**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “FORMING OPEN AND ROBUST UNIVERSITY MINDS (FORUM) ACT” BY ADDING CHAPTER 148 TO TITLE 59 SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE MEASURES TO PROTECT EXPRESSIONS BY STUDENTS AND STUDENT ORGANIZATIONS IN CERTAIN PLACES ON THE CAMPUSES OF PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE, TO PROVIDE RELATED REQUIREMENTS FOR POLICIES AND PROCEDURES, TO PROVIDE SPECIFIC RESPONSIBILITIES OF PUBLIC INSTITUTIONS OF HIGHER LEARNING, AND TO PROVIDE MEANS OF REDRESS FOR VIOLATIONS OF THIS ACT, AMONG OTHER THINGS.

Whereas, the South Carolina General Assembly finds that the First Amendment of the United States Constitution and the South Carolina Constitution protect the rights of free speech, freedom of the press, freedom of religion, and freedom of association and to petition the government for all citizens; and

Whereas, the South Carolina General Assembly finds that in Healy v. James, 408 U.S. 169, 180 (1972), the Supreme Court of the United States called public universities, “peculiarly the marketplace of ideas” where young adults learn to exercise these constitutional rights necessary to participate in our system of government and to tolerate others’ exercise of the same rights, and there is “no room for the view that … First Amendment protections should apply with less force on college campuses than in the community at large”; and

Whereas, the South Carolina General Assembly views the exercise of First Amendment rights on public university campuses in this State as critical components of the education experience for students and requires that each public college and university in this State ensure free, robust, and uninhibited debate and deliberations by students whether on or off campus; and

Whereas, the South Carolina General Assembly finds that public colleges and universities in this State and elsewhere are failing to provide adequate safeguards for the First Amendment rights of their students leading to a stifling of expression on campuses; and

Whereas, the South Carolina General Assembly finds that the Supreme Court of the United States has warned in Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957), that if public universities stifle student speech and prevent the open exchange of ideas on campuses, “our civilization will stagnate and die”; and

Whereas, the South Carolina General Assembly finds that a significant amount of taxpayer dollars are appropriated to public institutions of higher learning each year and as such, this Legislature must ensure that all public institutions of higher learning receiving state funds recognize freedom of speech as a fundamental right for all. Now, therefore,

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

SECTION 1. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 148

Forming Open and Robust University Minds (FORUM) Act

Section 59‑148‑110. This chapter must be known and may be cited as the‘Forming Open and Robust University Minds (FORUM) Act’.

Section 59‑148‑120. As used in this chapter:

(1) ‘Benefit’ means recognition, registration, the use of facilities for meeting or speaking purposes, the use of channels of communication, and the use of funding sources that otherwise are available to student organizations at a public institution of higher learning.

(2) ‘Campus community’ means students, administrators, faculty and staff at the institution of higher learning and their invited guests.

(3) ‘Harassment’ shall mean only that expression that is unwelcome, so severe, pervasive, and subjectively and objectively offensive, that a student is effectively denied equal access to educational opportunities or benefits provided by the public institution of higher education.

(4) ‘Materially and substantially disrupts’ means when a person, with the intent to or with knowledge of doing so, significantly hinders another person’s or group’s expressive activity, prevents the communication of the message, or prevents the transaction of the business of a lawful meeting, gathering, or procession by:

(a) engaging in fighting, violent or other unlawful behavior; or

(b) physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity. Conduct that ‘materially disrupts’ does not include conduct protected under the First Amendment to the United States Constitution or the Constitution of this State. This protected conduct includes, but is not limited to:

(i) lawful 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

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

(5) ‘Outdoor area of campus’ means generally accessible outside areas of campus where members of the campus community are commonly allowed, including grassy areas, walkways, or other similar common areas, but specifically excluding outdoor areas where access is restricted to a majority of the campus community.

(6) ‘Public institution of higher learning’ means state‑supported post‑secondary educational institutions, including technical and comprehensive educational institutions.

(7) ‘Student’ means a person who is enrolled on a full‑time or part‑time basis in a public institution of higher learning.

(8) ‘Student organization’ means an officially recognized group at a public institution of higher learning or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through the institution of higher learning.

Section 59‑148‑130.Expressive activities protected under the provisions of this chapter include, but are not limited to, any lawful verbal, written, audio‑visual, or electronic means by which individuals may communicate ideas to one another, including peaceful assembly, peaceful protests, speeches, guest speakers, literature distribution, sign carrying, and petition circulation.

Section 59‑148‑140. (A) The outdoor areas of campuses of public institutions of higher learning in this state are considered public forums for the campus community. Public institutions of higher learning may maintain and enforce reasonable time, place, and manner restrictions that are narrowly tailored in service of a significant institutional interest only when such restrictions employ clear, published, content‑ and viewpoint‑neutral criteria, and provide for ample alternative means of expression. The restrictions must allow members of the campus community to spontaneously and contemporaneously assemble and distribute literature.

(B) Nothing in this section may be interpreted as limiting the right of student expression elsewhere on campus.

Section 59‑148‑150. (A) A person who wishes to engage in noncommercial expressive activity on campus is permitted to do so freely if his conduct is lawful and does not materially and substantially disrupt the functioning of the public institution of higher learning, subject only to the requirements of this chapter.

(B) Nothing in this section prohibits public institutions of higher learning from maintaining and enforcing reasonable time, place, and manner restrictions that are narrowly tailored in service of a significant institutional interest only when such restrictions employ clear, published, content‑ and viewpoint‑neutral criteria. Any such restrictions shall allow members of the campus community to spontaneously and contemporaneously assemble, speak, and distribute literature.

(C) Nothing in this section may be interpreted as preventing public institutions of higher learning from prohibiting, limiting, or restricting expression that the First Amendment does not protect or prohibiting harassment.

(D) Nothing in this section shall enable individuals to engage in conduct that intentionally, materially, and substantially disrupts the expressive activity of another if that activity occurs in a campus space reserved for that activity under the exclusive use or control of a particular group.

Section 59‑148‑160. A public institution of higher learning may not deny a religious, political, or ideological student organization a benefit or privilege available to another student organization, or otherwise discriminate against such an organization, based on the expression of the organization, including a requirement that the leaders or members of the organization:

(1) affirm and adhere to the organization’s sincerely held beliefs;

(2) comply with the organization’s standards of conduct; or

(3) further the organization’s self‑defined mission or purpose.

Section 59‑148‑170. (A) A public institution of higher learning shall make its policies, regulations, and expectations of students regarding free expression on campus consistent with this chapter available publicly in its handbooks, on its website, and in its student orientation programs.

(B) A public institution of higher learning shall develop materials, programs, and procedures to ensure that those persons who have responsibility for discipline or education of students, such as administrators, campus police officers, residence life officials, and professors, understand the policies, regulations, and duties of the institution regarding free expression on campus, consistent with this chapter.

Section 59‑148‑180. (A) A public institution of higher learning annually, before January fifteenth, shall prepare and publicly post on its website, as well as submit to the Commission on Higher Education, a report of the previous calendar year which details the course of action implemented to comply with the requirements of this chapter. The institution also shall report any changes or updates to the chosen course of action.

(B) The information in the report must be:

(1) accessible from the respective Internet website home pages of the institution and the Commission on Higher Education by use of not more than three links;

(2) searchable by keywords and phrases; and

(3) accessible to the public without requiring registration or use of a user name, a password, or another user identification.

(C) The contents of the report must include:

(1) a description of any barriers to or incidents of disruption of free expression occurring on campus including, but not limited to, attempts to block or prohibit speakers and investigations into students or student organizations for their speech, with this description to include the nature of each barrier or incident and what disciplinary action, if any, was taken against responsible students who were members of the campus community. This description may not reveal personally identifiable information of those students; and

(2) other information each institution considers valuable for the public to evaluate whether free expression rights for all members of the campus community have been equally protected and enforced consistent with this chapter.

(D) If a public institution of higher learning is sued for an alleged violation of First Amendment rights, the institution must, submit a supplemental report, with a copy of the complaint, or any amended complaint, to the Governor and the General Assembly within thirty days.

Section 59‑148‑190. (A) A person or student organization aggrieved by a violation of this chapter may bring an action against the public institution of higher learning and any other officials acting in their official capacities who are responsible for the violation and seek appropriate relief, including, but not limited to, injunctive relief, monetary damages, reasonable attorneys’ fees, and court costs. If a court finds a violation of this chapter, it shall award at least five thousand dollars. A person or student organization who is aggrieved by a provision of this chapter may assert such violation as a defense or counter claim in a disciplinary action or in a civil or administrative proceeding brought against the student or student organization.

(B) The provisions of this section may not be construed to limit any other remedies available to a person or student organization aggrieved by a violation of this chapter.

Section 59‑148‑200. A person may bring suit for a violation of this chapter no later than one year after the day the cause of action accrues. For purposes of calculating the one‑year limitation period, each day that the violation persists, and each day that a policy in violation of this section remains in effect, constitutes a new violation of this chapter and a new day that the cause of action has accrued.

Section 59‑148‑210. The State waives its immunity under the Eleventh Amendment to the United States Constitution and consents to jurisdiction in federal court for lawsuits arising from the provisions of this chapter. A public institution of higher learning that violates this chapter is not immune from suit or liability for the violation.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

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