

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

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 or groups communicate ideas to**
16 **one another, as provided by the First Amendment of the Constitution of the**
17 **United States of America and by the Constitution of Louisiana, including all**
18 **forms of peaceful assembly, protest, speech, distribution of literature, carrying**

1 signs, and circulating petitions. This expressly excludes commercial activities
2 where individuals or groups are being compensated or attempting to advertise,
3 market, or accrue financial gain to any individual, corporation, business, or
4 organization.

5 (2) "Outdoor areas" are outside areas generally accessible to the
6 majority of students, administrators, faculty, and staff, such as grassy areas,
7 walkways, or other similar common areas, and do not include areas where
8 access is restricted.

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

12 §3399.32. Expressive activities; public postsecondary education institutions;
13 protected

14 A. Expressive activities at public postsecondary education institutions by
15 students, administrators, faculty members, staff members, and invited guests
16 are protected.

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

21 C. The outdoor areas of a public postsecondary education institution
22 shall be deemed traditional public forums and open to expressive activities.
23 Nothing in this Part shall be interpreted as limiting the right of student
24 expression elsewhere on campus.

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

1 E. Nothing in this Part shall be interpreted as preventing institutions
2 from prohibiting, limiting, or restricting expression that the First Amendment
3 of the Constitution of the United States of America does not protect, such as
4 threats and expressions directed to provoke and likely to produce imminent
5 lawless actions, or from prohibiting harassment.

6 §3399.33. Freedom of association; student organizations

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

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

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

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

16 §3399.34. Institutional policies on free expression

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

22 (1) Be made public in the institution's handbook, on its website, and
23 through student orientation programs.

24 (2) Be incorporated in the materials, programs, and procedures provided
25 to all employees and students.

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

29 §3399.35. Management boards; policy on free expression

30 Each public postsecondary education management board, in

1 collaboration with the Board of Regents, shall develop and adopt policies on free
2 expression that contain at least the following:

3 (1) A statement that each institution shall strive to ensure the fullest
4 degree of intellectual freedom and free expression.

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

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

18 (4) A provision that students and faculty may assemble and engage in
19 spontaneous expressive activity as long as such activity is not unlawful and does
20 not materially and substantially disrupt the functioning of the institution,
21 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 that are open on the same terms to any speaker.

29 (7) A provision that the policy supersedes and nullifies any provision in
30 the policies and regulations of any institution that restricts speech on campus

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

5 **§3399.36. Reports**

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

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

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

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

20 **§3399.37. Regulations**

21 Each postsecondary public education management board shall adopt
 22 policies to implement the provisions of this Part. Nothing in this Part shall be
 23 construed to prevent institutions from regulating student speech or activity that
 24 is 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 and other applicable laws.

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
 30 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____