

**SSB 5064** - H AMD TO JUDI COMM AMD (H-4920.2/18) **1241**  
By Representative Walsh

**SCOPE AND OBJECT 03/02/2018**

1 On page 4, after line 20 of the striking amendment, insert the  
2 following:

3 "NEW SECTION. **Sec. 3.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires  
5 otherwise.

6 (1) "Constitutional time, place, and manner restrictions" means  
7 restrictions on the time, place, and manner of free speech that do  
8 not violate the federal or state constitutions, are reasonable,  
9 content-neutral, and viewpoint-neutral, are narrowly tailored to  
10 satisfy a significant institutional interest, and leave open ample  
11 alternative channels for the communication of the information or  
12 message to its intended audience.

13 (2) "Faculty" or "faculty member" means any person, whether or  
14 not the person is compensated by a public institution of higher  
15 education, and regardless of political affiliation, who is tasked  
16 with providing scholarship, academic research, or teaching.  
17 "Faculty" includes tenured and nontenured professors, adjunct  
18 professors, visiting professors, lecturers, graduate student  
19 instructors, and those in comparable positions, however titled.  
20 "Faculty" does not include persons whose primary responsibilities  
21 are administrative or managerial.

22 (3) "Free speech" means speech, expression, or assemblies,  
23 verbal or written, protected by the federal or state constitutions,  
24 including, but not limited to, all forms of peaceful assembly,  
25 protests, demonstrations, rallies, vigils, marches, public speaking,  
26 distribution of printed materials, carrying signs, displays, or  
27

1 circulating petitions. "Free speech" does not include the promotion,  
2 sale, or distribution of any product or service.

3 (4) "Institution of higher education" or "institution" has the  
4 definition in RCW 28B.10.016.

5 (5) "Student" means:

6 (a) An individual currently enrolled in a course of study at an  
7 institution of higher education; and

8 (b) An organization that comprises entirely individuals  
9 currently enrolled in a course of study at an institution of higher  
10 education and the organization is registered as a student  
11 organization with the institution pursuant to institutional rules.

12

13 NEW SECTION. **Sec. 4.** (1) The governing boards of every  
14 institution of higher education shall each adopt a policy that  
15 affirms the following principles of free speech, which are the  
16 public policy of this state:

17 (a) Students have a fundamental constitutional right to free  
18 speech;

19 (b) An institution of higher education must be committed to  
20 giving students the broadest possible latitude to speak, write,  
21 listen, challenge, learn, and discuss any issue, subject to section  
22 6 of this act;

23 (c) An institution of higher education must be committed to  
24 maintaining its campus as a marketplace of ideas for all students  
25 and all faculty in which the free exchange of ideas is not  
26 suppressed because some or most members of the institution's  
27 community think those ideas are offensive, unwise, immoral,  
28 indecent, disagreeable, conservative, liberal, traditional, radical,  
29 or emotionally disturbing;

30 (d) Students and faculty members must be allowed to make  
31 judgments about ideas for themselves and to act on those judgments  
32 by openly and vigorously debating the ideas they either agree to  
33 and/or oppose, rather than by seeking to suppress free speech;

34

1 (e) It is not the proper role of an institution of higher  
2 education to attempt to shield individuals from free speech,  
3 including ideas and opinions they find offensive, unwise, immoral,  
4 indecent, disagreeable, conservative, liberal, traditional, radical,  
5 or emotionally disturbing;

6 (f) Although an institution of higher education should greatly  
7 value civility and mutual respect, concerns about civility and  
8 mutual respect must not be used by an institution of higher  
9 education as a justification for closing off the discussion of  
10 ideas, however offensive, unwise, immoral, indecent, disagreeable,  
11 conservative, liberal, traditional, radical, or emotionally  
12 disturbing those ideas may be to some students or faculty;

13 (g) All students and all faculty must be free to state their own  
14 views about and contest the views expressed on campus and to state  
15 their own views about and contest speakers who are invited to  
16 express their views on campus. Students and faculty may not  
17 substantially obstruct or otherwise substantially interfere with the  
18 freedom of others to express views they reject or even loathe.  
19 Therefore, an institution of higher education has a responsibility  
20 to promote a lively and fearless freedom of debate and deliberation  
21 and protect that freedom;

22 (h) An institution of higher education must be committed to  
23 providing an atmosphere that is most conducive to speculation,  
24 experimentation, and creation by all students and all faculty, who  
25 shall always remain free to inquire, to study, and to evaluate, and  
26 to gain new understanding;

27 (i) The primary responsibility of faculty is to engage an  
28 honest, courageous, and persistent effort to search out and  
29 communicate the truth that lies in the areas of their competencies;

30 (j) Although faculty are free in the classroom to discuss  
31 subjects within areas of their competencies, faculty shall be  
32 cautious in expressing personal views in the classroom and shall be  
33 careful not to introduce controversial matters that have no  
34 relationship to the subject taught, especially regarding matters

1 they have no special competence or training in and in which,  
2 therefore, faculty's views cannot claim the authority accorded other  
3 statements they make that are within their areas of competence.  
4 However, no faculty should face adverse employment action for  
5 classroom speech, unless it is not reasonably germane to the subject  
6 matter of the class as broadly construed and comprises a substantial  
7 portion of classroom instruction;

8 (k) An institution of higher education must maintain the  
9 generally accessible, open, outdoor areas of its campus as  
10 traditional public forums for free speech by students;

11 (l) An institution of higher education must not restrict  
12 students' free speech only to particular areas of the campus,  
13 sometimes known as "free speech zones";

14 (m) An institution of higher education must not deny student  
15 activity fee funding to a student organization based on the  
16 viewpoints that the student organization advocates;

17 (n) An institution of higher education must not establish  
18 permitting requirements that prohibit spontaneous outdoor assemblies  
19 or outdoor distribution of literature. However, an institution of  
20 higher education may maintain a policy that grants members of the  
21 institution's community the right to reserve certain outdoor spaces  
22 in advance;

23 (o) An institution of higher education must not charge students  
24 security fees based on the content of their speech, the content of  
25 the speech of guest speakers invited by students, or the anticipated  
26 reaction or opposition to speech;

27 (p) An institution of higher education must allow all students  
28 and all faculty to invite guest speakers to campus to engage in free  
29 speech regardless of the views of the guest speakers; and

30 (q) An institution of higher education must not disinvite a  
31 speaker invited by a student, student organization, or faculty  
32 member solely because the speaker's anticipated speech may be  
33 considered offensive, unwise, immoral, indecent, disagreeable,  
34 conservative, liberal, traditional, radical, or emotionally

1 disturbing by students, faculty, administrators, government  
2 officials, or members of the public.

3 (2) The policy adopted pursuant to this section must be made  
4 available to students and faculty annually through one or more of  
5 the following methods:

6 (a) By publication annually in the institution of higher  
7 education's student handbook and faculty handbook, whether paper or  
8 electronic;

9 (b) By way of a prominent notice on the institution of higher  
10 education's web site other than through the electronic publication  
11 of the policy in the student handbook and faculty handbook;

12 (c) Sent annually to students and employees to their  
13 institutionally provided email address; or

14 (d) Addressed by the institution of higher education in  
15 orientation programs for new students and new faculty.

16 (3) Nothing in this section may be construed to grant students  
17 the right to disrupt previously scheduled or reserved activities  
18 occurring in a traditional public forum.

19  
20 NEW SECTION. **Sec. 5.** (1) With respect to disciplining students  
21 for their speech, expression, or assemblies, each institution of  
22 higher education must adopt a policy on "student-on-student  
23 harassment" defining the term consistent with and no more  
24 expansively than the language contained in subsection (2) of this  
25 section.

26 (2) As used in this section, "student-on-student harassment"  
27 means unwelcome conduct directed toward a person that is  
28 discriminatory on a basis prohibited by federal, state, or local  
29 law, and that is so severe, pervasive, and objectively offensive  
30 that it effectively bars the victim's access to an educational  
31 opportunity or benefit.

32  
33 NEW SECTION. **Sec. 6.** Nothing in this chapter requires an  
34 institution of higher education to fund costs associated with

1 student speech or expression. An institution of higher education  
2 shall not impose costs on students or student organizations on the  
3 basis of the anticipated reaction or opposition to a person's speech  
4 by listeners.

5

6 NEW SECTION. **Sec. 7.** Nothing in this chapter prohibits an  
7 institution of higher education from imposing measures that do not  
8 violate the federal and state constitutions, such as:

9 (1) Constitutional time, place, and manner restrictions;

10 (2) Reasonable and viewpoint-neutral restrictions in nonpublic  
11 forums;

12 (3) Restricting the use of the institution of higher education's  
13 property to protect the free speech rights of students and faculty  
14 and preserve the use of the property for the advancement of the  
15 institution's mission;

16 (4) Prohibiting or limiting speech, expression, or assemblies  
17 that are not protected by the federal or state constitution; and

18 (5) Content restrictions on speech that are reasonably related  
19 to a legitimate pedagogical purpose, such as classroom rules enacted  
20 by faculty.

21

22 NEW SECTION. **Sec. 8.** The governing body of each institution of  
23 higher education may adopt rules to effectuate the purposes of this  
24 chapter.

25

26 NEW SECTION. **Sec. 9.** Sections 3 through 8 of this act  
27 constitute a new chapter in Title 28B RCW."

28

29 Renumber the remaining sections consecutively and correct any  
30 internal references accordingly.

31

32 Correct the title.

^^

EFFECT: Requires each governing board of an institution of higher

education to adopt a policy that affirms certain principles of free speech, which are the public policy of this state. Requires the policy to be made available to students and faculty annually. Requires each institution of higher education, with respect to disciplining students for their speech, expression, or assemblies, to adopt a policy on "student-on-student harassment" which is defined as unwelcome conduct directed toward a person that is discriminatory on a basis prohibited by federal, state, or local law, and that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit.

--- END ---