

The House Committee on Higher Education offers the following substitute to HB 1:

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 a short title; to provide for definitions; to provide for related matters;
15 to provide for an effective date; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1 (SUB)

- 1 -

17 **SECTION 1.**

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

22 "20-3-48.

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

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

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

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

34 (3) 'Materially and substantially disrupts' means when a person intentionally engages in
35 conduct or expressive activity which such person knew or reasonably should have known
36 would significantly hinder another person's or group's expressive activity, prevent the
37 communication of the person's or group's message, or prevent the transaction of the
38 business of a lawful meeting, gathering, or procession by:

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

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

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

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

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

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

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

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

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

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

78 (e) Protected expressive activity under this part consists of speech and other conduct
79 protected by the First Amendment to the United States Constitution, including, but not
80 limited to, lawful verbal, written, audio-visual, or electronic expression by which
81 individuals may communicate ideas to one another, including all forms of peaceful
82 assembly, distributing literature, carrying signs, circulating petitions, demonstrations,
83 protests, and speeches including those by guest speakers.

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

91 (g) Nothing in this part shall be interpreted as preventing public institutions of higher
92 education from prohibiting student on student harassment as defined in this part; from
93 complying with federal and state laws prohibiting discrimination and harassment; or from
94 prohibiting, limiting, or restricting expression that is not protected under the Georgia
95 Constitution or the First Amendment to 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) Public institutions of higher education shall make public in their handbooks, on their
103 websites, and through their orientation programs for students the policies, regulations, and
104 expectations of students regarding free expressive activity on campus consistent with this
105 part.

106 (j) Public institutions of higher education shall develop materials, programs, and
107 procedures to ensure that those persons who have responsibility for discipline or education
108 of students, such as administrators, campus police officers, residence life officials, and
109 professors, understand the policies, regulations, and duties of public institutions of higher
110 education regarding expressive activity on campus consistent with this part."

111 **SECTION 2.**

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

114 "20-3-48.1.

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

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

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

- 122 (3) Actions taken by ~~state~~ public institutions of higher ~~learning~~ education, including
123 difficulties, controversies, or successes, in maintaining a posture of administrative and
124 institutional neutrality with regard to political or social issues; and
125 (4) Any assessments, criticisms, commendations, or recommendations the board of
126 regents deems appropriate to further include in the report."

127 **SECTION 3.**

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

130 **SECTION 4.**

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

133 "20-4-11.1.

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

135 (1) 'Benefit' means any of the following conferred upon a student or student organization
136 by a public institution of higher education: recognition; registration; the use of facilities
137 of the public institution of higher education for purposes of meetings or other expressive
138 activity; the use of channels of communication of the public institution of higher
139 education; or funding sources that are otherwise available to other students or student
140 organizations at the public institution of higher education.

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

143 (3) 'Materially and substantially disrupts' means when a person intentionally engages in
144 conduct or expressive activity which such person knew or reasonably should have known
145 would significantly hinder another person's or group's expressive activity, prevent the

146 communication of the person's or group's message, or prevent the transaction of the
147 business of a lawful meeting, gathering, or procession by:

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

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

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

158 (4) 'Public institution of higher education' or 'institution' means any postsecondary
159 technical school or other postsecondary branch of the Technical College System of
160 Georgia.

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

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

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

171 (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is
172 generally accessible to members of the campus community, including, but not limited to,

173 grassy areas, walkways, or other common areas, and does not include outdoor areas when
174 and where access to members of the campus community is lawfully restricted.

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

179 (c) Public institutions of higher education may maintain and enforce reasonable time,
180 place, and manner restrictions for the campus community narrowly tailored in service of
181 a significant institutional interest only when such restrictions employ clear, published,
182 content- and viewpoint-neutral criteria, and provide for ample alternative means of
183 expression. Any such restrictions shall allow for members of the campus community to
184 spontaneously and contemporaneously assemble and distribute literature. Nothing in this
185 Code section shall be interpreted as limiting the right of student expression elsewhere on
186 campus.

187 (d) Protected expressive activity under this Code section consists of speech and other
188 conduct protected by the First Amendment to the United States Constitution, including, but
189 not limited to, lawful verbal, written, audio-visual, or electronic expression by which
190 individuals may communicate ideas to one another, including all forms of peaceful
191 assembly, distributing literature, carrying signs, circulating petitions, demonstrations,
192 protests, and speeches including those by guest speakers.

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

200 (f) Nothing in this Code section shall be interpreted as preventing public institutions of
201 higher education from prohibiting student on student harassment as defined in this Code
202 section; from complying with federal and state laws prohibiting discrimination and
203 harassment; or from prohibiting, limiting, or restricting expression that is not protected
204 under the Georgia Constitution or the First Amendment to the United States Constitution,
205 including, but not limited to, true threats or expressive activity directed to provoke
206 imminent lawless actions and likely to produce it.

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

211 (h) Public institutions of higher education shall make public in their handbooks, on their
212 websites, and through their orientation programs for students the policies, regulations, and
213 expectations of students regarding free expressive activity on campus consistent with this
214 Code section.

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

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

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

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

227 (3) Actions taken by public institutions of higher education, including difficulties,
228 controversies, or successes, in maintaining a posture of administrative and institutional
229 neutrality with regard to political or social issues; and
230 (4) Any assessments, criticisms, commendations, or recommendations the board of
231 regents deems appropriate to further include in the report."

232 **SECTION 5.**

233 This Act shall become effective on July 1, 2021.

234 **SECTION 6.**

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