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Bill Analysis
Legislative Service Commission

H.B. 43
123rd General Assembly
(As Introduced)

Reps. Schuck, Amstutz, Britton, Buchy, Callender, Calvert, Cates, Healy, Householder, Jacobson, Krupinski, Olman, Taylor, Tiberi, Van Vyven, Williams, Netzley

BILL SUMMARY

- Limits the authority of governing boards of public post-secondary educational institutions to restrict student expression if it is protected from government regulation outside of the educational institution.
- Permits students aggrieved by a restriction of expression in violation of the bill to file a civil action to enjoin the enforcement of the restriction and recover reasonable attorney's fees.

CONTENT AND OPERATION

The bill prohibits the governing authority or any employee of public post-secondary educational institutions from adopting or enforcing any rule, regulation, or policy subjecting a student to disciplinary action solely on the basis of speech or other expression, if the speech or expression is protected from governmental restrictions when engaged in off the property of or outside the facilities of the institution. Any rule or policy adopted in violation of the bill's provisions is void and unenforceable. (Secs. 3345.43(B) to (C), 3354.091(B) to (C), 3355.062(B) to (C), and 3357.20(B) to (C).)

The bill's requirements apply to state universities and colleges, community colleges, university branches, technical colleges, and state community colleges.

Exceptions

The bill permits the limitation of speech or other expression that is defamatory speech actionable under civil law; that poses a substantial risk of

disorder creating a threat to public health or safety, substantially interferes with the appropriate discipline required for the operation of the institution, or invades the rights of others; that is obscene; or that is personally abusive or insulting to the hearer and is used in an abusive manner in a situation that presents an actual danger that the speech or expression will cause a breach of peace. Also, the bill permits the limitation of any conduct that violates state criminal law prohibiting disorderly conduct. (Secs. 3345.43(B), 3354.091(B), 3355.062(B), and 3357.20(B).)

In addition, the bill expressly does **not** prohibit the following:

(1) The imposition of discipline for harassment, threats, or intimidation, unless disallowed by the state or federal constitution or laws;

(2) The adoption of reasonable time and place regulations restricting student speech or expression, provided the regulations are content-neutral in matter and application; or

(3) The adoption of rules designed to prevent "hate violence" that is directed at students or employees and denies such individuals full participation in the educational process. (Secs. 3345.43(E) to (G), 3354.091(E) to (G), 3355.062(E) to (G), and 3357.20(E) to (G).)

"Hate violence" is defined by the bill as an act of physical intimidation or physical harassment, physical force or physical violence, or the threat of such force or violence, that is directed against a person or group of persons or their property, because of the ethnicity, race, national origin, religion, sex, sexual orientation, disability, or political or religious beliefs of that person or group. Acts cannot be considered hate violence based on speech alone, except upon a showing of all of the following:

(1) The speech threatens violence against a specific person or group of persons;

(2) The person or group of persons reasonably fears that the violence will be committed because of the speech; and

(3) The person threatening the violence had the apparent ability to carry out the threat. (Secs. 3345.43(A), 3354.091(A), 3355.062(A), and 3357.20(A).)

Cause of action

A student aggrieved by the attempted or actual enforcement of a rule, regulation, or policy enforced in violation of the bill (by either the governing



authority of the institution or one of its employees) may commence a civil action, in the common pleas court of the county in which the institution is located, to obtain an injunction to prohibit enforcement of the restriction and to recover reasonable attorney's fees. (Secs. 3345.43(D), 3354.091(D), 3355.062(D), and 3357.20(D).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 92

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