

**SENATE BILL NO. 2320**

Introduced by

Senators Holmberg, Davison

Representatives Becker, K. Koppelman, Mock, Schreiber-Beck

1 A BILL for an Act to create and enact chapter 15-10.4 of the North Dakota Century Code,  
2 relating to free speech at institutions under the control of the state board of higher education;  
3 and to provide a penalty.

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

5 **SECTION 1.** Chapter 15-10.4 of the North Dakota Century Code is created and enacted as  
6 follows:

7 **15-10.4-01. Definitions.**

8 As used in this chapter:

- 9 1. "Constitutional time, place, and manner restrictions" means restrictions on the time,  
10 place, and manner of free speech which do not violate the First Amendment to the  
11 United States Constitution or section 4 of article I of the Constitution of North Dakota  
12 and which are reasonable, content- and viewpoint-neutral, and narrowly tailored to  
13 satisfy a significant institutional interest, and leave open ample alternative channels for  
14 the communication of the information or message to its intended audience.
- 15 2. "Faculty" or "faculty member" means an individual, regardless of whether the  
16 individual is compensated by an institution, and regardless of political affiliation, who is  
17 tasked with providing scholarship, academic research, or teaching, including tenured  
18 and nontenured professors, adjunct professors, visiting professors, lecturers, graduate  
19 student instructors, and those in comparable positions. "Faculty" does not mean  
20 individuals whose primary responsibilities are administrative or managerial.
- 21 3. "Free speech" means speech, expression, and assemblies protected by the First  
22 Amendment to the United States Constitution or section 4 of article I of the  
23 Constitution of North Dakota, including all forms of peaceful assembly, protests,  
24 demonstrations, rallies, vigils, marches, public speaking, distribution of printed

1 materials, carrying signs, displays, or circulating petitions. "Free speech" does not  
2 include the promotion, sale, or distribution of a product or service.

3 4. "Institution" means an institution under the control of the state board of higher  
4 education.

5 5. "Materially and substantially disrupts" means when a person knowingly or intentionally  
6 hinders significantly expressive activity of an individual or a group, prevents the  
7 communication of a message, or prevents the transaction of the business of a lawful  
8 meeting, gathering, or procession by engaging in fighting or violent or seriously  
9 disruptive behavior, or physically blocking or significantly hindering an individual from  
10 attending, listening to, viewing, or otherwise participating in an expressive activity.

11 Conduct that "materially and substantially disrupts" does not include conduct protected  
12 under the First Amendment to the United States Constitution or section 4 of article I of  
13 the Constitution of North Dakota. Protected conduct includes lawful protests and  
14 counterprotests in the outdoor areas of campus generally accessible to the members  
15 of the public, except during times when the areas have been reserved in advance for  
16 other events, and minor, brief, or fleeting nonviolent disruptions of events which are  
17 isolated and short in duration.

18 6. "Student" means an individual enrolled in a course of study at the institution.

19 7. "Student-on-student harassment" means unwelcome conduct directed toward an  
20 individual which is discriminatory on a basis prohibited by federal, state, or local law,  
21 and is so severe, pervasive, and objectively offensive it effectively bars the victim's  
22 access to an educational opportunity or benefit.

23 8. "Student organization" means an officially recognized organization at an institution, or  
24 an organization seeking official recognition, comprised of admitted students receiving  
25 or are seeking to receive benefits through the institution.

26 **15-10.4-02. Adoption of campus free speech policy.**

27 1. The state board of higher education and each institution shall adopt and enforce a  
28 policy affirming the following principles of free speech:

29 a. Students have a fundamental, constitutional right to free speech:

- 1           b. An institution shall be committed to giving students the broadest possible latitude  
2           to speak, write, listen, challenge, learn, and discuss any issue, subject to the  
3           exceptions in sections 15-10.4-03 and 15-10.4-05;
- 4           c. An institution shall be committed to maintaining a campus as a marketplace of  
5           ideas for all students and faculty in which the free exchange of ideas is not to be  
6           suppressed because the ideas put forth are thought by some or even most  
7           members of the institution's community to be offensive, unwise, immoral,  
8           indecent, disagreeable, conservative, liberal, traditional, radical, or wrongheaded;
- 9           d. An institution's individual students and faculty may make judgments about ideas  
10           for themselves and act on those judgments not by seeking to suppress free  
11           speech, but by openly and vigorously contesting ideas the students and faculty  
12           oppose;
- 13           e. An institution may not attempt to shield individuals from free speech, including  
14           ideas the institution finds offensive, unwise, immoral, indecent, disagreeable,  
15           conservative, liberal, traditional, radical, or wrongheaded;
- 16           f. An institution's concerns about civility and mutual respect may not be used by an  
17           institution as a justification for limiting or restricting the discussion of ideas,  
18           however offensive, unwise, immoral, indecent, disagreeable, conservative,  
19           liberal, traditional, radical, or wrongheaded those ideas may be to some students  
20           or faculty;
- 21           g. An institution shall be committed to providing an atmosphere most conducive to  
22           speculation, experimentation, and creation by all students and faculty so students  
23           and faculty are free to inquire, study, evaluate, and gain new understanding;
- 24           h. The primary responsibility of faculty is to engage in honest, courageous, and  
25           persistent efforts to seek and communicate truth in the areas of the faculty's  
26           competence;
- 27           i. Although faculty members are free in the classroom to discuss subjects within  
28           their areas of competence, faculty members should be cautious in expressing  
29           personal views in the classroom and careful not to introduce matters that have no  
30           relationship to the subject taught, especially matters in which the faculty  
31           members have no special competence or training and for which the views of the

1 faculty members lack the authority accorded to statements about subjects within  
2 areas of their competence. However, a faculty member may not face adverse  
3 employment action for classroom speech unless the speech is not reasonably  
4 germane to the subject matter of the class as broadly construed and comprises a  
5 substantial portion of classroom instruction:

6 j. An institution shall maintain the generally accessible, open, outdoor areas of its  
7 campus as traditional public forums for free speech by students, faculty, and  
8 invited guests:

9 k. An institution may not restrict students free speech to particular areas of campus,  
10 sometimes known as "free speech zones":

11 l. An institution may not deny student activity fee funding to a student organization  
12 based on the viewpoints the student organization advocates:

13 m. An institution may not establish permitting requirements prohibiting spontaneous  
14 outdoor assemblies or outdoor distribution of literature. An institution may  
15 maintain a policy granting members of the college or university community the  
16 right to reserve certain outdoor spaces in advance:

17 n. An institution may not charge students or student organizations security fees  
18 based on the content of the student's or student organization's speech, the  
19 content of the speech of guest speakers invited by students, or the anticipated  
20 reaction or oppositions of listeners to speech:

21 o. An institution shall allow all students, student organizations, and faculty to invite  
22 guest speakers to campus to engage in free speech regardless of the views of  
23 the guest speakers; and

24 p. An institution may not disinvite a speaker invited by a student, student  
25 organization, or faculty member because the speaker's anticipated speech may  
26 be considered offensive, unwise, immoral, indecent, disagreeable, conservative,  
27 liberal, traditional, radical, or wrongheaded by students, faculty, administrators,  
28 government officials, or members of the public.

29 2. Each institution shall make the policy the institution adopted pursuant to subsection 1  
30 available to students and faculty by annually:

- 1           a. Publishing the policy in the institution's handbook and faculty handbook, whether  
2           paper or electronic;
- 3           b. Posting a prominent notice on the institution's internet site other than through the  
4           electronic publication of the policy in the student handbook and faculty handbook;
- 5           c. Sending the policy to the institutionally provided electronic mail addresses of  
6           students and faculty; or
- 7           d. Addressing the policy in the institution's orientation programs for new students  
8           and new faculty.

9           3. This chapter does not enable an individual to engage in conduct that intentionally,  
10           materially, and substantially disrupts the expressive activity of another individual if the  
11           activity occurs in a campus space reserved for that activity under the exclusive use or  
12           control of a particular group.

13           **15-10.4-03. Student-on-student harassment.**

14           Each institution shall adopt a policy on "student-on-student harassment" defining the term  
15           consistent with and no more expansively than the definition in section 15-10.4-01.

16           **15-10.4-04. Costs associated with speech.**

17           This chapter does not require an institution to fund costs associated with student speech or  
18           expression. An institution may not impose costs on students or student organizations on the  
19           basis of the anticipated reaction or opposition to a person's speech by listeners.

20           **15-10.4-05. Permissible restrictions on campus speech.**

21           This chapter does not prohibit an institution from imposing measures that do not violate the  
22           First Amendment to the United States Constitution or section 4 of article I of the Constitution of  
23           North Dakota including:

- 24           1. Constitutional time, place, and manner restrictions;
- 25           2. Reasonable and viewpoint-neutral restrictions in nonpublic forums;
- 26           3. Prioritizing the use of the institution's resources and property for students and faculty  
27           above requests from groups or individuals not affiliated with the institution;
- 28           4. Prohibiting or limiting speech, expression, or assemblies not protected by the First  
29           Amendment to the United States Constitution or section 4 of article I of the  
30           Constitution of North Dakota; or

1        5. Content restrictions on speech reasonably related to a legitimate pedagogical  
2                    purpose, including classroom rules enacted by faculty.

3        **15-10.4-06. Cause of action.**

4        The attorney general or a person whose expressive rights are violated by an action  
5 prohibited under this chapter may bring an action in a court of competent jurisdiction to recover  
6 compensatory damages, reasonable court costs, and attorney fees. If the court finds a violation  
7 of this chapter occurred, the court shall award the aggrieved party a minimum of one thousand  
8 dollars. Excluding reasonable court costs and attorney fees, the total compensatory damages  
9 available to a plaintiff in a case arising from a single violation of this section may not exceed one  
10 hundred thousand dollars. If there are multiple plaintiffs, the court shall divide the damages  
11 equally among the plaintiffs until the maximum award is exhausted.