

2017 Regular Session

HOUSE BILL NO. 269

BY REPRESENTATIVE LANCE HARRIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COLLEGES/UNIVERSITIES: Provides for free expression on college campuses

1 AN ACT

2 To enact Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, to  
3 be comprised of R.S. 17:3399.31 through 3399.36, relative to free expression on  
4 college campuses; to provide for the authority of the management boards of public  
5 postsecondary education institutions; to provide for the adoption of a policy on free  
6 expression; to provide for the authority of the Board of Regents; to provide for the  
7 creation and duties of a committee on free expression; to provide relative to  
8 freshman orientation programs; to provide for the adoption of regulations; to provide  
9 for the adoption of restrictions on expressive conduct; to provide for a cause of  
10 action; to provide for damages; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of  
13 1950, to be comprised of R.S. 17:3399.31 through 3399.36, is hereby enacted to read as  
14 follows:

15 PART XIV. CAMPUS FREE EXPRESSION

16 §3399.31. Policy on free expression

17 The Board of Supervisors of Louisiana State University and Agricultural and  
18 Mechanical College, the Board of Supervisors of Southern University and  
19 Agricultural and Mechanical College, the Board of Supervisors for the University of  
20 Louisiana System, and the Board of Supervisors of Community and Technical

1 Colleges, hereafter in this Part collectively referred to as the "management boards",  
2 shall develop and adopt a policy on free expression that contains at least the  
3 following:

4 (1) A statement that the primary function of an institution of postsecondary  
5 education is the discovery, improvement, transmission, and dissemination of  
6 knowledge by means of research, teaching, discussion, and debate. This statement  
7 shall provide that, to fulfill this function, each institution must strive to ensure the  
8 fullest degree of intellectual freedom and free expression.

9 (2) A statement that it is not the proper role of an institution to shield  
10 individuals from speech protected by the First Amendment of the Constitution of the  
11 United States and Article I, Section 7 of the Constitution of Louisiana, including  
12 without limitation ideas and opinions they find unwelcome, disagreeable, or even  
13 deeply offensive.

14 (3) A provision that students and faculty have the freedom to discuss any  
15 problem that presents itself, as the First Amendment of the Constitution of the  
16 United States and Article I, Section 7 of the Constitution of Louisiana permit and  
17 within the limits of reasonable viewpoint and content-neutral restrictions on time,  
18 place, and manner of expression that are consistent with this Part and that are  
19 necessary to achieve a significant institutional interest; such restrictions shall be  
20 clear, published, and provide ample alternative means of expression. Students and  
21 faculty shall be permitted to assemble and engage in spontaneous expressive activity  
22 as long as such activity is not unlawful and does not materially and substantially  
23 disrupt the functioning of the institution, subject to the requirements of this Part.

24 (4) A provision that any person lawfully present on a campus may protest or  
25 demonstrate there. Protests and demonstrations that infringe upon the rights of others  
26 to engage in or listen to expressive activity shall not be permitted and shall be subject  
27 to sanction. Professors or other instructors shall not be prohibited from maintaining  
28 order in the classroom.

1           (5) A provision that the campuses of each institution are open to any speaker  
2           whom students, student groups, or members of faculty have invited.

3           (6) A provision that the public areas of campuses of each institution are  
4           traditional public forums, open on the same terms to any speaker.

5           (7) A range of disciplinary sanctions for anyone under the jurisdiction of an  
6           institution who interferes with the free expression of others.

7           (8) A provision that in all disciplinary cases involving expressive conduct,  
8           students are entitled to a disciplinary hearing in accordance with published  
9           procedures which shall include at least:

10           (a) The right to receive advanced written notice of the charges.

11           (b) The right to review the evidence in support of the charges.

12           (c) The right to confront witnesses against them.

13           (d) The right to present a defense.

14           (e) The right to call witnesses.

15           (f) A decision by an impartial arbiter or panel.

16           (g) The right of appeal.

17           (9) A provision that for each case where suspension for longer than thirty  
18           days or expulsion is a potential disciplinary sanction, students are entitled to a  
19           disciplinary hearing under all published procedures plus the right to active assistance  
20           of counsel.

21           (10) A provision that any student who has twice been found responsible for  
22           infringing the expressive rights of others will be suspended for a minimum of one  
23           year or expelled.

24           (11) A provision that each institution shall strive to remain neutral, as an  
25           institution, on the public policy controversies of the day, and may not take action, as  
26           an institution, on the public policy controversies of the day in such a way as to  
27           require students or faculty to publicly express a particular view of social policy.

28           (12) A provision that the policy supersedes and nullifies any provision in the  
29           policies and regulations of any institution that restrict speech on campus and that any

1 such provision is therefore inconsistent with this statement on free expression. Each  
2 institution shall remove or revise any such provision in its policies and regulations  
3 to ensure compatibility with the statement on free expression.

4 §3399.32. Committee on free expression

5 The Board of Regents shall create a committee on free expression consisting  
6 of no less than fifteen members. The committee shall report to the public, the  
7 management boards, the governor, and the legislature on September first of every  
8 year. The report shall include:

9 (1) A description of any barriers to or disruptions of free expression within  
10 state institutions of postsecondary education.

11 (2) A description of the administrative handling and discipline relating to  
12 these disruptions or barriers.

13 (3) A description of substantial difficulties, controversies, or successes in  
14 maintaining a posture of administrative and institutional neutrality with regard to  
15 political or social issues.

16 (4) Any assessments, criticisms, commendations, or recommendations the  
17 committee sees fit to include.

18 §3399.33. Regulations

19 The management boards may adopt regulations to further the purposes of the  
20 policies adopted pursuant to this Part. Nothing in this Part shall be construed to  
21 prevent institutions from regulating student speech or activity that is prohibited by  
22 law. Except as further limited by this Part, institutions may restrict student  
23 expression only for expressive activity not protected by the First Amendment of the  
24 Constitution of the United States and Article I, Section 7 of the Constitution of  
25 Louisiana, including:

26 (1) Violations of state or federal law.

27 (2) Expression that a court has deemed unprotected defamation.

28 (3) Harassment, including but not limited to:

1           (a) Conduct directed by a student toward another individual student, on the  
2           basis of that student's membership or perceived membership in a protected class, that  
3           is so severe, pervasive, and objectively offensive that it effectively deprives the  
4           victim of access to the educational opportunities or benefits provided by the  
5           university.

6           (b) Explicitly or implicitly conditioning a student's participation in an  
7           education program or activity or basing an educational decision on the student's  
8           submission to unwelcome sexual advances, requests for sexual favors, or other  
9           verbal, nonverbal, or physical conduct of a sexual nature.

10           (4) Statements meant by the speaker to communicate a serious expression  
11           of an intent to commit an act of unlawful violence against a particular individual or  
12           group of individuals.

13           (5) An unjustifiable invasion of privacy or confidentiality not involving a  
14           matter of public concern.

15           (6) An action that unlawfully disrupts the function of the university.

16           (7) Violations of reasonable time, place, and manner restrictions on  
17           expressive activities consistent with R.S. 17:3399.31.

18           §3399.34. Freshman orientation programs

19           State institutions of postsecondary education shall include in freshman  
20           orientation programs a section describing to all students the policies and regulations  
21           pursuant to this Part regarding free expression.

22           §3399.35. Restrictions on expressive conduct

23           A state institution of postsecondary education may restrict expressive conduct  
24           in the public areas of campus only if the restriction:

25           (1) Is necessary to achieve a compelling governmental interest.

26           (2) Is the least restrictive means of furthering that compelling governmental  
27           interest.

28           (3) Leaves open ample other opportunities to engage in the expressive  
29           conduct.

1                   (4) Provides for spontaneous assembly and distribution of literature.

2                   §3399.36. Cause of action; attorney fees

3                   A. The attorney general or a person whose expressive rights are violated by  
4                   a violation of this Part or the policy adopted by a management board in accordance  
5                   with R.S. 17:3399.31 may bring an action in a court of competent jurisdiction to  
6                   enjoin any violation of this Part and to recover damages, reasonable court costs, and  
7                   reasonable attorney fees. If the court finds that a violation occurred, the court shall  
8                   award the aggrieved person injunctive relief for the violation, reasonable court costs,  
9                   reasonable attorney fees, and damages of one thousand dollars or actual damages,  
10                  whichever is higher.

11                  B. An action filed pursuant to this Section is subject to a liberative  
12                  prescription of one year. This prescription commences to run from the day the  
13                  violation occurs or the injury or damage is sustained. For the purpose of calculating  
14                  the prescriptive period, each day that the violation persists or each day that a policy  
15                  in violation of this Part remains in effect constitutes a new violation of this Part and  
16                  shall be considered a day that the violation occurs or the injury or damage is  
17                  sustained.

18                  Section 2. The cause of action provided for in Section 1 of this Act shall be available  
19 for one year following the effective date of this Act for any cause of action that arose within  
20 one year preceding the effective date of this Act.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 269 Engrossed

2017 Regular Session

Lance Harris

**Abstract:** Provides for the creation of a policy on free expression and for the adoption of regulations and restrictions of free expression on college campuses.

Proposed law provides for a state policy on free expression on public college and university campuses, including the following major components:

- (1) Requires each of the management boards of the state institutions of postsecondary education to develop and adopt a policy on free expression that contains specific enumerated statements and provisions.

- (2) Requires the Bd. of Regents to create a committee on free expression to issue annual reports of the status of free expression on college campuses based upon various metrics.
- (3) Authorizes the management boards to adopt regulations to further the purposes of the adopted policy.
- (4) Requires state institutions of postsecondary education to include in freshman orientation programs a description of the free expression policies and regulations.
- (5) Authorizes state institutions of postsecondary education to restrict expressive conduct within certain limitations.
- (6) Creates a cause of action for injunction, damages, court costs, and attorney fees available to the attorney general or a person whose expressive rights are violated by a violation of proposed law.

(Adds R.S. 17:3399.31-3399.36)