

## HOUSE BILL No. 2158

By Representative Garber

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1 AN ACT concerning postsecondary educational institutions; creating the  
2 campus free speech act; requiring the governing body of each such  
3 institution to adopt a policy of free expression; establishing a  
4 committee on free expression at each such institution; providing a  
5 cause of action for violations of the act.  
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. The provisions of sections 1 through 7, and amendments  
9 thereto, shall be known and may be cited as the campus free speech act.

10 Sec. 2. As used in sections 1 through 7, and amendments thereto:

11 (a) "Act" means the campus free speech act.

12 (b) The terms "community college," "municipal university,"  
13 "postsecondary educational institution" and "technical college" mean the  
14 same as such terms are defined in K.S.A. 74-3201b, and amendments  
15 thereto.

16 Sec. 3. The state board of regents and the governing body of each  
17 community college, technical college and municipal university shall  
18 develop and adopt a policy on free expression that includes, but is not  
19 limited to, the following:

20 (a) The primary function of a postsecondary educational institution is  
21 the discovery, improvement, transmission and dissemination of knowledge  
22 by means of research, teaching, discussion and debate. To fulfill such  
23 primary function, the postsecondary educational institution must strive to  
24 ensure the fullest degree of intellectual freedom and free expression.

25 (b) It is not the proper role of a postsecondary educational institution  
26 to shield individuals from speech protected by the first amendment of the  
27 constitution of the United States, including, but not limited to, ideas and  
28 opinions such individuals find unwelcome, disagreeable or offensive.

29 (c) Students and faculty have the freedom to discuss any problem that  
30 presents itself as the first amendment of the constitution of the United  
31 States permits and within the limits of reasonable viewpoint-neutral and  
32 content-neutral restrictions on the time, place and manner of expression  
33 that are consistent with this act and that are necessary to achieve a  
34 compelling institutional interest. Any such restrictions shall be clear,  
35 published and provide ample alternative means of expression. Students  
36 and faculty shall be permitted to assemble and engage in spontaneous

1 expressive activity, provided that such expressive activity is not unlawful  
2 and does not materially and substantially disrupt the operation of the  
3 postsecondary educational institution.

4 (d) Any person who is lawfully present on the campus of a  
5 postsecondary educational institution may protest or demonstrate on such  
6 campus. Any protests or demonstrations that materially and substantially  
7 infringe upon the rights of others to engage in or listen to expressive  
8 activity shall not be permitted and shall be subject to sanction. Such policy  
9 shall not prohibit professors or other instructors from maintaining order in  
10 the classroom.

11 (e) The public areas of campuses of a postsecondary educational  
12 institution are traditional public forums and are open to any speaker under  
13 the same terms and conditions.

14 (f) The campuses of a postsecondary educational institution are open  
15 to any speaker whom students, student groups or members of the faculty  
16 have invited.

17 (g) A postsecondary educational institution shall make all reasonable  
18 efforts and make available all reasonable resources to ensure the safety of  
19 invited speakers. A postsecondary educational institution shall not charge  
20 security fees based on the content of the speech of either the speaker or the  
21 individual or group who invited the speaker. A postsecondary educational  
22 institution may restrict the use of its nonpublic facilities to invited  
23 individuals.

24 (h) A range of disciplinary sanctions shall be provided for anyone  
25 under the jurisdiction of a postsecondary educational institution who  
26 materially and substantially interferes with the free expression of others.

27 (i) (1) In all disciplinary cases involving expressive conduct, a  
28 student shall be entitled to a disciplinary hearing under published  
29 procedures, including, but not limited to:

30 (A) The right to receive advanced written notice of the charges;

31 (B) the right to review the evidence in support of the charges;

32 (C) the right to confront witnesses against the student charged;

33 (D) the right to present a defense;

34 (E) the right to call witnesses;

35 (F) a decision by an impartial arbiter or panel; and

36 (G) the right of appeal.

37 (2) When the potential penalties include a suspension for longer than  
38 30 days or an expulsion from a postsecondary educational institution, a  
39 student shall also be entitled to the right to active assistance of counsel.

40 (j) Any student who has twice been found responsible for infringing  
41 on the expressive rights of others shall be suspended for a minimum of one  
42 year or expelled from the postsecondary educational institution.

43 (k) Students, faculty and staff of a postsecondary educational

1 institution shall be free to take positions on the public controversies of the  
2 day, but the postsecondary educational institution should attempt to remain  
3 neutral, as an institution, on the public policy controversies of the day,  
4 except insofar as administrative decisions on such controversies are  
5 essential to the operation of such institution. A postsecondary educational  
6 institution shall not take any action on the public policy controversies of  
7 the day in such a way as to require students, faculty or staff of such  
8 institution to publicly express a given view of a public policy controversy.

9 (l) No postsecondary educational institution shall deny a student  
10 organization any benefit or privilege available to any other student  
11 organization or otherwise discriminate against a student organization based  
12 on the content of such student organization's expression, including any  
13 requirement that the leaders or members of such student organization:

- 14 (1) Affirm and adhere to the organization's sincerely held beliefs;
- 15 (2) comply with the organization's standards of conduct; or
- 16 (3) further the organization's mission or purpose, as defined by the  
17 student organization.

18 (m) Such policy supersedes and revises any such provisions in a  
19 postsecondary educational institution's policies and procedures to ensure  
20 compatibility with the provisions of such policy on free expression.

21 Sec. 4. (a) The state board of regents and each governing body of a  
22 community college, technical college and municipal university shall  
23 establish a committee on free expression. A committee on free expression  
24 established by the state board of regents shall consist of not fewer than 15  
25 members who shall be appointed by such board. A committee on free  
26 expression established by the governing body of a community college,  
27 technical college or municipal university shall consist of not fewer than  
28 nine members who shall be appointed by the governing body establishing  
29 such committee.

30 (b) On or before September 1, 2023, and each September 1 thereafter,  
31 a committee on free expression shall submit a report to the governing body  
32 that established such committee, the governor and the legislature. For the  
33 committee established by the state board of regents, such report shall be  
34 published on the website of the state board of regents. For all other  
35 committees, such report shall be published on the website of the  
36 postsecondary educational institution for which the committee was  
37 established. Each report shall include:

- 38 (1) A description of any barriers to or disruptions of free expression  
39 within the postsecondary educational institution or institutions examined  
40 by the committee;
- 41 (2) a description of the administrative handling and discipline related  
42 to such disruptions or barriers;
- 43 (3) a description of substantial difficulties, controversies or successes

1 in maintaining a posture of administrative and institutional neutrality with  
2 regard to political or social issues; and

3 (4) any assessments, criticisms, commendations or recommendations  
4 the committee deems fit to include.

5 Sec. 5. Each freshmen orientation program conducted by a  
6 postsecondary educational institution shall include a section describing the  
7 policies and procedures regarding free expression consistent with this act.

8 Sec. 6. (a) The state board of regents shall adopt rules and regulations  
9 to further the purposes of the policies adopted pursuant to this act. Each  
10 governing body of a community college, technical college and municipal  
11 university shall adopt policies and procedures to further the purposes of  
12 the policies adopted pursuant to this act.

13 (b) Nothing in this act shall be construed to prevent a postsecondary  
14 educational institution from regulating student speech or activity that is  
15 prohibited by law.

16 (c) Except as otherwise provided in this act, postsecondary  
17 educational institutions may only restrict student expression if such  
18 expression is not protected by the first amendment of the constitution of  
19 the United States, including:

- 20 (1) Violations of state or federal law;  
21 (2) expression that a court has deemed unprotected defamation;  
22 (3) peer-on-peer harassment or quid pro quo sexual harassment;  
23 (4) true threats;  
24 (5) an unjustifiable invasion of privacy or confidentiality not  
25 involving a matter of public concern;  
26 (6) an action that unlawfully disrupts the operation of a  
27 postsecondary educational institution; and  
28 (7) reasonable time, place and manner restrictions on expressive  
29 activities consistent with policies adopted pursuant to section 1, and  
30 amendments thereto.

31 (d) As used in this section:

32 (1) "Peer-on-peer harassment" means conduct directed by a student  
33 towards another student, on the basis of such student's membership or  
34 perceived membership in a protected class, that is so severe, pervasive and  
35 objectively offensive that it effectively deprives the victim of access to the  
36 educational opportunities or benefits provided by the state educational  
37 institution.

38 (2) "Quid pro quo sexual harassment" means explicitly or implicitly  
39 conditioning a student's participation in an education program or activity  
40 or basing an educational decision on the student's submission to  
41 unwelcome sexual advances, requests for sexual favors or other verbal,  
42 nonverbal or physical conduct of a sexual nature.

43 (3) "True threat" means a statement meant by the speaker to

1 communicate a serious expression of an intent to commit an act of  
2 unlawful violence to a particular individual or group of individuals.

3 Sec. 7. (a) A postsecondary educational institution may restrict  
4 expressive conduct in the public areas of the campus only if such  
5 institution demonstrates that the restriction:

6 (1) Is necessary to achieve a compelling governmental interest;  
7 (2) is the least restrictive means of furthering that compelling  
8 governmental interest;

9 (3) permits other opportunities to engage in the expressive conduct;  
10 and

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

12 (b) The following persons shall have a cause of action in a court of  
13 competent jurisdiction to enjoin any violation of this act and to recover  
14 reasonable attorney fees and court costs:

15 (1) The attorney general; and

16 (2) any person whose expressive rights are violated by a violation of  
17 subsection (a).

18 (c) In any action brought under this section, if the court finds a  
19 violation of subsection (a), the court shall award injunctive relief for the  
20 violation and reasonable attorney fees and court costs. The court shall also  
21 award damages of \$1,000 or actual damages, whichever is higher.

22 (d) An action for a violation of subsection (a) shall be brought within  
23 one year after the date the cause of action accrues. For the purpose of  
24 calculating the one-year limitation period, each day that the violation  
25 persists or each day that a policy in violation of this section remains in  
26 effect constitutes a new violation of this section and shall be considered a  
27 day that the cause of action has accrued.

28 (e) The state hereby waives sovereign immunity and consents to suit  
29 in state and federal court for any action arising out of this act. A  
30 postsecondary educational institution that violates the provisions of this act  
31 shall not be immune from any action or liability for such violation.

32 Sec. 8. This act shall take effect and be in force from and after its  
33 publication in the statute book.