

CAMPUS FREE SPEECH ACT AND COLLEGE CAMPUS INTELLECTUAL AND EXPRESSIVE FREEDOM ACT

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House Bills 4435 and 4436 as introduced

Sponsor: Rep. John Reilly

Committee: Oversight

Complete to 4-17-19

Analysis available at
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BRIEF SUMMARY:

Each bill would create a new act regarding free speech and assembly on the campuses of the state's public universities and community and junior colleges.

House Bill 4435 would specify the criteria by which a public institution of higher learning could restrict expressive conduct in public areas of its campuses and would provide remedies to a person aggrieved by a violation of the act.

House Bill 4436 would require public institutions of higher education to develop and adopt a policy on free expression that contains elements prescribed by the new act; provide the policy to students; and develop programs and materials to ensure that individuals who have responsibility for the discipline or education of students (e.g., administrators, instructors, and campus police) understand the policies, regulations, and duties of the institution regarding free expression on campus consistent with the act.

DETAILED SUMMARY:

House Bill 4435 would create the Campus Free Speech Act. Under the new act, a public institution of higher learning could restrict *expressive conduct* in public areas of its campuses, but only if it demonstrated that the restriction met all of the following:

- It is necessary to achieve a compelling governmental interest and is viewpoint-neutral and content-neutral.
- It leaves open ample alternative opportunities to engage in the expressive conduct.
- It allows for spontaneous assembly and distribution of literature.
- It does not quarantine speech to zones.

Expressive conduct would include all peaceful forms of assembly, protest, speech, distributing literature, carrying signs, and circulating petitions in open areas, and filming and broadcasting on the internet.

Remedy for a violation

An individual aggrieved by a violation of the act, or the attorney general, or both, could bring an action in a court of competent jurisdiction to obtain the following remedies:

- In all cases, reasonable court costs and attorney fees.
- In all cases, injunctive relief as appropriate.

- In a case brought by or on behalf of an individual aggrieved by a violation of the act, the individual’s actual damages or \$1,000, whichever is greater, to be awarded to that individual.

An action would have to be commenced no later than one year after the day the cause of action accrued. For purposes of calculating the one-year limitation period, a cause of action would accrue each day that a violation of the act persisted or a policy in violation of the act remained in effect.

House Bill 4436 would create the College Campus Intellectual and Expressive Freedom Act. The bill specifies it would not prevent a public institution of higher education from prohibiting, limiting, or otherwise restricting *expressive activity* in a manner permitted by the First Amendment to the U.S. Constitution and sections 3 and 5 of Article I of the State Constitution.

Expressive activity would include all peaceful forms of assembly, protest, speech, distributing literature, carrying signs, and circulating petitions in open areas, and filming and broadcasting on the internet, *by any number of individuals and whether planned or spontaneous*. [Italicized text denotes the difference between the definitions of “expressive conduct” in HB 4435 and “expressive activity.”]

The new act would require a public institution of higher learning to do all of the following:

- Develop and adopt a policy on free expression that contains, at a minimum, the following statements:
 - That an essential part of the institution’s mission is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this mission, the institution will strive to ensure the fullest degree of intellectual freedom and free expression.
 - That students and faculty are free to discuss anything, as permitted by the First Amendment and within the limits of reasonable viewpoint-neutral and content-neutral restrictions on time, place, and manner of expression. A viewpoint-neutral and content-neutral restriction would be reasonable only if:
 - It is consistent with the requirements of the new act.
 - It is in furtherance of a significant institutional interest.
 - It is clearly written and published.
 - It provides ample alternative means of expression.
 - That students and faculty may assemble and engage in expressive activity as long as that activity is not unlawful and does not materially and substantially disrupt the functioning of the institution, as permitted by the U.S. Constitution, and is within the limits of reasonable viewpoint-neutral and content-neutral restrictions on time, place, and manner of expression.
 - That any person lawfully present on campus has the right to protest or demonstrate there, but protests and demonstrations are not permitted and are subject to sanction

if they substantially and materially infringe on the rights of others to engage in or listen to expressive activity. A statement complying with this provision would not prohibit professors or other instructors from maintaining order in the classroom.

- That the institution's campuses are open to any speaker whom students, student groups, or members of the faculty have invited.
- That the public areas of campuses of the institution are traditional public forums, open on the same terms to any speaker.
- That belief-based *student organizations* will not be denied any benefits or privileges available to other student organizations and will not be discriminated against based on either of the following:
 - The expressive activity of the organization.
 - Any requirement that leaders or members of the organization must do any of the following:
 - Affirm and adhere to the organization's sincerely held beliefs.
 - Comply with the organization's standards of conduct.
 - Further the organization's mission or purpose.

Student organization would mean any student group officially recognized by, or seeking official recognition from, a public institution of higher education that receives or seeks to receive benefits from the institution.

- That the institution will strive to remain neutral on the public policy controversies of the day, except for those affecting the function of the institution or the rights and welfare of members of its community, and—as an institution—will not take any action on the public policy controversies of the day that would require students or faculty to publicly express a given view of social policy.
- That the policy on free expression adopted as required under the act supersedes all prior provisions of institutional policy or regulation to the extent that the prior provisions are inconsistent with the act's required policy and that the institution will remove or revise any inconsistent prior provision of policy or regulation to ensure compatibility of its policies and regulations with the policy on free expression adopted as required by the act.
- Include information for students describing the policies and regulations regarding free expression consistent with the act in freshman orientation programs, handbooks, and websites.
- Develop materials, programs, and procedures to ensure that all individuals having a responsibility for discipline or education of students, including administrators, campus police officers, residence life officials, and professors, understand the policies, regulations, and duties of the public institution of higher education regarding free expression on campus consistent with the act.

FISCAL IMPACT:

House Bill 4435 would have an indeterminate yet potentially small fiscal impact on public universities and community colleges. If an institution was found to be in violation of the act, there would be some court fees and fines that the institution would be responsible for. The bill raises constitutional autonomy questions for public universities, and it is unclear if the universities would be subject to the financial penalties mentioned in the bill for noncompliance.

House Bill 4436 would have an indeterminate yet potentially small fiscal impact on public universities and community colleges. There would be some administrative costs to adopt the policies expressed in the bill, and it is unclear if those changes would be absorbed under current funding levels. The bill raises constitutional autonomy questions for public universities. Therefore, it is unclear if the universities would have to adopt the changes described in the bill.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.