

**HOUSE BILL NO. 1503**

Introduced by

Representatives K. Koppelman, Becker, M. Johnson, Satrom

Senators Dever, Dwyer, Holmberg

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to ~~create and enact section 15-10.4-03 of the North Dakota Century Code,~~  
2 ~~relating to higher education student and faculty free speech;~~ to amend and reenact section  
3 15-10.4-02 of the North Dakota Century Code, relating to free speech policies of institutions  
4 under the control of the state board of higher education; ~~and to provide a penalty.~~

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 15-10.4-02 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **15-10.4-02. Adoption of campus free speech policy.**

9 ~~By August 27, 2019, the~~

10 The state board of higher education and each institution shall adopt a policy that:

- 11 1. Protects students' rights to free speech, assembly, and expression;
- 12 2. Permits institutions to establish and enforce reasonable and constitutional time, place,  
13 and manner restrictions on free speech, assembly, and expression;
- 14 3. ~~Permits students, faculty, or student organizations to invite guest speakers or groups~~  
15 ~~to present regardless of the viewpoint or content of the anticipated speech of the guest~~  
16 ~~speaker or group; and~~
- 17 4. Protects the academic freedom and free speech rights of faculty ~~while adhering to~~  
18 ~~guidelines established by the American association of university professors.~~

19 ~~Upon adoption of the policies under this section, the state board of higher education shall~~  
20 ~~provide a copy of the policies to the legislative management.~~ by guaranteeing, at a minimum, no  
21 faculty member will face adverse employment action for classroom speech, unless the speech  
22 is not reasonably germane to the subject matter of the class as broadly construed and  
23 comprises a substantial portion of classroom instruction; ~~and~~

1       4. Prohibits student-on-student discriminatory harassment consistent with the following  
2 requirements:

3           a. An institution may not enforce the student-on-student discriminatory harassment  
4 policy by disciplining or otherwise imposing any sanction on a student for a  
5 violation of the policy stemming from expression unless:

6           (1) The speech or expression is unwelcome, targets the victim on a basis  
7 protected under federal, state, or local law, and is so severe, pervasive, and  
8 objectively offensive that a student effectively is denied equal access to  
9 educational opportunities or benefits provided by the institution; or

10          (2) The speech or expression explicitly or implicitly conditions a student's  
11 participation in an education program or activity or bases an educational  
12 decision on the student's submission to unwelcome sexual advances or  
13 requests for sexual favors;

14          b. An institution may sanction or discipline student-on-student speech or expression  
15 that does not meet the definition of student-on-student harassment only when the  
16 speech or expression is not protected under the First Amendment to the United  
17 States Constitution or section 4 of article I of the Constitution of North Dakota,  
18 and

19          c. An institution may respond to student-on-student speech that is not  
20 discriminatory harassment by taking nonpunitive actions designed to promote a  
21 welcoming, inclusive environment; and

22       5. Complies with the following principles of free speech:

23          a. An institution shall maintain the generally accessible, open, outdoor areas of the  
24 institution's campus as traditional public forums for free speech by students,  
25 faculty, and invited guests, subject to reasonable time, place, and manner  
26 restrictions on free speech, assembly, and expression which are applicable to the  
27 publicly accessible outdoor areas of campus, do not violate the First Amendment  
28 to the United States Constitution or section 4 of article I of the Constitution of  
29 North Dakota, and are clear, published, reasonable, content-neutral,  
30 viewpoint-neutral, and narrowly tailored to satisfy a significant institutional

1 interest, and leave open alternative channels for the communication of  
2 information or a message;

3 b. An institution may not restrict students' free speech to particular areas of campus,  
4 sometimes known as "free speech zones";

5 c. An institution may not deny student activity fee funding to a student organization  
6 based on the viewpoints the student organization advocates;

7 d. An institution may not establish permitting requirements prohibiting spontaneous  
8 outdoor assemblies or outdoor distribution of literature, except an institution may  
9 maintain a policy granting an individual or organization the right to reserve the  
10 exclusive use of certain outdoor spaces, and may prohibit spontaneous  
11 assemblies or distribution of literature inside reserved outdoor spaces;

12 e. An institution may not charge students or student organizations security fees  
13 based on the content of the student's or student organization's speech, the  
14 content of the speech of guest speakers invited by students, or the anticipated  
15 reaction or opposition of listeners to the speech. Any security fees charged to a  
16 student or student organization may not exceed the actual costs incurred by the  
17 institution, and the institution shall refund any overpayment. Institutions shall set  
18 forth empirical and objective criteria for calculating security fees and shall make  
19 the criteria available to the public;

20 f. An institution shall allow students, student organizations, and faculty to invite  
21 guest speakers to campus to engage in free speech regardless of the views of  
22 the guest speakers or viewpoint or content of the anticipated speech;

23 g. An institution may not retract or compel a student, student organization, or faculty  
24 member to retract a guest speaker's invitation to speak at the institution based on  
25 the guest speaker's viewpoints or the content of the anticipated speech; and

26 h. An institution may not discriminate against a student organization with respect to  
27 a benefit available to any other student organization based on a requirement of  
28 the organization that leaders or voting members of the organization:

29 (1) Adhere to the organization's viewpoints or sincerely held beliefs; or

30 (2) Be committed to furthering the organization's beliefs or religious missions.

1 — **SECTION 2.** Section 15-10.4-03 of the North Dakota Century Code is created and enacted  
2 as follows:

3 — **15-10.4-03. Cause of action.**

4 — The attorney general or a person whose expressive rights are violated by an action that is  
5 not compliant with the law may bring an action against an institution of higher education and the  
6 institution's agents acting in their official capacities in a court of competent jurisdiction to recover  
7 compensatory damages and reasonable court costs. If the court finds a violation of the law, the  
8 court shall award the aggrieved party a minimum of five thousand dollars. Excluding reasonable  
9 court costs, the total compensatory damages in a case arising from a single violation of this  
10 section may not exceed twenty five thousand dollars, regardless of the number of plaintiffs  
11 awarded damages. If there are multiple plaintiffs in an action under this section, the court shall  
12 divide any compensatory damages equally among the plaintiffs.