

Introduced by

Representatives Rick C. Becker, M. Johnson, Kading, Toman

Senators Casper, Myrdal

1 A BILL for an Act to create and enact a new chapter to title 15 of the North Dakota Century
2 Code, relating to freedom of speech at state institutions of higher education.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 15 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter, unless the context otherwise requires:

8 1. "Free speech" means the clauses of section 4 of article I of the Constitution of North
9 Dakota and the first amendment to the Constitution of the United States which protect
10 freedom of speech and forbid laws abridging freedom of speech.

11 2. "Peer-on-peer harassment" means discriminatory conduct directed toward a student
12 on the basis of the student's real or perceived membership in a protected class which
13 is so severe, pervasive, and objectively offensive that it deprives the student of access
14 to the educational opportunities or benefits provided by a state institution of higher
15 education. Peer-on-peer harassment does not include constitutionally protected
16 expressive activity.

17 3. "Public forum" means an open, outdoor area on the campus of a state institution of
18 higher education or any facility the institution has opened to students for expression.

19 4. "Semester" means one-half of an academic year at an institution of higher education.

20 5. "Student" means an individual enrolled in a course of study in a state institution of
21 higher education, and organizations comprised of individuals currently enrolled at a
22 state institution of higher education.

23 6. "True threat" means a statement through which the speaker means to communicate a
24 serious expression of an intent to commit an act of unlawful violence to a particular

1 individual or group of individuals, regardless of whether the speaker intends to carry
2 out the threat.

3 **Freedom of speech policy.**

4 The state board of higher education shall adopt a policy on free speech that must apply to
5 all students. The policy:

- 6 1. Must confirm free speech is a fundamental right, and each state institution of higher
7 education is committed to free and open inquiry by students in all matters.
- 8 2. Must guarantee students the broadest possible latitude to speak, write, listen,
9 challenge, and learn to discuss any issue that presents itself on campus.
- 10 3. May not shield individuals from constitutionally protected expression merely because it
11 is considered unwelcome, disagreeable, or offensive.
- 12 4. May not prohibit any type of speech or expressive activity, except as otherwise
13 provided in this chapter.
- 14 5. Must prohibit each state institution of higher education from restricting speech or
15 expressive activity except for situations that involve:
 - 16 a. Violations of state or federal law.
 - 17 b. Expression that a court has deemed defamation.
 - 18 c. True threats or peer-on-peer harassment.
 - 19 d. An unjustifiable invasion of privacy or confidentiality.
 - 20 e. An action that directly conflicts with the function of an institution.
 - 21 f. Reasonable viewpoint-neutral and content-neutral restrictions on the time, place,
22 and manner of expression, consistent with state law and in service of a significant
23 institutional interest, if the restrictions are clear, published, and provide ample
24 alternative means for expression. The restrictions must allow members of the
25 university community to assemble spontaneously and contemporaneously and
26 distribute literature in the open, outdoor areas of campus.
- 27 6. Must authorize any student to criticize and contest the views of the community of a
28 state institution of higher education, except the student may not obstruct or otherwise
29 interfere with the freedom of others to express views contrary to the student.

1 7. Must promote a lively and fearless freedom of debate and deliberation while protecting
2 free speech when a state institution of higher education or its community condemns or
3 attempts to restrict speech.

4 **Bill of student rights.**

5 The state board of higher education free speech policy must include a bill of student rights

6 that:

- 7 1. Recognizes there are certain fundamental and indisputable rights to freedom of
8 inquiry, freedom of thought, and freedom of expression in each state institution of
9 higher education.
- 10 2. Encourages students to seek truth and knowledge and does not abridge the right of a
11 student to reveal findings, by both spoken and written word, even if in so doing the
12 student might be at variance with peers or the community.
- 13 3. Reassures students that dissenting or disagreeing with generally accepted truth and
14 knowledge is acceptable and essential to free debate and inquiry, and that a student
15 may not be subject to any non-academic punishment, discipline, or censorship by a
16 state institution of higher education for the content of the student's lawful speech.
- 17 4. Recognizes that, in exercising freedom of speech, students may not interfere with the
18 academic process of a class.

19 **Public assembly and expression.**

20 Subject to the limitations in this chapter, each state institution of higher education shall allow
21 peaceful assembly and the expression of ideas and opinions in any public forum to facilitate
22 robust debate and the free exchange of ideas.

23 **Limited restrictions on assembly and expression.**

- 24 1. A state institution of higher education may require any individual who is not employed
25 by or enrolled in the institution to obtain prior permission or authorization from the
26 institution to use a public forum to demonstrate, protest, or assemble to exercise the
27 right to free speech. If prior permission or authorization is required, the appropriate
28 institution administrator shall evaluate the request using content-neutral and
29 viewpoint-neutral criteria, and process the request within a reasonable length of time.
- 30 2. Subject to reasonable time, place, and manner restrictions, this chapter does not limit
31 the right to student expression at any public place on the premises of a state institution

- 1 of higher education if the expressive activity or related student conduct does not
2 substantially disrupt essential activities and functions of the institution by:
3 a. Substantially obstructing building entrances, walkways, and rights-of-way.
4 b. Obstructing vehicular or pedestrian traffic on or adjacent to the institution.
5 c. Interfering with classes, meetings, events, or ceremonies, or other essential
6 processes of the institution.

7 **Free speech notices.**

8 Each state institution of higher education shall provide notice of the protections for free
9 speech in this chapter to all students, faculty members, and employees within seven days after
10 the commencement of each fall semester. The notice must be communicated by electronic mail
11 or other electronic communication, and must include the student bill of rights and the practices
12 prohibited by this chapter.

13 **Violations - Injunctions.**

14 If the state board of higher education or an institution under its control is in violation of this
15 chapter, a student may file a complaint or petition for an injunction in a court with proper
16 jurisdiction. If the student prevails in the court case, the court shall award actual damages, if
17 applicable, plus attorney's fees and court costs.