
Wisconsin Legislative Council

AMENDMENT MEMO



Memo published: January 19, 2022

Contact: Emily Hicks, Staff Attorney

2021 Assembly Bill 735

**Assembly Substitute
Amendment 1**

2021 ASSEMBLY BILL 735

Standards for Free Speech and Academic Freedom on UW System and Wisconsin Technical College System Campuses

2021 Assembly Bill 735 establishes several standards that University of Wisconsin (UW) System and Wisconsin Technical College System institutions (“covered institution”) must follow regarding free speech and academic freedom. Under the bill, a covered institution may not do any of the following:

- Restrict noncommercial speech protected under the First Amendment of the U.S. Constitution.
- Place time, place, and manner restrictions on expressive activities in open outdoor areas that are generally accessible to the public unless those restrictions are reasonable; are in furtherance of a significant institutional interest; employ clear, published, content-neutral and viewpoint neutral criteria; provide ample means of communication; and allow for members of the institution’s community to spontaneously and contemporaneously distribute literature and assemble.
- Designate any areas of campus as a “free speech zone” or otherwise create policies restricting noncommercial expressive activity to a particular area of campus.
- Charge fees for additional security based on the anticipated content of speech or anticipated reaction to speech.
- Sanction individuals or groups for discriminatory harassment unless the speech is unwelcome, targets the victim on the basis of the victim’s real or perceived membership in a protected class, and is demonstrably so severe, pervasive, and objectively offensive that it effectively bars a student from receiving equal access to educational opportunities or benefits.
- Sanction an individual on the basis of the content or viewpoints expressed while the individual is directly engaged in instruction, research, or service explicitly related to the individual’s role as a student or faculty member of the institution.

Additionally, the bill requires each covered institution to consider all indoor and outdoor public areas operated by or under the jurisdiction of the institution to be public forums. Further, an institution must make every reasonable effort to prevent protected speech and institution-sanctioned events, activities, and instruction from being disrupted.

Under the bill, covered institutions are required to annually provide all students and employees with instruction on academic freedom, due process, and First Amendment protections. Institutions are also required to annually conduct a campus-wide survey of students and employees regarding First Amendment rights, academic freedom, whether campus culture promotes self-censorship, and perceived political, ideological, or other bias at the institution.

Penalties for Violations of Standards

For the purpose of instituting penalties, the bill provides that the following entities may make a finding, on the basis of a preponderance of the evidence, that a covered institution has violated the standards set forth in the bill:

- A state or federal court in Wisconsin.
- The Higher Educational Aids Board (HEAB).
- Any standing committee of the Legislature having jurisdiction over matters relating to higher education.

Under the bill, an institution found to have violated any of the standards set forth in the bill is subject to two penalties: a required disclaimer and loss of Wisconsin grant funding.

First, upon a finding that an institution violated any of the standards set forth in the bill, the institution must, for 10 years after the finding, include on all notices to individuals regarding admission to the institution, a disclaimer in regular size font noticing the institution's violation of the standards in the bill.

Second, an institution found to have violated any of the standards set forth in the bill more than once in a 10-year period becomes ineligible for Wisconsin grant funding for at least one year. Further, if any violation was caused by an administrator at the institution, the institution must remain ineligible for Wisconsin grant funding until the violating administrator is permanently removed from his or her administrative role.

Civil Causes of Action

Under the bill, a civil cause of action may be brought by the Wisconsin Attorney General, a Wisconsin district attorney, or a person whose expressive rights were violated through violation of the standards set forth in the bill.

The bill provides that a party bringing such an action may seek injunctive relief as well as recovery of compensatory damages. The bill caps the damages at \$100,000 per controversy.

If a court finds a violation, the court is required to award the plaintiffs at least \$500 for the initial violation, as well as \$50 per day that the violation remains ongoing, which begins to accrue the day after the board of regents or district board is served with a complaint. The court is also required to award the plaintiffs court costs and reasonable attorneys' fees.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Under the substitute amendment, only a state or federal court located in Wisconsin may find that an institution violated the standards set forth in the bill. Additionally, the only penalty provided under the substitute amendment is the required disclaimer; under the substitute amendment, institutions found in violation of the bill remain eligible for Wisconsin grant funding. Other than these two provisions, the substitute amendment is identical to the bill.

BILL HISTORY

Representatives Murphy and Cabral-Guevara offered Assembly Substitute Amendment 1 on January 12, 2022. On January 13, 2022, the Assembly Committee on Colleges and Universities voted to recommend adoption of the amendment and passage of the bill, as amended, both on votes of Ayes 9; Noes, 4.