**South Carolina General Assembly**

125th Session, 2023-2024

**S. 255**

**STATUS INFORMATION**

General Bill

Sponsors: Senator M. Johnson

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Introduced in the Senate on January 10, 2023

Currently residing in the Senate Committee on **Education**

Summary: Campus Free Expression Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/30/2022 Senate Prefiled

11/30/2022 Senate Referred to Committee on **Education**

1/10/2023 Senate Introduced and read first time ([Senate Journal‑page 129](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Education** ([Senate Journal‑page 129](h:\sj\20230110.docx))

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**VERSIONS OF THIS BILL**

[11/30/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/255_20221130.docx)

A bill

to amend the South Carolina Code of Laws so as to enact the “Campus Free Expression Act”; by adding Section 59-101-810 so as to define conduct that materially and substantially disrupts EXPRESSIVE ACTIVITY; by adding Section 59-101-820 so as to protect free expression rights; by adding Section 59-101-830 so as to LIST free expression rights; by adding Section 59-101-840 so as to identify publicly-accessible outdoor areas of public higher education campuses as public forums; by adding Section 59-101-850, Section 59-101-860, Section 59-101-870, AND Section 59-101-880 SO AS TO GUARANTEE EXISTENT EXPRESSIVE ACTIVITY PROTECTION; by adding Section 59-101-890 so as to permit public institutions of higher education to charge security fees for expressive activities based on neutral criteria; by adding Section 59-101-900, Section 59-101-910, and Section 59-101-920, so as to provide for CAUSES OF action following a violation of expressive rights.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Campus Free Expression Act”.

SECTION 2. Chapter 101, Title 59 of the S.C. Code is amended by adding:

Article 4

Campus Free Expression Act

Section 59-101-810. For the purposes of this article, “conduct that materially and substantially disrupts,” means action with the intent to significantly hinder another person’s or group’s expressive activity, prevent the communication of the person’s or group’s message, or prevent the transaction of the business of a lawful meeting, gathering, or procession, including, but not limited to:

(1) fighting, violent, or seriously disruptive behavior; or

(2) the physical blocking or significant hinderance of any person from attending, listening to, viewing, or otherwise participating in an expressive activity.

Section 59-101-820. Conduct that materially and substantially disrupts shall not include conduct that is protected under the First Amendment of the United States Constitution or Article I, Section 2 of the South Carolina Constitution. Such protected conduct includes, but is not limited to:

(1) lawful protests and counter-protests in the outdoor areas of campus generally accessible to the members of the public, except during times when those areas have been reserved in advance for other events, or;

(2) minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

Section 59-101-830. Expressive activities protected under the provisions of this article include, but are not limited to, all forms of peaceful assembly, protests, speeches, distribution of literature, carrying signs, circulating petitions, and the recording and lawful publication, including internet publication, of video and audio lawfully recorded in public outdoor areas of public institutions of higher education.

Section 59-101-840. The publicly accessible outdoor areas of public higher education campuses are deemed traditional public forums. Public institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions on expressive activity in the publicly accessible outdoor areas of campus and in indoor locations that the institutions have opened to the public for expressive activity, only if the restrictions:

(1) are reasonable;

(2) are in furtherance of a significant institutional interest;

(3) employ clear, published, content- and viewpoint-neutral criteria;

(4) provide for reasonable alternative means of expression; and

(5) allow for members of the university community to spontaneously and contemporaneously distribute literature and assemble.

Section 59-101-850. Any person who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as his conduct is lawful and does not materially and substantially disrupt the functioning of the institution, subject to the requirements of Section 59-101-840. No public institution of higher education shall designate any area of its campus as a “free speech zone” or otherwise create policies restricting expressive activities to particular areas of campus.

Section 59-101-860. Nothing in this section shall enable individuals to engage in conduct that intentionally, materially, and substantially disrupts another’s expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.

Section 59-101-870. Nothing in this article may be construed as limiting the right of student expression elsewhere on campus.

Section 59-101-880. Nothing in this section prohibits a public institution of higher education from requiring a permit from any individual or group as a condition of being granted exclusive control of a location for its expressive activity at a reserved time. Any such permitting process shall not be overly burdensome, and applications for permits shall be evaluated solely using published content- and viewpoint-neutral criteria.

Section 59-101-890. (A) A public institution of higher education may charge security fees to a student or student group as part of an application for expressive activities that require a permit, provided that whether the security fee is required and its amount may only be determined on the basis of content- and viewpoint-neutral criteria. Examples of content-and viewpoint-neutral criteria include, but are not limited to, the time of the event, the location of the event, the anticipated size of the invited audience, and whether alcohol will be served. No public institution of higher education shall charge security fees to a student or a student group based on the content of expressive activity.

(B) Any public institution of higher education charging security fees pursuant to this section shall publish the criteria it uses for assessing those charges publicly on the institution’s website. The published criteria the institution uses for assessing security fees shall be included on any application form for those expressive activities that require a permit.

Section 59-101-900. The Attorney General and persons whose expressive rights were violated through the violation of this article may bring an action against a public institution of higher education, and its agents acting within their official capacities, in a state or federal court of competent jurisdiction to enjoin violation and to recover compensatory damages, reasonable court costs, and attorney fees.

Section 59-101-910. In an action brought under Section 59-101-900, if the court finds a violation of this article, the court shall award the aggrieved persons no less than five hundred dollars for the initial violation plus fifty dollars for each day the violation remains ongoing, which shall accrue starting on the day after the complaint is served. The total damages, excluding court costs and attorney’s fees, available to a plaintiff, in a case stemming from a single controversy shall not exceed one hundred thousand dollars in total. In violations harming multiple plaintiffs, the court shall divide the damages equitably among them until the award is exhausted.

Section 59-101-920. A person must bring suit for a violation of this article not later than one year after the day the cause of action accrues, and, for purposes of calculating the one-year limitation period, each day that the violation of this article persists, and each day that a policy in violation of this article remains in effect, shall constitute a new day that the cause of action has accrued.

SECTION 3. This act takes effect upon approval by the Governor.

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