**South Carolina General Assembly**

123rd Session, 2019-2020

**S. 33**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Grooms and Campsen

Document Path: l:\s-res\lkg\007camp.kmm.lkg.docx

Introduced in the Senate on January 8, 2019

Currently residing in the Senate Committee on **Education**

Summary: Campus Free Expression Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/12/2018 Senate Prefiled

12/12/2018 Senate Referred to Committee on **Education**

1/8/2019 Senate Introduced and read first time ([Senate Journal‑page 53](file:///h:\sj\20190108.docx))

1/8/2019 Senate Referred to Committee on **Education** ([Senate Journal‑page 53](file:///h:\sj\20190108.docx))

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**VERSIONS OF THIS BILL**

[12/12/2018](file:///p:\pprever\2019-20\33_20181212.docx)

**A** **BILL**

TO AMEND CHAPTER 101, TITLE 59 OF THE 1976 CODE, RELATING TO COLLEGES AND INSTITUTIONS OF HIGHER LEARNING, GENERALLY, BY ADDING ARTICLE 4, TO ENACT THE CAMPUS FREE EXPRESSION ACT, TO PROVIDE THAT OUTDOOR AREAS OF CAMPUSES OF PUBLIC COLLEGES AND INSTITUTIONS OF HIGHER LEARNING IN THIS STATE SHALL BE DEEMED TRADITIONAL PUBLIC FORUMS, TO PROVIDE THAT ANY PERSON WISHING TO ENGAGE IN NONCOMMERCIAL EXPRESSIVE ACTIVITY ON CAMPUS SHALL BE PERMITTED TO DO SO FREELY UNLESS THE PERSON’S CONDUCT IS UNLAWFUL OR MATERIALLY AND SUBSTANTIALLY DISRUPTS THE FUNCTIONING OF THE INSTITUTION, TO PROVIDE FOR PERMISSIBLE RESTRICTIONS THAT A PUBLIC INSTITUTION OF HIGHER LEARNING MAY PLACE IN CERTAIN AREAS, TO PROVIDE THAT A PUBLIC INSTITUTION OF HIGHER LEARNING SHALL INCLUDE A RANGE OF DISCIPLINARY SANCTIONS FOR ANYONE WITHIN ITS JURISDICTION WHO MATERIALLY AND SUBSTANTIALLY INTERFERES WITH THE FREE EXPRESSION OF OTHERS, TO PROVIDE THAT THE GOVERNING BOARD OF EACH STATE INSTITUTION OF HIGHER LEARNING SHALL DEVELOP AND ADOPT A POLICY ON FREE EXPRESSION BY JANUARY 1, 2020, TO PROVIDE FOR THE CONTENTS OF SUCH POLICY, TO PROVIDE THAT THE ATTORNEY GENERAL AND PERSONS WHOSE EXPRESSIVE RIGHTS HAVE BEEN VIOLATED BY A VIOLATION OF THIS ARTICLE MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION TO ENJOIN ANY VIOLATION OF THIS ARTICLE OR TO RECOVER COMPENSATORY DAMAGES, REASONABLE COURT COSTS, AND ATTORNEYS’ FEES, TO PROVIDE THAT THE GOVERNING BOARD OF EACH PUBLIC INSTITUTION OF HIGHER LEARNING SHALL ISSUE AN ANNUAL REPORT ON THE ADMINISTRATIVE HANDLING OF FREE SPEECH ISSUES WITHIN ITS RESPECTIVE INSTITUTION, TO PROVIDE FOR EXCLUSIONS TO THIS ARTICLE, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited and referred to as the “Campus Free Expression Act.”

SECTION 2. Chapter 101, Title 59 of the 1976 Code is amended by adding:

“ARTICLE 4

Campus Free Expression Act

Section 59-101-810. Outdoor areas on campuses of public colleges and institutions of higher learning in this State shall be deemed traditional public forums. Public colleges and institutions of higher learning may maintain and enforce reasonable time, place, and manner restrictions in service of a significant institutional interest only when such restrictions employ clear, published, content neutral, and viewpoint neutral criteria and provide for alternative means of expression. Any restriction shall allow for members of the university community to spontaneously and contemporaneously assemble.

Section 59-101-820. (A) Any person wishing to engage in noncommercial expressive activity on campus shall be permitted to do so freely, unless the person’s conduct is unlawful or materially and substantially disrupts the functioning of the institution.

(B) Public institutions of higher learning may restrict expressive conduct in the public areas of campus only if the institution demonstrates that the restriction:

(1) is necessary to achieve a compelling governmental interest;

(2) is the least restrictive means of furthering a compelling governmental interest;

(3) leaves open ample other opportunities to engage in the expressive conduct; and

(4) provides for spontaneous assembly and distribution of literature.

Section 59-101-830. (A) The governing board of each state institution of higher learning shall develop and adopt a policy on free expression, which includes, but is not limited to, the following statements:

(1) The primary function of a public institution of higher learning is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, the institution shall strive to ensure the fullest degree of intellectual freedom and free expression.

(2) It is not the proper role of the institution to shield individuals from speech protected by the First Amendment, including, but not limited to, ideas and opinions that individuals find unwelcome, disagreeable, or even deeply offensive.

(3) Any person lawfully present on campus may protest or demonstrate there. Protests and demonstrations that materially and substantially infringe upon the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction. This does not prohibit instructors from maintaining order in the classroom.

(4) The campuses of the institution are open to any speaker whom students, student groups, or members of the faculty have invited.

(5) The institution shall make all reasonable efforts and make available all reasonable resources to ensure the safety of invited speakers. An institution shall not charge security fees based on the content of the speech. The institution may restrict the use of its nonpublic facilities to invited individuals.

(6) Any student who has twice been found responsible for infringing upon the expressive rights of others shall be suspended for a minimum of one year or expelled.

(7) Individual students, faculty, and staff of the institution shall be free to take positions on the public controversies of the day, but the institution itself shall attempt to remain neutral, as an institution, on such controversies, except when administrative decisions on such issues are essential to the day‑to‑day functioning of the institution. The institution shall not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or staff to publicly express a given view of a public controversy.

(8) No institution shall deny a student organization any benefit or privilege available to any other student organization or otherwise discriminate against a student organization based on the content of the organization’s expression, including any requirement that the leaders or members of such an organization:

(a) affirm and adhere to the organization’s sincerely held beliefs;

(b) comply with the organization’s standards of conduct; or

(c) further the organization’s mission or purpose, as defined by the student organization.

(B) If any statement required pursuant to subsection (A) conflicts with a previous policy, rule, or regulation of an institution, then the institution shall revise the conflicting policy, rule, or regulation to ensure compatibility with the statements required pursuant to this section.

Section 59-101-840. (A) A public institution of higher learning shall provide and enforce a range of disciplinary sanctions for anyone within its jurisdiction who materially and substantially interferes with the free expression of others.

(B) A person found in violation of the policies developed pursuant to this article shall have notice of and the opportunity for a hearing in accordance with the Administrative Procedures Act.

(C) In cases where suspension for longer than thirty days or expulsion is a potential penalty, students shall be entitled to the additional right to active assistance of counsel.

Section 59-101-850. Public institutions of higher learning shall include in their freshman orientation program a section describing the policies regarding free expression consistent with the provisions of this article.

Section 59-101-860. (A) As used in this section:

(1) ‘Peer‑on‑peer harassment’ means conduct directed by a student toward another individual student, on the basis of that student’s membership or perceived membership in a protected class, that is so severe, pervasive, and objectively offensive that it effectively deprives the victim of access to the educational opportunities or benefits provided by the institution.

(2) ‘Quid pro quo sexual harassment’ means harassment that is explicitly or implicitly conditioning a student’s participation in an education program or activity or basing an educational decision on the student’s submission to unwelcome sexual advances; requests for sexual favors; or other verbal, nonverbal, or physical conduct of a sexual nature.

(B) Nothing contained in this article shall be construed to prevent public institutions of higher learning from regulating student speech or activity that is prohibited by law.

(C) Except as further limited in this article, institutions shall be allowed to restrict student expression only for expressive activity not protected by the First Amendment, including:

(1) violations of state or federal law;

(2) expression that a court has deemed unprotected defamation;

(3) peer-on-peer harassment and quid pro quo sexual harassment;

(4) true threats, which are statements meant by a speaker to communicate a serious expression of the intent to commit an act of unlawful violence to a particular individual or group of individuals;

(5) an unjustifiable invasion of privacy or confidentiality not involving a matter of public concern;

(6) an action that unlawfully disrupts the function of a public institution of higher learning; and

(7) reasonable time, place, and manner restrictions consistent with Section 59-101-820.

Section 59-101-870. (A) The Attorney General and persons whose expressive rights have been violated by a violation of this article may bring an action in a court of competent jurisdiction to enjoin any violation of this article or to recover compensatory damages, reasonable court costs, and attorneys’ fees.

(B) In an action brought under this section, if the court finds a violation, then the court shall award the aggrieved person no less than five hundred dollars for an initial violation, plus fifty dollars for each day the violation remains ongoing.

(C) A person must bring suit for violation of this article not later than one year after the date upon which the incident giving rise to the cause of action occurred. For purposes of calculating the one-year limitation period, each day that the violation persists and each day that a policy in violation of this section remains in effect shall constitute a violation of this article and, therefore, a date that the cause of action has accrued.

Section 59-101-880. Notwithstanding any other provision of law, the state waives sovereign immunity and consents to suit in state and federal court for lawsuits arising out of this article. A public institution of higher learning that violates any of the provisions of this article shall not be immune from suit or liability for any such violation.

Section 59-101-890. The governing board of each public institution of higher learning shall adopt policies for the administration of this article.

Section 595-101-900. (A) The governing board of each public institution of higher learning shall issue an annual report on the administrative handling of free speech issues within its respective institution.

(B) Each governing board shall report to the public, the Commission on Higher Education, and the General Assembly on September first of each year. The report shall include the following:

(1) a description of any barriers to or disruptions of free expression within the public institution of higher learning;

(2) a description of the administrative handling and discipline relating to barriers to or disruptions of free expression within the public institution of higher learning;

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

(4) any assessments, criticisms, commendations, or recommendations of the governing board.

Section 59-101-910. Nothing in this article shall be construed as limiting the right of student expression elsewhere on campus.”

SECTION 3. The governing board of each state institution of higher learning shall develop and adopt an initial policy on free expression pursuant to Section 59-101-840 by January 1, 2020.

SECTION 4. This act takes effect upon approval by the Governor.

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