

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3586

By: McCall, Downing, McDugle,
West (Kevin), Kannady, West
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11 COMMITTEE SUBSTITUTE

12 An Act relating to higher education; creating the
13 Forming Open and Robust University Minds Act;
14 defining terms; protecting specified expressive
15 activities; authorizing reasonable time, place and
16 manner restrictions; allowing designation of limited
17 traditional public forums; interpreting provision;
18 permitting person to engage in noncommercial
19 expressive activity; providing exceptions; providing
20 certain interpretations; prohibiting discrimination
21 against certain student organization; requiring state
22 educational institutions to develop handbooks and
23 materials regarding free expression; permitting
24 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.

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

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

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

6 B. As used in this act only:

7 1. "Benefit" means the following:

- 8 a. recognition,
- 9 b. registration,
- 10 c. the use of facilities of the institution of higher
11 education for meetings or speaking purposes,
- 12 d. the use of channels of communication, and
- 13 e. funding sources that are otherwise available to other
14 student associations at the public institution of
15 higher education;

16 2. "Campus community" includes students, administrators,
17 faculty and staff at the institution of higher education and their
18 invited guests;

19 3. "Counterdemonstration" means lawful action or conduct that
20 criticizes or objects to the free expression activities of others on
21 campus, and does not violate the rights of others in the campus
22 community by materially disrupting previously scheduled or reserved
23 activities in a portion or section of the campus at that scheduled
24 time;

1 4. "Harassment" shall mean only that expression that is
2 unwelcome, directed toward a person and is discriminatory on the
3 basis prohibited by federal or state law and that is so severe,
4 pervasive, and subjectively and objectively offensive that it
5 unreasonably interferes with an individual's access to educational
6 opportunities or benefits provided by the public institution of
7 higher education;

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

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

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

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

22 C. Expressive activities protected under the provisions of the
23 Forming Open and Robust University Minds Act include, but are not
24 limited to, any lawful verbal or written means by which individuals

1 may communicate ideas to one another, including all forms of
2 peaceful assembly, protests, speeches and guest speakers,
3 distribution of literature, carrying signs and circulating
4 petitions.

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

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

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

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1 G. Nothing in the Forming Open and Robust University Minds Act
2 shall prohibit state educational institutions from maintaining and
3 enforcing reasonable time, place and manner restrictions that are
4 narrowly tailored to serve a significant institutional interest only
5 when such restrictions employ clear, published, content- and
6 viewpoint-neutral criteria. Any such restrictions shall allow for
7 members of the campus community to spontaneously and
8 contemporaneously assemble.

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

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

23 J. No state educational institution may deny a belief-based
24 student organization any benefit or privilege available to any other

1 student organization, or otherwise discriminate against a belief-
2 based organization based on the expression of the organization,
3 including any requirement that the leaders or members of such
4 organization:

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

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

8 3. Further the organization's mission or purpose, as defined by
9 the student organization.

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

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

22 M. Any person or student association aggrieved by a violation
23 of this act may bring an action in Oklahoma state courts against a
24 state educational institution and any other persons responsible for

1 the violation and seek appropriate relief, including, but not
2 limited to, injunctive relief, monetary damages, reasonable attorney
3 fees and court costs. Any person or student organization aggrieved
4 by a violation of this act may assert such violation as a defense or
5 counterclaim in any disciplinary action or in any civil or
6 administrative proceedings brought against such student or student
7 organization. Nothing in this section shall be interpreted to limit
8 any other remedies available to any person or student organization.

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

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

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

3 2. A statement that it is not the proper role of the
4 institution to shield individuals from speech protected by the First
5 Amendment, including, without limitation, ideas and opinions they
6 find unwelcome, disagreeable or even deeply offensive; that students
7 and faculty have the freedom to discuss any problem that presents
8 itself as the First Amendment permits and within the limits of
9 reasonable viewpoint- and content-neutral restrictions on time,
10 place and manner of expression that are consistent with the Forming
11 Open and Robust University Minds Act and that are necessary to
12 achieve a significant institutional interest, provided that these
13 restrictions are clear, published and provide ample alternative
14 means of expression. Students and faculty shall be permitted to
15 assemble and engage in spontaneous expressive activity as long as
16 such activity is not unlawful and does not materially and
17 substantially disrupt the functioning of the institution, subject to
18 the requirements of this subsection, and that the public areas of
19 campuses of the institution are designated public forums, open on
20 the same terms to any speaker.

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

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23 COMMITTEE REPORT BY: COMMITTEE ON HIGHER EDUCATION AND CAREER TECH,
24 dated 02/28/2018 - DO PASS, As Amended and Coauthored.