

The Senate Committee on Judiciary offered the following substitute to SB 318:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 20 of the Official Code of Georgia Annotated, relating to education
2 generally, so as to provide for public forums at public institutions of higher education within
3 the University System of Georgia and the Technical College System of Georgia for the
4 campus community; to prevent the creation of "free speech zones" at such public institutions
5 of higher education; to allow for reasonable, content- and viewpoint-neutral, and
6 narrowly-tailored time, place, and manner restrictions on expressive activity at public
7 institutions of higher education; to prohibit material and substantial disruption of protected
8 expressive activity at public institutions of higher education; to prohibit such public
9 institutions of higher education from denying benefits to or otherwise discriminating against
10 a student organization on the basis of the student organization's religious, political, or
11 ideological positions; to require public institutions of higher education to provide public
12 notice of rules and expectations regarding expressive activity; to require public institutions
13 of higher education to develop materials, programs, and procedures related to expressive
14 activity; to provide for penalties; to provide for a limitation period; to provide for a short
15 title; to provide for definitions; to provide for related matters; to provide for an effective date;
16 to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Title 20 of the Official Code of Georgia Annotated, relating to education generally, is
20 amended by repealing Code Section 20-3-48, relating to adoption of free speech and
21 expression regulations and disciplinary sanctions for interfering with rights, and enacting a
22 new Code Section 20-3-48 to read as follows:

23 "20-3-48.

24 (a) This part shall be known and may be cited as the 'Forming Open and Robust University
25 Minds (FORUM) Act.'

26 (b) As used in this part, the term:

27 (1) 'Benefit' means any of the following conferred upon a student or student organization
28 by a public institution of higher education: recognition; registration; the use of facilities
29 of the public institution of higher education for purposes of meetings or other expressive
30 activity; the use of channels of communication of the public institution of higher
31 education; or funding sources that are otherwise available to other students or student
32 organizations at the public institution of higher education.

33 (2) 'Campus community' means students, administrators, faculty, and staff at the public
34 institution of higher education and their invited guests.

35 (3) 'Materially and substantially disrupts' means when a person knowingly and
36 intentionally engages in conduct or expressive activity which significantly hinders
37 another person's or group's expressive activity; prevents the communication of the
38 person's or group's message; or prevents the transaction of the business of a lawful
39 meeting, gathering, or procession by:

40 (A) Engaging in fighting, violent, or other unlawful behavior; or

41 (B) Physically blocking, using threats of violence, or creating loud or sustained noise
42 or vocalization intended to prevent any person from attending, listening to, viewing, or
43 otherwise participating in an expressive activity.

44 Conduct or expressive activity shall not be considered a material or substantial disruption
45 if it is protected under the Georgia Constitution or the First Amendment of the United
46 States Constitution, including, but not limited to, lawful protests in an unrestricted
47 outdoor area of campus (except during times when those areas have been reserved in
48 advance for other events) or minor, brief, or fleeting nonviolent disruptions of events that
49 are isolated and short in duration.

50 (4) 'Public institution of higher education' or 'institution' means any college or university
51 under the management and control of the Board of Regents of the University System of
52 Georgia.

53 (5) 'Student' means any person who is enrolled on a full-time or part-time basis in a
54 public institution of higher education.

55 (6) 'Student on student harassment' means unwelcome conduct or expressive activity
56 directed at a student that is so severe, pervasive, and subjectively and objectively
57 offensive that a student is effectively denied equal access to educational opportunities or
58 benefits provided by the public institution of higher education. This term shall not apply
59 to or govern any employment policy of a public institution of higher education relating
60 to harassment.

61 (7) 'Student organization' means any association, club, fraternity, society, sorority, or
62 organized group of students, whether academic, athletic, political, social, or otherwise,
63 that is officially recognized by a public institution of higher education.

64 (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is
65 generally accessible to members of the campus community, including, but not limited to,
66 grassy areas, walkways, or other common areas, and does not include outdoor areas when
67 and where access to members of the campus community is lawfully restricted.

68 (c) Unrestricted outdoor areas of campuses of public institutions of higher education in this
69 state shall be deemed public forums for the campus community, and public institutions of
70 higher education shall not create 'free speech zones' or other designated areas of campus
71 outside of which expressive activities are prohibited for the campus community.

72 (d) Public institutions of higher education may maintain and enforce reasonable time,
73 place, and manner restrictions for the campus community narrowly tailored in service of
74 a significant institutional interest only when such restrictions employ clear, published,
75 content- and viewpoint-neutral criteria, and provide for ample alternative means of
76 expression. Any such restrictions shall allow for members of the campus community to
77 spontaneously and contemporaneously assemble and distribute literature. Nothing in this
78 Code section shall be interpreted as limiting the right of student expression elsewhere on
79 campus.

80 (e) Protected expressive activity under this part includes, but is not limited to, lawful
81 verbal, written, audio-visual, or electronic expression by which individuals may
82 communicate ideas to one another, including all forms of peaceful assembly, distributing
83 literature, carrying signs, circulating petitions, demonstrations, protests, and speeches
84 including those by guest speakers.

85 (f) Any person who wishes to engage in noncommercial expressive activity in an
86 unrestricted outdoor area of campus shall be permitted to do so freely, as long as the
87 person's conduct is not unlawful and does not materially and substantially disrupt the
88 functioning of the public institution of higher education, subject to restrictions lawfully
89 imposed under subsections (c) and (d) of this Code section. Nothing in this Code section
90 shall be construed to make the unrestricted areas of campus into a designated public forum
91 for persons who are not members of the campus community.

92 (g) Nothing in this part shall be interpreted as preventing public institutions of higher
93 education from prohibiting student on student harassment as defined in this part or from
94 prohibiting, limiting, or restricting expression that is not protected under the Georgia
95 Constitution or the First Amendment of the United States Constitution, including, but not
96 limited to, true threats or expressive activity directed to provoke imminent lawless actions
97 and likely to produce it.

98 (h) Nothing in this part shall enable individuals to engage in conduct that materially and
99 substantially disrupts another's expressive activity that is occurring in an unrestricted

100 outdoor area of campus or a campus space reserved for that activity under the exclusive use
101 or control of a particular group.

102 (i) No public institution of higher education may deny a religious, political, or ideological
103 student organization any benefit or privilege available to any other student organization,
104 or otherwise discriminate against such an organization, nor may a prospective student
105 organization actively seeking official recognition by a public institution of higher education
106 be denied official recognition, based on the actual or anticipated expressive activity of the
107 organization, including any requirement that the leaders or members of such organization:

108 (1) Affirm and adhere to the organization's sincerely held beliefs;

109 (2) Comply with the organization's standards of conduct; or

110 (3) Further the organization's mission or purpose, as defined by the student organization.

111 (j) Public institutions of higher education shall make public in their handbooks, on their
112 websites, and through their orientation programs for students the policies, regulations, and
113 expectations of students regarding free expressive activity on campus consistent with this
114 part.

115 (k) Public institutions of higher education shall develop materials, programs, and
116 procedures to ensure that those persons who have responsibility for discipline or education
117 of students, such as administrators, campus police officers, residence life officials, and
118 professors, understand the policies, regulations, and duties of public institutions of higher
119 education regarding expressive activity on campus consistent with this part.

120 (l) Any person or student organization aggrieved by a violation of this part may bring an
121 action against the public institution of higher education, including its employees acting in
122 their official capacities, responsible for the violation and seek appropriate relief, including,
123 but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and
124 court costs. If a court should find a violation of this part, it shall issue an award of at least
125 \$5,000.00. Any person or student organization aggrieved by a violation of this part may
126 assert such violation as a defense or counterclaim in any disciplinary action or in any civil
127 or administrative proceedings brought against such student or student organization.
128 Nothing in this subsection shall be interpreted to limit any other remedies available to any
129 person or student organization.

130 (m) A person shall be required to bring suit for violation of this part not later than one year
131 after the day the cause of action accrues. For purposes of calculating the one-year
132 limitation period, each day that the violation persists, and each day that a policy in violation
133 of this part remains in effect, shall constitute a new day that the cause of action has
134 accrued."

135 **SECTION 2.**

136 Said title is further amended by revising Code Section 20-3-48.1, relating to annual report
137 by board of regents, as follows:

138 "20-3-48.1.

139 The board of regents shall make and publish an annual report and provide a copy to the
140 Governor and each chamber of the General Assembly on July 1 of each year addressing the
141 following from the previous calendar year:

142 (1) Any barriers to, or disruptions of, free expression within ~~state~~ public institutions of
143 higher education;

144 (2) Administrative response and discipline relating to violation of regulations and
145 policies established pursuant to Code Section 20-3-48;

146 (3) Actions taken by ~~state~~ public institutions of higher ~~learning~~ education, including
147 difficulties, controversies, or successes, in maintaining a posture of administrative and
148 institutional neutrality with regard to political or social issues; and

149 (4) Any assessments, criticisms, commendations, or recommendations the board of
150 regents deems appropriate to further include in the report."

151 **SECTION 3.**

152 Said title is further amended by repealing and reserving Code Section 20-3-48.2, relating to
153 reasonable time, place, and manner restrictions on speech.

154 **SECTION 4.**

155 Said title is further amended in Article 2 of Chapter 4, relating to technical and adult
156 education, by adding a Code section to read as follows:

157 "20-4-11.1.

158 (a) As used in this Code section, the term:

159 (1) 'Benefit' means any of the following conferred upon a student or student organization
160 by a public institution of higher education: recognition; registration; the use of facilities
161 of the public institution of higher education for purposes of meetings or other expressive
162 activity; the use of channels of communication of the public institution of higher
163 education; or funding sources that are otherwise available to other students or student
164 organizations at the public institution of higher education.

165 (2) 'Campus community' means students, administrators, faculty, and staff at the public
166 institution of higher education and their invited guests.

167 (3) 'Materially and substantially disrupts' means when a person knowingly and
168 intentionally engages in conduct or expressive activity which significantly hinders
169 another person's or group's expressive activity; prevents the communication of the

170 person's or group's message; or prevents the transaction of the business of a lawful
 171 meeting, gathering, or procession by:

172 (A) Engaging in fighting, violent, or other unlawful behavior; or

173 (B) Physically blocking, using threats of violence, or creating loud or sustained noise
 174 or vocalization intended to prevent any person from attending, listening to, viewing, or
 175 otherwise participating in an expressive activity.

176 Conduct or expressive activity shall not be considered a material or substantial disruption
 177 if it is protected under the Georgia Constitution or the First Amendment of the United
 178 States Constitution, including, but not limited to, lawful protests in an unrestricted
 179 outdoor area of campus (except during times when those areas have been reserved in
 180 advance for other events) or minor, brief, or fleeting nonviolent disruptions of events that
 181 are isolated and short in duration.

182 (4) 'Public institution of higher education' or 'institution' means any postsecondary
 183 technical school or other postsecondary branch of the Technical College System of
 184 Georgia.

185 (5) 'Student' means any person who is enrolled on a full-time or part-time basis in a
 186 public institution of higher education.

187 (6) 'Student on student harassment' means unwelcome conduct or expressive activity
 188 directed at a student that is so severe, pervasive, and subjectively and objectively
 189 offensive that a student is effectively denied equal access to educational opportunities or
 190 benefits provided by the public institution of higher education. This term shall not apply
 191 to or govern any employment policy of a public institution of higher education relating
 192 to harassment.

193 (7) 'Student organization' means any association, club, fraternity, society, sorority, or
 194 organized group of students, whether academic, athletic, political, social, or otherwise,
 195 that is officially recognized by a public institution of higher education.

196 (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is
 197 generally accessible to members of the campus community, including, but not limited to,
 198 grassy areas, walkways, or other common areas, and does not include outdoor areas when
 199 and where access to members of the campus community is lawfully restricted.

200 (c) Unrestricted outdoor areas of campuses of public institutions of higher education in this
 201 state shall be deemed public forums for the campus community, and public institutions of
 202 higher education shall not create 'free speech zones' or other designated areas of campus
 203 outside of which expressive activities are prohibited for the campus community.

204 (d) Public institutions of higher education may maintain and enforce reasonable time,
 205 place, and manner restrictions for the campus community narrowly tailored in service of
 206 a significant institutional interest only when such restrictions employ clear, published,

207 content- and viewpoint-neutral criteria, and provide for ample alternative means of
208 expression. Any such restrictions shall allow for members of the campus community to
209 spontaneously and contemporaneously assemble and distribute literature. Nothing in this
210 Code section shall be interpreted as limiting the right of student expression elsewhere on
211 campus.

212 (e) Protected expressive activity under this Code section includes, but is not limited to,
213 lawful verbal, written, audio-visual, or electronic expression by which individuals may
214 communicate ideas to one another, including all forms of peaceful assembly, distributing
215 literature, carrying signs, circulating petitions, demonstrations, protests, and speeches
216 including those by guest speakers.

217 (f) Any person who wishes to engage in noncommercial expressive activity in an
218 unrestricted outdoor area of campus shall be permitted to do so freely, as long as the
219 person's conduct is not unlawful and does not materially and substantially disrupt the
220 functioning of the public institution of higher education, subject to restrictions lawfully
221 imposed under subsections (c) and (d) of this Code section. Nothing in this Code section
222 shall be construed to make the unrestricted areas of campus into a designated public forum
223 for persons who are not members of the campus community.

224 (g) Nothing in this Code section shall be interpreted as preventing public institutions of
225 higher education from prohibiting student on student harassment as defined in this Code
226 section or from prohibiting, limiting, or restricting expression that is not protected under
227 the Georgia Constitution or the First Amendment of the United States Constitution,
228 including, but not limited to, true threats or expressive activity directed to provoke
229 imminent lawless actions and likely to produce it.

230 (h) Nothing in this Code section shall enable individuals to engage in conduct that
231 materially and substantially disrupts another's expressive activity that is occurring in an
232 unrestricted outdoor area of campus or a campus space reserved for that activity under the
233 exclusive use or control of a particular group.

234 (i) No public institution of higher education may deny a religious, political, or ideological
235 student organization any benefit or privilege available to any other student organization,
236 or otherwise discriminate against such an organization, nor may a prospective student
237 organization actively seeking official recognition by a public institution of higher education
238 be denied official recognition, based on the actual or anticipated expressive activity of the
239 organization, including any requirement that the leaders or members of such organization:

240 (1) Affirm and adhere to the organization's sincerely held beliefs;

241 (2) Comply with the organization's standards of conduct; or

242 (3) Further the organization's mission or purpose, as defined by the student organization.

243 (j) Public institutions of higher education shall make public in their handbooks, on their
244 websites, and through their orientation programs for students the policies, regulations, and
245 expectations of students regarding free expressive activity on campus consistent with this
246 Code section.

247 (k) Public institutions of higher education shall develop materials, programs, and
248 procedures to ensure that those persons who have responsibility for discipline or education
249 of students, such as administrators, campus police officers, residence life officials, and
250 professors, understand the policies, regulations, and duties of public institutions of higher
251 education regarding expressive activity on campus consistent with this Code section.

252 (l) Any person or student organization aggrieved by a violation of this Code section may
253 bring an action against the public institution of higher education, including its employees
254 acting in their official capacities, responsible for the violation and seek appropriate relief,
255 including, but not limited to, injunctive relief, monetary damages, reasonable attorneys'
256 fees, and court costs. If a court should find a violation of this Code section, it shall issue
257 an award of at least \$5,000.00. Any person or student organization aggrieved by a
258 violation of this Code section may assert such violation as a defense or counterclaim in any
259 disciplinary action or in any civil or administrative proceedings brought against such
260 student or student organization. Nothing in this subsection shall be interpreted to limit any
261 other remedies available to any person or student organization.

262 (m) A person shall be required to bring suit for violation of this Code section not later than
263 one year after the day the cause of action accrues. For purposes of calculating the one-year
264 limitation period, each day that the violation persists, and each day that a policy in violation
265 of this Code section remains in effect, shall constitute a new day that the cause of action
266 has accrued.

267 (n) The State Board of the Technical College System of Georgia shall make and publish
268 an annual report and provide a copy to the Governor and each chamber of the General
269 Assembly on July 1 of each year addressing the following from the previous calendar year:

270 (1) Any barriers to, or disruptions of, free expression within public institutions of higher
271 education;

272 (2) Administrative response and discipline relating to violation of regulations and
273 policies established pursuant to Code Section 20-3-48;

274 (3) Actions taken by public institutions of higher education, including difficulties,
275 controversies, or successes, in maintaining a posture of administrative and institutional
276 neutrality with regard to political or social issues; and

277 (4) Any assessments, criticisms, commendations, or recommendations the board of
278 regents deems appropriate to further include in the report."

279

SECTION 5.

280 This Act shall become effective on July 1, 2020.

281

SECTION 6.

282 All laws and parts of laws in conflict with this Act are repealed.