

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

Committee Substitute

for

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for

Senate Bill 657

BY SENATORS PHILLIPS, AZINGER, RUCKER, SMITH,
SYPOLT, TARR, WOODRUM, ROBERTS, KARNES, GRADY,

AND MAYNARD

[Originating in the Committee on the Judiciary;

reported on March 26, 2021]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §18B-20-1, §18B-20-2, §18B-20-3, §18B-20-4, §18B-20-5, §18B-20-6, §18B-
3 20-7, §18B-20-8, and §18B-20-9, all relating to free expression on state institution of
4 higher education campuses; providing for definitions; defining protected expressive
5 activities; defining public forums and prohibiting “free speech zones”; permitting
6 expressive activity on campus under certain conditions; allowing state institutions of higher
7 education to maintain and enforce reasonable time, place, and manner restrictions under
8 certain parameters; requiring state institutions of higher education to treat student
9 organizations which are open to all students equally; encouraging state institutions of
10 higher education to develop materials to educate the campus community on its policies
11 relating to protected speech and expression activities; requiring posting of policies on
12 website; allowing a person or student organization who believes a violation of this article
13 has occurred to bring an action for relief against the state institution of higher education;
14 establishing the relief available for a violation of the article and enacting a one-year statute
15 of limitations for alleged violations under the article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. FREE EXPRESSION ON CAMPUS.

§18B-20-1. Definitions.

1 As used in this article:

2 (1) “Campus community” includes students, administrators, faculty, and staff at the
3 institution of higher education, and their invited guests.

4 (2) “Harassment” means an expression that is unwelcome, so severe, pervasive, and
5 subjectively and objectively offensive that a student is effectively denied equal access to
6 educational opportunities or benefits provided by the state institution of higher education or sexual
7 harassment as defined by federal law and federal regulations applicable to state institutions of
8 higher education.

9 (3) “Materially and substantially disrupts” means an occurrence where a person or group
10 significantly hinders another person’s or group’s expressive activity, prevents the communication
11 of the message, prevents the transaction of the business of a lawful meeting, gathering, or
12 procession, or interferes with or prevents the operations and functions of a state institution of
13 higher education by:

14 (A) Engaging in fighting, violent, or other unlawful behavior;

15 (B) Physically blocking or using threats of violence to prevent any person from attending,
16 listening to, viewing, or otherwise participating in an expressive activity;

17 (C) Using sound to drown out or muffle expressive activity; or

18 (D) Violating a state institution of higher education’s reasonable time, place, and manner
19 restrictions.

20 (E) Conduct that “materially and substantially disrupts” shall not include conduct that is
21 protected under the First Amendment to the United States Constitution or West Virginia
22 Constitution. The protected conduct includes, but is not limited to, lawful protests in the outdoor
23 areas of campus generally accessible to the members of the public (except during times when
24 those areas have been reserved in advance for other events), or minor, brief, or fleeting nonviolent
25 disruptions of events that are isolated and short in duration.

26 (4) “Outdoor areas of campus” means the generally accessible outside areas of campus
27 where members of the campus community are commonly allowed, such as grassy areas,
28 walkways, or other similar common areas and does not include outdoor areas where access is
29 restricted from a majority of the campus community.

30 (5) “State institution of higher education” means any university, college, or community and
31 technical college under the jurisdiction of a governing board as defined in §18B-1-2 of this code.

32 (6) “Student” means any person who is enrolled on a full-time or part-time basis in a state
33 institution of higher education.

34 (7) “Student organization” means an officially recognized group at a state institution of
35 higher education, or a group seeking official recognition, comprised of admitted students that
36 receive, or are seeking to receive, benefits through the institution of higher education as defined
37 in this section.

§18B-20-2. Protected expressive activities.

1 Expressive activities protected under the provisions of §18-1-1 et seq. of this code include,
2 but are not limited to, any lawful verbal and nonverbal speech. This may include lawful and
3 protected forms of peaceful assembly, protests, speeches and guest speakers, distribution of
4 literature, carrying signs, and circulating petitions.

§18B-20-3. Public forums; establishment of “free speech zones” prohibited.

1 The outdoor areas of campuses of state institutions of higher education shall be
2 considered public forums for the campus community, and state institutions of higher education
3 shall not limit free speech by creating “free speech zones” or other designated areas of campus
4 outside of which expressive activities are prohibited. Nothing in this section shall be interpreted
5 as limiting the right of student expression elsewhere on campus.

§18B-20-4. Time, place, and manner restrictions.

1 (a) Any person who wishes to engage in protected and lawful expressive activity on
2 campus shall be permitted to do so freely, as long as the person’s conduct is not unlawful, and
3 does not materially and substantially disrupt the functioning of the state institution of higher
4 education.

5 (b) To enable the state institutions of higher education to function in a safe and secure
6 manner and to advance their missions and objectives, the state institutions of higher education
7 may enact reasonable time, place, and manner restrictions which are content neutral and narrowly
8 tailored to serve a significant state institution of higher education or other governmental interest.
9 A state institution of higher education may deny, cancel, or postpone a reservation, or immediately
10 terminate any ongoing activity that represents a violation of its time, place, and manner

11 restrictions. A state institution of higher education shall endeavor to allow members of the campus
12 community to spontaneously and contemporaneously engage in protected expressive activities.

13 (c) Nothing in this article shall be interpreted as preventing state institutions of higher
14 education from prohibiting, limiting, or restricting expression not protected by the First Amendment
15 to the Constitution of the United States such as true threats, expression designed to provoke
16 imminent lawless actions and likely to produce it or prohibiting harassment as defined in §18B-
17 20-2 of this code, or sexual harassment as prohibited by federal law and defined by federal
18 regulations applicable to state institutions of higher education.

19 (d) Nothing in this article shall be construed to authorize a person or group to intentionally,
20 materially, and substantially disrupt another person or group's expressive activity if that activity is
21 occurring in a campus space reserved for that activity under the exclusive use or control of a
22 particular group.

§18B-20-5. Freedom of association and nondiscrimination against students and student organizations.

1 A state institution of higher education may not deny a religious, political, or ideological
2 student organization which is open to all students any benefit or privilege made available to any
3 other student organization by the state institution of higher education, or otherwise discriminate
4 against an organization, based on the expression of the organization.

§18B-20-6. Development of policies and procedures.

1 State institutions of higher education shall develop materials to educate the campus
2 community on the institution's free speech policies.

§18B-20-7. Accountability to the public.

1 (a) Each state institution of higher education shall publicly post on its website any policies
2 it has enacted regarding protected expressive activity under the First Amendment to the United
3 States Constitution.

4 (b) Each campus shall report to the Higher Education Policy Commission or the Council
5 for Community and Technical College Education, as applicable, a description of any barriers to,
6 or incidents of disruption of, free expression occurring on campus, including, but not limited to,
7 attempts to block or prohibit speakers and investigations into students or student organizations
8 for their speech. The description shall include the nature of each barrier or incident, as well as
9 what disciplinary action, if any, was taken against members of the campus community determined
10 to be responsible for those specific barriers or incidents involving students and shall be reported
11 without revealing those students' personally identifiable information. Annually, by August 1, the
12 commission and council shall report to the Legislative Oversight Commission on Education
13 Accountability any barriers or incidents reported to them pursuant to this subsection.

§18B-20-8. Remedies.

1 Any person or student organization aggrieved by a violation of this article may bring an
2 action against the state institution of higher education and its employees acting in their official
3 capacities, alleged to be responsible for the alleged violation. The aggrieved person or student
4 organization may seek injunctive relief and actual damages, as well as reasonable attorney's
5 fees, and court costs if the person or student organization substantially prevails.

§18B-20-9. Statute of limitations.

1 Any action brought pursuant to this article shall be commenced not later than one year
2 after the day the cause of action accrues.