

# HOUSE BILL 796

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By: **Delegate Grammer**

Introduced and read first time: February 3, 2020

Assigned to: Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Freedom of Speech on Campus – Protection**  
3 **(Forming Open and Robust University Minds (FORUM) Act)**

4 FOR the purpose of specifying that certain areas on campuses of public institutions of  
5 higher education are public forums; prohibiting public institutions of higher  
6 education from designating areas in which expressive activities are prohibited;  
7 authorizing public institutions of higher education to create certain restrictions on  
8 expressive activities; prohibiting public institutions of higher education from  
9 denying benefits to student organizations for certain reasons; requiring public  
10 institutions of higher education to develop materials, programs, and procedures to  
11 ensure that certain employees or contractors understand the institution's policies,  
12 regulations, and duties to protect free expression; requiring public institutions of  
13 higher education to make certain information available in certain ways; requiring  
14 public institutions of higher education to submit a certain report in a certain manner  
15 to the Governor and the General Assembly on or before a certain date each year;  
16 authorizing a person aggrieved by a violation of this Act to bring an action against a  
17 public institution of higher education and certain employees; requiring a court to  
18 grant a certain award if it finds a violation of this Act; authorizing a court to grant  
19 certain relief if it finds a violation of this Act; requiring an aggrieved person to bring  
20 an action within a certain period of time; prohibiting public institutions of higher  
21 education from raising a certain defense to lawsuits alleging a certain violation;  
22 authorizing a student to raise a violation of this Act as a defense in certain  
23 proceedings; requiring public institutions of higher education to report to the  
24 Governor and the General Assembly when sued for certain violations; defining  
25 certain terms; making the provisions of this Act severable; and generally relating to  
26 free expression on the campuses of public institutions of higher education.

27 BY adding to  
28 Article – Education  
29 Section 15–118  
30 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2018 Replacement Volume and 2019 Supplement)

Preamble

WHEREAS, The First Amendment to the United States Constitution and the Maryland Declaration of Rights protect the rights of freedom of speech, freedom of the press, freedom of religion, freedom of association, and the right to petition the government; and

WHEREAS, The Supreme Court of the United States has called public universities “peculiarly the marketplace of ideas” and stated that there is “no room for the view that ... First Amendment protections should apply with less force on college campuses than in the community at large”; and

WHEREAS, The General Assembly views the exercise of First Amendment rights on the campuses of public institutions of higher education in the State as a critical component of the educational experience for students at those institutions and that each institution shall ensure free, robust, and uninhibited debate and deliberation by students on or off campus; and

WHEREAS, The General Assembly finds that public institutions of higher education in the State are failing to provide adequate safeguards for the protection of the First Amendment rights of students, leading to the stifling of free expression; and

WHEREAS, The Supreme Court has warned that, if public institutions of higher education stifle student speech and prevent the open exchange of ideas on campus, “our civilization will stagnate and die”; and

WHEREAS, The General Assembly finds that, because a significant amount of taxpayer dollars is appropriated each year to public institutions of higher education, it is necessary to ensure that these institutions adequately protect the First Amendment rights of students; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Education**

**15–118.**

**(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(2) “BENEFIT” INCLUDES ANY OF THE FOLLOWING THAT ARE MADE AVAILABLE TO STUDENT ORGANIZATIONS AT A PUBLIC INSTITUTION OF HIGHER EDUCATION:**

1 (I) RECOGNITION;

2 (II) REGISTRATION;

3 (III) THE USE OF FACILITIES OWNED OR CONTROLLED BY THE  
4 INSTITUTION FOR THE PURPOSES OF MEETINGS OR SPEAKING ENGAGEMENTS;

5 (IV) THE USE OF CHANNELS OF COMMUNICATION; AND

6 (V) FUNDING SOURCES.

7 (3) "EXPRESSIVE ACTIVITY" MEANS ANY LAWFUL ORAL, WRITTEN,  
8 AUDIO-VISUAL, OR ELECTRONIC MEANS BY WHICH INDIVIDUALS COMMUNICATE  
9 IDEAS TO ONE ANOTHER.

10 (B) (1) ANY OUTDOOR AREA LOCATED ON ANY CAMPUS OF A PUBLIC  
11 INSTITUTION OF HIGHER EDUCATION SHALL BE CONSIDERED A PUBLIC FORUM.

12 (2) PUBLIC INSTITUTIONS OF HIGHER EDUCATION MAY NOT CREATE  
13 DESIGNATED AREAS OF A CAMPUS OUTSIDE WHICH EXPRESSIVE ACTIVITIES ARE  
14 PROHIBITED.

15 (C) (1) PUBLIC INSTITUTIONS OF HIGHER EDUCATION MAY MAINTAIN  
16 AND ENFORCE REASONABLE TIME, PLACE, AND MANNER RESTRICTIONS ON  
17 EXPRESSIVE ACTIVITIES THAT ARE NARROWLY TAILORED IN SERVICE OF A  
18 SIGNIFICANT INSTITUTIONAL INTEREST.

19 (2) ANY RESTRICTION AUTHORIZED BY THIS SUBSECTION SHALL:

20 (I) EMPLOY CLEAR, PUBLISHED, CONTENT-NEUTRAL, AND  
21 VIEWPOINT-NEUTRAL CRITERIA;

22 (II) PROVIDE FOR AMPLE ALTERNATIVE MEANS OF  
23 EXPRESSION; AND

24 (III) ALLOW FOR MEMBERS OF THE CAMPUS COMMUNITY TO  
25 SPONTANEOUSLY ASSEMBLE AND DISTRIBUTE LITERATURE.

26 (D) A PUBLIC INSTITUTION OF HIGHER EDUCATION MAY NOT DENY A  
27 RELIGIOUS, POLITICAL, OR IDEOLOGICAL STUDENT ORGANIZATION ANY BENEFIT  
28 AVAILABLE TO ANOTHER STUDENT ORGANIZATION BASED ON THE EXPRESSIVE  
29 ACTIVITIES OF THE ORGANIZATION, INCLUDING ANY REQUIREMENT OF THE

1 STUDENT ORGANIZATION THAT MEMBERS:

2 (1) AFFIRM AND ADHERE TO THE STUDENT ORGANIZATION'S  
3 SINCERELY HELD BELIEFS;

4 (2) COMPLY WITH THE STUDENT ORGANIZATION'S STANDARDS OF  
5 CONDUCT; OR

6 (3) FURTHER THE STUDENT ORGANIZATION'S MISSION OR PURPOSE.

7 (E) EACH PUBLIC INSTITUTION OF HIGHER EDUCATION SHALL DEVELOP  
8 MATERIALS, PROGRAMS, AND PROCEDURES TO ENSURE THAT EMPLOYEES OR  
9 CONTRACTORS OF THE INSTITUTION WHO HAVE RESPONSIBILITY FOR THE  
10 EDUCATION OR DISCIPLINE OF STUDENTS UNDERSTAND THE POLICIES,  
11 REGULATIONS, AND DUTIES OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION  
12 REGARDING FREE EXPRESSION ON CAMPUS.

13 (F) (1) EACH PUBLIC INSTITUTION OF HIGHER EDUCATION SHALL  
14 PUBLISH IN ITS STUDENT HANDBOOK AND ON ITS WEBSITE ITS POLICIES  
15 REGARDING FREE EXPRESSION ON CAMPUS.

16 (2) EACH PUBLIC INSTITUTION OF HIGHER EDUCATION SHALL  
17 INCLUDE IN ITS ORIENTATION PROGRAM FOR NEW STUDENTS A DISCUSSION OF ITS  
18 POLICIES REGARDING FREE EXPRESSION ON CAMPUS.

19 (G) (1) ON OR BEFORE DECEMBER 1 EACH YEAR, EACH PUBLIC  
20 INSTITUTION OF HIGHER EDUCATION SHALL SUBMIT TO THE GOVERNOR AND, IN  
21 ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL  
22 ASSEMBLY A REPORT DETAILING THE INSTITUTION'S COMPLIANCE WITH THE  
23 REQUIREMENTS OF THIS SECTION.

24 (2) THE REPORT SHALL BE POSTED ON THE INSTITUTION'S WEBSITE  
25 IN A CONSPICUOUS MANNER AND PUBLICLY ACCESSIBLE.

26 (3) THE REPORT SHALL INCLUDE:

27 (I) A DESCRIPTION OF ANY BARRIERS TO FREE EXPRESSION  
28 THAT OCCURRED ON ITS CAMPUS;

29 (II) A DESCRIPTION OF ANY INCIDENT IN WHICH FREE  
30 EXPRESSION ON CAMPUS WAS DISRUPTED;

31 (III) A DESCRIPTION OF ANY ATTEMPT TO BLOCK OR PROHIBIT

1 ANY SPEAKING ENGAGEMENT ON CAMPUS;

2 (IV) A DESCRIPTION OF ANY INVESTIGATION INTO A STUDENT  
3 OR STUDENT ORGANIZATION BASED ON THEIR EXPRESSIVE ACTIVITIES AND ANY  
4 DISCIPLINARY ACTIONS TAKEN; AND

5 (V) ANY OTHER INFORMATION THE INSTITUTION DEEMS  
6 VALUABLE FOR THE PUBLIC TO EVALUATE WHETHER FREE EXPRESSION ON CAMPUS  
7 HAS BEEN EQUALLY PROTECTED AND ENFORCED.

8 (H) (1) ANY PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION MAY  
9 BRING AN ACTION AGAINST THE PUBLIC INSTITUTION OF HIGHER EDUCATION AND  
10 ANY OF ITS EMPLOYEES ACTING IN THEIR OFFICIAL CAPACITIES WHO ARE  
11 RESPONSIBLE FOR THE VIOLATION.

12 (2) IF A COURT FINDS THAT A PUBLIC INSTITUTION OF HIGHER  
13 EDUCATION OR ANY OF ITS EMPLOYEES ACTING IN THEIR OFFICIAL CAPACITIES  
14 VIOLATED THIS SECTION, THE COURT SHALL ISSUE AN AWARD TO THE AGGRIEVED  
15 PERSON OF AT LEAST \$5,000 AS WELL AS ANY OTHER RELIEF THE COURT DEEMS  
16 APPROPRIATE.

17 (3) (I) ANY ACTION ALLEGING A VIOLATION OF THIS SECTION  
18 SHALL BE FILED WITHIN 1 YEAR AFTER THE DATE ON WHICH THE ALLEGED  
19 VIOLATION OCCURS.

20 (II) IF THE ALLEGED VIOLATION OF THIS SECTION IS A POLICY  
21 MAINTAINED BY THE PUBLIC INSTITUTION OF HIGHER EDUCATION, EACH DAY THAT  
22 THE POLICY REMAINS IN EFFECT SHALL BE CONSIDERED A DAY ON WHICH THE  
23 VIOLATION OCCURS.

24 (I) A PUBLIC INSTITUTION OF HIGHER EDUCATION MAY NOT RAISE THE  
25 DEFENSE OF SOVEREIGN IMMUNITY TO ANY CLAIM ASSERTING A VIOLATION OF THE  
26 RIGHT TO FREE SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES  
27 CONSTITUTION OR THE MARYLAND DECLARATION OF RIGHTS.

28 (J) IN ANY DISCIPLINARY OR CIVIL PROCEEDING BROUGHT BY A PUBLIC  
29 INSTITUTION OF HIGHER EDUCATION AGAINST A STUDENT, THE STUDENT MAY  
30 RAISE A VIOLATION OF THIS SECTION AS A DEFENSE TO THE DISCIPLINARY ACTION  
31 OR CIVIL PROCEEDING.

32 (K) IF ANY PUBLIC INSTITUTION OF HIGHER EDUCATION IS SUED FOR AN  
33 ALLEGED VIOLATION OF THE RIGHT TO FREE SPEECH UNDER THE FIRST  
34 AMENDMENT TO THE UNITED STATES CONSTITUTION OR THE MARYLAND

1 **DECLARATION OF RIGHTS, THE INSTITUTION SHALL, WITHIN 30 DAYS AFTER**  
2 **RECEIVING THE COMPLAINT, SUBMIT TO THE GOVERNOR AND, IN ACCORDANCE**  
3 **WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY A**  
4 **REPORT DETAILING THE ALLEGATIONS AND CONTAINING A COPY OF THE**  
5 **COMPLAINT.**

6         SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or  
7 the application thereof to any person or circumstance is held invalid for any reason in a  
8 court of competent jurisdiction, the invalidity does not affect other provisions or any other  
9 application of this Act that can be given effect without the invalid provision or application,  
10 and for this purpose the provisions of this Act are declared severable.

11         SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
12 1, 2020.