

AMENDMENTS TO LB718

Introduced by Halloran, 33.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 8 of this act shall be known and may be
4 cited as the Higher Education Free Speech Accountability Act.

5 Sec. 2. For purposes of the Higher Education Free Speech
6 Accountability Act:

7 (1) Campus community includes students of an institution, all
8 employees of an institution, and the invited guests of such students or
9 employees;

10 (2) Counter demonstration means lawful action or conduct that
11 criticizes or objects to the free expression activities of others on
12 campus;

13 (3) Student means any person who is enrolled on a full-time or part-
14 time basis in an institution;

15 (4) Governing body means the Board of Regents of the University of
16 Nebraska, the Board of Trustees of the Nebraska State Colleges, and each
17 community college board of governors; and

18 (5) Institution means a community college, a state college, or the
19 University of Nebraska.

20 Sec. 3. Each governing body shall develop, adopt, and promulgate a
21 policy governing free expression within its institutions. Such policy
22 shall contain at least the following provisions:

23 (1) A statement that the primary function of each institution is the
24 discovery, improvement, transmission, and dissemination of knowledge by
25 means of research, teaching, discussion, and debate. This statement shall
26 provide that, to fulfill this function, the institution must strive to
27 ensure the fullest degree of intellectual freedom and free expression;

1 (2) A statement that it is not the proper role of the institution to
2 shield individuals from speech protected by the First Amendment to the
3 Constitution of the United States, including, without limitation, ideas
4 and opinions individuals find unwelcome, disagreeable, or even deeply
5 offensive;

6 (3) An institution shall not take action, as an institution, on the
7 public policy controversies of the day in such a way as to require
8 students, faculty, or administrators to publicly express a given view on
9 such controversies;

10 (4) Students and faculty have the freedom to discuss any problem
11 that presents itself, as permitted by the First Amendment and within the
12 limits of reasonable viewpoint and content-neutral restrictions on time,
13 place, and manner of expression that are consistent with the Higher
14 Education Free Speech Accountability Act and that are necessary to
15 achieve a compelling institutional interest. Any such restrictions shall
16 be clear and published and shall provide ample alternative means of
17 expression. Students and faculty shall be permitted to assemble and
18 engage in spontaneous expressive activity as long as such activity is not
19 unlawful and does not materially and substantially disrupt the
20 functioning of the institution, subject to the requirements of this
21 subdivision;

22 (5) The institution shall not limit the right of members of the
23 campus community to hold counter demonstrations, so long as the conduct
24 of such counter demonstrations is lawful, does not interfere with the
25 free expression rights of others on campus by materially and
26 substantially disrupting previously scheduled or reserved activities in a
27 portion or section of the campus at that scheduled time, and does not
28 materially and substantially disrupt the functioning of the institution;

29 (6) Access to campuses of the institution for purposes of free
30 speech and expression shall be consistent with First Amendment
31 jurisprudence regarding traditional public forums, designated public

1 forums, and nonpublic forums and subject to reasonable time, place, and
2 manner restrictions;

3 (7) The public areas of campuses of the institution are traditional
4 public forums, open on the same terms to any speaker;

5 (8) Any campus of the institution shall be open to any speaker whom
6 students, student groups, or members of the faculty have invited;

7 (9) Protests and demonstrations that materially and substantially
8 infringe upon the rights of others to engage in or listen to expressive
9 activity shall not be permitted. Any student or institution employee who
10 engages in such protests or demonstrations shall be subject to sanction;

11 (10) A series of sanctions for any student or institution employee
12 who violates the policy governing free expression. Such sanctions shall
13 parallel other institutional disciplinary actions and shall include
14 increased sanctions for repeat violators; and

15 (11) The rights afforded to any student or institution employee
16 accused of violating the policy governing free expression.

17 Sec. 4. (1) Each governing body shall create a Committee on Free
18 Expression to consist of nine members. The membership shall consist of
19 three members from the governing body, three faculty members, and three
20 student members. The committee shall elect one of its members as
21 chairperson. Members shall serve for terms of one year. Members shall
22 serve without compensation but shall be reimbursed for their actual and
23 necessary expenses incurred in the performance of their duties as
24 provided in sections 81-1174 to 81-1177.

25 (2) Each year, each committee shall provide a report to the public,
26 its own governing body, the Governor, and the Legislature. The report
27 shall be submitted at least thirty days prior to the beginning of the
28 legislative session for the following year. The annual report shall
29 include:

30 (a) A description of any barriers to or incidents of disruption of
31 free expression occurring on any campus of an institution, including, but

1 not limited to, attempts to block or prohibit speakers and investigations
2 into students or student organizations for their speech. The description
3 shall include the nature of each barrier or incident, as well as what
4 disciplinary action, if any, was taken against members of the campus
5 community determined to be responsible for such specific barriers or
6 incidents. The description shall not reveal any student's personally
7 identifiable information; and

8 (b) Any assessments, criticisms, commendations, or recommendations
9 the committee sees fit to include.

10 (3) The annual report shall be:

11 (a) Accessible from the home page of the web site of each campus of
12 the institution;

13 (b) Searchable by keywords and phrases; and

14 (c) Accessible to the public without requiring registration or use
15 of a user name, a password, or another user identification.

16 (4) If an institution or one of its officials, schools, or colleges
17 is sued for an alleged violation of the First Amendment of the
18 Constitution of the United States or of Article I, section 5 of the
19 Constitution of Nebraska, such institution's Committee on Free Expression
20 shall submit a report of the incident, together with a copy of the
21 complaint, to the Governor and the Legislature. The report shall be
22 submitted on or before thirty days after the lawsuit is filed.

23 (5) A report under this section submitted to the Legislature shall
24 be submitted electronically.

25 Sec. 5. Each campus of an institution shall publicly post on its
26 web site a report which will detail the course of action implemented in
27 order to comply with the Higher Education Free Speech Accountability Act
28 and the policy governing free speech adopted pursuant to section 3 of
29 this act. Each campus shall publicly post on its web site any changes or
30 updates to the chosen course of action or the policy.

31 Sec. 6. All institution employees and all state departments and

1 agencies shall cooperate with the Committee on Free Expression by
2 providing information requested by the committee.

3 Sec. 7. (1) Each governing body may adopt additional policies and
4 guidelines to further the purposes of the policy adopted pursuant to
5 section 3 of this act.

6 (2) Nothing in the Higher Education Free Speech Accountability Act
7 shall be construed to prevent an institution from regulating student
8 speech or activity that is prohibited by law. Unless otherwise prohibited
9 by the act, an institution may only restrict student expressive activity
10 if such expressive activity is not protected by the First Amendment,
11 including:

12 (a) Violations of state or federal law;

13 (b) Expressive activity that a court has deemed unprotected
14 defamation;

15 (c) Unlawful harassment;

16 (d) True threats, which are defined as statements intended by the
17 speaker to communicate a serious expression of intent to commit an act of
18 unlawful violence to a particular individual or group of individuals;

19 (e) An unjustifiable invasion of privacy or confidentiality not
20 involving a matter of public concern;

21 (f) Expressive activity that substantially disrupts the functions of
22 an institution;

23 (g) Expressive activity that violates reasonable time, place, and
24 manner restrictions that are consistent with section 3 of this act; and

25 (h) Speech that interferes with the treatment of patients.

26 Sec. 8. Each governing body shall develop a policy that requires
27 each institution to identify the person, office, or department with
28 responsibility for ensuring compliance with the Higher Education Free
29 Speech Accountability Act and for answering any related questions or
30 concerns. This policy shall require that such person, office, or
31 department receive training in ensuring compliance with the act.