



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Assembly Bill 299**

**Assembly Amendment 2**

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*Contact: Julia Norsetter, Staff Attorney*

### **2017 ASSEMBLY BILL 299**

2017 Assembly Bill 299 (“the bill”) requires the Board of Regents (“the Board”) of the University of Wisconsin-System (“System”) to adopt a policy on freedom of expression that would apply to all two- and four-year System institutions. The bill allows the Board to adopt the policy without promulgating rules and requires that the policy include certain disciplinary measures. The bill also contains legislative findings and creates a council on free expression. Finally, the bill requires System institutions to include a section on the policy during freshman orientation.

### **ASSEMBLY AMENDMENT 2**

Assembly Amendment 2 (“the amendment”) generally makes changes to the following sections of the bill.

#### **Inappropriate Conduct**

The bill requires that the Board adopt a policy that includes a range of disciplinary sanctions for certain individuals who engage in “violent, abusive, indecent, profane, boisterous, obscene, unreasonably loud, or other disorderly conduct that interferes with the free expression of others.”

The amendment modifies the types of conduct for which disciplinary sanctions must be established. Specifically, the amendment provides that there be disciplinary sanctions for “violent or other disorderly conduct that materially and substantially disrupts the free expression of others.”

### **Student Rights**

The bill provides that a student who is subject to a disciplinary hearing has the right to counsel if the student may be penalized with a suspension to last longer than nine days or with expulsion.

The amendment provides that a student who is subject to a disciplinary hearing has the right to counsel in all circumstances, no matter the nature of the potential penalty. The amendment also adds a requirement that a student who is subject to a disciplinary hearing be informed that he or she has the option to record the disciplinary hearing.

### **Penalties**

The bill requires that a student who is twice found responsible for interfering with the expressive rights of others be suspended for at least one semester or expelled.

The amendment requires that a student who is twice found responsible for interfering with the expressive rights of others any time during the student's enrollment be suspended for at least one semester. The amendment requires that a student who is found responsible for interfering with the expressive rights of other three times during the student's enrollment be expelled.

### **Reporting Violations of Free Expression**

The amendment requires that any person be permitted to make a report that another person has violated the bill's provisions or the policy adopted pursuant to the bill. The amendment also requires that a formal investigation and disciplinary hearing be conducted if two or more reports are made regarding the same person's violation of the bill or policy adopted pursuant to the bill.

### **Reports to the Council**

The bill creates a council on free expression, which is responsible for annually submitting a report to the Board, the Governor, and the Chief Clerk of each house of the Legislature for distribution to the appropriate standing committees. The report must include certain information relating to free expression, including a description of the administrative handling and discipline relating to disruptions of free expression within institutions.

The amendment eliminates the council on free expression and instead requires the Board to annually submit the report, described above, to the Governor and the Chief Clerk of each house of the Legislature for distribution to the appropriate standing committees. The amendment adds a requirement that the Board ensure that a description of all disciplinary hearings involving expressive conduct and the outcomes of those hearings are included in the report. The amendment also adds a requirement that each standing committee that receives a report must hold a public hearing before taking any action regarding that report.

### **Notice, Orientation, and Training**

The bill requires that each System institution include a description of the free expression policies and rules in freshman orientation programs.

The amendment modifies that requirement to require that the Board provide a notice to all students enrolled in System institutions that informs them about its adopted free expression policy. In general, each institution must also include a description or training of the free expression policies in freshmen and transfer student orientation programs, during employee hiring, and as part of annual training to instructors.

### **Fees for Frivolous Suits**

The bill provides that a person whose expressive rights are violated under the bill or the policy adopted pursuant to the bill may bring an action in court for injunction and may be awarded reasonable attorney fees and costs and some damages under certain circumstances.

The amendment adds a provision regarding the defendant in such an action. Under the amendment, a defendant may recover reasonable attorney fees incurred to defend the action if the defendant prevails in the action and the court determines that the action was frivolous or brought in bad faith.

### **BILL HISTORY**

Representative Kremer introduced 2017 Assembly Bill 299 on May 5, 2017, and introduced Assembly Amendment 2 on June 21, 2017. On June 21, 2017, the Assembly recommended adoption of the amendment on a voice vote, and passage of the bill, as amended, on a vote of Ayes, 61; Noes, 36.

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