

2018 Regular Session

SENATE BILL NO. 364

BY SENATOR WARD

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 **spontaneously and contemporaneously 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 **does not protect, such as threats and expressions directed to provoke and likely**
29 **to produce imminent lawless actions, or prohibiting harassment.**

1 **§3399.33. Freedom of association; student organizations**

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

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

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

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

11 **§3399.34. Institutional policies on free expression**

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

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

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

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

25 **§3399.35. Policy on free expression**

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

29 **(1) A statement that the primary function of an institution of**

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

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

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

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

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

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

29 (7) A provision that the policy supersedes and nullifies any provision in

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

6 §3399.36. Reports

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

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

14 C. If an institution is sued for an alleged violation of First Amendment
15 rights, the institution shall submit a supplementary report with a copy of the
16 complaint to the governor and the state legislature within thirty days of receipt
17 of the complaint.

18 D. Each institution shall post all reports pursuant to this Section on its
19 website.

20 §3399.37. Regulations

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

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 3 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Cheryl Serrett.

DIGEST

SB 364 Engrossed

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.