

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

348B0336

HOUSE ENGROSSED NO. **HB 1087** - 2/19/2019

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Peterson (Sue), Haugaard, and Qualm and Senators Stalzer, Greenfield (Brock), Langer, and Maher

1 FOR AN ACT ENTITLED, An Act to promote intellectual diversity at certain institutions of
2 higher education.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-53 be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Benefit,":

7 (a) Recognition;

8 (b) Registration;

9 (c) The use of an institution's facilities for assemblies, gatherings, meetings, or
10 speaking purposes;

11 (d) The use of communication channels; and

12 (e) Student activity funding or funding from sources other than tax revenues;

13 (2) "Free expression," the right to discuss and present scholarly opinions and conclusions
14 on all matters, within the boundaries of an institution, whether indoors or outdoors,



1 without fear of institutional discipline or restraint, and the right to speak and write
2 on matters of public concern, as a member of the institution's administration, faculty,
3 other staff, and student body, or as a private citizen;

4 (3) "Expressive activity," any lawful, noncommercial, verbal or written means by which
5 one person communicates ideas to another, and includes peaceful assembly, protests,
6 speeches, including by guest speakers, the distribution of literature, the carrying of
7 signs, and the circulation of petitions;

8 (4) "Harassment," conduct that is unwelcome, so severe, pervasive, and objectively
9 offensive that a student is effectively denied equal access to educational opportunities
10 or benefits provided by the institution;

11 (5) "Institution," an institution of higher education under the control of the Board of
12 Regents;

13 (6) "Intellectual diversity," a learning environment that exposes students to and
14 encourages exploration regarding a variety of ideological and political perspectives.

15 Section 2. That chapter 13-53 be amended by adding a NEW SECTION to read:

16 The publicly accessible outdoor areas of an institution are available for expressive activity
17 by students, faculty, their guests, and other members of the university community. In these
18 areas, institutions may maintain reasonable time, place, and manner restrictions, which are
19 narrowly tailored in the service of a significant institutional interest, provided the restrictions
20 employ clear, published, content and viewpoint neutral criteria and provide for alternative
21 means of expression.

22 Restrictions imposed under this section must allow members of the university community
23 to spontaneously and contemporaneously distribute literature, assemble, and engage in
24 expressive activity, provided their conduct is not unlawful and does not significantly disrupt the

1 functioning of the institution. No institution may restrict expressive activity to a designated free
2 speech zone or through policy or otherwise, restrict expressive activities to a particular area of
3 the institution.

4 Nothing in this section limits the rights of any person to engage in expressive activity
5 elsewhere on campus.

6 Nothing in this section enables a person to engage in conduct that intentionally, materially,
7 and substantially disrupts another's expressive activity, if that expressive activity is occurring
8 in an institutional space that is reserved for the activity and is under the exclusive use or control
9 of the other person. A material and substantial disruption occurs when a person, with the intent
10 to or knowledge of doing so, significantly hinders another's expressive activity, prevents the
11 other person from communicating a message, or prevents the transaction of business during a
12 lawful meeting, gathering, or procession by engaging in fighting, violence, or seriously
13 disruptive behavior, or by physically blocking or hindering another person from attending,
14 listening to, viewing, or otherwise participating in an expressive activity.

15 Nothing in this section precludes a person from engaging in conduct that is protected under
16 the First Amendment to the United States Constitution or under S.D. Const., Art. VI, §§ 4 and

17 5. Such protected conduct includes:

18 (1) Lawful protests and counter-protests in the outdoor areas of institutions, provided:

19 (a) Those areas are generally accessible to members of the university community;

20 and

21 (b) Those areas have not been reserved in advance for other events; and

22 (2) Minor, brief, or fleeting nonviolent disruptions of events that are isolated and of short
23 duration.

24 Nothing in this section prevents an institution from prohibiting, limiting, or restricting

1 categories of expression that are not protected under the First Amendment to the United States
2 Constitution, including true threats, expression intended to provoke and likely to produce
3 imminent lawless action, expression that a court has deemed defamatory, expression that
4 unlawfully violates the confidentiality or privacy of another person, or any expression that
5 constitutes harassment.

6 Section 3. That chapter 13-53 be amended by adding a NEW SECTION to read:

7 Each institution shall, through policy, prohibit a student from harassing another student. An
8 institution may not define harassment more expansively than it is defined in section 1 of this
9 Act.

10 Section 4. That chapter 13-53 be amended by adding a NEW SECTION to read:

11 An institution may not:

- 12 (1) Deny an ideological, political, or religious student organization any benefit or
13 privilege available to any other student organization;
- 14 (2) Discriminate against an ideological, political, or religious student organization based
15 on the expression of the organization; or
- 16 (3) Prohibit an ideological, political, or religious student organization from requiring that
17 its leaders, the members of the organization, or both:
 - 18 (a) Affirm and adhere to the organization's sincerely held beliefs;
 - 19 (b) Comply with the organization's standards of conduct; or
 - 20 (c) Further the organization's mission or purpose, as defined by the organization.

21 Section 5. That chapter 13-53 be amended by adding a NEW SECTION to read:

22 Each institution shall include in the institution's handbooks, publish on the institution's
23 website, and include in student orientation, all policies, rules, and expectations of students with
24 respect to free expression within the boundaries of the institution. Each institution shall provide

1 training to administrators, faculty, and relevant employees, including security personnel and
2 residence life officials, regarding the institution's freedom of expression policies.

3 Section 6. That chapter 13-53 be amended by adding a NEW SECTION to read:

4 On or before January first of each year, each institution shall prepare a report that sets forth
5 all actions taken by the institution to promote and ensure intellectual diversity and the free
6 exchange of ideas, and to otherwise comply with this Act. The institution shall also:

7 (1) Describe in the report any barriers to free expression within the boundaries of the
8 institution or any reported incidents in which free expression was disrupted, and
9 include:

10 (a) Any attempts to block or prohibit a speaker;

11 (b) Any investigation into students or student organizations based on their speech;

12 and

13 (c) Any disciplinary action that resulted from an incident, provided that any
14 description of an incident involving a student may not include or reveal the
15 student's personally identifiable information;

16 (2) Post the report on the institution's website, in a manner that is readily accessible and
17 clearly defined using a separately identified tab on the website's navigation bar;

18 (3) Make the report searchable by the use of keywords and phrases;

19 (4) Make the report accessible without requiring registration, a user name, a password,
20 or any other identifier;

21 (5) Provide a copy of each report to the Governor, the Board of Regents, and to each
22 member of the Legislature; and

23 (6) If subjected to legal action resulting from an alleged violation of the First
24 Amendment, provide a revised report, together with a copy of any complaint or

1 amended complaint, to the Governor and the members of the Legislature within thirty
2 days.

3 Section 7. That chapter 13-53 be amended by adding a NEW SECTION to read:

4 The Board of Regents shall by policy require each institution under its control to maintain
5 a commitment to the principles of free expression and encourage the timely and rational
6 discussion of topics that promote the ethical and intellectual development and intellectual
7 diversity of students enrolled in each institution. The policy required by this section shall:

- 8 (1) Recognize that the right to engage in free expression is constitutionally protected;
- 9 (2) Recognize the right of administrators, faculty, other staff, and students to discuss any
10 problem or issue that presents itself, even if there are varying perspectives regarding
11 the problem or issue and even if the problem or issue conflicts with the institution's
12 values and principles;
- 13 (3) Recognize that a person should not be institutionally shielded from a viewpoint that
14 the person finds to be unwelcome, disagreeable, or offensive, provided the viewpoint
15 is shared in a manner that evidences civility and mutual respect;
- 16 (4) Recognize that encouraging intellectual diversity and fostering the ability of the
17 administrators, faculty, other staff, and students to engage in debate and deliberation
18 in an effective and responsible manner is an essential part of each institution's
19 educational mission;
- 20 (5) Recognize that while administrators, faculty, other employees, and students are free
21 to criticize and contest views expressed within the boundaries of an institution, and
22 to criticize and contest speakers who are invited to the institution, administrators,
23 faculty, other employees, and students may not obstruct or otherwise interfere with
24 the conduct of the institution or the freedom of others to express views; and

1 (6) Permit the maintenance and enforcement of reasonable restrictions on the time, place,
2 and manner in which expressive activities may occur, as provided for in section 2 of
3 this Act.

4 Section 8. That chapter 13-53 be amended by adding a NEW SECTION to read:

5 The Board of Regents shall implement a policy that offers equal opportunities in
6 employment, as required by law, to all persons qualified by academic preparation, experience,
7 and ability, without discrimination based on ideological or political perspectives.