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CS/CS/HB 233

2021 Legislature

1  
2 An act relating to postsecondary education; amending  
3 ss. 1001.03 and 1001.706, F.S.; defining the terms  
4 "intellectual freedom and viewpoint diversity" and  
5 "shield"; requiring the State Board of Education and  
6 the Board of Governors, respectively, to annually  
7 assess intellectual freedom and viewpoint diversity at  
8 certain institutions; providing requirements for the  
9 assessment; authorizing the State Board of Education  
10 to adopt rules; prohibiting the State Board of  
11 Education and the Board of Governors, respectively,  
12 from shielding certain students, faculty, or staff  
13 from certain speech; amending s. 1004.097, F.S.;  
14 defining the term "shield"; providing that certain  
15 faculty communications are protected expressive  
16 activity; prohibiting specified entities from  
17 shielding students, faculty, or staff from certain  
18 speech; authorizing students at public postsecondary  
19 institutions to record video and audio in classrooms  
20 for specified purposes; prohibiting the publication of  
21 certain video or audio recordings; providing  
22 exception; revising available remedies for certain  
23 causes of action to include damages; providing that  
24 such damages and specified costs and fees must be paid  
25 from nonstate funds; providing a cause of action

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26 |       against a person who publishes certain video or audio  
 27 |       recordings; providing a limitation on the amount that  
 28 |       can be recovered; amending s. 1004.26, F.S.; requiring  
 29 |       university student governments to adopt certain  
 30 |       internal procedures; providing requirements for such  
 31 |       procedures; amending s. 1006.60, F.S.; requiring the  
 32 |       State Board of Education and the Board of Governors to  
 33 |       require certain institutions to adopt codes of  
 34 |       conduct; providing requirements for such codes of  
 35 |       conduct; providing that such codes of conduct include  
 36 |       certain due process rights; providing an effective  
 37 |       date.

38 |

39 | Be It Enacted by the Legislature of the State of Florida:

40 |

41 |       Section 1. Subsection (19) is added to section 1001.03,  
 42 | Florida Statutes, to read:

43 |       1001.03 Specific powers of State Board of Education.—

44 |       (19) INTELLECTUAL FREEDOM AND VIEWPOINT DIVERSITY

45 | ASSESSMENT.—

46 |       (a) For the purposes of this subsection, the term:

47 |       1. "Intellectual freedom and viewpoint diversity" means  
 48 | the exposure of students, faculty, and staff to, and the  
 49 | encouragement of their exploration of, a variety of ideological  
 50 | and political perspectives.

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51        2. "Shield" means to limit students', faculty members', or  
52 staff members' access to, or observation of, ideas and opinions  
53 that they may find uncomfortable, unwelcome, disagreeable, or  
54 offensive.

55        (b) The State Board of Education shall require each  
56 Florida College System institution to conduct an annual  
57 assessment of the intellectual freedom and viewpoint diversity  
58 at that institution. The State Board of Education shall select  
59 or create an objective, nonpartisan, and statistically valid  
60 survey to be used by each institution which considers the extent  
61 to which competing ideas and perspectives are presented and  
62 members of the college community, including students, faculty,  
63 and staff, feel free to express their beliefs and viewpoints on  
64 campus and in the classroom. The State Board of Education shall  
65 annually compile and publish the assessments by September 1 of  
66 each year, beginning on September 1, 2022. The State Board of  
67 Education may adopt rules to implement this paragraph.

68        (c) The State Board of Education may not shield students,  
69 faculty, or staff at Florida College System institutions from  
70 free speech protected under the First Amendment to the United  
71 States Constitution, Art. I of the State Constitution, or s.  
72 1004.097.

73        Section 2. Subsection (13) is added to section 1001.706,  
74 Florida Statutes, to read:

75        1001.706 Powers and duties of the Board of Governors.—

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(13) INTELLECTUAL FREEDOM AND VIEWPOINT DIVERSITY

ASSESSMENT.—

(a) For the purposes of this subsection, the term:

1. "Intellectual freedom and viewpoint diversity" means the exposure of students, faculty, and staff to, and the encouragement of their exploration of, a variety of ideological and political perspectives.

2. "Shield" means to limit students', faculty members', or staff members' access to, or observation of, ideas and opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.

(b) The Board of Governors shall require each state university to conduct an annual assessment of the intellectual freedom and viewpoint diversity at that institution. The Board of Governors shall select or create an objective, nonpartisan, and statistically valid survey to be used by each state university which considers the extent to which competing ideas and perspectives are presented and members of the university community, including students, faculty, and staff, feel free to express their beliefs and viewpoints on campus and in the classroom. The Board of Governors shall annually compile and publish the assessments by September 1 of each year, beginning on September 1, 2022.

(c) The Board of Governors may not shield students, faculty, or staff at state universities from free speech

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101 protected under the First Amendment to the United States  
 102 Constitution, Art. I of the State Constitution, or s. 1004.97.

103 Section 3. Paragraph (a) of subsection (3) and subsection  
 104 (4) of section 1004.097, Florida Statutes, are amended,  
 105 paragraph (f) is added to subsection (2), and paragraphs (f) and  
 106 (g) are added to subsection (3) of that section, to read:

107 1004.097 Free expression on campus.—

108 (2) DEFINITIONS.—As used in this section, the term:

109 (f) "Shield" means to limit students', faculty members',  
 110 or staff members' access to, or observation of, ideas and  
 111 opinions that they may find uncomfortable, unwelcome,  
 112 disagreeable, or offensive.

113 (3) RIGHT TO FREE-SPEECH ACTIVITIES.—

114 (a) Expressive activities protected under the First  
 115 Amendment to the United States Constitution and Art. I of the  
 116 State Constitution include, but are not limited to, any lawful  
 117 oral or written communication of ideas, including all forms of  
 118 peaceful assembly, protests, and speeches; distributing  
 119 literature; carrying signs; circulating petitions; faculty  
 120 research, lectures, writings, and commentary, whether published  
 121 or unpublished; and the recording and publication, including the  
 122 Internet publication, of video or audio recorded in outdoor  
 123 areas of campus. Expressive activities protected by this section  
 124 do not include defamatory or commercial speech.

125 (f) A Florida College System institution or a state

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126 | university may not shield students, faculty, or staff from  
 127 | expressive activities.

128 | (g) Notwithstanding s. 934.03 and subject to the  
 129 | protections provided in the Family Educational Rights and  
 130 | Privacy Act of 1974, 20 U.S.C. s. 1232g and ss. 1002.22 and  
 131 | 1002.225, a student may record video or audio of class lectures  
 132 | for their own personal educational use, in connection with a  
 133 | complaint to the public institution of higher education where  
 134 | the recording was made, or as evidence in, or in preparation  
 135 | for, a criminal or civil proceeding. A recorded lecture may not  
 136 | be published without the consent of the lecturer.

137 | (4) CAUSE OF ACTION.—A person injured by a violation of  
 138 | ~~whose expressive rights are violated by an action prohibited~~  
 139 | ~~under~~ this section may bring an action:

140 | (a) Against a public institution of higher education based  
 141 | on the violation of the individual's expressive rights in a  
 142 | court of competent jurisdiction to obtain declaratory and  
 143 | injunctive relief and may be entitled to damages plus court  
 144 | costs and reasonable attorney fees, which may only be paid from  
 145 | nonstate funds, ~~reasonable court costs, and attorney fees.~~

146 | (b) Against a person who has published video or audio  
 147 | recorded in a classroom in violation of paragraph (3)(g) in a  
 148 | court of competent jurisdiction to obtain declaratory and  
 149 | injunctive relief and may be entitled to damages plus court  
 150 | costs and reasonable attorney fees, with the total recovery not

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151 to exceed \$200,000.

152 Section 4. Paragraph (d) is added to subsection (4) of  
153 section 1004.26, Florida Statutes, to read:

154 1004.26 University student governments.—

155 (4)

156 (d) Notwithstanding any other provision of law, each  
157 student government shall adopt internal procedures providing an  
158 elected or appointed officer of the student government who has  
159 been disciplined, suspended, or removed from office, the right  
160 to directly appeal such decision to the vice president of  
161 student affairs or other senior university administrator  
162 designated to hear such appeals. The internal procedures shall  
163 not condition the exercise of such right on the consideration or  
164 decision of any student panel, including, but not limited to,  
165 any student judiciary, or place any condition precedent on the  
166 exercise of such right granted by this paragraph.

167 Section 5. Section 1006.60, Florida Statutes, is amended  
168 to read:

169 1006.60 Codes of conduct; disciplinary measures; ~~authority~~  
170 to adopt rules or regulations.—

171 (1) The State Board of Education and the Board of  
172 Governors, respectively, shall require, each Florida College  
173 System institution to ~~may~~ adopt, by rule, and each state  
174 university to ~~may~~ adopt, by regulation, codes of conduct and  
175 appropriate penalties for violations of rules or regulations by

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176 students, to be administered by the institution. Such penalties,  
 177 unless otherwise provided by law, may include: reprimand;  
 178 restitution; fines; withholding of diplomas or transcripts  
 179 pending compliance with rules or regulations, completion of any  
 180 student judicial process or sanction, or payment of fines;  
 181 restrictions on the use of or removal from campus facilities;  
 182 community service; educational requirements; and the imposition  
 183 of probation, suspension, dismissal, or expulsion.

184 (2) The State Board of Education and the Board of  
 185 Governors, respectively, shall require, each Florida College  
 186 System institution to ~~may~~ adopt, by rule, and each state  
 187 university to ~~may~~ adopt, by regulation, a code of conduct and  
 188 appropriate penalties for violations of rules or regulations by  
 189 student organizations, to be administered by the institution.  
 190 Such penalties, unless otherwise provided by law, may include:  
 191 reprimand; restitution; suspension, cancellation, or revocation  
 192 of the registration or official recognition of a student  
 193 organization; and restrictions on the use of, or removal from,  
 194 campus facilities.

195 (3) The codes of conduct shall be published on the Florida  
 196 College System institution's or state university's website,  
 197 protect the rights of all students, and, at minimum, provide the  
 198 following due process protections to students and student  
 199 organizations:

200 (a) The right to timely written notice. The code must



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201 require that the institution or university provide a student or  
202 student organization with timely written notice of the student's  
203 or student organization's alleged violation of the code of  
204 conduct. The notice must include sufficient detail and be  
205 provided with sufficient time to prepare for any disciplinary  
206 proceeding.

207 1. The written notice must include the allegations to be  
208 investigated, the citation to the specific provision of the code  
209 of conduct at issue, the process to be used in determining  
210 whether a violation has occurred and associated rights, and the  
211 date, time, and location of the disciplinary proceeding.

212 2. The written notice is considered timely if it is  
213 provided at least 7 business days before the disciplinary  
214 proceeding and may be provided by delivery to the student's  
215 institutional e-mail address, and if the student is under 18  
216 years of age, to the student's parent or to the student  
217 organization's e-mail address.

218 3. At least 5 business days before the disciplinary  
219 proceeding, the institution or university must provide the  
220 student or student organization with:

221 a. A listing of all known witnesses that have provided, or  
222 will provide, information against the student or student  
223 organization.

224 b. All known information relating to the allegation,  
225 including inculpatory and exculpatory information.

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226        (b) The right to a presumption that no violation occurred.  
 227        The institution has the burden to prove, by a preponderance of  
 228        the evidence, that a violation has taken place. Preponderance of  
 229        the evidence means that the information presented supports the  
 230        finding that it is more likely than not that the violation of  
 231        the code of conduct was committed by the student or student  
 232        organization.

233        (c) The right to an impartial hearing officer.

234        (d) The right against self-incrimination and the right to  
 235        remain silent. Such silence may not be used against the student  
 236        or student organization.

237        (e) The right to present relevant information and question  
 238        witnesses.

239        (f) The right to an advisor or advocate who may not serve  
 240        in any other role, including as an investigator, decider of  
 241        fact, hearing officer, member of a committee or panel convened  
 242        to hear or decide the charge, or any appeal.

243        (g) The right to have an advisor, advocate, or legal  
 244        representative, at the student's or student organization's own  
 245        expense, present at any proceeding, whether formal or informal.  
 246        Such person may directly participate in all aspects of the  
 247        proceeding, including the presentation of relevant information  
 248        and questioning of witnesses.

249        (h) The right to appeal the final decision of the hearing  
 250        officer, or any committee or panel, directly to the vice

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251 president of student affairs, or any other senior administrator  
252 designated by the code of conduct, who must hear the appeal and  
253 render a final decision. The vice president of student affairs  
254 or person designated by the code of conduct to hear the appeal  
255 may not have directly participated in any other proceeding  
256 related to the charged violation.

257 (i) The right to an accurate and complete record of every  
258 disciplinary proceeding relating to the charged violation of the  
259 code, including record of any appeal, to be made, preserved, and  
260 available for copying upon request by the charged student or  
261 student organization.

262 (j) A provision setting a time limit for charging a  
263 student or student organization with a violation of the code of  
264 conduct, and a description of those circumstances in which that  
265 time limit may be extended or waived.

266 (4)~~(3)~~ Sanctions authorized by such codes of conduct may  
267 be imposed only for acts or omissions in violation of rules or  
268 regulations adopted by the institution, including rules or  
269 regulations adopted under this section, rules of the State Board  
270 of Education, rules or regulations of the Board of Governors  
271 regarding the State University System, county and municipal  
272 ordinances, and the laws of this state, the United States, or  
273 any other state.

274 (5)~~(4)~~ Each Florida College System institution may  
275 establish and adopt, by rule, and each state university may

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276 establish and adopt, by regulation, codes of appropriate  
277 penalties for violations of rules or regulations governing  
278 student academic honesty. Such penalties, unless otherwise  
279 provided by law, may include: reprimand; reduction of grade;  
280 denial of academic credit; invalidation of university credit or  
281 of the degree based upon such credit; probation; suspension;  
282 dismissal; or expulsion. In addition to any other penalties that  
283 may be imposed, an individual may be denied admission or further  
284 registration, and the institution may invalidate academic credit  
285 for work done by a student and may invalidate or revoke the  
286 degree based upon such credit if it is determined that the  
287 student has made false, fraudulent, or incomplete statements in  
288 the application, residence affidavit, or accompanying documents  
289 or statements in connection with, or supplemental to, the  
290 application for admission to or graduation from the institution.

291 (6)~~(5)~~ Each Florida College System institution shall adopt  
292 rules and each state university shall adopt regulations for the  
293 lawful discipline of any student who intentionally acts to  
294 impair, interfere with, or obstruct the orderly conduct,  
295 processes, and functions of the institution. Said rules or  
296 regulations may apply to acts conducted on or off campus when  
297 relevant to such orderly conduct, processes, and functions.

298 Section 6. This act shall take effect July 1, 2021.