

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 3586

By: McCall

COMMITTEE SUBSTITUTE

An Act relating to higher education; creating the
Forming Open and Robust University Minds Act;
defining terms; protecting specified expressive
activities; authorizing reasonable time, place and
manner restrictions; allowing designation of limited
traditional public forums; interpreting provision;
permitting person to engage in noncommercial
expressive activity; providing exceptions; providing
certain interpretations; prohibiting discrimination
against certain student organization; requiring state
educational institutions to develop handbooks and
materials regarding free expression; permitting
certain legal action; providing for statute of
limitation; providing intent of Legislature for
adoption of model policy; providing for codification;
and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3249 of Title 70, unless there
is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Forming
Open and Robust University Minds Act".

B. As used in this act only:

1 1. "Benefit" means the following:

- 2 a. recognition,
- 3 b. registration,
- 4 c. the use of facilities of the institution of higher
- 5 education for meetings or speaking purposes,
- 6 d. the use of channels of communication, and
- 7 e. funding sources that are otherwise available to other
- 8 student associations at the public institution of
- 9 higher education;

10 2. "Campus community" includes students, administrators,

11 faculty and staff at the institution of higher education and their

12 invited guests;

13 3. "Counterdemonstration" means lawful action or conduct that

14 criticizes or objects to the free expression activities of others on

15 campus, and does not violate the rights of others in the campus

16 community by materially disrupting previously scheduled or reserved

17 activities in a portion or section of the campus at that scheduled

18 time;

19 4. "Harassment" shall mean only that expression that is

20 unwelcome, directed toward a person and is discriminatory on the

21 basis prohibited by federal or state law and that is so severe,

22 pervasive, and subjectively and objectively offensive that it

23 unreasonably interferes with an individual's access to educational

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opportunities or benefits provided by the public institution of higher education;

5. "Outdoor areas of campus" means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways or other similar common areas, and does not include outdoor areas where access is restricted to a majority of the campus community;

6. "State educational institution" means the term as defined in Section 3102 of Title 70 of the Oklahoma Statutes;

7. "Student" means any person who is enrolled on a full-time or part-time basis in a state educational institution; and

8. "Student organization" means an officially recognized group at a public institution of higher education, or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through the institution of higher education as defined in this section.

C. Expressive activities protected under the provisions of the Forming Open and Robust University Minds Act include, but are not limited to, any lawful verbal or written means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches and guest speakers, distribution of literature, carrying signs and circulating petitions.

1 D. State educational institutions may maintain and enforce
2 reasonable time, place and manner restrictions narrowly tailored in
3 service of a significant institutional interest only when such
4 restrictions employ clear, published, content- and viewpoint-neutral
5 criteria, and provide for ample alternative means of expression.
6 Any such restrictions shall allow for members of the campus
7 community to spontaneously and contemporaneously assemble and
8 distribute literature. State educational institutions may designate
9 outdoor areas as limited traditional public forums for use by campus
10 community members for a limited purpose.

11 E. Nothing in the Forming Open and Robust University Minds Act
12 shall be interpreted as limiting the right of student expression
13 elsewhere on campus.

14 F. Any person who wishes to engage in noncommercial expressive
15 activity on campus shall be permitted to do so freely, as long as
16 the person's conduct is not unlawful and does not materially and
17 substantially disrupt the functioning of the state educational
18 institution, subject only to the requirements of subsection D of
19 this section.

20 G. Nothing in the Forming Open and Robust University Minds Act
21 shall prohibit state educational institutions from maintaining and
22 enforcing reasonable time, place and manner restrictions that are
23 narrowly tailored to serve a significant institutional interest only
24 when such restrictions employ clear, published, content- and

1 viewpoint-neutral criteria. Any such restrictions shall allow for
2 members of the campus community to spontaneously and
3 contemporaneously assemble.

4 H. Nothing in the Forming Open and Robust University Minds Act
5 shall be interpreted as preventing state educational institutions
6 from prohibiting, limiting or restricting expression that the First
7 Amendment does not protect (e.g., true threats, and expression
8 directed to provoke imminent lawless actions and likely to produce
9 it), or prohibiting harassment as defined in paragraph 4 of
10 subsection B of this section.

11 I. Nothing in the Forming Open and Robust University Minds Act
12 shall be interpreted as limiting the right of members of the campus
13 community to hold demonstrations or counterdemonstrations, so long
14 as the conduct of such demonstrations or counterdemonstrations is
15 not unlawful and does not materially and substantially prohibit the
16 free expression rights of others on campus, or disrupt the
17 functioning of the institution of higher education.

18 J. No state educational institution may deny a belief-based
19 student organization any benefit or privilege available to any other
20 student organization, or otherwise discriminate against a belief-
21 based organization based on the expression of the organization,
22 including any requirement that the leaders or members of such
23 organization:

1 1. Affirm and adhere to the organization's sincerely held
2 beliefs;

3 2. Comply with the organization's standards of conduct; or

4 3. Further the organization's mission or purpose, as defined by
5 the student organization.

6 K. State educational institutions shall make public in their
7 handbooks, on their websites, and through their orientation programs
8 for students the policies, regulations and expectations of students
9 regarding free expression on campus consistent with the Forming Open
10 and Robust University Minds Act.

11 L. State educational institutions shall develop materials,
12 programs and procedures to ensure that those persons who have
13 responsibility for discipline or education of students, such as
14 administrators, campus police officers, residence life officials and
15 professors, understand the policies, regulations and duties of state
16 educational institutions regarding free expression on campus
17 consistent with the Forming Open and Robust University Minds Act.

18 M. Any person or student association aggrieved by a violation
19 of this act may bring an action in Oklahoma state courts against a
20 state educational institution and any other persons responsible for
21 the violation and seek appropriate relief, including, but not
22 limited to, injunctive relief, monetary damages, reasonable attorney
23 fees and court costs. Any person or student organization aggrieved
24 by a violation of this act may assert such violation as a defense or

1 counterclaim in any disciplinary action or in any civil or
2 administrative proceedings brought against such student or student
3 organization. Nothing in this section shall be interpreted to limit
4 any other remedies available to any person or student organization.

5 N. A person shall be required to bring suit for violation of
6 this section not later than one (1) year after the day the cause of
7 action accrues. For purposes of calculating the one-year limitation
8 period, each day that the violation persists and each day that a
9 policy in violation of this section remains in effect shall
10 constitute a new violation of this section and therefore a new day
11 that the cause of action has accrued.

12 O. It is the intent of the Legislature that the Oklahoma State
13 Regents for Higher Education adopt a model policy for each state
14 educational institution to adopt on free expression that contains,
15 at least, the following:

16 1. A statement that the primary function of an institution of
17 higher education is the discovery, improvement, transmission and
18 dissemination of knowledge by means of research, teaching,
19 discussion and debate. This statement shall provide that, to
20 fulfill this function, the institution must strive to ensure the
21 fullest degree of intellectual freedom and free expression; and

22 2. A statement that it is not the proper role of the
23 institution to shield individuals from speech protected by the First
24 Amendment, including, without limitation, ideas and opinions they

1 find unwelcome, disagreeable or even deeply offensive; that students
2 and faculty have the freedom to discuss any problem that presents
3 itself as the First Amendment permits and within the limits of
4 reasonable viewpoint- and content-neutral restrictions on time,
5 place and manner of expression that are consistent with the Forming
6 Open and Robust University Minds Act and that are necessary to
7 achieve a significant institutional interest, provided that these
8 restrictions are clear, published and provide ample alternative
9 means of expression. Students and faculty shall be permitted to
10 assemble and engage in spontaneous expressive activity as long as
11 such activity is not unlawful and does not materially and
12 substantially disrupt the functioning of the institution, subject to
13 the requirements of this subsection, and that the public areas of
14 campuses of the institution are designated public forums, open on
15 the same terms to any speaker.

16 SECTION 2. This act shall become effective November 1, 2018.

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