



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBs0303/1
ARG:klm

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 735**

January 12, 2022 - Offered by Representatives CABRAL-GUEVARA and MURPHY.

1 **AN ACT** *to create* 36.41 and 38.34 of the statutes; **relating to:** free speech and
2 academic freedom at University of Wisconsin System institutions and technical
3 colleges, and causes of action against the Board of Regents of the University of
4 Wisconsin System and technical college district boards.

Analysis by the Legislative Reference Bureau

This bill establishes certain standards related to free speech and academic freedom at University of Wisconsin System institutions and technical colleges. For violation of these standards, the Board of Regents of the UW System or technical college district board may be subject to a civil cause of action and must provide certain public notice of the violation.

First Amendment protections

Under the bill, a UW institution or technical college may not do any of the following: 1) restrict noncommercial speech protected under the First Amendment; 2) maintain and enforce time, place, and manner restrictions on expressive activities on the publicly accessible, open outdoor areas of its campus unless those restrictions meet specified requirements; 3) designate any area of a campus a “free speech zone” or otherwise create policies restricting noncommercial expressive activities to a particular area of a campus; 4) charge fees for additional security based on the anticipated content of speech or anticipated reaction to speech; or 5) sanction

individuals or groups for discriminatory harassment unless the speech is unwelcome, targets its victim on the basis of a protected class under law, and is demonstrably so severe, pervasive, and objectively offensive that it effectively bars a student from receiving equal access to educational opportunities or benefits. The bill also specifies that all of an institution's or technical college's indoor and outdoor public areas, except classrooms, are considered public forums. An institution or technical college must make every reasonable effort to prevent protected speech and sanctioned events, activities, and instruction from being disrupted.

The bill requires an institution or technical college to annually do all of the following: 1) conduct a survey of all students and employees on First Amendment rights, academic freedom, perceived political or other bias at the institution or technical college, and whether campus culture promotes self-censorship; 2) submit a report to the legislature detailing the results of this survey; and 3) provide all students and employees with instruction in academic freedom, due process, and First Amendment protections.

Academic freedom

Under the bill, an institution or technical college may not sanction an individual on the basis of content or viewpoints expressed while the individual is directly engaged in instruction, research, or service explicitly related to the individual's role as a student or faculty member of the institution or technical college.

Penalty and cause of action

The bill requires a UW institution or technical college that is found by a state or federal court, by a preponderance of the evidence, to have violated any of the free speech or academic freedom provisions described above to include, for 10 years, the following disclaimer on all notices to individuals regarding admission to the UW institution or technical college: "NOTICE: We are required by the State of Wisconsin to inform you that within the last 10 years ... [insert name of UW institution or technical college] has violated the free speech or academic freedom provisions in the Wisconsin statutes."

Under the bill, the attorney general, a district attorney, or any person whose expressive rights were violated may bring a court action against the Board of Regents of the UW System or the technical college district board for violation by a UW institution or technical college of any of the free speech or academic freedom provisions described above and may seek an injunction and recovery of compensatory damages for persons aggrieved by the violation. In such an action, if the court finds a violation, the court must award to the plaintiffs all of the following: 1) total damages for all persons aggrieved by the violation of not less than \$500 for the initial violation plus \$50 for each day after the complaint is served that the violation remains ongoing, but not exceeding an aggregate amount of \$100,000 for all cases stemming from a single controversy; and 2) court costs and reasonable attorney fees.

An award to the plaintiffs of damages, court costs, or attorney fees must be paid from the UW institution's or technical college's administrative expense moneys.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 36.41 of the statutes is created to read:

2 **36.41 Campus free speech and academic freedom. (1) DEFINITION.** In this
3 section, "employee" means a member of the faculty, academic staff, or university staff
4 assigned to an institution.

5 **(2) FIRST AMENDMENT PROTECTIONS.** (a) An institution may not do any of the
6 following:

7 1. Restrict noncommercial speech protected under the First Amendment of the
8 U.S. Constitution.

9 2. Maintain and enforce time, place, and manner restrictions on expressive
10 activities on the open outdoor areas of its campus that are generally accessible to the
11 public unless those restrictions meet all of the following requirements:

12 a. The restrictions are reasonable, in furtherance of a significant institutional
13 interest, and employ clear, published, content-neutral, and viewpoint-neutral
14 criteria.

15 b. The restrictions provide for ample alternative means for communication and
16 allow for members of the institution's community to spontaneously and
17 contemporaneously distribute literature and assemble.

18 3. Designate any area of a campus a "free speech zone" or otherwise create
19 policies restricting noncommercial expressive activities to a particular area of a
20 campus.

1 4. Charge fees for additional security based on the anticipated content of speech
2 or anticipated reaction to speech.

3 5. Sanction individuals or groups for discriminatory harassment unless the
4 speech is unwelcome, targets its victim on the basis of the victim's real or perceived
5 membership in a class protected under federal, state, or local law, and is
6 demonstrably so severe, pervasive, and objectively offensive that it effectively bars
7 a student from receiving equal access to educational opportunities or benefits. This
8 subdivision does not preclude an institution from providing additional resources to
9 a student affected by speech that cannot be sanctioned under this subdivision or from
10 taking nonpunitive actions designed to promote a welcoming, inclusive
11 environment.

12 (b) All indoor and outdoor public areas operated by an institution or under the
13 institution's jurisdiction, except classrooms, shall be considered public forums.

14 (c) An institution shall make every reasonable effort to prevent protected
15 speech and institution-sanctioned events, activities, and instruction from being
16 disrupted. Nothing in this section shall prevent or inhibit an institution from
17 preventing disruptions or punishing disrupters if the institution, to do so, does not
18 prevent or punish expression that is protected under the First Amendment.

19 (d) An institution shall do all of the following:

20 1. Conduct an annual survey of all students and employees on First
21 Amendment rights, academic freedom, perceived political, ideological, or other bias
22 at the institution, and whether campus culture promotes self-censorship.

23 2. Annually submit to the legislature under s. 13.172 (2) a report detailing the
24 results of the survey under subd. 1.

1 3. Annually provide all students and employees with instruction in academic
2 freedom, due process, and First Amendment protections.

3 **(3) ACADEMIC FREEDOM.** An institution may not sanction an individual on the
4 basis of the content or viewpoints expressed while the individual is directly engaged
5 in instruction, research, or service explicitly related to the individual's role as a
6 student or faculty member of the institution.

7 **(4) PENALTIES; INSTITUTIONAL AID.** (a) An institution that violates this section,
8 for 10 years following the date of the finding of the violation under par. (b), shall
9 include a disclaimer on all notices, both printed or electronic, to individuals
10 regarding admission to the institution, in a type size no smaller than the majority
11 of the rest of the notice, in substantially the following form: "NOTICE: We are
12 required by the State of Wisconsin to inform you that within the last 10 years ...
13 [insert name of institution] has violated the free speech or academic freedom
14 provisions in the Wisconsin statutes."

15 (b) The penalty under par. (a) applies if a state or federal court in this state
16 finds, on the basis of a preponderance of the evidence, that the institution violated
17 this section.

18 **(5) CAUSE OF ACTION.** (a) Any person identified in par. (b) may bring an action
19 in circuit court against the board for violation of this section by an institution and
20 may seek any of the following:

- 21 1. An injunction against violation of this section.
- 22 2. Recovery from the board of compensatory damages for persons aggrieved by
23 the violation.

24 (b) Any of the following persons may bring an action under par. (a):

- 25 1. The attorney general.

1 2. A district attorney.

2 3. Any person whose expressive rights were violated through the violation of
3 this section.

4 (c) Subject to par. (d), in an action brought under par. (a), if the court finds a
5 violation, the court shall award to the plaintiffs all of the following:

6 1. Total damages for all persons aggrieved by the violation of not less than \$500
7 for the initial violation plus \$50 for each day the violation remains ongoing, which
8 shall accrue starting on the day after the complaint is served on the board.

9 2. Notwithstanding s. 814.04 (1), court costs and reasonable attorney fees.

10 (d) In an action brought under par. (a), the total damages, excluding court costs
11 and attorney fees, that may be awarded to plaintiffs in a case or cases stemming from
12 a single controversy may not exceed an aggregate amount of \$100,000. In violations
13 harming multiple plaintiffs, the court shall divide the damages equitably among
14 them until the maximum award is exhausted, if applicable.

15 (e) If a court awards to plaintiffs damages, court costs, or attorney fees in an
16 action brought under this subsection, the board shall pay the total amount of the
17 award from moneys allocated under s. 36.09 (1) (h) to the violating institution for the
18 institution's administrative expenses.

19 **SECTION 2.** 38.34 of the statutes is created to read:

20 **38.34 Campus free speech and academic freedom. (1) DEFINITIONS.** In
21 this section:

22 (a) "Employee" means a staff member, faculty member, or administrator
23 employed by a district board.

24 (b) "Student" means an individual enrolled in a district school.

1 **(2) FIRST AMENDMENT PROTECTIONS.** (a) A district board may not do any of the
2 following:

3 1. Restrict noncommercial speech protected under the First Amendment of the
4 U.S. Constitution.

5 2. Maintain and enforce time, place, and manner restrictions on expressive
6 activities on the open outdoor areas of district campuses that are generally accessible
7 to the public unless those restrictions meet all of the following requirements:

8 a. The restrictions are reasonable, in furtherance of a significant interest of the
9 district board, and employ clear, published, content-neutral, and viewpoint-neutral
10 criteria.

11 b. The restrictions provide for ample alternative means for communication and
12 allow for members of the district campus's community to spontaneously and
13 contemporaneously distribute literature and assemble.

14 3. Designate any area of a district campus a "free speech zone" or otherwise
15 create policies restricting noncommercial expressive activities to a particular area
16 of a district campus.

17 4. Charge fees for additional security based on the anticipated content of speech
18 or anticipated reaction to speech.

19 5. Sanction individuals or groups for discriminatory harassment unless the
20 speech is unwelcome, targets its victim on the basis of the victim's real or perceived
21 membership in a class protected under federal, state, or local law, and is
22 demonstrably so severe, pervasive, and objectively offensive that it effectively bars
23 a student from receiving equal access to educational opportunities or benefits. This
24 subdivision does not preclude a district board from providing additional resources to
25 a student affected by speech that cannot be sanctioned under this subdivision or from

1 taking nonpunitive actions designed to promote a welcoming, inclusive
2 environment.

3 (b) All indoor and outdoor public areas owned or operated by a district board,
4 except classrooms, shall be considered public forums.

5 (c) A district board shall make every reasonable effort to prevent protected
6 speech and district board–sanctioned events, activities, and instruction from being
7 disrupted. Nothing in this section shall prevent or inhibit a district board from
8 preventing disruptions or punishing disrupters if the district board, to do so, does not
9 prevent or punish expression that is protected under the First Amendment.

10 (d) A district board shall do all of the following:

11 1. Conduct an annual survey of all students and employees on First
12 Amendment rights, academic freedom, perceived political, ideological, or other bias
13 at the district schools, and whether campus culture promotes self-censorship.

14 2. Annually submit to the legislature under s. 13.172 (2) a report detailing the
15 results of the survey under subd. 1.

16 3. Annually provide all students and employees with instruction in academic
17 freedom, due process, and First Amendment protections.

18 **(3) ACADEMIC FREEDOM.** A district board may not sanction an individual on the
19 basis of the content or viewpoints expressed while the individual is directly engaged
20 in instruction, research, or service explicitly related to the individual's role as a
21 student or faculty member of a district school.

22 **(4) PENALTIES; INSTITUTIONAL AID.** (a) A district board that violates this section,
23 for 10 years following the date of the finding of the violation under par. (b), shall
24 include a disclaimer on all notices, both printed or electronic, to individuals
25 regarding admission to a technical college of the district, in a type size no smaller

1 than the majority of the rest of the notice, in substantially the following form:
2 “NOTICE: We are required by the State of Wisconsin to inform you that within the
3 last 10 years ... [insert name of technical college] has violated the free speech or
4 academic freedom provisions in the Wisconsin statutes.”

5 (b) The penalty under par. (a) applies if a state or federal court in this state
6 finds, on the basis of a preponderance of the evidence, that the district board violated
7 this section.

8 **(5) CAUSE OF ACTION.** (a) Any person identified in par. (b) may bring an action
9 in circuit court against a district board for violation of this section and may seek any
10 of the following:

- 11 1. An injunction against violation of this section.
- 12 2. Recovery from the district board of compensatory damages for persons
13 aggrieved by the violation.

14 (b) Any of the following persons may bring an action under par. (a):

- 15 1. The attorney general.
- 16 2. A district attorney.
- 17 3. Any person whose expressive rights were violated through the violation of
18 this section.

19 (c) Subject to par. (d), in an action brought under par. (a), if the court finds a
20 violation, the court shall award to the plaintiffs all of the following:

- 21 1. Total damages for all persons aggrieved by the violation of not less than \$500
22 for the initial violation plus \$50 for each day the violation remains ongoing, which
23 shall accrue starting on the day after the complaint is served on the district board.
- 24 2. Notwithstanding s. 814.04 (1), court costs and reasonable attorney fees.

