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CS/CS/HB 233

2021 Legislature

1
2 An act relating to postsecondary education; amending
3 ss. 1001.03 and 1001.706, F.S.; defining the terms
4 "intellectual freedom and viewpoint diversity" and
5 "shield"; requiring the State Board of Education and
6 the Board of Governors, respectively, to annually
7 assess intellectual freedom and viewpoint diversity at
8 certain institutions; providing requirements for the
9 assessment; authorizing the State Board of Education
10 to adopt rules; prohibiting the State Board of
11 Education and the Board of Governors, respectively,
12 from shielding certain students, faculty, or staff
13 from certain speech; amending s. 1004.097, F.S.;
14 defining the term "shield"; providing that certain
15 faculty communications are protected expressive
16 activity; prohibiting specified entities from
17 shielding students, faculty, or staff from certain
18 speech; authorizing students at public postsecondary
19 institutions to record video and audio in classrooms
20 for specified purposes; prohibiting the publication of
21 certain video or audio recordings; providing
22 exception; revising available remedies for certain
23 causes of action to include damages; providing that
24 such damages and specified costs and fees must be paid
25 from nonstate funds; providing a cause of action

ENROLLED

CS/CS/HB 233

2021 Legislature

26 | against a person who publishes certain video or audio
 27 | recordings; providing a limitation on the amount that
 28 | can be recovered; amending s. 1004.26, F.S.; requiring
 29 | university student governments to adopt certain
 30 | internal procedures; providing requirements for such
 31 | procedures; amending s. 1006.60, F.S.; requiring the
 32 | State Board of Education and the Board of Governors to
 33 | require certain institutions to adopt codes of
 34 | conduct; providing requirements for such codes of
 35 | conduct; providing that such codes of conduct include
 36 | certain due process rights; providing an effective
 37 | date.

38 |

39 | Be It Enacted by the Legislature of the State of Florida:

40 |

41 | Section 1. Subsection (19) is added to section 1001.03,
 42 | Florida Statutes, to read:

43 | 1001.03 Specific powers of State Board of Education.—

44 | (19) INTELLECTUAL FREEDOM AND VIEWPOINT DIVERSITY

45 | ASSESSMENT.—

46 | (a) For the purposes of this subsection, the term:

47 | 1. "Intellectual freedom and viewpoint diversity" means
 48 | the exposure of students, faculty, and staff to, and the
 49 | encouragement of their exploration of, a variety of ideological
 50 | and political perspectives.

ENROLLED

CS/CS/HB 233

2021 Legislature

51 2. "Shield" means to limit students', faculty members', or
52 staff members' access to, or observation of, ideas and opinions
53 that they may find uncomfortable, unwelcome, disagreeable, or
54 offensive.

55 (b) The State Board of Education shall require each
56 Florida College System institution to conduct an annual
57 assessment of the intellectual freedom and viewpoint diversity
58 at that institution. The State Board of Education shall select
59 or create an objective, nonpartisan, and statistically valid
60 survey to be used by each institution which considers the extent
61 to which competing ideas and perspectives are presented and
62 members of the college community, including students, faculty,
63 and staff, feel free to express their beliefs and viewpoints on
64 campus and in the classroom. The State Board of Education shall
65 annually compile and publish the assessments by September 1 of
66 each year, beginning on September 1, 2022. The State Board of
67 Education may adopt rules to implement this paragraph.

68 (c) The State Board of Education may not shield students,
69 faculty, or staff at Florida College System institutions from
70 free speech protected under the First Amendment to the United
71 States Constitution, Art. I of the State Constitution, or s.
72 1004.097.

73 Section 2. Subsection (13) is added to section 1001.706,
74 Florida Statutes, to read:

75 1001.706 Powers and duties of the Board of Governors.—

ENROLLED

CS/CS/HB 233

2021 Legislature

(13) INTELLECTUAL FREEDOM AND VIEWPOINT DIVERSITY

ASSESSMENT.—

(a) For the purposes of this subsection, the term:

1. "Intellectual freedom and viewpoint diversity" means the exposure of students, faculty, and staff to, and the encouragement of their exploration of, a variety of ideological and political perspectives.

2. "Shield" means to limit students', faculty members', or staff members' access to, or observation of, ideas and opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.

(b) The Board of Governors shall require each state university to conduct an annual assessment of the intellectual freedom and viewpoint diversity at that institution. The Board of Governors shall select or create an objective, nonpartisan, and statistically valid survey to be used by each state university which considers the extent to which competing ideas and perspectives are presented and members of the university community, including students, faculty, and staff, feel free to express their beliefs and viewpoints on campus and in the classroom. The Board of Governors shall annually compile and publish the assessments by September 1 of each year, beginning on September 1, 2022.

(c) The Board of Governors may not shield students, faculty, or staff at state universities from free speech

ENROLLED

CS/CS/HB 233

2021 Legislature

101 protected under the First Amendment to the United States
 102 Constitution, Art. I of the State Constitution, or s. 1004.97.

103 Section 3. Paragraph (a) of subsection (3) and subsection
 104 (4) of section 1004.097, Florida Statutes, are amended,
 105 paragraph (f) is added to subsection (2), and paragraphs (f) and
 106 (g) are added to subsection (3) of that section, to read:

107 1004.097 Free expression on campus.—

108 (2) DEFINITIONS.—As used in this section, the term:

109 (f) "Shield" means to limit students', faculty members',
 110 or staff members' access to, or observation of, ideas and
 111 opinions that they may find uncomfortable, unwelcome,
 112 disagreeable, or offensive.

113 (3) RIGHT TO FREE-SPEECH ACTIVITIES.—

114 (a) Expressive activities protected under the First
 115 Amendment to the United States Constitution and Art. I of the
 116 State Constitution include, but are not limited to, any lawful
 117 oral or written communication of ideas, including all forms of
 118 peaceful assembly, protests, and speeches; distributing
 119 literature; carrying signs; circulating petitions; faculty
 120 research, lectures, writings, and commentary, whether published
 121 or unpublished; and the recording and publication, including the
 122 Internet publication, of video or audio recorded in outdoor
 123 areas of campus. Expressive activities protected by this section
 124 do not include defamatory or commercial speech.

125 (f) A Florida College System institution or a state

ENROLLED

CS/CS/HB 233

2021 Legislature

126 | university may not shield students, faculty, or staff from
 127 | expressive activities.

128 | (g) Notwithstanding s. 934.03 and subject to the
 129 | protections provided in the Family Educational Rights and
 130 | Privacy Act of 1974, 20 U.S.C. s. 1232g and ss. 1002.22 and
 131 | 1002.225, a student may record video or audio of class lectures
 132 | for their own personal educational use, in connection with a
 133 | complaint to the public institution of higher education where
 134 | the recording was made, or as evidence in, or in preparation
 135 | for, a criminal or civil proceeding. A recorded lecture may not
 136 | be published without the consent of the lecturer.

137 | (4) CAUSE OF ACTION.—A person injured by a violation of
 138 | ~~whose expressive rights are violated by an action prohibited~~
 139 | ~~under~~ this section may bring an action:

140 | (a) Against a public institution of higher education based
 141 | on the violation of the individual's expressive rights in a
 142 | court of competent jurisdiction to obtain declaratory and
 143 | injunctive relief and may be entitled to damages plus court
 144 | costs and reasonable attorney fees, which may only be paid from
 145 | nonstate funds, reasonable court costs, and attorney fees.

146 | (b) Against a person who has published video or audio
 147 | recorded in a classroom in violation of paragraph (3)(g) in a
 148 | court of competent jurisdiction to obtain declaratory and
 149 | injunctive relief and may be entitled to damages plus court
 150 | costs and reasonable attorney fees, with the total recovery not

ENROLLED

CS/CS/HB 233

2021 Legislature

151 to exceed \$200,000.

152 Section 4. Paragraph (d) is added to subsection (4) of
153 section 1004.26, Florida Statutes, to read:

154 1004.26 University student governments.—

155 (4)

156 (d) Notwithstanding any other provision of law, each
157 student government shall adopt internal procedures providing an
158 elected or appointed officer of the student government who has
159 been disciplined, suspended, or removed from office, the right
160 to directly appeal such decision to the vice president of
161 student affairs or other senior university administrator
162 designated to hear such appeals. The internal procedures shall
163 not condition the exercise of such right on the consideration or
164 decision of any student panel, including, but not limited to,
165 any student judiciary, or place any condition precedent on the
166 exercise of such right granted by this paragraph.

167 Section 5. Section 1006.60, Florida Statutes, is amended
168 to read:

169 1006.60 Codes of conduct; disciplinary measures; ~~authority~~
170 to adopt rules or regulations.—

171 (1) The State Board of Education and the Board of
172 Governors, respectively, shall require, each Florida College
173 System institution to ~~may~~ adopt, by rule, and each state
174 university to ~~may~~ adopt, by regulation, codes of conduct and
175 appropriate penalties for violations of rules or regulations by

ENROLLED

CS/CS/HB 233

2021 Legislature

176 students, to be administered by the institution. Such penalties,
177 unless otherwise provided by law, may include: reprimand;
178 restitution; fines; withholding of diplomas or transcripts
179 pending compliance with rules or regulations, completion of any
180 student judicial process or sanction, or payment of fines;
181 restrictions on the use of or removal from campus facilities;
182 community service; educational requirements; and the imposition
183 of probation, suspension, dismissal, or expulsion.

184 (2) The State Board of Education and the Board of
185 Governors, respectively, shall require, each Florida College
186 System institution to ~~may~~ adopt, by rule, and each state
187 university to ~~may~~ adopt, by regulation, a code of conduct and
188 appropriate penalties for violations of rules or regulations by
189 student organizations, to be administered by the institution.
190 Such penalties, unless otherwise provided by law, may include:
191 reprimand; restitution; suspension, cancellation, or revocation
192 of the registration or official recognition of a student
193 organization; and restrictions on the use of, or removal from,
194 campus facilities.

195 (3) The codes of conduct shall be published on the Florida
196 College System institution's or state university's website,
197 protect the rights of all students, and, at minimum, provide the
198 following due process protections to students and student
199 organizations:

200 (a) The right to timely written notice. The code must

ENROLLED

CS/CS/HB 233

2021 Legislature

201 require that the institution or university provide a student or
202 student organization with timely written notice of the student's
203 or student organization's alleged violation of the code of
204 conduct. The notice must include sufficient detail and be
205 provided with sufficient time to prepare for any disciplinary
206 proceeding.

207 1. The written notice must include the allegations to be
208 investigated, the citation to the specific provision of the code
209 of conduct at issue, the process to be used in determining
210 whether a violation has occurred and associated rights, and the
211 date, time, and location of the disciplinary proceeding.

212 2. The written notice is considered timely if it is
213 provided at least 7 business days before the disciplinary
214 proceeding and may be provided by delivery to the student's
215 institutional e-mail address, and if the student is under 18
216 years of age, to the student's parent or to the student
217 organization's e-mail address.

218 3. At least 5 business days before the disciplinary
219 proceeding, the institution or university must provide the
220 student or student organization with:

221 a. A listing of all known witnesses that have provided, or
222 will provide, information against the student or student
223 organization.

224 b. All known information relating to the allegation,
225 including inculpatory and exculpatory information.

ENROLLED

CS/CS/HB 233

2021 Legislature

226 (b) The right to a presumption that no violation occurred.
 227 The institution has the burden to prove, by a preponderance of
 228 the evidence, that a violation has taken place. Preponderance of
 229 the evidence means that the information presented supports the
 230 finding that it is more likely than not that the violation of
 231 the code of conduct was committed by the student or student
 232 organization.

233 (c) The right to an impartial hearing officer.

234 (d) The right against self-incrimination and the right to
 235 remain silent. Such silence may not be used against the student
 236 or student organization.

237 (e) The right to present relevant information and question
 238 witnesses.

239 (f) The right to an advisor or advocate who may not serve
 240 in any other role, including as an investigator, decider of
 241 fact, hearing officer, member of a committee or panel convened
 242 to hear or decide the charge, or any appeal.

243 (g) The right to have an advisor, advocate, or legal
 244 representative, at the student's or student organization's own
 245 expense, present at any proceeding, whether formal or informal.
 246 Such person may directly participate in all aspects of the
 247 proceeding, including the presentation of relevant information
 248 and questioning of witnesses.

249 (h) The right to appeal the final decision of the hearing
 250 officer, or any committee or panel, directly to the vice

ENROLLED

CS/CS/HB 233

2021 Legislature

251 president of student affairs, or any other senior administrator
252 designated by the code of conduct, who must hear the appeal and
253 render a final decision. The vice president of student affairs
254 or person designated by the code of conduct to hear the appeal
255 may not have directly participated in any other proceeding
256 related to the charged violation.

257 (i) The right to an accurate and complete record of every
258 disciplinary proceeding relating to the charged violation of the
259 code, including record of any appeal, to be made, preserved, and
260 available for copying upon request by the charged student or
261 student organization.

262 (j) A provision setting a time limit for charging a
263 student or student organization with a violation of the code of
264 conduct, and a description of those circumstances in which that
265 time limit may be extended or waived.

266 (4)~~(3)~~ Sanctions authorized by such codes of conduct may
267 be imposed only for acts or omissions in violation of rules or
268 regulations adopted by the institution, including rules or
269 regulations adopted under this section, rules of the State Board
270 of Education, rules or regulations of the Board of Governors
271 regarding the State University System, county and municipal
272 ordinances, and the laws of this state, the United States, or
273 any other state.

274 (5)~~(4)~~ Each Florida College System institution may
275 establish and adopt, by rule, and each state university may

ENROLLED

CS/CS/HB 233

2021 Legislature

276 establish and adopt, by regulation, codes of appropriate
277 penalties for violations of rules or regulations governing
278 student academic honesty. Such penalties, unless otherwise
279 provided by law, may include: reprimand; reduction of grade;
280 denial of academic credit; invalidation of university credit or
281 of the degree based upon such credit; probation; suspension;
282 dismissal; or expulsion. In addition to any other penalties that
283 may be imposed, an individual may be denied admission or further
284 registration, and the institution may invalidate academic credit
285 for work done by a student and may invalidate or revoke the
286 degree based upon such credit if it is determined that the
287 student has made false, fraudulent, or incomplete statements in
288 the application, residence affidavit, or accompanying documents
289 or statements in connection with, or supplemental to, the
290 application for admission to or graduation from the institution.

291 (6) ~~(5)~~ Each Florida College System institution shall adopt
292 rules and each state university shall adopt regulations for the
293 lawful discipline of any student who intentionally acts to
294 impair, interfere with, or obstruct the orderly conduct,
295 processes, and functions of the institution. Said rules or
296 regulations may apply to acts conducted on or off campus when
297 relevant to such orderly conduct, processes, and functions.

298 Section 6. This act shall take effect July 1, 2021.