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**HOUSE BILL 2223**

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**State of Washington 65th Legislature 2017 2nd Special Session**

**By** Representatives J. Walsh, Graves, Haler, Manweller, Pike, Van Werven, Griffey, Irwin, Volz, Buys, Harris, and Kraft

AN ACT Relating to protecting the freedom of speech in institutions of higher education; and adding a new chapter to Title 28B RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds and declares that public institutions of higher education are not exempt from the First Amendment to the United States Constitution or Article I, section 5, of the Washington state Constitution, which guarantees freedom of speech and expression. It is the intent of the legislature that Washington's public institutions of higher education embrace a commitment to the freedom of speech and expression for all students and all faculty.

(2) The legislature further intends that its public institutions of higher education, including faculty at the institutions, may not require students or other faculty to adopt or indicate an adherence to the beliefs or orthodoxies on any particular political, philosophical, religious, social, or other such subject. However, institutions of higher education may require students and faculty to conform their conduct to the requirements of law and policy.

(3) It is further the intent of the legislature that public institutions of higher education not stifle freedom of speech and expression by implementing vague or overbroad speech codes, establishing free speech zones, imposing unconstitutional prior restraints on speech, or disinviting speakers based on the anticipated reaction or opposition of others to the content of speech.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Constitutional time, place, and manner restrictions" means restrictions on the time, place, and manner of free speech that do not violate the federal or state constitutions, are reasonable, content-neutral, and viewpoint-neutral, are narrowly tailored to satisfy a significant institutional interest, and leave open ample alternative channels for the communication of the information or message to its intended audience.

(2) "Faculty" or "faculty member" means any person, whether or not the person is compensated by a public institution of higher education, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching. "Faculty" includes tenured and nontenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions, however titled. "Faculty" does not include persons whose primary responsibilities are administrative or managerial.

(3) "Free speech" means speech, expression, or assemblies, verbal or written, protected by the federal or state constitutions, including, but not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free speech" does not include the promotion, sale, or distribution of any product or service.

(4) "Institution of higher education" or "institution" has the definition in RCW 28B.10.016.

(5) "Student" means:

(a) An individual currently enrolled in a course of study at an institution of higher education; and

(b) An organization that comprises entirely individuals currently enrolled in a course of study at an institution of higher education and the organization is registered as a student organization with the institution pursuant to institutional rules.

NEW SECTION. **Sec.**  (1) The governing boards of every institution of higher education shall each adopt a policy that affirms the following principles of free speech, which are the public policy of this state:

(a) Students have a fundamental constitutional right to free speech;

(b) An institution of higher education must be committed to giving students the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue, subject to section 6 of this act;

(c) An institution of higher education must be committed to maintaining its campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not suppressed because some or most members of the institution's community think those ideas are offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or emotionally disturbing;

(d) Students and faculty members must be allowed to make judgments about ideas for themselves and to act on those judgments by openly and vigorously debating the ideas they either agree to and/or oppose, rather than by seeking to suppress free speech;

(e) It is not the proper role of an institution of higher education to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or emotionally disturbing;

(f) Although an institution of higher education should greatly value civility and mutual respect, concerns about civility and mutual respect must not be used by an institution of higher education as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or emotionally disturbing those ideas may be to some students or faculty;

(g) All students and all faculty must be free to state their own views about and contest the views expressed on campus and to state their own views about and contest speakers who are invited to express their views on campus. Students and faculty may not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe. Therefore, an institution of higher education has a responsibility to promote a lively and fearless freedom of debate and deliberation and protect that freedom;

(h) An institution of higher education must be committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by all students and all faculty, who shall always remain free to inquire, to study, and to evaluate, and to gain new understanding;

(i) The primary responsibility of faculty is to engage an honest, courageous, and persistent effort to search out and communicate the truth that lies in the areas of their competencies;

(j) Although faculty are free in the classroom to discuss subjects within areas of their competencies, faculty shall be cautious in expressing personal views in the classroom and shall be careful not to introduce controversial matters that have no relationship to the subject taught, especially regarding matters they have no special competence or training in and in which, therefore, faculty's views cannot claim the authority accorded other statements they make that are within their areas of competence. However, no faculty should face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction;

(k) An institution of higher education must maintain the generally accessible, open, outdoor areas of its campus as traditional public forums for free speech by students;

(l) An institution of higher education must not restrict students' free speech only to particular areas of the campus, sometimes known as "free speech zones";

(m) An institution of higher education must not deny student activity fee funding to a student organization based on the viewpoints that the student organization advocates;

(n) An institution of higher education must not establish permitting requirements that prohibit spontaneous outdoor assemblies or outdoor distribution of literature. However, an institution of higher education may maintain a policy that grants members of the institution's community the right to reserve certain outdoor spaces in advance;

(o) An institution of higher education must not charge students security fees based on the content of their speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition to speech;

(p) An institution of higher education must allow all students and all faculty to invite guest speakers to campus to engage in free speech regardless of the views of the guest speakers; and

(q) An institution of higher education must not disinvite a speaker invited by a student, student organization, or faculty member solely because the speaker's anticipated speech may be considered offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or emotionally disturbing by students, faculty, administrators, government officials, or members of the public.

(2) The policy adopted pursuant to this section must be made available to students and faculty annually through one or more of the following methods:

(a) By publication annually in the institution of higher education's student handbook and faculty handbook, whether paper or electronic;

(b) By way of a prominent notice on the institution of higher education's web site other than through the electronic publication of the policy in the student handbook and faculty handbook;

(c) Sent annually to students and employees to their institutionally provided email address; or

(d) Addressed by the institution of higher education in orientation programs for new students and new faculty.

(3) Nothing in this section may be construed to grant students the right to disrupt previously scheduled or reserved activities occurring in a traditional public forum.

NEW SECTION. **Sec.**  (1) With respect to disciplining students for their speech, expression, or assemblies, each institution of higher education must adopt a policy on "student-on-student harassment" defining the term consistent with and no more expansively than the language contained in subsection (2) of this section.

(2) As used in this section, "student-on-student harassment" means unwelcome conduct directed toward a person that is discriminatory on a basis prohibited by federal, state, or local law, and that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit.

NEW SECTION. **Sec.**  Nothing in this chapter requires an institution of higher education to fund costs associated with student speech or expression. An institution of higher education shall not impose costs on students or student organizations on the basis of the anticipated reaction or opposition to a person's speech by listeners.

NEW SECTION. **Sec.**  Nothing in this chapter prohibits an institution of higher education from imposing measures that do not violate the federal and state constitutions, such as:

(1) Constitutional time, place, and manner restrictions;

(2) Reasonable and viewpoint-neutral restrictions in nonpublic forums;

(3) Restricting the use of the institution of higher education's property to protect the free speech rights of students and faculty and preserve the use of the property for the advancement of the institution's mission;

(4) Prohibiting or limiting speech, expression, or assemblies that are not protected by the federal or state constitution; and

(5) Content restrictions on speech that are reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by faculty.

NEW SECTION. **Sec.**  The governing body of each institution of higher education may adopt rules to effectuate the purposes of this chapter.

NEW SECTION. **Sec.**  Sections 1 through 7 of this act constitute a new chapter in Title 28B RCW.

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