

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 665

H.P. 486

House of Representatives, February 7, 2019

An Act To Enact the Campus Free Expression Act

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative ANDREWS of Paris.
Cosponsored by Senator FARRIN of Somerset and
Representatives: AUSTIN of Gray, DeVEAU of Caribou, FAULKINGHAM of Winter Harbor,
FECTEAU of Augusta, MORRIS of Turner, O'CONNOR of Berwick, ORDWAY of Standish,
RUDNICKI of Fairfield.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA §10014** is enacted to read:

3 **§10014. Campus Free Expression Act**

4 **1. Short title.** This section may be known and cited as "the Campus Free Expression
5 Act."

6 **2. Definitions.** As used in this section, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "Expressive activity" means an expressive activity protected under the United
9 States Constitution, Amendment I and the Constitution of Maine, Article I, including,
10 but not limited to, all forms of peaceful assembly, protests and speeches; distributing
11 literature; carrying signs; circulating petitions; and the recording and publication,
12 including Internet publication, of video or audio lawfully recorded in outdoor areas of
13 campus. "Expressive activity" does not include commercial speech.

14 B. "Free speech zone" means an area on a campus of a public institution of higher
15 education that is designated for the purpose of engaging in an expressive activity.

16 C. "Material and substantial disruption" means conduct that intentionally and
17 significantly hinders another person's or group's expressive activity or, in the case of
18 disruption of the functioning of a public institution of higher education in subsection
19 3, paragraph A, conduct that intentionally and significantly hinders the functioning of
20 a public institution of higher education. "Material and substantial disruption" does
21 not include conduct that is protected under the United States Constitution,
22 Amendment I and the Constitution of Maine, Article I, including, but not limited to,
23 lawful protests and counterprotests in the outdoor areas of campus or minor or
24 fleeting nonviolent disruptions that are isolated or brief in duration.

25 D. "Outdoor area of campus" means a publicly accessible area of a campus of a
26 public institution of higher education in which members of the public are commonly
27 allowed.

28 E. "Public institution of higher education" means a university in the University of
29 Maine System, a college in the Maine Community College System and the Maine
30 Maritime Academy.

31 **3. Right to free speech activities on campus.** Free speech activities on campus are
32 governed by this subsection.

33 A. A person who wishes to engage in an expressive activity in an outdoor area of
34 campus may do so freely as long as the person's conduct is lawful and does not
35 materially and substantially disrupt the functioning of the public institution of higher
36 education.

37 B. Outdoor areas of campus are considered traditional public forums for individuals,
38 organizations and guest speakers. A public institution of higher education may create
39 and enforce restrictions on time, place and manner of expression that are reasonable
40 and content-neutral and that are narrowly tailored to achieve a significant institutional

interest. Such restrictions must be clear and provide for ample alternative means of expression. A public institution of higher education shall post such restrictions on the institution's publicly accessible website.

C. A public institution of higher education may not designate an area of campus as a free speech zone or otherwise create policies restricting expressive activities to a particular outdoor area of campus, except as provided in paragraph B.

D. Students, faculty or staff of a public institution of higher education may not materially and substantially disrupt expressive activities on campus that are scheduled or reserved.

4. Enforcement by Attorney General. The Attorney General has the authority to enforce compliance with this section and may bring an action to enjoin violations of this section.

5. Cause of action. A person whose rights to conduct an expressive activity are violated by an action prohibited under this section may bring an action against a public institution of higher education in a court of competent jurisdiction to enjoin violations of this section and to recover compensatory damages, reasonable court costs and attorney's fees. If the court finds a public institution of higher education violated this section, the court shall award damages of at least \$500 for the initial violation and \$50 for each day thereafter that the person's rights are violated. Damages stemming from a single violation of this section may not exceed \$100,000. If more than one person brings an action arising from a single violation of this section and the court finds more than one person's rights were violated, the court shall award damages equally among those persons.

6. Statute of limitations. An action brought pursuant to this section must be commenced within one year of the date of the violation.

SUMMARY

This bill authorizes a person who wishes to engage in an expressive activity, as defined in the bill, in an outdoor area of campus of a public institution of higher education to do so freely as long as the person's conduct is lawful and does not materially and substantially disrupt the functioning of the public institution of higher education. It prohibits a public institution of higher education from designating an area of campus as a free speech zone or otherwise creating policies restricting expressive activities to a particular outdoor area of campus, except that it allows public institutions of higher education to create and enforce restrictions on time, place and manner of expression that are reasonable and content-neutral. The Attorney General has the authority to enforce compliance, and a person whose rights are violated may bring an action to enjoin violations and to recover compensatory damages, reasonable court costs and attorney's fees.