

CHAPTER 100

EDUCATION - PUBLIC SCHOOLS

SENATE BILL 17-062

BY SENATOR(S) Neville T., Baumgardner, Cooke, Crowder, Grantham, Holbert, Jahn, Lundberg, Marble, Priola, Scott, Sonnenberg, Tate, Gardner, Hill, Kefalas, Lambert, Martinez Humenik, Smallwood;
 also REPRESENTATIVE(S) Humphrey and Bridges, Catlin, Everett, Leonard, Lundeen, Neville P., Saine, Van Winkle, Williams D., Wilson, Arndt, Becker J., Beckman, Buck, Buckner, Carver, Coleman, Covarrubias, Danielson, Esgar, Exum, Garnett, Ginal, Hamner, Hansen, Herod, Hooton, Kennedy, Kraft-Tharp, Landgraf, Lawrence, Lebsock, Lee, Lewis, Liston, Lontine, McKean, McLachlan, Melton, Michaelson Jenet, Mitsch Bush, Navarro, Nordberg, Pettersen, Rankin, Ransom, Rosenthal, Singer, Weissman, Willett, Winter, Wist, Young, Duran.

AN ACT**CONCERNING THE RIGHT TO FREE SPEECH ON CAMPUSES OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add 23-5-144** as follows:

23-5-144. Students' right to speak in a public forum - legislative declaration - definitions - violations - court actions - free speech zones. (1) (a) ~~THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE II, SECTION 10 OF THE COLORADO CONSTITUTION EACH PROTECT THE RIGHT TO FREE SPEECH, INCLUDING THE SPEECH OF STUDENTS ENROLLED AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION. THE GENERAL ASSEMBLY DECLARES THAT IT IS A MATTER OF STATEWIDE INTEREST TO PROTECT THE RIGHTS OF STUDENTS TO EXERCISE THEIR FREEDOM OF SPEECH ON THE CAMPUSES OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION, WHILE RECOGNIZING THE RIGHT OF THOSE INSTITUTIONS OF HIGHER EDUCATION TO ENACT REASONABLE TIME, PLACE, AND MANNER RESTRICTIONS THAT PRESERVE THEIR ABILITY TO FULFILL THEIR EDUCATIONAL MISSIONS. AT THE SAME TIME, THE GENERAL ASSEMBLY DECLARES THAT STUDENT EXPRESSION ON THE CAMPUSES OF INSTITUTIONS OF HIGHER EDUCATION IS A VITAL COMPONENT OF THE EDUCATIONAL ENVIRONMENT AT THESE INSTITUTIONS OF HIGHER EDUCATION AND THAT PROMOTING THE FREE AND UNFETTERED EXCHANGE OF IDEAS IN THIS MARKETPLACE OF IDEAS IS ONE WAY IN WHICH THESE INSTITUTIONS OF HIGHER EDUCATION FULFILL THEIR EDUCATIONAL MISSIONS.~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE PROVISIONS OF SUBSECTIONS (2) TO (6) OF THIS SECTION BE CONFINED TO AND APPLY ONLY TO STUDENT EXPRESSION IN A STUDENT FORUM AT AN INSTITUTION OF HIGHER EDUCATION, AS DEFINED HEREIN.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "EXPRESSION" MEANS ANY LAWFUL VERBAL OR WRITTEN MEANS BY WHICH INDIVIDUALS MAY COMMUNICATE IDEAS TO ONE ANOTHER, INCLUDING ALL FORMS OF PEACEFUL ASSEMBLY, PROTESTS, SPEAKING VERBALLY, HOLDING SIGNS, CIRCULATING PETITIONS, AND DISTRIBUTING WRITTEN MATERIALS. "EXPRESSION" INCLUDES VOTER REGISTRATION ACTIVITIES BUT DOES NOT INCLUDE SPEECH THAT IS PRIMARILY FOR A COMMERCIAL PURPOSE, INCLUDING THE PROMOTION, SALE, OR DISTRIBUTION OF ANY PRODUCT OR SERVICE.

(b) "INSTITUTION OF HIGHER EDUCATION" MEANS A PUBLIC POSTSECONDARY INSTITUTION.

(c) "STUDENT" MEANS A PERSON WHO IS ENROLLED FOR EDUCATIONAL PURPOSES AT AN INSTITUTION OF HIGHER EDUCATION.

(d) "STUDENT FORUM" MEANS, AS APPLIED TO STUDENTS, ANY GENERALLY ACCESSIBLE, OPEN, OUTDOOR AREA ON THE CAMPUS OF AN INSTITUTION OF HIGHER EDUCATION, AS WELL AS ANY NONACADEMIC AND PUBLICLY OPEN PORTION OF A FACILITY THAT THE INSTITUTION OF HIGHER EDUCATION HAS TRADITIONALLY MADE AVAILABLE TO STUDENTS FOR EXPRESSIVE PURPOSES.

(3) (a) AN INSTITUTION OF HIGHER EDUCATION SHALL NOT LIMIT OR RESTRICT A STUDENT'S EXPRESSION IN A STUDENT FORUM, INCLUDING SUBJECTING A STUDENT TO DISCIPLINARY ACTION RESULTING FROM HIS OR HER EXPRESSION, BECAUSE OF THE CONTENT OR VIEWPOINT OF THE EXPRESSION OR BECAUSE OF THE REACTION OR OPPOSITION BY LISTENERS OR OBSERVERS TO SUCH EXPRESSION.

(b) NOTHING IN THIS SECTION GRANTS STUDENTS, FACULTY, OR STAFF OF THE COLLEGE OR UNIVERSITY THE RIGHT TO MATERIALLY DISRUPT PREVIOUSLY SCHEDULED OR RESERVED ACTIVITIES IN A PORTION OR SECTION OF THE STUDENT FORUM AT THAT SCHEDULED TIME.

(c) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS PREVENTING AN INSTITUTION OF HIGHER EDUCATION FROM PROHIBITING, LIMITING, OR RESTRICTING EXPRESSION THAT IS NOT PROTECTED UNDER THE FIRST AMENDMENT AND ARTICLE II, SECTION 10 OF THE COLORADO CONSTITUTION.

(4) AN INSTITUTION OF HIGHER EDUCATION SHALL NOT DESIGNATE ANY AREA ON CAMPUS AS A FREE SPEECH ZONE OR OTHERWISE CREATE POLICIES IMPLYING THAT ITS STUDENTS' EXPRESSIVE ACTIVITIES ARE RESTRICTED TO PARTICULAR AREAS OF CAMPUS. AN INSTITUTION OF HIGHER EDUCATION SHALL NOT, EXCEPT FOR THE PURPOSE OF ENACTING TIME, PLACE, AND MANNER RESTRICTIONS PERMITTED PURSUANT TO SUBSECTION (5) OF THIS SECTION, RESTRICT THE RIGHT OF STUDENTS TO ENGAGE IN EXPRESSION IN A STUDENT FORUM.

(5) AN INSTITUTION OF HIGHER EDUCATION SHALL NOT IMPOSE RESTRICTIONS ON THE TIME, PLACE, AND MANNER OF STUDENT EXPRESSION IN A STUDENT FORUM UNLESS THE RESTRICTIONS:

- (a) ARE REASONABLE;
- (b) ARE JUSTIFIED WITHOUT REFERENCE TO THE CONTENT OF THE SPEECH;
- (c) ARE NARROWLY TAILORED TO SERVE A SIGNIFICANT GOVERNMENTAL INTEREST; AND
- (d) LEAVE OPEN AMPLE ALTERNATIVE CHANNELS FOR COMMUNICATION OF THE INFORMATION OR MESSAGE.

(6) ANY STUDENT WHO HAS BEEN DENIED ACCESS TO A STUDENT FORUM FOR EXPRESSIVE PURPOSES PROTECTED BY THIS SECTION MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION TO ENJOIN ANY VIOLATION OF THIS SECTION OR TO RECOVER REASONABLE COURT COSTS AND ATTORNEY FEES.

(7) IN AN ACTION BROUGHT PURSUANT TO SUBSECTION (6) OF THIS SECTION, IF THE COURT FINDS THAT A VIOLATION OCCURRED, THE COURT SHALL AWARD THE AGGRIEVED PARTY INJUNCTIVE RELIEF FOR THE VIOLATION AND SHALL AWARD REASONABLE COURT COSTS AND ATTORNEY FEES.

(8) A STUDENT SHALL BRING AN ACTION PURSUANT TO THIS SECTION WITHIN ONE CALENDAR YEAR AFTER THE DATE THAT THE VIOLATION OCCURRED.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 4, 2017