

HB 234 - AS INTRODUCED

2021 SESSION

21-0179

04/05

HOUSE BILL **234**

AN ACT relative to freedom of speech and association on college campuses.

SPONSORS: Rep. Alexander Jr., Hills. 6; Rep. Baxter, Rock. 20; Rep. Lynn, Rock. 7; Rep. Marsh, Carr. 8; Rep. Berry, Hills. 44; Rep. O'Hara, Belk. 9; Rep. Deshaies, Carr. 6; Sen. Daniels, Dist 11; Sen. Avard, Dist 12

COMMITTEE: Education

ANALYSIS

This bill establishes requirements for engaging in protected speech, association, or other forms of expression or communication at public institutions of higher education.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to freedom of speech and association on college campuses.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Findings. The general court finds and declares the following principles:

2 I. The principle of freedom of speech has from the earliest days of this state been regarded
3 as a fundamental tenet of the existence and operation of all public colleges and universities in New
4 Hampshire.

5 II. Students should have freedom to discuss any problem that presents itself. The response
6 to ideas some may oppose is through open discussion rather than through inhibition. Free inquiry is
7 indispensable to the good life, public colleges and universities exist for the sake of such inquiry.

8 III. The commitment to free and open inquiry is the hallmark of higher education. Public
9 postsecondary educational institutions guarantee that all members of its community retain the
10 broadest possible latitude to speak, write, listen, challenge, and learn is what distinguishes higher
11 education. Except insofar as limitations on that freedom are necessary to the functioning of the
12 institution, public postsecondary educational institutions should fully respect and support the
13 freedom of all members of its community to discuss any problem that presents itself.

14 IV. The ideas of different members of public postsecondary educational institutional
15 communities will often and quite naturally conflict. But it is not the proper role of public
16 postsecondary educational institutions to attempt to shield individuals from ideas and opinions they
17 find unwelcome, disagreeable, or even deeply offensive. Although public postsecondary educational
18 institutions greatly value civility, and although all members of its community should share in the
19 responsibility for maintaining a climate of mutual respect, concerns about civility and mutual
20 respect should never be used as a justification for closing off discussion of ideas, however offensive or
21 disagreeable those ideas may be to some members of its community.

22 V. The general court hereby declares public postsecondary educational institutions shall
23 commit and follow the principles found in the First Amendment to the United States Constitution
24 and Part I, Article 22 of the New Hampshire constitution. That shall be done through this act.

25 2 New Chapter; Freedom of Speech and Association at Postsecondary Educational Institutions
26 of Higher Education. Amend RSA by inserting after chapter 188-H the following new chapter:

27 CHAPTER 188-I

28 FREEDOM OF SPEECH AND ASSOCIATION

29 AT POSTSECONDARY EDUCATIONAL INSTITUTIONS

30 188-I:1 Definitions:

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1 I. “Benefit” means the following: (1) recognition; (2) registration; (3) the use of facilities of
2 the institution of higher education for meetings or speaking purposes; (4) the use of channels of
3 communication; and (5) funding sources that are otherwise available to other student organizations
4 at the public institution of higher education.

5 II. “Campus community” includes students, administrators, faculty and staff at the
6 institution of higher education and their invited guests.

7 III. “Harassment” shall mean only that expression that is unwelcome, so severe, pervasive,
8 and subjectively and objectively offensive, that a student is effectively denied equal access to
9 educational opportunities or benefits provided by the public institution of higher education.

10 IV “Materially and substantially disrupts” means when a person, with the intent to or with
11 knowledge of doing so, significantly hinders another person’s or group’s expressive activity, prevents
12 the communication of the message, or prevents the transaction of the business of a lawful meeting,
13 gathering or procession by:

14 (a) Engaging in fighting, violent, or other unlawful behavior; or

15 (b) Physically blocking or using threats of violence to prevent any person from attending,
16 listening to, viewing, or otherwise participating in an expressive activity. Conduct that “materially
17 disrupts” shall not include conduct that is protected under the First Amendment to the United
18 States Constitution or Part I, Article 22 of the New Hampshire constitution. Such protected conduct
19 includes, but is not limited to, lawful protests in the outdoor areas of campus generally accessible to
20 the members of the public (except during times when those areas have been reserved in advance for
21 other events), or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short
22 in duration.

23 V. “Outdoor areas of campus” means the generally accessible outside areas of campus where
24 members of the campus community are commonly allowed, such as grassy areas, walkways or other
25 similar common areas and does not include outdoor areas where access is restricted from a majority
26 of the campus community.

27 VI. “Public institution of higher education” means any public technical institute, public
28 junior college, public senior college or university, law school, medical, or dental school, public state
29 college, or other agency of higher education as defined in state law.

30 VII. “Student” means any person who is enrolled on a full-time or part-time basis in a public
31 institution of higher education.

32 VIII. “Student organization” means an officially recognized group at a public institution of
33 higher education, or a group seeking official recognition, comprised of admitted students that
34 receive, or are seeking to receive, benefits through the public institution of higher education.

35 188-I:2 Freedom of Speech and Association at Public Institutions of Higher Education.

36 I. Expressive activities protected under the provisions of this chapter include, but are not
37 limited to, any lawful verbal, written, audio-visual, or electronic means by which individuals may

1 communicate ideas to one another, including all forms of peaceful assembly, protests, speeches and
2 guest speakers, distribution of literature, carrying signs, and circulating petitions.

3 II. The outdoor areas of campuses of public institutions of higher education in this state
4 shall be deemed public forums for the campus community, and public institutions of higher
5 education shall not create “free speech zones” or other designated areas of campus outside of which
6 expressive activities are prohibited. Public institutions of higher education may maintain and
7 enforce reasonable time, place and manner restrictions narrowly tailored in service of a significant
8 institutional interest only when such restrictions employ clear, published, content- and viewpoint-
9 neutral criteria, and provide for ample alternative means of expression. Any such restrictions shall
10 allow for members of the campus community to spontaneously and contemporaneously assemble and
11 distribute literature. Nothing in this section shall be interpreted as limiting the right of student
12 expression elsewhere on campus.

13 III. Any person who wishes to engage in non-commercial expressive activity on campus shall
14 be permitted to do so freely, as long as the person’s conduct is not unlawful and does not materially
15 and substantially disrupt the functioning of the public institution of higher education, subject only to
16 the requirements of this chapter.

17 IV. Nothing in this section shall prohibit public institutions of higher education from
18 maintaining and enforcing reasonable time, place and manner restrictions that are narrowly tailored
19 to serve a significant institutional interest only when such restrictions employ clear, published,
20 content and viewpoint-neutral criteria. Any such restrictions shall allow for members of the campus
21 community to spontaneously and contemporaneously assemble, speak and distribute literature.

22 V. Nothing in this section shall be interpreted as preventing public institutions of higher
23 education from prohibiting, limiting, or restricting expression that the First Amendment does not
24 protect (e.g. true threats, expression directed to provoke imminent lawless actions and likely to
25 produce it,) or prohibiting harassment.

26 VI. Nothing in this section shall enable individuals to engage in conduct that intentionally,
27 materially, and substantially disrupts another’s expressive activity if that activity is occurring in a
28 campus space reserved for that activity under the exclusive use or control of a particular group.

29 188-I:3 Freedom of Association and Nondiscrimination Against Students and Student
30 Organizations. No public institution of higher education shall deny a religious, political, or
31 ideological student organization any benefit or privilege available to any other student organization,
32 or otherwise discriminate against such an organization, based on the expression of the organization,
33 including any requirement that the leaders or members of such organization:

34 I. Affirm and adhere to the organization’s sincerely held beliefs;

35 II. Comply with the organization’s standards of conduct; or

36 III. Further the organization’s mission or purpose, as defined by the student organization

1 188-I:4 Free Speech Education for Members of the Campus Community. Public institutions of
2 higher education shall make public in their handbooks, on their websites, and through their
3 orientation programs for students the policies, regulations, and expectations of students regarding
4 free expression on campus consistent with this chapter.

5 188-I:5 Educational Materials. Public institutions of higher education shall develop materials,
6 programs, and procedures to ensure that those persons who have responsibility for discipline or
7 education of students, such as administrators, campus police officers, residence life officials, and
8 professors, understand the policies, regulations, and duties of public institutions of higher education
9 regarding free expression on campus consistent with this chapter.

10 188-I:6 Accountability to the Public.

11 I. Each public institution of higher education shall publicly post on their website, as well as
12 submit to the governor and state legislature at least 30 days prior to the beginning of the state
13 legislative session, a report which will detail the course of action implemented to be in compliance
14 with the requirements of this chapter. A report shall also be given in the instance of any changes or
15 updates to the chosen course of action. The information required in the report shall be:

16 (a) Accessible from the institution's Internet website home page by use of not more than
17 three links;

18 (b) Searchable by keywords and phrases; and

19 (c) Accessible to the public without requiring registration or use of a user name, a
20 password, or another user identification.

21 II. The report shall include:

22 (a) A description of any barriers to or incidents of disruption of free expression occurring
23 on campus, including but not limited to attempts to block or prohibit speakers and investigations
24 into students or student organizations for their speech. The description shall include the nature of
25 each barrier or incident, as well as what disciplinary action, if any, was taken against members of
26 the campus community determined to be responsible for those specific barriers or incidents involving
27 students shall be reported without revealing those students' personally identifiable information; and

28 (b) Any other information each public institution of higher education deems valuable for
29 the public to evaluate whether free expression rights for all members of the campus community have
30 been equally protected and enforced consistent with this chapter.

31 III. If a public institution of higher education is sued for an alleged violation of First
32 Amendment rights, a supplementary report with a copy of the complaint, or any amended complaint,
33 shall be submitted to the governor and state legislature within 30 days.

34 188-I:7 Remedies. Any person or student association aggrieved by a violation of this chapter
35 may bring an action against the public institution of higher education and its employees acting in
36 their official capacities, responsible for the violation and seek appropriate relief, including, but not
37 limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and court costs. If a

1 court should find a violation of this chapter, it shall issue an award of at least \$5,000. Any person or
2 student organization aggrieved by a violation of this chapter may assert such violation as a defense
3 or counter claim in any disciplinary action or in any civil or administrative proceedings brought
4 against such student or student organization. Nothing in this section shall be interpreted to limit
5 any other remedies available to any person or student organization.

6 188-I:8 Statute of Limitations. A person shall be required to bring suit for violation of this
7 chapter not later than one year after the day the cause of action accrues. For purposes of calculating
8 the one-year limitation period, each day that the violation persists, and each day that a policy in
9 violation of this chapter remains in effect, shall constitute a new day that the cause of action has
10 accrued.

11 188-I:9 Immunity. The state waives immunity under the Eleventh Amendment of the United
12 States Constitution and consents to suit in a federal court for lawsuits arising out of this chapter. A
13 public institution of higher education that violates this chapter is not immune from suit or liability
14 for the violation.

15 188-I:10 Severability. If any provision of this chapter or any application of such provision to
16 any person or circumstance is held to be unconstitutional, the remainder of this chapter and the
17 application of the provision to any other person or circumstance shall not be affected.

18 3 Effective Date. This act shall take effect 60 days after its passage.