

By: Cain

H.B. No. 2100

A BILL TO BE ENTITLED

AN ACT

relating to the protection of expressive activities at state facilities, including institutions of higher education; creating a civil action.

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

SECTION 1. Chapter 2165, Government Code, is amended by adding a new Subchapter J to read as follows:

SUBCHAPTER J. PROTECTION OF EXPRESSION

2165.450. APPLICABILITY. The exceptions provided by Section 2165.002 do not apply to this section.

2165.451. DEFINITIONS. In this section:

(a) "Expressive activities" means any speech or expressive conduct protected by the First Amendment to the United States Constitution or by Sections 6 and 8, Article I, Texas Constitution, and includes assemblies, protests, speeches, the distribution of written or visual material, the carrying of signs, and the circulation of petitions. The term does not include commercial speech;

(b) "Disruptive activity" has the meaning assigned by Section 51.935(b), Education Code;

(c) "Employee" means a person employed by a state agency or institution of higher education in an executive, professional, administrative, or clerical capacity;

(d) "Institution of higher education" has the meaning

1 assigned by Section 61.003, Education Code.

2 (e) "Matter of public concern" means an issue related to:

3 (1) health or safety;

4 (2) environmental, economic, or community well-being;

5 (3) the government;

6 (4) a public official or public figure;

7 (5) a good, product, or service in the marketplace; or

8 (6) a public policy controversy.

9 2165.452. AFFIRMATIVE RESPONSIBILITIES OF COMMISSION,  
10 AGENCY, or INSTITUTION. The commission, a state agency, or an  
11 institution of higher education shall:

12 (a) ensure that the common outdoor areas of the buildings,  
13 grounds, or property under the control of the commission, state  
14 agency, or institution of higher education are deemed traditional  
15 public forums; and

16 (b) permit any person lawfully present to engage in  
17 expressive activities in those areas freely, as long as the  
18 person's conduct:

19 (1) is not unlawful;

20 (2) is not a disruptive activity; and

21 (3) does not materially and substantially disrupt the  
22 functioning of the commission, agency, or institution.

23 2165.453. REASONABLE RESTRICTIONS. Notwithstanding Section  
24 2165.452, the commission, a state agency, or an institution of  
25 higher education by rule may maintain and enforce reasonable  
26 restrictions on the time, place, and manner of expressive  
27 activities in the common outdoor areas of any public buildings,

grounds, or property under the control of the commission, state agency, or institution of higher education, if those restrictions:

(a) employ clear, published, content-neutral, and viewpoint-neutral criteria;

(b) are necessary to serve a compelling state interest;

(c) are the least restrictive means to further that compelling state interest;

(d) leave ample alternative means of expression; and

(e) allow members of the public to spontaneously and contemporaneously assemble or distribute written material without a permit or other permission from the commission, state agency, or institution of higher education.

2165.453. NON LIMITATION. Sections 2165.452 and 2165.453 do not limit the right of expression at any other location on the public buildings, grounds, or property.

2165.454. EQUAL APPLICATION. The protections under this subchapter apply equally to all persons, regardless of whether the person is recognized by or registered with the commission, state agency, or institution of higher education.

2165.455. POLICIES. (a) The commission, each state agency, and each institution of higher education shall adopt a policy that must:

(1) prohibit:

(A) the commission, agency, or institution, or any employee of such commission, agency, or institution, from punishing a person in any manner for engaging in expressive activities;

1                   (B) the commission, agency, or institution from  
2 taking action on a matter of public concern in a way as to require  
3 employees or other persons under the jurisdiction of the  
4 commission, agency, or institution of higher education to publicly  
5 express a given view of a matter of public concern;

6                   (2) encourage the free and open exchange of ideas,  
7 including unpopular, controversial, or offensive ideas, on the  
8 public buildings, grounds, or property under the control of the  
9 commission, state agency, or institution of higher education; and

10                   (3) establishes disciplinary sanctions for employees  
11 of the commission, state agency, or institution of higher education  
12 for employees who unduly interfere with such expressive activities.

13                   (b) The commission, state agency, or institution of higher  
14 education must make the policy adopted under this section available  
15 on the commission's, agency's, or institution's website.

16                   2165.456. INJUNCTIVE RELIEF. (a) The attorney general or a  
17 person whose expressive rights have been violated under this  
18 subchapter may bring an action in state court for injunctive relief  
19 to compel the commission, state agency, or institution of higher  
20 education to comply with this section.

21                   (b) The person bringing an action for injunctive relief  
22 under this section may recover compensatory damages, court costs,  
23 and reasonable attorney's fees. For purposes of this section,  
24 compensatory damages means the greater of:

25                   (1) the amount of the person's compensatory damages;

26 or

27                   (2) \$1,000.

1        (c) Venue for an action under this section is appropriate in  
2 the county in which the violation occurred.

3        (d) An action brought under this section must commence not  
4 later than one year after the violation occurs. For purposes of  
5 computing the limitation period, each day of a continuing  
6 violation, including each day a rule or policy violating this  
7 section remains in effect, constitutes a separate violation.

8        2165.457. CIVIL CAUSE OF ACTION. In addition to a suit for  
9 injunctive relief under Section 2165.456, a person whose expressive  
10 rights are affected by a rule or policy adopted by the commission, a  
11 state agency, or an institution of higher education may bring a  
12 civil action against the commission, agency, or institution for  
13 declaratory judgment in the manner provide by Chapter 37, Civil  
14 Practice and Remedies Code.

15        2165.458. WAIVER OF SOVEREIGN AND GOVERNMENTAL IMMUNITY.  
16 Sovereign immunity and governmental immunity are waived for a  
17 violation of this subchapter.

18        SECTION 2. Not later than August 1, 2020, the policies  
19 required under Section 2165.455 as required by this Act must be  
20 adopted.

21        SECTION 3. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2019.