

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 of America and Article I, Section 7 of the Constitution of Louisiana,
12 including without limitation ideas and opinions they find unwelcome, disagreeable,
13 or even 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 of America and Article I, Section 7 of the Constitution of Louisiana
17 permit and within the limits of reasonable viewpoint and content-neutral restrictions
18 on time, place, and manner of expression that are consistent with this Part and that
19 are 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 constitutional
26 rights of others to engage in or listen to expressive activity shall not be permitted and
27 shall be subject to sanction. Professors or other instructors shall not be prohibited
28 from maintaining order in the classroom. An institution shall not be prohibited from
29 maintaining order on a campus or restricting the time and location of a protest or

1 demonstration so that the protest or demonstration does not interfere with regularly
2 scheduled campus events.

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

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

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

9 (8) A provision that the student codes of conduct for the campuses of each
10 institution shall contain procedures for disciplinary actions for violations in instances
11 involving expressive conduct.

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

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

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

23 (12) A provision that the policy supersedes and nullifies any provision in the
24 policies and regulations of any institution that restrict speech on campus and that any
25 such provision is therefore inconsistent with this statement on free expression. Each
26 institution shall remove or revise any such provision in its policies and regulations
27 to ensure compatibility with the statement on free expression.

1 §3399.32. Committee on free expression

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

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

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

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

13 (4) Any assessments, criticisms, commendations, or recommendations that
14 the committee determines necessary, including but not limited to deficiencies and
15 inconsistencies among the institutions' application of the policies and procedures
16 developed pursuant to this Part.

17 §3399.33. Regulations

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

25 (1) Violations of state or federal law.

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

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

28 (a) Conduct directed by a student toward another individual student, on the
29 basis of that student's membership or perceived membership in a protected class, that

1 is so severe, pervasive, and objectively offensive that it effectively deprives the
2 victim of access to the educational opportunities or benefits provided by the
3 university.

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

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

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

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

14 (7) Violations of reasonable time, place, and manner restrictions on
15 expressive activities consistent with R.S. 17:3399.31, including restrictions on
16 protests and demonstrations necessary to prevent any interference with regularly
17 scheduled campus events.

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 (5) Is necessary to prevent any interference by a protest or demonstration
3 with regularly scheduled campus events.

4 §3399.36. Cause of action; attorney fees

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

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

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

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 Reengrossed

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 a person whose expressive rights are violated by a violation of proposed law.

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

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Relative to the requirement that management boards adopt policies on free expression:
 - (a) Add further provisions authorizing institutions to restrict protests and demonstrations with regard to maintaining order on campus and to prevent any interference with regularly scheduled campus events.
 - (b) Change provisions relative to disciplinary hearings for students to remove specific requirements and provide instead that student codes of conduct shall contain procedures for disciplinary actions for violations in instances involving expressive conduct.
2. Relative to the requirement that the committee created by the Bd. of Regents report certain information, add that the report shall include deficiencies and inconsistencies among the institutions' application of the policies and procedures developed pursuant to proposed law.
3. Relative to the authority for the management boards to adopt regulations for purposes of the adopted policies, add that such regulations include restrictions on protests and demonstrations necessary to prevent any interference with regularly scheduled campus events.
4. Relative to the authority for the institutions to restrict expressive conduct for certain purposes, add to such purposes that institutions may restrict expressive conduct if necessary to prevent any interference by a protest or demonstration with regularly scheduled campus events.
5. Remove authority for the attorney general to bring a legal action to enjoin a violation of proposed law.