

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3019

BY DELEGATE PRITT

[Introduced March 09, 2021; Referred to the
Committee on Education then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §18-34-1, §18-34-2, §18-34-3, and §18-34-4, all relating to the creation of the
 3 Campus Free Expression Act; providing for legislative findings; requiring that colleges and
 4 universities allow for the free expression for all students on campus; providing a framework
 5 and parameters for speech; and allowing for civil actions in the event that this article is
 6 violated by a college or university.

Be it enacted by the Legislature of West Virginia:

ARTICLE 34. CAMPUS FREE EXPRESSION ACT.

§18-34-1. Short title.

1 This article may be cited and known as the Campus Free Expression Act.

§18-34-2. Right to use campus for free speech activities.

1 (a) Expressive activities protected under the provisions of this article include, but not
 2 limited to, all forms of peaceful assembly, protests, speeches, distribution of literature, carrying
 3 signs, circulating petitions, and the recording and publication, including Internet publication, of
 4 video and audio lawfully recorded in public outdoor areas of public institutions of higher education.

5 (b) The publicly accessible outdoor areas of campuses of public institutions of higher
 6 education shall be deemed traditional public forums. Public institutions of higher education may
 7 maintain and enforce reasonable time, place, and manner restrictions in service of a significant
 8 institutional interest only when such restrictions employ clear, published, content- and viewpoint-
 9 neutral criteria and provide for ample alternative means of expression. Any such restrictions must
 10 allow for members of the university community to spontaneously and contemporaneously
 11 distribute literature assemble.

12 (c) Any person who wishes to engage in noncommercial expressive activity on campus
 13 shall be permitted to do so freely, as long as their conduct is not unlawful and does not materially
 14 and substantially disrupt the functioning of the institution, subject to the requirements of
 15 subsection (b) of this section. No public institution of higher education shall designate any area of

16 its campus as a “free speech zone” or otherwise create policies restricting expressive activities to
17 particular areas of campus.

18 (d) Nothing in this article grants students, faculty, or staff of the institution the right to
19 materially disrupt previously scheduled or reserved activities in a portion or section of the campus
20 at that scheduled time.

21 (e) Nothing in this law shall enable individuals to engage in conduct that intentionally,
22 materially and substantially disrupts another’s expressive activity if that activity is occurring in a
23 campus space reserved for that activity under the exclusive use or control of a particular group.
24 For purposes of this article, “Materially, and substantially disrupts” means when a person, with
25 the intent to or with knowledge of doing so, significantly hinders another person’s or group’s
26 expressive activity, prevents the communication of the message, or prevents the transaction of
27 the business of a lawful meeting, gathering or procession by:

28 (1) Engaging in fighting, violent, or seriously disruptive behavior; or

29 (2) Physically blocking or significantly hindering any person from attending, listening to,
30 viewing, or otherwise participating in an expressive activity.

31 (f) Conduct that “materially and substantially disrupts” shall not include conduct that is
32 protected under the First Amendment to the United States Constitution or West Virginia
33 Constitution. Such protected conduct includes, but is not limited to, lawful protests and counter-
34 protests in the outdoor areas of campus generally accessible to the members of the public (except
35 during times when those areas have been reserved in advance for other events), or minor, brief,
36 or fleeting nonviolent disruptions of events that are isolated and short in duration.

37 (g) Nothing in this article shall be interpreted as limiting the right of student expression
38 elsewhere on campus.

§18-34-3. Cause of action.

1 (a) The following persons may bring an action in a court of competent jurisdiction to enjoin
2 violation of this article and to recover compensatory damages, reasonable court costs, and

3 attorneys' fees:

4 (1) The attorney general; and

5 (2) Persons whose expressive rights were violated through the violation of this article.

6 (b) In an action brought under this section, if the court finds a violation of this article, the
7 court shall award the aggrieved persons no less than \$500 for the initial violation plus \$50 for
8 each day the violation remains ongoing, which shall accrue starting on the day after the complaint
9 is served on the institution of higher education. The total damages, excluding court costs and
10 attorney's fees, available to a plaintiff or set of plaintiffs, in a case or cases stemming from a single
11 controversy shall not exceed \$100,000 in total. In violations harming multiple plaintiffs, the court
12 shall divide the damages equitably among them until the maximum award is exhausted, if
13 applicable.

§18-34-4. Cause of action.

1 There shall be a one year limitation period, and:

2 (1) A person must bring suit for violation of this article not later than one year after the day
3 the cause of action accrues; and

4 (2) For purposes of calculating the one-year limitation period, each day that the violation
5 of this article persists, and each day that a policy in violation of this article remains in effect, shall
6 constitute a new violation of this article and, therefore, a new day that the cause of action has
7 accrued.

NOTE: The purpose of this bill is to create the Campus Free Expression Act, which provides findings, requires that colleges and universities allow for the free expression for all students on campus, and provides a framework for civil actions in the event that this article is violated by a college or university.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.