

HOUSE BILL NO. 295

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE EASTMAN

Introduced: 2/24/20

Referred: State Affairs, Education

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to public policy neutrality and nondiscrimination by the University of**
2 **Alaska; relating to the duties of the Board of Regents of the University of Alaska;**
3 **relating to a free speech policy for the University of Alaska; and providing for an**
4 **effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 14.40.045 is amended by adding a new subsection to read:

7 (b) The University of Alaska, as an institution, shall remain neutral on public
8 policy matters except to the extent necessary for the administration of the university.
9 The University of Alaska may not take official action on a public policy matter that
10 pressures a student or member of the faculty or staff to express a particular viewpoint
11 or that prevents a student or member of the faculty or staff from taking a position on a
12 public policy matter.

13 * **Sec. 2.** AS 14.40.050 is amended to read:

14 **Sec. 14.40.050. Discrimination because of sex, color, [OR] nationality, or**

1 **expression prohibited.** A person may not be deprived of the privileges of the
 2 University of Alaska because of sex, color, [OR] nationality, **or the content of the**
 3 **person's expression.**

4 * **Sec. 3.** AS 14.40.050 is amended by adding a new subsection to read:

5 (b) The University of Alaska may not discriminate against a student
 6 organization or deny a student organization a benefit or privilege available to another
 7 student organization based on the content of the organization's expression. In this
 8 subsection, the "organization's expression" includes any idea or rule endorsed or
 9 enforced by the organization that is based on sincerely held beliefs, standards of
 10 conduct of the organization, or the mission or purpose of the organization as defined
 11 by the organization.

12 * **Sec. 4.** AS 14.40.170(a) is amended to read:

13 (a) The Board of Regents shall

14 (1) appoint the president of the university by a majority vote of the
 15 whole board, and the president may attend meetings of the board;

16 (2) fix the compensation of the president of the university, all heads of
 17 departments, professors, teachers, instructors, and other officers;

18 (3) confer appropriate degrees as it may determine and prescribe;

19 (4) have the care, control, and management of

20 (A) all the real and personal property of the university; and

21 (B) land

22 (i) conveyed to the Board of Regents by the
 23 commissioner of natural resources in the settlement of the claim of the
 24 University of Alaska to land granted to the state in accordance with the
 25 Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance
 26 with the Act of January 21, 1929 (45 Stat. 1091), as amended; and

27 (ii) conveyed to the Board of Regents in trust for the
 28 University of Alaska by the commissioner of natural resources under
 29 AS 14.40.365;

30 (5) keep a correct and easily understood record of the minutes of every
 31 meeting and all acts done by it in pursuance of its duties;

(6) under procedures to be established by the commissioner of administration, and in accordance with existing procedures for other state agencies, have the care, control, and management of all money of the university and keep a complete record of all money received and disbursed;

(7) adopt reasonable rules for the prudent trust management and the long-term financial benefit to the university of the land of the university;

(8) provide public notice of sales, leases, exchanges, and transfers of the land of the university or of interests in land of the university;

(9) administer, manage, market, and promote a postsecondary education savings program, including the Alaska Higher Education Savings Trust under AS 14.40.802 and the Alaska advance college tuition savings fund under AS 14.40.803 - 14.40.817;

(10) designate buildings owned by the university as covered buildings for purposes of paying the costs of use, management, operation, maintenance, and depreciation from the fund established under AS 37.05.555;

(11) adopt a policy on free expression that meets the requirements of AS 14.40.045(b), 14.40.050(b), and 14.40.179.

* **Sec. 5.** AS 14.40 is amended by adding a new section to read:

Sec. 14.40.179. Free expression policy; committee; penalties. (a) The Board of Regents shall adopt a policy on free expression and provide a presentation explaining the policy to students during orientation programs for students. The policy must, at a minimum,

(1) state that

(A) the primary function of an institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge through research, teaching, discussion, and debate;

(B) the university shall strive to ensure the fullest degree of intellectual freedom and freedom of expression possible;

(C) it is not the proper role of the university to shield a person from speech protected by the First Amendment to the United States Constitution or art. I, secs. 5 and 6, Constitution of the State of Alaska,

1 including ideas and opinions that the person finds unwelcome, disagreeable, or
2 even deeply offensive;

3 (D) students and faculty have the freedom, within the limits of
4 regulations adopted by the Board of Regents consistent with this section, to
5 discuss any issue that arises;

6 (E) students and faculty may assemble and engage in
7 spontaneous expressive activity as long as the activity is lawful, does not
8 materially and substantially disrupt the functioning of the university, and is
9 consistent with regulations adopted by the Board of Regents;

10 (F) the university maintains a policy of neutrality with respect
11 to public policy matters, as required under AS 14.40.045(b), and the
12 university's nondiscrimination policy, as required under AS 14.40.050;

13 (G) a person lawfully present on campus may protest or
14 demonstrate on campus, but protests or demonstrations that materially and
15 substantially infringe on the rights of others to engage in or listen to expressive
16 activity are not permitted and may be penalized; the statement required under
17 this subparagraph may not prohibit professors or other instructors from
18 maintaining order in a classroom;

19 (H) public areas of the campuses of the university are
20 traditional public forums open to all speakers on the same terms, and use of
21 other areas of the campuses of the university may be restricted to speakers
22 invited by students, student organizations, or members of the faculty;

23 (I) the university will make all reasonable efforts to ensure the
24 safety of invited speakers;

25 (2) describe

26 (A) the university's policies regulating expressive activities as
27 authorized under (b) of this section;

28 (B) the range of disciplinary sanctions the university may,
29 within the jurisdiction of the university, impose on a person who materially
30 and substantially interferes with the free expression of others;

31 (C) disciplinary procedures applicable to cases involving

expressive conduct; the disciplinary procedures must meet the minimum requirements described in (c) of this section.

(b) The Board of Regents may adopt reasonable viewpoint-neutral and content-neutral regulations limiting the time, place, or manner of expression by students and faculty if the regulations are clear, published, necessary to achieve a compelling governmental interest, the least restrictive means of furthering the compelling governmental interest, and open to ample alternative means of expression. If the regulations restrict expressive conduct in a public area of a campus of the university, the regulations must also provide ample opportunities for spontaneous assembly and distribution of literature.

(c) The Board of Regents shall adopt disciplinary procedures and a range of punishments for violations of policies and regulations related to expressive conduct. The disciplinary procedures must include a hearing and, at a minimum,

(1) protect the right of the accused person to

(A) receive written notice of the charges in advance of the disciplinary proceeding;

(B) review the evidence in support of the charges;

(C) confront witnesses;

(D) present a defense;

(E) call witnesses;

(F) decision making by an impartial arbiter or panel;

(G) appeal the decision of the arbiter or panel;

(H) representation by a lawyer if the possible disciplinary measures include suspension for more than 30 days or expulsion; and

(2) provide that a student who has been found two or more times to have infringed on the expressive rights of another will be suspended for a minimum of one year or expelled.

(d) The university may not charge security fees based on the content of an invited speaker's speech or the content of the speech of a person who invites a speaker to a campus.

(e) The Board of Regents shall establish a committee on free expression

1 consisting of not less than five members of the Board of Regents. The committee shall
 2 elect a chair from among its membership. Each member of the committee shall serve
 3 at the pleasure of the Board of Regents and each member's term is equal to the
 4 remainder of the member's term on the Board of Regents. In the event of a vacancy on
 5 the committee, the Board of Regents shall appoint a replacement from among its
 6 membership. All university employees shall cooperate with the committee by
 7 providing information requested by the committee. Annually, on or before
 8 September 1, the committee shall complete a report and submit the report to the Board
 9 of Regents, the senate secretary, and the chief clerk of the house of representatives,
 10 notify the legislature that the report is available, and make the report available to the
 11 public. The report must include a description of

12 (1) any barriers to or disruptions of free expression within the
 13 university;

14 (2) the disciplinary process and any discipline imposed by the
 15 university as a result of barriers or disruptions described in (1) of this subsection;

16 (3) substantial difficulties, controversies, or successes the university
 17 faced in remaining neutral with respect to public policy matters, as required under
 18 AS 14.40.045(b); and

19 (4) any other relevant assessments, criticisms, commendations, or
 20 recommendations.

21 (f) Nothing in this section prohibits the Board of Regents from regulating
 22 activity that is not protected by the First Amendment to the United States Constitution
 23 or art. I, secs. 5 and 6, Constitution of the State of Alaska, including

24 (1) violations of state or federal law;

25 (2) expression that a court has determined to be unprotected
 26 defamation;

27 (3) peer-on-peer harassment;

28 (4) quid pro quo sexual harassment;

29 (5) true threats;

30 (6) an unjustifiable invasion of privacy or confidentiality that does not
 31 involve a matter of public concern.

(g) The attorney general or a person aggrieved by an action of the university or the Board of Regents that violates the requirements of this section, AS 14.40.045(b), or 14.40.050(b) may bring an action for injunctive relief and damages in the superior court. If the court finds a violation of this section, the court shall award civil damages in the amount of \$1,000 or actual damages, whichever is greater, appropriate injunctive relief, and reasonable costs and attorney fees allowed under the Alaska Rules of Civil Procedure.

(h) This section supersedes any existing university policies that are inconsistent with this section.

(i) In this section,

(1) "committee" means the committee on free expression;

(2) "peer-on-peer harassment" means conduct directed by a student toward another student that is so severe, pervasive, and objectively offensive that it effectively deprives the student of access to the educational opportunities or benefits provided by the university;

(3) "quid pro quo sexual harassment" means conduct that explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature;

(4) "true threat" means a statement meant by the speaker to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals;

(5) "university" means the University of Alaska.

* **Sec. 6.** AS 14.40.240 is amended by adding a new subsection to read:

(b) The president, or the president's delegate, shall suspend or expel a student who infringes on the expressive rights of another person if suspension or expulsion is required under AS 14.40.179(c).

* **Sec. 7.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 14.40.179(g) and (h), enacted by sec. 5 of this Act, apply only

- 1 to an action by the University of Alaska or the Board of Regents taken on or after the
2 effective date of this Act.
- 3 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).