

House File 661 - Introduced

HOUSE FILE 661
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 276)

A BILL FOR

1 An Act relating to speech and expression at public institutions
2 of higher education, providing for remedies, and including
3 effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 261H.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Benefit" with respect to a student organization at
5 a public institution of higher education means any of the
6 following:

- 7 a. Recognition.
- 8 b. Registration.
- 9 c. Use of facilities for meetings or speaking purposes.
- 10 d. Use of channels of communication.
- 11 e. Access to funding sources that are otherwise available
12 to other student groups.

13 2. "Campus community" means students, administrators,
14 faculty, and staff at a public institution of higher education
15 and guests invited to a public institution of higher education
16 by the institution's students, administrators, faculty, or
17 staff.

18 3. "Materially and substantially disrupts" means when
19 a person, with the intent to or with knowledge of doing
20 so, engages in violent or other disorderly conduct that
21 significantly hinders a previously scheduled or reserved
22 activity occurring on university grounds, buildings, and
23 facilities. "Materially and substantially disrupts" does not
24 include conduct that is protected under the first amendment
25 to the Constitution of the United States, including but not
26 limited to lawful protests and counterprotests.

27 4. "Outdoor areas of campus" means the generally accessible
28 outside areas of campus where students, administrators,
29 faculty, and staff at a public institution of higher education
30 are commonly allowed, such as grassy areas, walkways, or other
31 similar common areas and does not include areas outside health
32 care facilities including both stand-alone facilities and
33 mixed-use facilities that are embedded within another facility,
34 veterinary medicine facilities, a facility or outdoor area
35 used by the institution's athletics program or teams, or other

1 outdoor areas where access is restricted to a majority of the
2 campus community. In recognition of the healing environment
3 that is essential to its clinical purposes, the areas outside
4 health care facilities, including both stand-alone facilities
5 and mixed-use facilities that are embedded within another
6 facility, are not designated public forums.

7 5. "*Public institution of higher education*" means a community
8 college established under chapter 260C or an institution of
9 higher learning governed by the state board of regents.

10 6. "*Student*" means an individual who is enrolled on a
11 full-time or part-time basis at a public institution of higher
12 education.

13 7. "*Student organization*" means a group officially
14 recognized at or officially registered by a public institution
15 of higher education, or a group seeking such official
16 recognition or official registration, comprised of students who
17 are admitted and in attendance at the public institution of
18 higher education, and who receive, or are seeking to receive,
19 student organization benefits or privileges through the public
20 institution of higher education.

21 Sec. 2. NEW SECTION. 261H.2 Policy adoption.

22 The state board of regents and the board of directors of each
23 community college shall adopt a policy that includes all of the
24 following statements:

25 1. That the primary function of an institution of higher
26 education is the discovery, improvement, transmission, and
27 dissemination of knowledge by means of research, teaching,
28 discussion, and debate. This statement shall provide that, to
29 fulfill this function, the institution must strive to ensure
30 the fullest degree of intellectual freedom and free expression
31 allowed under the first amendment to the Constitution of the
32 United States.

33 2. a. That it is not the proper role of an institution of
34 higher education to shield individuals from speech protected by
35 the first amendment to the Constitution of the United States,

1 which may include ideas and opinions the individual finds
2 unwelcome, disagreeable, or even offensive.

3 *b.* That it is the proper role of an institution of higher
4 education to encourage diversity of thoughts, ideas, and
5 opinions and to encourage, within the bounds of the first
6 amendment to the Constitution of the United States, the
7 peaceful, respectful, and safe exercise of first amendment
8 rights.

9 3. That students and faculty have the freedom to discuss
10 any problem that presents itself, assemble, and engage in
11 spontaneous expressive activity on campus, within the bounds
12 of established principles of the first amendment to the
13 Constitution of the United States, and subject to reasonable
14 time, place, and manner restrictions that are consistent with
15 established first amendment principles.

16 4. That the outdoor areas of campus of an institution of
17 higher education are public forums, open on the same terms
18 to any invited speaker subject to reasonable time, place,
19 and manner restrictions that are consistent with established
20 principles of the first amendment to the Constitution of the
21 United States.

22 Sec. 3. NEW SECTION. **261H.3 Protected activities.**

23 1. Noncommercial expressive activities protected under the
24 provisions of this chapter include but are not limited to any
25 lawful oral or written means by which members of the campus
26 community may communicate ideas to one another, including
27 but not limited to all forms of peaceful assembly, protests,
28 speeches including by invited speakers, distribution of
29 literature, circulating petitions, and publishing, including
30 publishing or streaming on an internet site, audio or video
31 recorded in outdoor areas of campus.

32 2. A member of the campus community who wishes to engage in
33 noncommercial expressive activity in outdoor areas of campus
34 shall be permitted to do so freely, subject to reasonable
35 time, place, and manner restrictions, and as long as the

1 member's conduct is not unlawful, does not impede others'
2 access to a facility or use of walkways, and does not disrupt
3 the functioning of the public institution of higher education,
4 subject to the protections of subsection 1. The public
5 institution of higher education may designate other areas of
6 campus available for use by the campus community according to
7 institutional policy, but in all cases access to designated
8 areas of campus must be granted on a viewpoint-neutral basis
9 within the bounds of established first amendment principles.

10 3. A public institution of higher education shall not deny
11 benefits or privileges available to student organizations based
12 on the viewpoint of a student organization or the expression
13 of the viewpoint of a student organization by the student
14 organization or its members protected by the first amendment to
15 the Constitution of the United States. In addition, a public
16 institution of higher education shall not deny any benefit
17 or privilege to a student organization based on the student
18 organization's requirement that the leaders of the student
19 organization agree to and support the student organization's
20 beliefs, as those beliefs are interpreted and applied by
21 the organization, and to further the student organization's
22 mission.

23 4. This section shall not be interpreted as limiting the
24 right of student expression in a counter demonstration held
25 in an outdoor area of campus as long as the conduct at the
26 counter demonstration is not unlawful, does not materially and
27 substantially prohibit the free expression rights of others in
28 an outdoor area of campus or disrupt the functioning of the
29 public institution of higher education, and does not impede
30 others' access to a facility or use of walkways, subject to
31 reasonable time, place, and manner restrictions that are
32 consistent with established principles of the first amendment
33 to the Constitution of the United States.

34 5. This chapter shall not be interpreted as preventing
35 public institutions of higher education from prohibiting,

1 limiting, or restricting expression that the first amendment
2 of the Constitution of the United States does not protect,
3 including but not limited to a threat of serious harm and
4 expression directed or likely directed to provoke imminent
5 unlawful actions; or from prohibiting harassment, including
6 but not limited to expression which is so severe, pervasive,
7 and subjectively and objectively offensive that the expression
8 unreasonably interferes with an individual's access to
9 educational opportunities or benefits provided by a public
10 institution of higher education.

11 Sec. 4. NEW SECTION. **261H.4 Public forums on campus —**
12 **freedom of association.**

13 1. The outdoor areas of campuses of public institutions of
14 higher education in this state shall be deemed public forums.
15 Public institutions of higher education may maintain and
16 enforce clear, published, reasonable viewpoint-neutral time,
17 place, and manner restrictions that are narrowly tailored in
18 furtherance of a significant institutional interest, but shall
19 allow members of the campus community to engage in spontaneous
20 expressive activity and to distribute literature. Restrictions
21 instituted by a public institution of higher education under
22 this section shall provide for ample alternative means of
23 expression.

24 2. Except as provided in this chapter, and subject to
25 reasonable time, place, and manner restrictions, a public
26 institution of higher education shall not designate any area
27 of campus a free-speech zone or otherwise create policies
28 restricting expressive activities to a particular outdoor area
29 of campus.

30 3. Nothing in this chapter shall be construed to grant
31 individuals the right to engage in conduct that intentionally,
32 materially, and substantially disrupts the expressive activity
33 of a person or student organization if the public institution
34 of higher education has reserved space in an outdoor area of
35 campus for activity by the person or student organization in

1 accordance with this chapter.

2 Sec. 5. NEW SECTION. 261H.5 Remedies — statute of
3 limitations — immunity.

4 1. A member of the campus community aggrieved by a violation
5 of this chapter may file a complaint with the governing body of
6 the public institution of higher education.

7 2. A member of the campus community aggrieved by a violation
8 of this chapter may assert such violation as a defense
9 or counterclaim in a disciplinary action or in a civil or
10 administrative proceeding brought against the member of the
11 campus community.

12 3. A member of the campus community shall bring a claim for
13 violation of this chapter pursuant to this section not later
14 than one year after the day the cause of action accrues.

15 4. This section shall not be interpreted to limit any other
16 remedies available to a member of the campus community.

17 5. Nothing in this section shall be construed to make
18 any administrator, officer, employee, or agent of a public
19 institution of higher education personally liable for acts
20 taken pursuant to the individual's official duties.

21 Sec. 6. IMPLEMENTATION OF ACT. Section 25B.2, subsection
22 3, shall not apply to this Act.

23 Sec. 7. EFFECTIVE DATE. This Act, being deemed of immediate
24 importance, takes effect upon enactment.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 This bill relates to public forums, freedom of expression,
29 and freedom of association at community colleges and regents
30 universities.

31 DEFINITIONS. The bill defines "benefit", "campus
32 community", "materially and substantially disrupts", "outdoor
33 areas of campus", "public institution of higher education",
34 "student", and "student organization" for purposes of the new
35 Code chapter established by the bill.

1 POLICY ADOPTION. The bill requires the boards governing
2 the public postsecondary institutions to adopt a policy that
3 includes statements describing the functions and roles of
4 institutions with regard to knowledge; protected speech;
5 the freedom to discuss within the bounds of the established
6 principles of the first amendment to the United States
7 Constitution; freedom to assemble and engage in spontaneous
8 expressive activities subject to reasonable time, place, and
9 manner restrictions; and public areas of campuses as public
10 forums.

11 PROTECTED ACTIVITIES. Protected activities include
12 noncommercial expressive activities including but not limited
13 to oral or written means to communicate ideas, including but
14 not limited to all forms of peaceful assembly, protests,
15 speeches including by invited speakers, distribution of
16 literature, and circulating petitions. A member of the campus
17 community who wishes to engage in noncommercial expressive
18 activity on campus shall be permitted to do so freely subject
19 to reasonable time, place, and manner restrictions. However,
20 nothing in the provision shall be interpreted as preventing
21 the institutions from prohibiting, limiting, or restricting
22 unprotected expression.

23 A public postsecondary institution shall not deny a student
24 organization any benefit or privilege available to any other
25 student organization. However, nothing in the bill shall be
26 interpreted as limiting the right of student expression in a
27 counter demonstration held on campus so long as the conduct at
28 the counter demonstration is not unlawful, does not materially
29 and substantially prohibit the free expression rights of others
30 or disrupt the functioning of the institution, and does not
31 impede others' access to a facility or walkway.

32 PUBLIC FORUMS ON CAMPUS — FREEDOM OF ASSOCIATION. The
33 bill requires that the outdoor areas of campuses of public
34 postsecondary institutions be deemed public forums. The
35 institutions may maintain and enforce clear, published,

1 reasonable viewpoint-neutral time, place, and manner
2 restrictions that are narrowly tailored in furtherance of
3 a significant institutional interest, shall allow members
4 of the campus community to engage in spontaneous expressive
5 activity and to distribute literature, shall provide for ample
6 alternative means of expression, and, subject to reasonable
7 time, place, and manner restrictions, shall not designate any
8 area of campus a free-speech zone or otherwise create policies
9 restricting expressive activities to a particular outdoor
10 area of campus. Such provisions shall not be construed to
11 grant individuals the right to disrupt the expressive activity
12 of a person or student organization if the institution has
13 reserved space in an outdoor area of campus for the person's
14 or organization's activity. An institution shall not deny
15 any benefit or privilege to a student organization based on
16 the organization's requirement that its leaders agree to and
17 support the organization's beliefs.

18 REMEDIES, STATUTE OF LIMITATIONS, AND IMMUNITY PROVISIONS.

19 An aggrieved member of the campus community may bring an action
20 against the institution responsible for a violation of the
21 Code chapter and seek appropriate relief, and may assert such
22 violation as a defense or counterclaim.

23 Such person has one year after the day the cause of action
24 accrues to bring a claim for violation of the Code chapter.
25 However, nothing in the bill shall be interpreted to limit any
26 other available remedies to a member of the campus community.

27 STATE MANDATE — INAPPLICABILITY PROVISION. The bill may
28 include a state mandate as defined in Code section 25B.3. The
29 bill makes inapplicable Code section 25B.2, subsection 3, which
30 would relieve a political subdivision from complying with a
31 state mandate if funding for the cost of the state mandate is
32 not provided or specified. Therefore, political subdivisions
33 are required to comply with any state mandate included in the
34 bill.

35 EFFECTIVE DATE. The bill takes effect upon enactment.