or university shall allow a representative chosen by**
 24 **a student or student organization under this section to fully**
 25 **participate in the disciplinary proceeding, including allowing the**
 26 **representative the opportunity to:**

27 **(1) make opening and closing statements;**

28 **(2) examine and cross-examine witnesses; and**

29 **(3) provide the accuser or accused with support, guidance,**
 30 **and advice.**

31 **(e) This section does not require a college or university to use**
 32 **formal rules of evidence in disciplinary proceedings. However, a**
 33 **college or university shall make good faith efforts to include**
 34 **relevant evidence, and exclude evidence that is neither relevant nor**
 35 **probative, in disciplinary proceedings.**

36 **(f) Not less than two (2) business days before a college or**
 37 **university, or an agent of the college or university, questions a**
 38 **student regarding an alleged violation of the college's or**
 39 **university's disciplinary or conduct rules that carries a potential**
 40 **penalty of suspension for ten (10) or more days or expulsion, the**
 41 **college or university shall advise the student, in writing, of the**
 42 **student's rights under this chapter.**



(g) A:

(1) student's right to representation in a disciplinary proceeding under subsection (a); and

(2) student organization's right to representation in a disciplinary proceeding under subsection (b);

extends to any appeal or review of the disciplinary proceeding.

(h) A college or university shall ensure that all parties to a disciplinary proceeding, including an accused student, an accused student organization, and an accusing student, have access to all material evidence, both inculpatory and exculpatory, including:

(1) complainant statements;

(2) third party witness statements;

(3) electronically stored information;

(4) written communications;

(5) social media posts; and

(6) demonstrative evidence;

not later than one (1) week before the start of any formal hearing or similar adjudicatory proceeding related to the disciplinary proceeding.

(i) A college or university shall ensure that a disciplinary proceeding is free from conflict of interest by ensuring that no individual acts in more than one (1) of the following roles with respect to the disciplinary proceeding:

(1) Victim counselor and victim advocate.

(2) Investigator.

(3) Institutional prosecutor.

(4) Adjudicator.

(5) Appellate adjudicator.

(j) A college or university shall provide equivalent rights under this section to:

(1) a student who is accused;

(2) a student who is an accuser; and

(3) a student who is an alleged victim;

in a disciplinary proceeding, including providing equivalent opportunities for the student to have others present and fully participating during the disciplinary proceeding.

(k) A college or university shall provide notification concurrently to:

(1) a student who is accused;

(2) a student who is an accuser; and

(3) a student who is an alleged victim;

in a disciplinary proceeding of the college's or university's



procedures to appeal the result of the disciplinary proceeding.

(l) This section does not prohibit a college or university from temporarily suspending a student pending a disciplinary proceeding.

(m) This section does not create a right of a student or student organization to be represented in a disciplinary proceeding at public expense.

Sec. 3. (a) A student or student organization may bring an action for 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 college or university has violated a student's or student organization's rights under this chapter, the court shall award the student or student organization the following:

(1) Compensatory damages. Compensatory damages for a student whose rights are violated must include:

(A) an amount that is not less than the cost of tuition paid by the student, or on the student's behalf, to the college or university for the semester during which the violation occurred; and

(B) an amount that is not less than the amount of any scholarship or grant funding lost by the student as a result of the violation.

(2) Reasonable court costs and attorney's fees, including expert witness fees.

(3) Any other relief in equity or law the court considers appropriate, including a rehearing by the college or university of the student's or student organization's disciplinary proceeding that is conducted de novo and in accordance with this chapter.

(c) A student or student organization must bring an action under this section not later than one (1) year after the date on which the student or student organization receives final notice of the result of the disciplinary proceeding from the college or university.

SECTION 4. IC 21-39-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 8. Campus Media Freedom of the Press

Sec. 1. (a) As used in this chapter, "campus media" means any matter that is:

(1) substantially prepared, written, published, or broadcast by



one (1) or more students at a state educational institution, regardless of whether the preparation, writing, publication, or broadcast is sponsored by the state educational institution or supervised by an employee of the state educational institution; and

(2) distributed or generally made available, without cost or for a fee, to members of the student body of the state educational institution or to the public.

(b) The term does not include media distributed solely in the classroom in which it is prepared.

Sec. 2. A state educational institution that accepts federal funds shall not make or enforce any rule or take any action:

(1) subjecting a student of the state educational institution to a disciplinary sanction solely on the basis of the student's expressive activity or other communication that, when engaged in outside of the campus of the state educational institution, is protected from governmental restriction by the First Amendment to the Constitution of the United States;

(2) retaliating against, including by attempting to dismiss, suspend, reassign, transfer, or otherwise discipline, an employee of the state educational institution in response to the employee:

(A) acting to protect a student of the state educational institution who is engaged in expressive activity or communication described in subdivision (1); or

(B) refusing to infringe upon expressive activity or communication described in subdivision (1); or

(3) subjecting campus media to prior restraint or prepublication approval, except:

(A) when the content of the campus media is not protected by the First Amendment to the Constitution of the United States;

(B) when prior restraint is necessary to prevent imminent loss of life; or

(C) as mandated by a judicial order.

Sec. 3. (a) The following persons may bring an action for a violation of section 2 of this chapter:

(1) The attorney general.

(2) A person whose expressive rights were infringed upon by the violation.

(3) A person who:

(A) is employed by the state educational institution or by



1 a producer, publisher, or broadcaster of campus media at
 2 the state educational institution; or

3 (B) assists in the creation of campus media at the state
 4 educational institution.

5 (b) In an action brought under this section by or on behalf of an
 6 individual described in subsection (a)(2) or (a)(3), if the court finds
 7 that the state educational institution violated section 2 of this
 8 chapter, the court:

9 (1) may award the individual:

10 (A) compensatory damages, reasonable court costs,
 11 attorney's fees, and expert witness fees; and

12 (B) any other relief in equity or law the court finds
 13 appropriate; and

14 (2) shall award the individual not less than one thousand
 15 dollars (\$1,000).

16 (c) The state of Indiana waives immunity from suit in federal
 17 court under the Eleventh Amendment to the Constitution of the
 18 United States for purposes of an action under this section.

19 (d) The remedies described in subsection (b), including remedies
 20 both at law and in equity, may be awarded in an action brought
 21 under this section against the state of Indiana to the same extent as
 22 the remedies may be awarded in an action brought under this
 23 section against a public or private entity other than the state of
 24 Indiana.

25 (e) An action under this section must be commenced not later
 26 than one (1) year after the cause of action arises.

27 (f) For purposes of calculating the one (1) year period under
 28 subsection (e):

29 (1) each day that a violation of section 2 of this chapter
 30 persists; and

31 (2) each day that a policy in violation of section 2 of this
 32 chapter is in effect;

33 is a day on which a cause of action accrues.

34 SECTION 5. [EFFECTIVE JULY 1, 2021] (a) As used in this
 35 SECTION, "disciplinary proceeding" has the meaning set forth in
 36 IC 21-39-9.5-1, as added by this act.

37 (b) IC 21-39-9.5, as added by this act, applies to disciplinary
 38 proceedings initiated after June 30, 2021.

39 (c) This SECTION expires July 1, 2025.

