

2018 Regular Session

SENATE BILL NO. 364

BY SENATORS WARD, ALARIO, BOUDREAUX, CARTER, CLAITOR, CORTEZ, DONAHUE, ERDEY, FANNIN, GATTI, HEWITT, JOHNS, LONG, LUNEAU, MARTINY, MILKOVICH, MILLS, MIZELL, PEACOCK, PERRY, GARY SMITH, JOHN SMITH, THOMPSON, WALSWORTH AND WHITE

COLLEGES/UNIVERSITIES. Provides relative to free speech on college campuses. (gov sig)

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 3399.37, 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 policies on free  
6 expression; to provide for definitions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of  
9 1950, comprised of R.S. 17:3399.31 through 3399.37, is hereby enacted to read as follows:

10 PART XIV. CAMPUS FREE EXPRESSION

11 §3399.31. Definitions

12 For the purposes of this Part, the following words, terms, and phrases  
13 shall have the following meanings, unless the context clearly requires otherwise:

14 (1) "Expressive activities" include but are not limited to any lawful  
15 verbal or written means by which individuals communicate ideas to one  
16 another, including all forms of peaceful assembly, protests, speeches,  
17 distribution of literature, carrying signs, and circulating petitions.

1           (2) "Outdoor areas" are outside areas generally accessible to the  
2           majority of students, administrators, faculty and staff, such as grassy areas,  
3           walkways, or other similar common areas, and does not include areas where  
4           access is restricted.

5           (3) "Student organization" means an officially recognized group at a  
6           public postsecondary education institution, or a group seeking official  
7           recognition, comprised of admitted students.

8           §3399.32. Expressive activities; public postsecondary institutions; protected

9           A. Expressive activities at public postsecondary education institutions by  
10          students, administrators, faculty members, staff members, and invited guests  
11          are protected.

12          B. Any person who wishes to engage in noncommercial expressive  
13          activity on the campus of a public postsecondary education institution shall be  
14          permitted to do so freely, as long as the person's conduct is not unlawful and  
15          does not materially and substantially disrupt the functioning of the institution.

16          C. The outdoor areas of a public postsecondary institution shall be  
17          deemed traditional public forums and open to expressive activities. Nothing in  
18          this Paragraph shall be interpreted as limiting the right of student expression  
19          elsewhere on campus.

20          D. A public postsecondary education institution may maintain and  
21          enforce reasonable time, place, and manner restrictions narrowly tailored in  
22          service of a significant institutional interest only when such restrictions employ  
23          clear, published, content and viewpoint-neutral criteria, and provide for ample  
24          alternative means of expression. Any such restrictions shall allow for  
25          spontaneous and contemporaneous assembly and distribution of literature.

26          E. Nothing in this Part shall be interpreted as preventing institutions  
27          from prohibiting, limiting, or restricting expression that the First Amendment  
28          of the Constitution of the United States of America does not protect, such as  
29          threats and expressions directed to provoke and likely to produce imminent

1 lawless actions, or prohibiting harassment.

2 §3399.33. Freedom of association; student organizations

3 No public postsecondary education institution shall deny a belief-based  
4 student organization any benefit or privilege available to any other student  
5 organization, or otherwise discriminate against a belief-based organization,  
6 based on the expression of the organization, including any requirement that the  
7 leaders or members of the organization:

8 (1) Affirm and adhere to the organization's sincerely held beliefs.

9 (2) Comply with the organization's standards of conduct.

10 (3) Further the organization's mission or purpose, as defined by the  
11 organization.

12 §3399.34. Institutional policies on free expression

13 Each public postsecondary education institution shall develop policies,  
14 regulations, and expectations of students regarding free expression and  
15 association on campus that are consistent with this Part and the policies of its  
16 management board. The policies shall outline the rights of students,  
17 administrators, faculty, and staff and shall:

18 (1) Be made public in the institution's handbooks, on its website, and  
19 through student orientation programs.

20 (2) Be incorporated in the materials, programs, and procedures provided  
21 to all faculty and staff, including administrators, campus police officers,  
22 residence life officials, and professors.

23 (3) Provide information regarding the procedures whereby a person  
24 aggrieved by a violation of this Part or the institution's policies on free  
25 expression may seek relief.

26 §3399.35. Policy on free expression

27 Each public postsecondary education management board, in  
28 collaboration with the Board of Regents, shall develop and adopt policies on free  
29 expression that contain at least the following:

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

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

12          (3) A provision that students and faculty have the freedom to discuss any  
13          topic that presents itself, as the First Amendment of the Constitution of the  
14          United States of America and Article I, Section 7 of the Constitution of  
15          Louisiana permit and within the limits on time, place, and manner of expression  
16          that are consistent with this Part and that are necessary to achieve a significant  
17          institutional interest; such restrictions shall be published and provide ample  
18          alternative means of expression.

19          (4) A provision that students and faculty shall be permitted to assemble  
20          and engage in spontaneous expressive activity as long as such activity is not  
21          unlawful and does not materially and substantially disrupt the functioning of  
22          the institution, subject to the requirements of this Part.

23          (5) A provision that any person lawfully present on a campus may  
24          protest or demonstrate there. Protests and demonstrations that infringe upon  
25          the constitutional rights of others to engage in or listen to expressive activity by  
26          creating a substantial and material disruption to the functioning of the  
27          institution or to someone's expressive activity shall not be permitted.

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

1           (7) A provision that the policy supersedes and nullifies any provision in  
2           the policies and regulations of any institution that restricts speech on campus  
3           and that any such provision is therefore inconsistent with this statement on free  
4           expression. Each institution shall remove or revise any such provision in its  
5           policies and regulations to ensure compatibility with the statement on free  
6           expression.

7           §3399.36. Reports

8           A. Each public postsecondary education institution shall submit a report  
9           to the governor and the legislature by January 1, 2019, on the implementation  
10          of the provisions of this Part.

11          B. Each institution shall annually submit a report to the governor and  
12          the legislature regarding any barriers to, or incidents against, free expression  
13          that occurred at the institution. The report shall detail the barrier or incident,  
14          as well as actions taken in response to the barrier or incident.

15          C. If an institution is sued for an alleged violation of a right guaranteed  
16          by the First Amendment of the Constitution of the United States of America, the  
17          institution shall submit a supplementary report with a copy of the complaint to  
18          the governor and the state legislature within thirty days of receipt of the  
19          complaint.

20          D. Each institution shall post all reports pursuant to this Section on its  
21          website.

22          §3399.37. Regulations

23          Each postsecondary education management board shall adopt policies  
24          to implement the provisions of this Part. Nothing in this Part shall be construed  
25          to prevent institutions from regulating student speech or activity that is  
26          prohibited by law. Except as further limited by this Part, institutions may  
27          restrict student expression only for expressive activity not protected by the First  
28          Amendment of the Constitution of the United States of America and Article I,  
29          Section 7 of the Constitution of Louisiana.

1           Section 2. This Act shall become effective upon signature by the governor or, if not  
 2 signed by the governor, upon expiration of the time for bills to become law without signature  
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 5 effective on the day following such approval.

---

The original instrument was prepared by Cheryl Cooper. The following digest, which does not constitute a part of the legislative instrument, was prepared by J. W. Wiley.

---

## DIGEST

SB 364 Reengrossed

2018 Regular Session

Ward

Proposed law provides that expressive activities at a public postsecondary institution are protected.

Proposed law provides that institutions may maintain and enforce reasonable time, place, and manner restrictions narrowly tailored in service of significant institutional interest.

Proposed law provides for freedom of association and provides that a public postsecondary institution shall not deny a belief-based student organization any benefit or privilege available to any other student organization.

Proposed law requires each public postsecondary institution to develop policies, regulation, and expectations of students regarding free expression and association on campus that are consistent with proposed law and the policies of the management board. Requires that the policies be made public in the institution's handbook, on its website, and through student orientation.

Proposed law requires the postsecondary education management boards, in consultation with the Board of Regents, to develop and adopt policies on free expression that contain the following:

- (1) A statement that the primary function of an institution of postsecondary education is the discovery, improvement, transmission, and dissemination of knowledge and in order to fulfill the function, each institution must strive to ensure the fullest degree of intellectual freedom and free expression.
- (2) A statement that it is not the proper role of an institution to shield individuals from speech protected by the United States Constitution.
- (3) A provision that students and faculty have the freedom to discuss any topic in a manner of expression that is permitted by the United States Constitution and the Louisiana Constitution. Additionally provides that limits on time, place, and manner of expression shall be consistent with proposed law and must be necessary to achieve a significant institutional interest. Further provides that such restrictions shall be published and provide ample alternative means of expression.
- (4) A provision that students and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as such activity is not unlawful and does not materially and substantially disrupt the functioning of the institution.

- (5) A provision that any person lawfully present on a campus may protest or demonstrate there. Protests and demonstrations that infringe upon the constitutional rights of others or create a substantial and material disruption to the functioning of the institution shall not be permitted.
- (6) A provision that the public areas of campus are traditional public forums, open on the same terms to any speaker.
- (7) A provision that the adopted policy supersedes and nullifies any existing provisions in the policies and regulations of any institution that restrict speech on campus.

Proposed law requires each public postsecondary institution to submit a report to the governor and the legislature by Jan. 1, 2019, on the implementation of proposed law.

Further requires each institution to submit an annual report to the governor and the legislature regarding barriers to, or incidents against, free expression that occurred at the institution and actions taken in response.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 17:3399.31-3399.37)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Education to the original bill

1. Provides definitions.
2. Provides that expressive activities are protected.
3. Provides for freedom of association.
4. Provides for institutional policies on free expression.
5. Revises required management board policies.
6. Mandates reporting.

##### Senate Floor Amendments to the engrossed bill

1. Makes Legislative Bureau technical changes.