AN ACT relating to freedom of speech at public postsecondary education institutions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164.348 is amended to read as follows:

(1) For purposes of this section:

(a) "Institution" means a public postsecondary education institution in the Commonwealth of Kentucky;

(b) "Faculty" means any person tasked by a public postsecondary education institution with providing scholarship, academic research, or teaching, regardless of whether the person is compensated by the public postsecondary education institution; and

(c) "Public" means all individuals that are not a faculty member, student, staff, or otherwise affiliated with an institution;

(d) "Staff" means an individual who is employed by an institution but is not faculty, including but not limited to a student worker, graduate student worker, or other non-faculty staff; and

(e) "Student" means an individual currently enrolled in at least one (1) credit hour at a public postsecondary education institution or a student organization registered pursuant to the policies of a public postsecondary education institution.

(2) Consistent with its obligations to respect the rights secured by the Constitutions of the United States and the Commonwealth of Kentucky, a governing board of a public postsecondary education institution shall adopt policies to ensure that:

(a) The institution protects the fundamental and constitutional right of all students, faculty, staff, and the public to freedom of expression, as protected by the First Amendment to the Constitution of the United States and Section 1 of the Constitution of Kentucky:
(b) The institution grants students, faculty, staff, and the public the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue;

(c) The institution does not restrict, regulate, or punish speech or conduct that is protected speech or expression that occurs off-campus, whether it be in-person or online, except conduct that is prohibited under Title IX of the Education Amendments of 1972, 20 U.S.C. secs. 1681 et seq., applicable federal regulations, binding federal judicial precedent, or state or federal law;

(d) The institution commits to maintaining a marketplace of ideas where the free exchange of ideas is not suppressed because an idea put forth is considered by some or even most of the members of the institution's community to be offensive, unwise, disagreeable, conservative, liberal, traditional, or radical;

(e) Students, faculty, staff, and the public do not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject so that a lively and fearless freedom of debate and deliberation is promoted and protected;

(f) The expression of a student's religious or political viewpoints in classroom, homework, artwork, and other written and oral assignments is free from discrimination or penalty based on the religious or political content of the submissions;

(g) 1. The selection of students to speak at official events is made in a viewpoint-neutral manner;

2. The prepared remarks of the student are not altered before delivery, except in a viewpoint-neutral manner, unless requested by the student. However, student speakers shall not engage in speech that is obscene, vulgar, offensively lewd, or indecent; and
3. If the content of the student's speech is such that a reasonable observer
may perceive affirmative institutional sponsorship or endorsement of the
student speaker's religious or political viewpoint, the institution shall
communicate, in writing, orally, or both, that the student's speech does
not reflect the endorsement, sponsorship, position, or expression of the
institution;

(h) Student religious and political organizations are allowed equal access to
public forums, room reservations, facilities, or other institutional grounds
on the same basis as nonreligious and nonpolitical organizations;

(i) No recognized religious or political student organization is hindered or
discriminated against in the ordering of its internal affairs, selection of leaders
and members, defining of doctrines and principles, and resolving of
organizational disputes in the furtherance of its mission, or in its
determination that only persons committed to its mission should conduct such
activities;

(j) Student activity fee funding to a student organization is not
impacted by the viewpoints that the student
organization advocates;

2. Any authority to distribute any institutional funding among student
organizations vested with the student government, or any other
student organization, shall be contingent upon a viewpoint-neutral
distribution of funds, in accordance with the First Amendment to the
Constitution of the United States and this subsection;

(k) The generally accessible, open, outdoor areas of the campus be
maintained as traditional public forums for students, faculty, staff, and
the public to express their views, so that the free expression of students,
faculty, staff, and the public is not limited to particular areas of the campus
often described as "free speech zones";

\( (l) \)\( (k) \) There shall be no buffer to any area of a building or residence hall that is immediately adjacent to a generally accessible, open, outdoor area of the campus and used as a traditional public forum for students, faculty, staff, and the public to express their views;

\( (m) \) There shall be no restrictions on the time, place, and manner of student speech that occurs in the outdoor areas of campus or is protected by the First Amendment of the United States Constitution, except for restrictions that are:

1. Reasonable;
2. Justified without reference to the content of the regulated speech;
3. Narrowly tailored to serve a compelling governmental interest; and
4. Limited to provide ample alternative options for the communication of the information;

\( (n) \)\( (l) \) Permit requirements do not prohibit:

a. Spontaneous outdoor assemblies or outdoor distribution of literature, in generally accessible outdoor areas, including but not limited to generally accessible courtyards between residence halls or the generally accessible outdoor areas immediately adjacent to residence halls; and

b. Spontaneous use of tables, stationary displays, or yard signs, or the exhibition of images in the generally accessible, open, outdoor areas of the campus;

2. The expressive activity protected by subparagraph 1. of this paragraph shall be permitted by the institution if the expressive activity would not:

a. Interfere with the normal operations of the institution, including but not limited to classes, scheduled meetings, events,
ceremonies, and other educational processes;

b. Prevent or substantially restrict vehicular or pedestrian traffic;

or

c. Interfere with the use or delivery of emergency services; and

3. Any [although an institution may adopt a ] policy adopted by an institution that grants members of the university community the right to reserve certain outdoor spaces in advance may not restrict the expressive activity protected by subparagraph 1.a. of this paragraph:

(o) All students and faculty are allowed to invite guest speakers to campus to engage in free speech regardless of the views of the guest speakers;

(p) Students are not charged fees based on the content of their speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to the speech;

(q) The institution does not disinvite a speaker invited by a student, student organization, or faculty member because the speaker's anticipated speech may be considered offensive, unwise, disagreeable, conservative, liberal, traditional, or radical by students, faculty, administrators, government officials, or members of the public; and

(r) The institution defines student-on-student harassment to mean unwelcome conduct directed toward a student that is discriminatory on a basis prohibited by federal or state law, and that is so severe, pervasive, and objectively offensive that it effectively denies equal access to an educational opportunity or benefit.

3. (a) Any person aggrieved by a violation of any policy adopted or required to have been adopted pursuant to subsection (2) of this section shall have a cause of action against the institution, or any of its agents acting in their official capacities, for damages arising from the violation, including reasonable
attorney's fees and litigation costs.

(b) A claim brought pursuant to this subsection may be asserted in any court of competent jurisdiction within one (1) year of the date the cause of action accrued. The cause of action shall be deemed to have accrued at the point in time the violation ceases or is cured by the institution.

(c) Excluding reasonable attorney's fees and litigation costs, any prevailing claimant shall be awarded no less than one thousand dollars ($1,000) but no more than two hundred fifty thousand dollars ($250,000) cumulatively per action. If multiple claimants prevail and the damages awarded would exceed two hundred fifty thousand dollars ($250,000), the court shall divide two hundred fifty thousand dollars ($250,000) amongst all prevailing claimants equally.

(d) The Commonwealth waives immunity for prospective equitable and declaratory relief only, under the Eleventh Amendment to the Constitution of the United States, for cases brought against any institution in federal jurisdictions by any person aggrieved by a violation of any policy adopted or required to have been adopted pursuant to subsection (2) of this section against the institution, or any of its agents acting in their official capacities, for damages arising from the violation, including but not limited to reasonable attorney's fees and litigation costs.

(4) If it is determined, after a final decision in an action brought pursuant to subsection (3) of this section, that:

(a) A faculty member or administrator knowingly and intentionally restricted the protected speech or otherwise penalized an individual in violation of any policy adopted or required to have been adopted pursuant to subsection (2) of this section, the faculty member or administrator shall be subject to
discipline by the institution through the normal disciplinary processes of the institution, and such discipline may include termination if supported by the totality of the circumstances; and

(b) Any student organization empowered to distribute institutional funding among other student organizations, knowingly and intentionally violated any policy adopted or required to have been adopted pursuant to subsection (2) of this section, the institution shall suspend the student government organization’s authority to distribute institutional funding for a period of at least one (1) year. During this period, all institutional funding for student organizations shall be distributed by the institution.

(5) (a) An institution shall not retaliate against any member of the campus community who:

1. Files a complaint for an alleged violation of any policy adopted or required to have been adopted pursuant to subsection (2) of this section, including but not limited to any individual who brings an action in accordance with subsection (3) of this section; and

2. Acts to protect, or refuses to infringe upon, the free expression of another as protected by any policy adopted or required to have been adopted pursuant to subsection (2) of this section, the First Amendment to the Constitution of the United States, or Section I of the Constitution of Kentucky.

(b) For the purposes of this section, "retaliation" includes but is not limited to a dismissal, suspension, expulsion, reassignment of job duties, job transfer, decrease in funding, termination or nonrenewal of a teaching contract or an extracurricular contract, or other disciplinary act that is intended to punish, embarrass, or harm the individual.

(6) (a) The policies adopted pursuant to subsection (2) of this section shall be made
available to students and faculty using the following methods:

1. Publishing in the institution’s student handbook and faculty handbook, whether paper or electronic; and

2. Posting to a prominent location on the institution’s Web site; and

3. Presenting and distributing the information in orientation programs for all new students, faculty, and staff.

(b) The policies adopted pursuant to subsection (2) of this section may also be mailed to students and faculty using the following methods:

1. Mailing electronically to students, faculty, and staff annually using their institutionally provided e-mail addresses; or

2. Including in orientation programs for new students and new faculty.

(7)(5)

(a) The Council on Postsecondary Education shall develop instructional materials and model trainings for institutions to ensure that members of the campus community understand the role of the institution in preserving the fundamental and constitutional rights of all students, faculty, staff, and the public to freedom of expression, as protected by the First Amendment to the Constitution of the United States, and Section 1 of the Constitution of Kentucky;

(b) An institution shall present instructional materials and trainings to the following members of the campus community to ensure that those individuals understand the role of the institution, and the individual when acting on behalf of the institution, in preserving the fundamental and constitutional rights of all students, faculty, staff, and members of the public to freedom of expression, as protected by the institution’s policies adopted pursuant to subsection (2) of this section, the First Amendment to the Constitution of the United States, and Section 1 of the Constitution of Kentucky:
1. All faculty members and any student responsible for the instruction of another student, including but not limited to teaching assistants;

2. Any student, staff, or administrator of the institution responsible for the discipline or management of any other member of the campus community;

3. Any student, staff, or administrator responsible for campus security and safety, including but not limited to campus police officers;

4. Any student, staff, or administrator with any oversight of or authority over student government organizations; and

5. Any student, staff, or administrator responsible for the distribution of student organization or activity funding, including but not limited to members of a student government organization authorized to distribute institutional funds among student organizations.

(8) No later than September 1 and February 1 of each year, an institution shall publish a semiannual report on the institution's student organizations and activity funding to a prominent location on the institution's Web site that is relevant to the contents of the report and readily accessible to the public without a password. The report shall include:

(a) A summary of the policies and procedures of the institution for the distribution of funds to student organizations, including but not limited to any policies or procedures adopted to ensure that student organization funding is not impacted by the viewpoints of a student organization;

(b) The total number of institutional funds budgeted for student organizations during the current fiscal year and the total amount of funds distributed by or on behalf of the institution to student organizations during the period of time since the last report;

(c) An itemization of the specific amount of funds budgeted for each student
organization during the current fiscal year, the total number of funds
distributed by or on behalf of the institution to each student organization
during the period of time since the last report, and the dates of each
distribution;

(d) The minutes of any meeting held to determine the distribution of student
organization and activity funding held during the period of time since the
last report, which shall include a clear statement of the rationale behind
any decision to increase, decrease, or deny funding to a student
organization; and

(e) All budgets, budget proposals or requests, itemizations of spending, or other
financial documents submitted by or on behalf of a student organization to
the institution, or student government when acting on behalf of the
institution, with regard to the distribution of student organization funding.

(9) (a) Nothing in this section shall be construed to grant students the right to engage
in conduct that intentionally, materially, and substantially disrupts another's
expressive activity if that activity is occurring in a campus space previously
scheduled or reserved for that activity or under the exclusive use or control of
a particular group.

(b) Conduct intentionally, materially, and substantially disrupts another's
expressive activity if it significantly hinders the expressive activity of another
person or group, or prevents the communication of a message or the
transaction of a lawful meeting, gathering, or procession by:

1. Being of a violent or seriously disruptive nature; or

2. Physically blocking or significantly hindering any person from
   attending, hearing, viewing, or otherwise participating in an expressive
   activity.

(c) Conduct does not intentionally, materially, and substantially disrupt another's
expressive activity if the conduct:

1. Is protected under the First Amendment to the United States Constitution or the Constitution of the Commonwealth of Kentucky, including but not limited to lawful protests and counter-protests in the outdoor areas of campus generally accessible to the public, except during times when those areas have been reserved in advance for other events; or

2. Is an isolated occurrence that causes minor, brief, and nonviolent disruptions of expressive activity.