

HOUSE BILL 677

F5, F2

0lr1904
CF 0lr2716

By: **Delegates Shank, Dwyer, Elliott, Frank, George, Haddaway, Jennings, Krebs, Miller, Myers, Norman, Schuh, Serafini, and Stocksdale**
Introduced and read first time: February 4, 2010
Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Nonpublic Institutions of Higher Education – Free**
3 **Speech**

4 FOR the purpose of prohibiting, under certain circumstances, certain nonpublic
5 institutions of higher education from making or enforcing certain rules
6 subjecting students at the institution to disciplinary sanctions on the basis of
7 conduct that is speech or other communication; authorizing certain students to
8 bring a civil enforcement action for certain relief in a certain court; authorizing
9 the court to award attorney's fees to a prevailing plaintiff under certain
10 circumstances; providing for the application of this Act; specifying that this Act
11 does not authorize the prior restraint of certain speech; specifying that this Act
12 does not prohibit an institution from imposing discipline for certain acts, subject
13 to a certain condition; specifying that this Act does not prohibit an institution
14 from adopting and enforcing rules and regulations to prevent hate crimes
15 against students at the institution, subject to certain conditions; and generally
16 relating to the regulation of speech at certain nonpublic institutions of higher
17 education.

18 BY adding to
19 Article – Education
20 Section 17–108
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2009 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Education**
26 **17–108.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 **(A) AN INSTITUTION THAT QUALIFIES FOR AID UNDER THIS SUBTITLE**
2 **MAY NOT MAKE OR ENFORCE A RULE THAT SUBJECTS A STUDENT ENROLLED AT**
3 **THE INSTITUTION TO DISCIPLINARY SANCTIONS BASED SOLELY ON CONDUCT**
4 **THAT IS SPEECH OR OTHER COMMUNICATION THAT, WHEN ENGAGED IN**
5 **OUTSIDE THE CAMPUS OR OTHER FACILITY OF THE INSTITUTION, IS PROTECTED**
6 **FROM GOVERNMENTAL RESTRICTION BY THE FIRST AMENDMENT TO THE**
7 **CONSTITUTION OF THE UNITED STATES OR BY THE MARYLAND CONSTITUTION.**

8 **(B) (1) A STUDENT ENROLLED AT AN INSTITUTION AT THE TIME THAT**
9 **THE INSTITUTION MAKES OR ENFORCES A RULE PROHIBITED UNDER**
10 **SUBSECTION (A) OF THIS SECTION MAY BRING A CIVIL ACTION IN A COURT OF**
11 **COMPETENT JURISDICTION FOR INJUNCTIVE OR DECLARATORY RELIEF, AS**
12 **DETERMINED BY THE COURT TO BE APPROPRIATE.**

13 **(2) ON MOTION, THE COURT MAY AWARD ATTORNEY'S FEES TO A**
14 **PREVAILING PLAINTIFF IN AN ACTION BROUGHT UNDER THIS SECTION.**

15 **(C) TO THE EXTENT THAT THE APPLICATION OF THIS SECTION WOULD**
16 **NOT BE CONSISTENT WITH THE RELIGIOUS TENETS OF AN INSTITUTION**
17 **CONTROLLED BY A RELIGIOUS ORGANIZATION, THIS SECTION DOES NOT APPLY**
18 **TO THE INSTITUTION.**

19 **(D) THIS SECTION DOES NOT:**

20 **(1) AUTHORIZE THE PRIOR RESTRAINT OF STUDENT SPEECH;**

21 **(2) PROHIBIT AN INSTITUTION SUBJECT TO THIS SECTION FROM**
22 **IMPOSING DISCIPLINE FOR HARASSMENT, THREATS, OR INTIMIDATION, UNLESS**
23 **THE ACT IS PROTECTED BY THE CONSTITUTION OF THE UNITED STATES OR THE**
24 **MARYLAND CONSTITUTION; OR**

25 **(3) PROHIBIT AN INSTITUTION SUBJECT TO THIS SECTION FROM**
26 **ADOPTING RULES OR REGULATIONS THAT ARE DESIGNED TO PREVENT HATE**
27 **CRIMES, AS SPECIFIED UNDER TITLE 10, SUBTITLE 3 OF THE CRIMINAL LAW**
28 **ARTICLE, FROM BEING DIRECTED AT STUDENTS IN A MANNER THAT DENIES ANY**
29 **STUDENT FULL PARTICIPATION IN THE EDUCATION PROCESS, PROVIDED THE**
30 **RULES AND REGULATIONS CONFORM TO STANDARDS ESTABLISHED FOR**
31 **CITIZENS GENERALLY UNDER THE FIRST AMENDMENT TO THE CONSTITUTION**
32 **OF THE UNITED STATES AND THE MARYLAND CONSTITUTION.**

33 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
34 **October 1, 2010.**