

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 178

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO HIGHER EDUCATION; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION
2 OF A NEW CHAPTER 68, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO
3 PROVIDE LEGISLATIVE FINDINGS, TO DEFINE TERMS, TO ESTABLISH PROVISIONS
4 REGARDING EXPRESSIVE ACTIVITIES IN OUTDOOR AREAS OF CAMPUSES, TO ESTAB-
5 LISH PROVISIONS REGARDING FREE EXPRESSIVE ACTIVITY, SECURITY FEES, AND
6 HARASSMENT POLICIES, TO PROVIDE FOR FREE SPEECH EDUCATION, TO REQUIRE
7 CERTAIN REPORTS, TO PROVIDE REMEDIES, TO PROVIDE LIMITATIONS AND EXCLU-
8 SIONS, TO PROVIDE A STATUTE OF LIMITATIONS, AND TO PROVIDE SEVERABIL-
9 ITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
13 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
14 ter 68, Title 33, Idaho Code, and to read as follows:

15 CHAPTER 68

16 PROTECTING CAMPUS FREE SPEECH IN HIGHER EDUCATION ACT

17 33-6801. SHORT TITLE. This chapter shall be known and may be cited as
18 the "Protecting Campus Free Speech in Higher Education Act."

19 33-6802. LEGISLATIVE FINDINGS. The legislature finds that:

20 (1) The first amendment to the United States constitution and the con-
21 stitution of the state of Idaho protect the rights of freedom of speech,
22 freedom of the press, freedom of religion, freedom of association, and free-
23 dom to petition the government for all people;

24 (2) The United States Supreme Court, in *Healy v. James*, described
25 public universities as "peculiarly the marketplace of ideas," where young
26 adults learn to exercise the constitutional rights necessary to participate
27 in this system of government and to tolerate others' exercise of the same
28 rights, and there is "no room for the view that ... first amendment protec-
29 tions should apply with less force on college campuses than in the community
30 at large";

31 (3) The exercise of first amendment rights on the campuses of public in-
32 stitutions of higher education in this state is a critical component of the
33 education experience for students and requires that each public institution
34 of higher education ensures free, robust, and uninhibited debate and delib-
35 erations by students whether on or off campus;

36 (4) The United States Supreme Court warned in *Sweezy v. New Hampshire*
37 that if public universities stifle student speech and prevent the open ex-
38 change of ideas on campus, "our civilization will stagnate and die"; and

39 (5) A significant amount of taxpayer dollars is appropriated to pub-
40 lic institutions of higher education each year and, as such, the legislature

1 must ensure that all public institutions of higher education receiving state
2 funds continue to recognize freedom of speech as a fundamental right for all.

3 33-6803. DEFINITIONS. As used in this chapter:

4 (1) "Benefit" means the recognition, registration, or use of fa-
5 cilities of an institution of higher education for meetings or speaking
6 purposes, use of channels of communication, and use of funding sources that
7 are otherwise available to other student organizations at the public insti-
8 tution of higher education.

9 (2) "Harassment" means expression that is unwelcome and so severe,
10 pervasive, and subjectively and objectively offensive that a student is
11 effectively denied equal access to educational opportunities or benefits
12 provided by a public institution of higher education.

13 (3) "Materially and substantially disrupts" means the act of doing one
14 (1) or more of the following:

15 (a) Materially disrupting the operation or functions of the public in-
16 stitution of higher education;

17 (b) Materially disrupting or preventing the communication of a message
18 of another individual or group; or

19 (c) Preventing a lawful meeting, gathering, or procession by:

20 (i) Engaging in fighting, violence, or other unlawful behavior;
21 or

22 (ii) Physically blocking or threatening or inciting violence to
23 prevent an individual from attending, listening to, viewing, or
24 participating in a protected expressive activity.

25 (4) "Outdoor areas of campus" means the generally accessible outside
26 areas of campus where students, administrators, faculty, staff, and invited
27 guests are commonly allowed, such as grassy areas, plazas, or other similar
28 common areas, and does not include outdoor areas of campus to which access by
29 the public is restricted.

30 (5) "Protected expressive activity" means noncommercial speech or
31 conduct protected by the first amendment to the constitution of the United
32 States, including:

33 (a) Communicating by any lawful verbal, written, audio-visual, or
34 electronic means;

35 (b) Participating in peaceful assembly;

36 (c) Protesting and counter-protesting;

37 (d) Making speeches, including speeches of guest speakers;

38 (e) Distributing literature;

39 (f) Carrying signs;

40 (g) Circulating petitions; and

41 (h) Distributing pamphlets and other literature.

42 (6) "Public institution of higher education" means a state institution
43 of higher education or a community college organized pursuant to chapter 21,
44 title 33, Idaho Code.

45 (7) "Student" means any person who is enrolled on a full-time or part-
46 time basis in a public institution of higher education.

47 (8) "Student organization" means an officially recognized group at a
48 public institution of higher education or a group seeking official recog-
49 nition, comprised of admitted students that receive, or are seeking to re-

1 ceive, benefits through the institution of higher education as defined in
2 this section.

3 33-6804. OUTDOOR AREAS. Public institutions of higher education shall
4 not create free speech zones or other designated outdoor areas of campus
5 outside of which non-commercial, protected expressive activities are pro-
6 hibited. Public institutions of higher education may maintain and enforce
7 reasonable time, place, and manner restrictions applicable to the outdoor
8 areas of campus that are narrowly tailored in service of a significant in-
9 stitutional interest only when such restrictions employ content-neutral
10 and viewpoint-neutral criteria and provide for ample alternative means of
11 expression. Any such restrictions shall allow for students and student or-
12 ganizations to spontaneously and contemporaneously assemble and distribute
13 literature. Nothing in this section may be interpreted as limiting the right
14 of non-commercial student expression elsewhere on campus. Nothing in this
15 chapter may be interpreted as applying to employee relations matters or
16 claims related to employment discrimination or harassment in employment.

17 33-6805. FREE EXPRESSIVE ACTIVITY -- SECURITY FEES -- HARASSMENT POL-
18 ICY REQUIRED. (1) Except as otherwise permitted by the first amendment to
19 the United States constitution, and by section 9, article I of the consti-
20 tution of the state of Idaho, no public institution of higher education shall
21 abridge the protected expressive activity of any member of the campus commu-
22 nity to speak on campus.

23 (2) No public institution of higher education shall charge security
24 fees to a student or a student organization based on the content of the stu-
25 dent's or organization's expression, the content of the expression of the
26 student's or organization's invited guest, or the anticipated reaction to an
27 invited guest's expression.

28 (3) All public institutions of higher education shall maintain a
29 policy prohibiting student-on-student harassment, as defined in section
30 33-6803(2), Idaho Code.

31 33-6806. FREE SPEECH EDUCATION FOR MEMBERS OF THE CAMPUS COMMU-
32 NITY. Public institutions of higher education are required to make public in
33 their handbooks, on their websites, and through their orientation programs
34 for students the laws, policies, and expectations of students regarding free
35 expression on campus consistent with this chapter.

36 33-6807. REPORTS. (1) No later than December 1, 2025, each public in-
37 stitution of higher education must publicly post on its website, as well as
38 submit to the governor and the legislative services office a report regard-
39 ing the institution's policies for implementing the requirements of this
40 chapter. A supplemental report shall also be given in the instance of any
41 changes or updates to such policies.

42 (2) If a claim or complaint is filed against a public institution of
43 higher education alleging an unlawful unconditional limitation on the pro-
44 tected activities set forth in this chapter, a supplementary report with a
45 copy of the claim, complaint, or any amended complaint shall be submitted
46 to the state board of education within thirty (30) days of the filing of the

1 claim, complaint, or amended complaint. No later than January 14 each year,
2 the state board of education shall create a report compiling non-privileged
3 information subject to and lawful for public disclosure pursuant to this
4 section and submit the report to the governor and the legislative services
5 office for access by members of the legislature.

6 (3) Nothing in this chapter shall be interpreted as requiring the in-
7 stitution to include any information from a student's education record that
8 would be prohibited from public disclosure by the family educational rights
9 and privacy act or any employee's personnel information that is prohibited
10 from public disclosure by section 74-106(1), Idaho Code.

11 33-6808. REMEDIES. (1) Subject to all provisions and limitations
12 contained in the Idaho tort claims act, chapter 9, title 6, Idaho Code, any
13 student or student organization may bring an action against a public insti-
14 tution of higher education and any of its employees, acting in their official
15 capacities, for a violation of the student's or student organization's
16 rights under this chapter.

17 (2) Before pursuing relief under this section, a claimant must provide
18 prior written notice of any alleged violation to the public institution of
19 higher education. If the public institution of higher education fails to
20 cure the allegation violation(s) within thirty (30) days, the claimant may
21 bring an action as described herein. The thirty (30) day period to cure shall
22 not count for purposes of calculating the statute of limitations.

23 (3) If a court in an action under this section finds that a public in-
24 stitution of higher education has violated the rights of a student or student
25 organization under this chapter, the court may award:

- 26 (a) Injunctive relief;
27 (b) Compensatory damages not to exceed twenty-five thousand dollars
28 (\$25,000);
29 (c) Nominal damages;
30 (d) Reasonable court costs; and
31 (e) Attorney's fees.

32 33-6809. LIMITATIONS AND EXCLUSIONS. The provisions of this chapter
33 shall not:

34 (1) Prevent a public institution of higher education from prohibiting,
35 limiting, or restricting commercial activity or commercial speech;

36 (2) Prevent a public institution of higher education from prohibit-
37 ing, limiting, or restricting expression that is not protected by the first
38 amendment to the constitution of the United States, including true threats
39 or expression directed to provoke imminent lawless action and likely to pro-
40 duce imminent lawless action;

41 (3) Prevent a public institution of higher education from prohibiting
42 harassment as defined in section 33-6803(2), Idaho Code; or

43 (4) Allow an individual to engage in conduct that materially and sub-
44 stantially disrupts the protected expressive activity of another individual
45 occurring in a space on campus reserved for the other individual's protected
46 expressive activity under the exclusive use or control of a particular group
47 or student organization.

1 33-6810. STATUTE OF LIMITATIONS. A student or organization is re-
2 quired to bring suit for a violation of this chapter no later than one (1)
3 year after the day the cause of action accrues. For purposes of calculating
4 the one (1) year limitation period, each day that the violation persists and
5 each day that a policy in violation of this section remains in effect consti-
6 tutes a new day that the cause of action has accrued.

7 33-6811. SEVERABILITY. The provisions of this chapter are hereby de-
8 clared to be severable, and if any provision of this chapter or the applica-
9 tion of such provision to any person or circumstance is declared invalid for
10 any reason, such declaration shall not affect the validity of the remaining
11 portions of this chapter.

12 SECTION 2. An emergency existing therefor, which emergency is hereby
13 declared to exist, this act shall be in full force and effect on and after
14 July 1, 2025.