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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 2726

02/20/2018 Authored by Nornes and Lohmer
The bill was read for the first time and referred to the Committee on Higher Education and Career Readiness Policy and Finance

1.1 A bill for an act
1.2 relating to higher education; requiring content-neutral campus free speech policies;
1.3 proposing coding for new law in Minnesota Statutes, chapters 136F; 137.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. 136F.21 **CAMPUS FREE SPEECH.**

1.6 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
1.7 the meanings given.

1.8 (b) "Constitutional time, place, and manner restrictions" means restrictions on the time,
1.9 place, and manner of free speech that do not violate the First Amendment to the United
1.10 States Constitution or the Minnesota Constitution, article I, section 3, that are reasonable,
1.11 content- and viewpoint-neutral, and narrowly tailored to satisfy a significant institutional
1.12 interest, and leave open ample alternative channels for the communication of the information
1.13 or message to its intended audience.

1.14 (c) "Faculty" or "faculty member" means any person, whether or not the person is
1.15 compensated by a public institution of higher education, and regardless of political affiliation,
1.16 who is tasked with providing scholarship, academic research, or teaching. For purposes of
1.17 this part, faculty includes tenured and nontenured professors, adjunct professors, visiting
1.18 professors, lecturers, graduate student instructors, and those in comparable positions, however
1.19 titled. For purposes of this part, faculty does not include persons whose primary
1.20 responsibilities are administrative or managerial.

1.21 (d) "Free speech" means speech, expression, or assemblies protected by the First
1.22 Amendment to the United States Constitution or the Minnesota Constitution, article I, section

2.1 3, verbal or written, including but not limited to all forms of peaceful assembly, protests,
2.2 demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials,
2.3 carrying signs, displays, or circulating petitions. Free speech does not include the promotion,
2.4 sale, or distribution of any product or service.

2.5 (e) "Institution" means a state college or university.

2.6 (f) "Student" means:

2.7 (1) an individual currently enrolled in a course of study at the institution; and

2.8 (2) an organization that is comprised entirely of individuals currently enrolled in a course
2.9 of study at the institution that is registered with an institution pursuant to institutional rules.

2.10 Subd. 2. **Institutional policy.** (a) The governing body of every institution shall adopt a
2.11 policy that affirms the following principles of free speech, which are the public policy of
2.12 this state:

2.13 (1) students have a fundamental constitutional right to free speech;

2.14 (2) an institution shall be committed to giving students the broadest-possible latitude to
2.15 speak, write, listen, challenge, learn, and discuss any issue, subject to subdivisions 3 and
2.16 5;

2.17 (3) an institution shall be committed to maintaining a campus as a marketplace of ideas
2.18 for all students and all faculty in which the free exchange of ideas is not to be suppressed
2.19 because the ideas put forth are thought by some or even by most members of the institution's
2.20 community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal,
2.21 traditional, radical, or wrongheaded;

2.22 (4) it is for an institution's individual students and faculty to make judgments about ideas
2.23 for themselves, and to act on those judgments not by seeking to suppress free speech but
2.24 by openly and vigorously contesting the ideas that they oppose;

2.25 (5) it is not the proper role of an institution to attempt to shield individuals from free
2.26 speech, including ideas and opinions they find offensive, unwise, immoral, indecent,
2.27 disagreeable, conservative, liberal, traditional, radical, or wrongheaded;

2.28 (6) although an institution should greatly value civility and mutual respect, concerns
2.29 about civility and mutual respect shall never be used by an institution as a justification for
2.30 closing off the discussion of ideas, however offensive, unwise, immoral, indecent,
2.31 disagreeable, conservative, liberal, traditional, radical, or wrongheaded those ideas may be
2.32 to some students or faculty;

3.1 (7) although all students and all faculty are free to state their own views about and contest
3.2 the views expressed on campus, and to state their own views about and contest speakers
3.3 who are invited to express their views on the institution's campus, they may not substantially
3.4 obstruct or otherwise substantially interfere with the freedom of others to express views
3.5 they reject or even loathe. To this end, an institution has a responsibility to promote a lively
3.6 and fearless freedom of debate and deliberation and protect that freedom;

3.7 (8) an institution shall be committed to providing an atmosphere that is most conducive
3.8 to speculation, experimentation, and creation by all students and all faculty, who shall always
3.9 remain free to inquire, study, evaluate, and gain new understanding;

3.10 (9) the primary responsibility of faculty is to engage an honest, courageous, and persistent
3.11 effort to search out and communicate the truth that lies in the areas of their competence;

3.12 (10) although faculty are free in the classroom to discuss subjects within areas of their
3.13 competence, faculty shall be cautious in expressing personal views in the classroom and
3.14 shall be careful not to introduce controversial matters that have no relationship to the subject
3.15 taught, especially matters in which they have no special competence or training and in
3.16 which, therefore, faculty's views cannot claim the authority accorded statements they make
3.17 about subjects within areas of their competence, provided that no faculty will face adverse
3.18 employment action for classroom speech, unless it is not reasonably germane to the subject
3.19 matter of the class as broadly construed, and comprises a substantial portion of classroom
3.20 instruction;

3.21 (11) an institution shall maintain the generally accessible, open, outdoor areas of its
3.22 campus as traditional public forums for free speech by students;

3.23 (12) an institution shall not restrict students' free speech only to particular areas of the
3.24 campus, sometimes known as "free speech zones";

3.25 (13) an institution shall not deny student activity fee funding to a student organization
3.26 based on the viewpoints that the student organization advocates;

3.27 (14) an institution shall not establish permitting requirements that prohibit spontaneous
3.28 outdoor assemblies or outdoor distribution of literature, although an institution may maintain
3.29 a policy that grants members of the college or university community the right to reserve
3.30 certain outdoor spaces in advance;

3.31 (15) an institution shall not charge students security fees based on the content of their
3.32 speech, the content of the speech of guest speakers invited by students, or the anticipated
3.33 reaction or opposition of listeners to a speech;

4.1 (16) an institution shall allow all students and all faculty to invite guest speakers to
4.2 campus to engage in free speech regardless of the views of guest speakers; and

4.3 (17) an institution shall not disinvite a speaker invited by a student, student organization,
4.4 or faculty member because the speaker's anticipated speech may be considered offensive,
4.5 unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or
4.6 wrongheaded by students, faculty, administrators, government officials, or members of the
4.7 public.

4.8 (b) The policy adopted pursuant to paragraph (a) shall be made available to students and
4.9 faculty annually through one or more of the following methods:

4.10 (1) published annually in the institution's student handbook and faculty handbook,
4.11 whether paper or electronic;

4.12 (2) made available to students and faculty by way of a prominent notice on the institution's
4.13 Web site other than through the electronic publication of the policy in the student handbook
4.14 and faculty handbook;

4.15 (3) sent annually to students and employees to their institutionally provided e-mail
4.16 address; or

4.17 (4) addressed by the institution in orientation programs for new students and new faculty.

4.18 (c) Nothing in this subdivision grants students the right to disrupt previously scheduled
4.19 or reserved activities occurring in a traditional public forum.

4.20 Subd. 3. **Harassment policy.** (a) With respect to disciplining students for their speech,
4.21 expression, or assemblies, an institution shall adopt a policy on "student-on-student
4.22 harassment," defining the term consistent with and no more expansively than the language
4.23 contained in paragraph (b).

4.24 (b) As used in this subdivision, "student-on-student harassment" means unwelcome
4.25 conduct directed toward a person that is discriminatory on a basis prohibited by federal,
4.26 state, or local law and that is so severe, pervasive, and objectively offensive that it effectively
4.27 bars the victim's access to an educational opportunity or benefit.

4.28 Subd. 4. **Costs.** Nothing in this part requires an institution to fund costs associated with
4.29 student speech or expression. An institution shall not impose costs on students or student
4.30 organizations on the basis of the anticipated reaction or opposition to a person's speech by
4.31 listeners.

5.1 Subd. 5. **Construction.** Nothing contained in this section prohibits an institution from
5.2 imposing measures that do not violate the First Amendment to the United States Constitution
5.3 or the Minnesota Constitution, article I, section 3, such as:

5.4 (1) constitutional time, place, and manner restrictions;

5.5 (2) reasonable and viewpoint-neutral restrictions in nonpublic forums;

5.6 (3) restricting the use of the institution's property to protect the free speech rights of
5.7 students and faculty and preserve the use of the property for the advancement of the
5.8 institution's mission;

5.9 (4) prohibiting or limiting speech, expression, or assemblies that are not protected by
5.10 the First Amendment to the United States Constitution or the Minnesota Constitution, article
5.11 I, section 3; or

5.12 (5) content restrictions on speech that are reasonably related to a legitimate pedagogical
5.13 purpose, such as classroom rules enacted by faculty.

5.14 Subd. 6. **Cause of action.** A student who has the student's free speech violated by an
5.15 institution under the policy adopted under this section may bring an action in a court of
5.16 competent jurisdiction to enjoin any violation of this section or to recover reasonable court
5.17 costs and attorney fees. In an action brought pursuant to this subdivision, if the court finds
5.18 that a violation occurred, the court shall award the aggrieved party injunctive relief for the
5.19 violation and shall award reasonable court costs and attorney fees.

5.20 Sec. 2. **[137.095] CAMPUS FREE SPEECH.**

5.21 The Board of Regents is encouraged to adopt policies consistent with the requirements
5.22 of section 136F.21.