



AN ACT GENERALLY REVISING LAWS RELATED TO EXPRESSION ON CAMPUSES OF PUBLIC POSTSECONDARY INSTITUTIONS; PROVIDING PROTECTIONS FOR FREE EXPRESSION AND EXPRESSIVE ACTIVITY ON PUBLIC POSTSECONDARY INSTITUTION CAMPUSES; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the First Amendment of the United States Constitution and Article II, sections 5 through 7, of the Montana Constitution protect the rights of freedom of religion, freedom of association, freedom of speech, freedom of the press, and to petition the government for all citizens; and

WHEREAS, the United States Supreme Court has called public universities "peculiarly the 'marketplace of ideas', " where young adults learn to exercise these constitutional rights necessary to participate in our system of government and to tolerate others' exercise of the same rights, and therefore there is "no room for the view that... First Amendment protections should apply with less force on college campuses than in the community at large," *Healy v. James*, 408 U.S. 169, 180 (1972); and

WHEREAS, the Montana Legislature views the exercise of First Amendment rights on the public postsecondary institutions' campuses in Montana as a critical component of the education experience for students and requires that each public postsecondary institution in Montana ensures free, robust, and uninhibited debate and deliberations by students whether on or off campus; and

WHEREAS, the United States Supreme Court has warned that if public universities stifle student speech and prevent the open exchange of ideas on campus, "our civilization will stagnate and die," *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957); and

WHEREAS, the Montana Legislature has determined that a significant amount of taxpayer dollars is appropriated to public postsecondary institutions each year, and therefore the Montana Legislature shall ensure that all postsecondary institutions receiving state funds recognize freedom of speech as a fundamental right for

all.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) (a) "Materially and substantially disrupt" means conduct by a person who acts purposely or knowingly to:

- (i) significantly hinder the expressive activity of another person or group;
- (ii) prevent the communication of an expressive activity; or
- (iii) prevent the transaction of business at a lawful meeting, gathering, or procession by:
 - (A) engaging in fighting or other violent or unlawful behavior; or
 - (B) physically blocking or using threats of violence to prevent another person from attending, listening to, viewing, or otherwise participating in an expressive activity.

(b) The term does not include conduct that is protected under the first amendment of the United States constitution or under Article II, section 7, of the Montana constitution, including but not limited to:

- (i) lawful protests in outdoor areas of campus; or
- (ii) minor, brief, or fleeting nonviolent disruption of an event that is isolated or short in duration.

(2) (a) "Outdoor area of campus" means a generally accessible outside area of campus, such as grassy areas, walkways, or other similar common areas.

(b) The term does not include an outdoor area where access is restricted from a majority of the public.

(3) "Public postsecondary institution" means:

- (a) a unit of the Montana university system as defined in 20-25-201; or
- (b) a Montana community college, defined and organized as provided in 20-15-101.

(4) "Student" means a person who is enrolled full-time or part-time at a public postsecondary institution.

(5) "Student organization" means an officially recognized group or a group seeking official recognition at a public postsecondary institution that is comprised of students who receive or are seeking to receive a benefit through the public postsecondary institution.

Section 2. Protected expressive activities. Expressive activity protected under the provisions of [sections 1 through 8] includes but is not limited to any lawful oral, written, audiovisual, or electronic means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches, guest speakers, distribution of printed materials, carrying signs, and circulating petitions.

Section 3. Public campus as public forum -- free speech zone prohibited. (1) An outdoor area of campus of a public postsecondary institution is a public forum. A public postsecondary institution may not create a free speech zone or other designated outdoor areas of campus outside of which expressive activity is prohibited.

(2) A public postsecondary institution may maintain and enforce reasonable restrictions on the time, place, or manner of expressive activity. The restrictions must be narrowly tailored to serve a significant institutional interest. The restrictions must employ clear, published, content-neutral, and viewpoint-neutral criteria while providing for ample alternative means of expression. The restrictions must allow members of the public to spontaneously and contemporaneously assemble and distribute printed materials.

(3) This section may not be construed to limit the right of student expressive activity elsewhere on the public postsecondary institution's campus.

Section 4. Noncommercial expressive activities -- certain prohibitions allowable. (1) A public postsecondary institution shall permit a person to engage freely in noncommercial expressive activity on campus, subject to the provisions of [section 3], as long as the person's expressive activity:

- (a) is not unlawful; or
- (b) does not materially and substantially disrupt the functioning of the public postsecondary institution.

(2) A public postsecondary institution may impose restrictions pursuant to [section 3] on noncommercial expressive activity. Any restrictions imposed must allow for members of the public to spontaneously and contemporaneously assemble, speak, and distribute printed materials.

(3) This section may not be construed to prevent a public postsecondary institution from prohibiting, limiting, or restricting expressive activity that is not protected by the first amendment of the United States

constitution or Article II, section 7, of the Montana constitution.

(4) This section may not be construed to permit a person to engage in conduct that materially and substantially disrupts another person's expressive activity.

Section 5. Policies protecting free expression required -- staff training. (1) A public postsecondary institution shall adopt policies to implement the provisions of [sections 1 through 8]. The policies must address students' expectations and provide appropriate regulations regarding free expression and expressive activities on campus consistent with [sections 1 through 8].

(2) A public postsecondary institution may develop materials, programs, and procedures to ensure that any person who has responsibility for the discipline or education of students, including administrators, campus security officers, residence life officials, and professors, understands the policies, regulations, and duties of the public postsecondary institution regarding free expression and expressive activities on campus consistent with [sections 1 through 8].

Section 6. Public accountability. (1) A public postsecondary institution may prepare a report to identify a course of action to be taken by the institution to implement the requirements of [sections 1 through 8].

(2) If a public postsecondary institution prepares a report pursuant to this section:

(a) the report must be revised and republished whenever the public postsecondary institution makes any changes or updates to the policies and procedures related to free speech and expressive activity on campus;

(b) the report must be posted to the public postsecondary institution's website. The report must be:

(i) accessible within three links from the institution's website homepage;

(ii) searchable by keywords and phrases; and

(iii) accessible to the public without having to register or use a username, password, or other user identification; and

(c) the contents of the report must include:

(i) a description of any barriers to or incidents of disruption of expressive activity on campus, including but not limited to any attempt to block or prohibit a speaker;

(ii) the nature of the barrier or disruption;

(iii) information about any disciplinary action taken against any member of the public who is responsible for a specific barrier or disruption, without disclosing personally identifiable information of any student found to be responsible; and

(iv) any other information the public postsecondary institution considers valuable for the public to evaluate whether the free expression and expressive activity rights of all members of the public have been protected equally and enforced consistently with the provisions of [sections 1 through 8].

(3) (a) The public postsecondary institution may submit the report biennially to the governor and, as provided in 5-11-210, to the legislature at least 30 days prior to the start of each regular legislative session.

(b) If the public postsecondary institution is sued for an alleged violation of the complainant's first amendment rights, the public postsecondary institution may prepare and submit a supplementary report along with a copy of the complaint and any amended complaint to the governor and the legislature within 30 days of receiving the complaint or amended complaint.

Section 7. Remedies. (1) A person or student organization who is aggrieved by a violation of [sections 1 through 8] may bring an action against a public postsecondary institution and any employees acting in their official capacities who were responsible for the violation and may seek appropriate relief, including but not limited to injunctive relief, monetary damages, reasonable attorney fees, and court costs.

(2) If a court finds that a public postsecondary institution has violated [sections 1 through 8], the court shall award damages of at least \$2,000 and not more than \$75,000 to the aggrieved person or student organization.

(3) A person or student organization may assert a violation of [sections 1 through 8] as a defense or counterclaim in any disciplinary action or civil or administrative proceeding brought against the person or student organization.

(4) This section may not be construed to limit any other remedy available to any person or student organization.

Section 8. Statute of limitations. An action brought for a violation of [sections 1 through 8] must be

commenced within 1 year after the day the cause of action accrues. For the purposes of this section, each date that a violation of [sections 1 through 8] persists or a policy that violates [sections 1 through 8] is in effect constitutes a continuing violation, and the statute of limitations is tolled until the violation ceases.

Section 9. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 through 8].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 218, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 218

INTRODUCED BY M. HOPKINS, G. HERTZ, F. ANDERSON, B. BEARD, D. BEDEY, M. BINKLEY, J. DOOLING, P. FIELDER, R. FITZGERALD, F. FLEMING, G. FRAZER, J. FULLER, W. GALT, F. GARNER, S. GIST, S. GREEF, S. GUNDERSON, C. HINKLE, J. HINKLE, K. HOLMLUND, L. JONES, J. KASSMIER, C. KNUDSEN, R. KNUDSEN, B. LER, R. MARSHALL, B. MITCHELL, T. MOORE, J. PATELIS, J. READ, M. REGIER, V. RICCI, K. SEEKINS-CROWE, D. SKEES, M. STROMSWOLD, J. TREBAS, B. TSCHIDA, B. USHER, S. VINTON, K. WALSH, K. WHITMAN, T. FRANCE

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