

## HOUSE BILL NO. HB0137

Wyoming Higher Education Free Speech Protection Act.

Sponsored by: Representative(s) Biteman, Clem, Gray,  
Halverson, Laursen, Lindholm, Olsen, Salazar  
and Steinmetz and Senator(s) Bouchard

A BILL

for

1 AN ACT relating to higher education; creating the Wyoming  
2 Higher Education Free Speech Protection Act; requiring the  
3 University of Wyoming and community college district boards  
4 of trustees to adopt a policy in accordance with this act;  
5 providing for disciplinary sanctions and hearings;  
6 requiring notice of the policy; permitting judicial relief;  
7 excluding applicability of the Wyoming Governmental Claims  
8 Act; conforming provisions; requiring reports; superseding  
9 and nullifying inconsistent rules, regulations and  
10 policies; and providing for an effective date.

11

12 *Be It Enacted by the Legislature of the State of Wyoming:*

13

14 **Section 1.** W.S. 21-16-1701 through 21-16-1705 are  
15 created to read:

1

2

## ARTICLE 17

3

## FREEDOM OF SPEECH ON UNIVERSITY AND COMMUNITY COLLEGE

4

## CAMPUSES

5

6

**21-16-1701. Short title.**

7

8

This act shall be known and may be cited as the "Wyoming

9

Higher Education Free Speech Protection Act."

10

11

**21-16-1702. Definitions.**

12

13

(a) As used in this act:

14

15

16

17

(i) "Board of trustees" includes the board of trustees of the University of Wyoming and any community college district board of trustees;

18

19

20

21

22

23

(ii) "Faculty member" means any person, whether or not the person is compensated by an institution and regardless of political affiliation, who is tasked with providing scholarship, academic research or teaching for an institution. The term includes tenured and nontenured

1 professors, adjunct professors, visiting professors,  
2 lecturers, graduate student instructors and any other  
3 persons in comparable positions at an institution. The term  
4 does not include any person whose primary responsibilities  
5 are administrative or managerial;

6

7 (iii) "Free speech" means any form of speech,  
8 expression or assembly, verbal or written, that is  
9 protected by the first amendment to the United States  
10 constitution or article I, section 20 or 21 of the Wyoming  
11 constitution. The term does not include the promotion, sale  
12 or distribution of any product or service;

13

14 (iv) "Free speech zone" means a particular area  
15 on the institution's campus to which the exercise of free  
16 speech is confined;

17

18 (v) "Institution" means the University of  
19 Wyoming or any community college in this state;

20

21 (vi) "Materially and substantially interfere  
22 with a free speech event or activity" means to prevent,  
23 stop or significantly impair or hinder any authorized or

1 lawful free speech event or activity by committing any of  
2 the following acts:

3

4 (A) Engaging in fighting or other violent  
5 behavior;

6

7 (B) Making protracted commotion or  
8 utterances;

9

10 (C) Physically blocking, preventing or  
11 hindering any person from attending, participating in,  
12 listening or viewing the free speech event or activity.

13

14 (vii) "Student" means an individual who is  
15 enrolled in a course of study at the institution;

16

17 (viii) "Student organization" means an  
18 organization comprised solely of students and registered  
19 with the institution pursuant to institution rules;

20

21 (ix) "This act" means W.S. 21-16-1701 through  
22 21-16-1705.

23

1           **21-16-1703. Higher education free speech protection**  
2 **policy; notice of policy; disciplinary sanctions and**  
3 **hearings.**

4

5           (a) Not later than January 1, 2019, each board of  
6 trustees shall adopt a higher education free speech  
7 protection policy that is consistent with the following:

8

9                   (i) Students and any persons lawfully on campus  
10 have a fundamental constitutional right to engage in free  
11 speech activities on the institution's campus;

12

13                   (ii) The primary function of the institution is  
14 to foster the discovery, improvement, transmission and  
15 dissemination of knowledge through research, teaching,  
16 discussion and debate. To fulfill this function, the  
17 institution shall allow students, student organizations and  
18 persons lawfully on campus the broadest possible latitude  
19 under the first amendment to the United States constitution  
20 and article I, sections 20 and 21 of the Wyoming  
21 constitution to speak, write, listen, challenge, assemble,  
22 learn and discuss any idea or issue;

23

1           (iii) The institution shall allow students,  
2 student organizations, faculty members and persons lawfully  
3 on campus to take positions on public controversies, but  
4 the institution itself shall endeavor to remain neutral on  
5 these controversies, except to the extent that  
6 administrative decisions on these issues are essential to  
7 the institution's day to day operations. The institution  
8 itself shall not take action on any public controversy so  
9 as to require or compel students, student organizations or  
10 faculty members to publicly express a given view of public  
11 controversy;

12

13           (iv) It is for the institution's students,  
14 student organizations and faculty members to make judgments  
15 about ideas for themselves and to act on those judgments  
16 not by seeking to suppress free speech, but by openly and  
17 vigorously contesting ideas they oppose;

18

19           (v) The institution shall maintain its campus as  
20 a marketplace of ideas for students, student organizations,  
21 faculty members and persons lawfully on campus, where the  
22 free exchange of ideas shall not be suppressed because  
23 certain ideas are thought by some or even by most members

1 of the institution's community or the general public to be  
2 unwelcome, disagreeable or even deeply offensive;

3

4 (vi) It is not the proper role of the  
5 institution to attempt to shield individuals from free  
6 speech they may find unwelcome, disagreeable or even deeply  
7 offensive;

8

9 (vii) While greatly valued, the institution  
10 shall not use concerns about civility and mutual respect as  
11 a justification for closing off the discussion of ideas,  
12 however unwelcome, disagreeable or even deeply offensive  
13 those ideas may be to members of the institution's  
14 community or the general public;

15

16 (viii) Although students, student organizations,  
17 faculty members and persons lawfully on campus are free to  
18 express their own views about and contest views expressed  
19 on campus and to express their own views about and contest  
20 any speaker who is invited to express his views on campus,  
21 they shall not, knowingly or purposefully, materially and  
22 substantially interfere with a free speech event or  
23 activity at which the speaker expresses or is scheduled to

1 express his views. To this end, the institution shall  
2 promote and protect a lively and fearless freedom of debate  
3 and deliberation;

4

5 (ix) The institution shall maintain an  
6 atmosphere that fosters speculation, experimentation and  
7 creation by students, student organizations, faculty  
8 members and persons lawfully on campus who shall always  
9 remain free to inquire, to study and evaluate and to gain  
10 new understandings;

11

12 (x) The primary responsibility of faculty  
13 members is to dedicate themselves to an honest, courageous  
14 and persistent effort to discover and communicate the truth  
15 that lies in their areas of competence;

16

17 (xi) Although faculty members are free in the  
18 classroom to discuss subjects within their areas of  
19 competence, they shall be cautious in expressing personal  
20 views in the classroom and endeavor not to introduce  
21 controversial matters bearing no relationship to the  
22 subject taught, especially matters in which they have no  
23 special competence or training;



1

2           (xii) The institution shall maintain areas of  
3 its campus that are generally accessible, open and outdoor  
4 as traditional public forums for free speech;

5

6           (xiii) The institution shall not restrict free  
7 speech to a free speech zone;

8

9           (xiv) Unless allowed under subparagraph  
10 (d)(iv)(A) of this section, the institution shall not adopt  
11 or maintain permitting requirements that prohibit  
12 spontaneous free speech activities;

13

14           (xv) The institution shall not deny a student  
15 organization any benefit or privilege available to any  
16 other student organization, or otherwise discriminate  
17 against a student organization, based on the student  
18 organization's viewpoints;

19

20           (xvi) The institution shall not charge students  
21 or student organizations security fees based on the content  
22 of their speech or that of a speaker they invite or based

1 on the anticipated reaction or opposition of listeners to  
2 the speaker, student or student organization's speech;

3

4 (xvii) The institution shall allow students,  
5 student organizations and faculty members to invite any  
6 speaker to campus to engage in free speech regardless of  
7 the speaker's views;

8

9 (xviii) The institution shall not disinvite a  
10 speaker invited by a student, student organization or  
11 faculty member because other students, student  
12 organizations, faculty members, administrators, government  
13 officials or members of the general public may find the  
14 speaker's anticipated speech to be unwelcome, disagreeable  
15 or even deeply offensive;

16

17 (xix) Any person subject to the institution's  
18 disciplinary authority who, knowingly or purposefully,  
19 materially and substantially interferes with a free speech  
20 event or activity on the institution's campus is subject to  
21 disciplinary sanctions as established by the institution,  
22 provided that a student who violates this paragraph two (2)

1 or more times shall be punished by suspension for a minimum  
2 of two (2) semesters or expulsion;

3

4 (xx) Any student accused of violating paragraph  
5 (xix) of this subsection is entitled to a disciplinary  
6 hearing under published procedures. At minimum, the  
7 procedures shall include:

8

9 (A) The right to receive advanced written  
10 notice of the charges;

11

12 (B) The right to review the evidence in  
13 support of the charges;

14

15 (C) The right to present a defense;

16

17 (D) The right to confront witnesses;

18

19 (E) The right to call witnesses;

20

21 (F) A decision by an impartial arbiter;

22

1                   (G) The right to counsel if the violation  
2 is punishable by more than a thirty (30) day suspension or  
3 expulsion;

4

5                   (H) The right to appeal.

6

7           (b) The institution shall make the policy adopted  
8 pursuant to subsection (a) of this section available to  
9 students and faculty members through one (1) or more of the  
10 following methods:

11

12                   (i) Publishing the policy in the institution's  
13 student and faculty handbooks;

14

15                   (ii) Providing prominent notice of the policy on  
16 the institution's internet homepage;

17

18                   (iii) Sending the policy at least one (1) time  
19 per semester to students and faculty members' institutional  
20 email addresses.

21

22           (c) During freshman orientation programs, the  
23 institution shall provide notice and the location of the

1 policy adopted pursuant to subsection (a) of this section  
2 and a session explaining the policy.

3

4 (d) Nothing in this section shall be construed to:

5

6 (i) Grant students, student organizations,  
7 faculty members or other persons lawfully on campus the  
8 right to prevent, hinder, impair, interfere with, obstruct  
9 or disrupt previously scheduled or reserved activities on  
10 the institution's campus;

11

12 (ii) Require an institution to fund any costs  
13 associated with free speech by any student, student  
14 organization, faculty member or any other person lawfully  
15 on campus;

16

17 (iii) Restrict or prohibit a board of trustees  
18 from exercising any authority provided by W.S. 6-6-301  
19 through 6-6-307 in a manner that is consistent with the  
20 provisions of this act;

21

22 (iv) Restrict or prohibit an institution's  
23 ability to adopt or impose measures that are consistent

1 with the provisions of this act and which do not violate  
2 the first amendment to the United States constitution or  
3 article I, section 20 or 21 of the Wyoming constitution.  
4 Those measures may include:

5  
6 (A) Restrictions on the time, place or  
7 manner of free speech, except those providing for a free  
8 speech zone, that are reasonable, content and viewpoint  
9 neutral and narrowly tailored to achieve a compelling  
10 institutional interest and which leave open ample  
11 alternative channels of communication;

12  
13 (B) Restrictions on speech, conduct or  
14 assembly that is not protected by the first amendment to  
15 the United States constitution or article I, section 20 or  
16 21 of the Wyoming constitution;

17  
18 (C) Any other measures that are consistent  
19 with the provisions of this act, the first amendment to the  
20 United States constitution and article I, sections 20 and  
21 21 of the Wyoming constitution.

22

23 **21-16-1704. Judicial relief.**

1

2 (a) The attorney general or any person aggrieved by a  
3 violation of this act or a policy adopted thereunder may  
4 bring an action in a court of competent jurisdiction to  
5 enjoin any further violation of this act or policy.

6

7 (b) Upon a finding that a violation of this act or a  
8 policy adopted thereunder occurred, the court may, in  
9 addition to injunctive relief, award damages of not more  
10 than one thousand dollars (\$1,000.00) or actual damages,  
11 whichever is higher, together with costs and attorney's  
12 fees, provided that any award under this subsection shall  
13 not exceed the limits provided in W.S. 1-39-118.

14

15 (c) Nothing in this section shall limit any  
16 additional civil or criminal liability under any other  
17 state or federal law.

18

19 (d) Nothing in the Wyoming Governmental Claims Act  
20 shall be deemed to bar any action against an institution  
21 under this section.

22

1           **21-16-1705. Annual report on higher education free**  
2 **speech rights.**

3  
4           (a) Not later than November 1, 2019, and by November  
5 1 annually thereafter, each board of trustees shall provide  
6 a report on free speech rights and issues on its  
7 institution's campus to the governor and the joint  
8 education interim committee. The report shall include:

9  
10           (i) A description of any barriers to or  
11 disruptions of free speech on the institution's campus and  
12 the manner in which the institution addressed or is  
13 planning to address those barriers or disruptions;

14  
15           (ii) A description of substantial difficulties,  
16 controversies and successes in maintaining administrative  
17 and institutional neutrality on public controversies;

18  
19           (iii) Any assessments, criticisms, commendations  
20 and recommendations regarding higher education free speech  
21 rights that the board of trustees may wish to provide.

22



1           **Section 2.** W.S. 1-39-104 by creating a new subsection  
2 (e), 21-17-204(a) (intro) and 21-18-304(a) by creating a new  
3 paragraph (xii) are amended to read:

4  
5           **1-39-104. Granting immunity from tort liability;  
6 liability on contracts; exceptions.**

7  
8           (e) Nothing in this act shall be deemed to provide  
9 immunity from liability in an action brought pursuant to  
10 the Wyoming Higher Education Free Speech Protection Act.

11  
12           **21-17-204. Additional powers and duties; sectarian or  
13 partisan instruction or test prohibited.**

14  
15           (a) The board of trustees shall prescribe rules for  
16 the government of the university and all its branches,  
17 elect the requisite officers, professors, instructors and  
18 employees, a director of finance and budget and a  
19 superintendent of buildings and grounds, any of whom may be  
20 removed for cause, and fix the salary and term of office of  
21 each. The board of trustees shall prescribe the studies to  
22 be pursued and the textbooks to be used, and determine the  
23 qualifications of applicants for admission to the various

1 courses of study. Not later than January 1, 2019, the board  
2 of trustees shall adopt a policy regarding free speech  
3 rights on the university's campus in accordance with the  
4 Wyoming Higher Education Free Speech Protection Act, W.S.  
5 21-16-1701 through 21-16-1705. This policy shall supersede  
6 and nullify any inconsistent rules, regulations and  
7 policies of the university. No instruction either sectarian  
8 in religion or partisan in politics shall ever be allowed  
9 in any department of the university, and no sectarian or  
10 partisan test shall ever be exercised or allowed in the  
11 appointment of trustees or in the election or removal of  
12 professors, teachers or other officers of the university or  
13 in the admission of students thereto, or for any purpose  
14 whatsoever. The board of trustees may:

15

16 **21-18-304. District board generally; duties.**

17

18 (a) The community college district board shall:

19

20 (xii) Not later than January 1, 2019, adopt a  
21 policy regarding free speech rights on the campus of the  
22 community college under its jurisdiction in accordance with  
23 the Wyoming Higher Education Free Speech Protection Act,

1 W.S. 21-16-1701 through 21-16-1705. This policy shall  
2 supersede and nullify any inconsistent rules, regulations  
3 and policies of the community college.

4

5 **Section 3.** This act is effective July 1, 2018.

6

7

(END)