

REFERENCE TITLE: **postsecondary institutions; free expression policies**

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2563

Introduced by
Representatives Boyer: Bowers, Finchem, Kern, Lawrence, Leach,
Livingston, Nutt, Stringer, Toma, Senators Allen S, Farnsworth D,
Kavanagh, Kerr, Yee

AN ACT

AMENDING SECTION 15-1864, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 14, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 15-1866, 15-1867 AND 15-1868; RELATING TO STUDENTS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1864, Arizona Revised Statutes, is amended to
3 read:

4 15-1864. Students' right to speak in a public forum; protests
5 and demonstrations; invited speakers; court
6 actions

7 A. A university or community college shall not restrict a student's
8 right to speak, including verbal speech, holding a sign or distributing
9 fliers or other materials, in a public forum.

10 B. A university or community college shall not impose restrictions
11 on the time, place and manner of student speech that:

12 1. Occurs in a public forum.

13 2. Is protected by the first amendment to the United States
14 Constitution unless the restrictions:

15 (a) Are reasonable.

16 (b) Are justified without reference to the content of the regulated
17 speech.

18 (c) Are ~~narrowly tailored to serve~~ NECESSARY TO ACHIEVE a
19 ~~significant~~ COMPELLING governmental interest.

20 (d) ARE THE LEAST RESTRICTIVE MEANS TO FURTHER THAT COMPELLING
21 GOVERNMENT INTEREST.

22 ~~(d)~~ (e) Leave open ample alternative channels for communication of
23 the information.

24 3. PROVIDES FOR SPONTANEOUS ASSEMBLY AND DISTRIBUTION OF
25 LITERATURE.

26 C. A PERSON WHO IS LAWFULLY PRESENT ON A UNIVERSITY OR COMMUNITY
27 COLLEGE CAMPUS MAY PROTEST OR DEMONSTRATE ON THAT CAMPUS. INDIVIDUAL
28 CONDUCT THAT MATERIALLY AND SUBSTANTIALLY INFRINGES ON THE RIGHTS OF OTHER
29 PERSONS TO ENGAGE IN OR LISTEN TO EXPRESSIVE ACTIVITY IS NOT ALLOWED AND
30 IS SUBJECT TO SANCTION. THIS SUBSECTION DOES NOT PROHIBIT FACULTY MEMBERS
31 FROM MAINTAINING ORDER IN THE CLASSROOM. FOR THE PURPOSES OF THIS
32 SUBSECTION, "INDIVIDUAL CONDUCT THAT MATERIALLY AND SUBSTANTIALLY
33 INFRINGES" MEANS CONDUCT BY A PERSON WHO, WITH THE INTENT TO OR THE
34 KNOWLEDGE OF DOING SO, MATERIALLY AND SUBSTANTIALLY INTERFERES WITH
35 ANOTHER PERSON'S OR GROUP'S EXPRESSIVE ACTIVITY, PREVENTS THE
36 COMMUNICATION OF A MESSAGE OR PREVENTS THE TRANSACTION OF THE BUSINESS OF
37 A LAWFUL MEETING, GATHERING OR PROCESSION BY ANY OF THE FOLLOWING:

38 1. ENGAGING IN FIGHTING OR VIOLENT OR SERIOUSLY DISRUPTIVE
39 BEHAVIOR.

40 2. MAKING ANY PROTRACTED COMMOTION, UTTERANCE OR SIMILAR ACTION.

41 3. PHYSICALLY BLOCKING, PREVENTING OR HINDERING ANY PERSON FROM
42 ATTENDING, LISTENING TO, VIEWING OR OTHERWISE PARTICIPATING IN AN
43 EXPRESSIVE ACTIVITY.

44 D. THE PUBLIC AREAS OF UNIVERSITY AND COMMUNITY COLLEGE CAMPUSES
45 ARE PUBLIC FORUMS AND ARE OPEN ON THE SAME TERMS TO ANY SPEAKER.

1 E. UNIVERSITY AND COMMUNITY COLLEGE CAMPUSES ARE OPEN TO ANY
2 SPEAKER WHOM A STUDENT, STUDENT GROUP OR FACULTY MEMBER HAS INVITED.

3 F. A UNIVERSITY OR COMMUNITY COLLEGE SHALL MAKE ALL REASONABLE
4 EFFORTS AND MAKE AVAILABLE ALL REASONABLE RESOURCES TO ENSURE THE SAFETY
5 OF AN INVITED SPEAKER AND OTHER PERSONS IN ATTENDANCE. A UNIVERSITY OR
6 COMMUNITY COLLEGE MAY NOT CHARGE SECURITY FEES BASED ON THE CONTENT OF THE
7 SPEECH OF THE PERSON WHO INVITED A SPEAKER OR OF THE INVITED SPEAKER. A
8 UNIVERSITY OR COMMUNITY COLLEGE MAY RESTRICT THE USE OF ITS NONPUBLIC
9 FACILITIES TO INVITED INDIVIDUALS.

10 G. AN INDIVIDUAL STUDENT OR A FACULTY OR STAFF MEMBER OF A
11 UNIVERSITY OR COMMUNITY COLLEGE MAY TAKE A POSITION ON THE PUBLIC POLICY
12 CONTROVERSIES OF THE DAY, BUT THE INSTITUTION IS ENCOURAGED TO ATTEMPT TO
13 REMAIN NEUTRAL, AS AN INSTITUTION, ON THE PUBLIC POLICY CONTROVERSIES OF
14 THE DAY UNLESS THE ADMINISTRATIVE DECISIONS ON SUCH ISSUES ARE ESSENTIAL
15 TO THE DAY-TO-DAY FUNCTIONING OF THE UNIVERSITY OR COMMUNITY COLLEGE.

16 H. THE UNIVERSITY OR COMMUNITY COLLEGE MAY NOT TAKE ACTION, AS AN
17 INSTITUTION, ON THE PUBLIC POLICY CONTROVERSIES OF THE DAY IN A WAY THAT
18 REQUIRES STUDENTS OR FACULTY MEMBERS TO PUBLICLY EXPRESS OR ENDORSE A
19 PARTICULAR VIEW OF A PUBLIC POLICY CONTROVERSY.

20 ~~E.~~ I. The following persons may bring an action in a court of
21 competent jurisdiction to enjoin any violation of this ~~section~~ ARTICLE BY
22 ANY UNIVERSITY, COMMUNITY COLLEGE, STUDENT, FACULTY MEMBER, ADMINISTRATOR
23 OR OTHER PERSON or to recover reasonable court costs and reasonable
24 attorney fees:

25 1. The attorney general.

26 2. A ~~student~~ PERSON whose expressive rights were violated by a
27 violation of this ~~section~~ ARTICLE.

28 ~~D.~~ J. In an action brought under subsection ~~E.~~ I of this section,
29 if the court finds that a violation of this ~~section~~ ARTICLE occurred, the
30 court shall award the aggrieved person injunctive relief for the violation
31 and shall award reasonable court costs and reasonable attorney fees. THE
32 COURT SHALL ALSO AWARD DAMAGES OF ONE THOUSAND DOLLARS OR ACTUAL DAMAGES,
33 WHICHEVER IS GREATER.

34 ~~E.~~ K. A person shall bring an action for a violation of this
35 ~~section~~ ARTICLE within one year after the date the cause of action
36 accrues. For the purpose of calculating the one-year limitation period,
37 each day that the violation persists or each day that a policy in
38 violation of this ~~section~~ ARTICLE remains in effect constitutes a new
39 violation of this ~~section~~ ARTICLE and shall be considered a day that the
40 cause of action has accrued.

1 Sec. 2. Title 15, chapter 14, article 6, Arizona Revised Statutes,
2 is amended by adding sections 15-1866, 15-1867 and 15-1868, to read:

3 15-1866. Free expression policy; rules; Arizona board of
4 regents; community college district governing
5 boards; requirements

6 A. THE ARIZONA BOARD OF REGENTS AND EACH COMMUNITY COLLEGE DISTRICT
7 GOVERNING BOARD SHALL DEVELOP AND ADOPT A POLICY ON FREE EXPRESSION THAT
8 CONTAINS AT LEAST THE FOLLOWING STATEMENTS AND REQUIREMENTS:

9 1. THE PRIMARY FUNCTION OF AN INSTITUTION OF HIGHER EDUCATION IS
10 THE DISCOVERY, IMPROVEMENT, TRANSMISSION AND DISSEMINATION OF KNOWLEDGE BY
11 MEANS OF RESEARCH, TEACHING, DISCUSSION AND DEBATE. THIS STATEMENT SHALL
12 PROVIDE THAT, TO FULFILL THIS FUNCTION, THE UNIVERSITY OR COMMUNITY
13 COLLEGE MUST STRIVE TO ENSURE THE FULLEST DEGREE OF INTELLECTUAL FREEDOM
14 AND FREE EXPRESSION.

15 2. IT IS NOT THE PROPER ROLE OF AN INSTITUTION OF HIGHER EDUCATION
16 TO SHIELD INDIVIDUALS FROM SPEECH PROTECTED BY THE FIRST AMENDMENT,
17 INCLUDING, WITHOUT LIMITATION, IDEAS AND OPINIONS THAT MAY BE UNWELCOME,
18 DISAGREEABLE OR DEEPLY OFFENSIVE.

19 3. STUDENTS AND FACULTY MEMBERS HAVE THE FREEDOM TO DISCUSS ANY
20 PROBLEM THAT PRESENTS ITSELF, AS THE FIRST AMENDMENT ALLOWS AND WITHIN THE
21 LIMITS OF REASONABLE VIEWPOINT AND CONTENT-NEUTRAL RESTRICTIONS ON TIME,
22 PLACE AND MANNER OF EXPRESSION THAT ARE CONSISTENT WITH THIS ARTICLE AND
23 THAT ARE NECESSARY TO ACHIEVE A SIGNIFICANT INSTITUTIONAL INTEREST IF
24 THESE RESTRICTIONS ARE CLEAR, ARE PUBLISHED AND PROVIDE AMPLE ALTERNATIVE
25 MEANS OF EXPRESSION. THIS STATEMENT SHALL SPECIFY THAT STUDENTS AND
26 FACULTY MEMBERS MAY ASSEMBLE AND ENGAGE IN SPONTANEOUS EXPRESSIVE
27 ACTIVITIES IF THOSE ACTIVITIES ARE NOT UNLAWFUL AND DO NOT MATERIALLY AND
28 SUBSTANTIALLY DISRUPT THE FUNCTIONING OF THE UNIVERSITY OR COMMUNITY
29 COLLEGE, SUBJECT TO THIS PARAGRAPH.

30 4. THERE IS A RANGE OF DISCIPLINARY ACTIONS FOR A STUDENT WHO IS
31 SUBJECT TO THE JURISDICTION OF A UNIVERSITY OR COMMUNITY COLLEGE AND WHO
32 SUBSTANTIALLY AND MATERIALLY INTERFERES WITH THE FREE EXPRESSION OF OTHER
33 PERSONS.

34 5. IN ALL DISCIPLINARY PROCEEDINGS INVOLVING EXPRESSIVE CONDUCT, A
35 STUDENT IS ENTITLED TO A DISCIPLINARY HEARING UNDER PUBLISHED PROCEDURES
36 THAT INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:

37 (a) THE RIGHT TO RECEIVE ADVANCED WRITTEN NOTICE OF THE
38 ALLEGATIONS.

39 (b) THE RIGHT TO REVIEW THE EVIDENCE IN SUPPORT OF THE ALLEGATIONS.

40 (c) THE RIGHT TO CONFRONT WITNESSES WHO TESTIFY AGAINST THAT
41 STUDENT.

42 (d) THE RIGHT TO PRESENT A DEFENSE.

43 (e) THE RIGHT TO CALL WITNESSES.

44 (f) A DECISION BY AN IMPARTIAL PERSON OR PANEL.

45 (g) THE RIGHT TO APPEAL.

(h) IF EITHER A SUSPENSION OF MORE THAN THIRTY DAYS OR EXPULSION IS A POTENTIAL CONSEQUENCE OF A DISCIPLINARY PROCEEDING UNDER THIS SECTION, THE RIGHT TO ACTIVE ASSISTANCE OF COUNSEL.

6. IT IS THE SENSE OF THE LEGISLATURE THAT IF A STUDENT HAS REPEATEDLY BEEN DETERMINED TO HAVE MATERIALLY AND SUBSTANTIALLY INFRINGED ON THE EXPRESSIVE RIGHTS OF ANOTHER PERSON, A PUNISHMENT OF SUSPENSION OR EXPULSION FROM THE UNIVERSITY OR COMMUNITY COLLEGE MAY BE APPROPRIATE.

7. THIS SECTION SUPERSEDES ANY PREVIOUS POLICIES OF A UNIVERSITY OR COMMUNITY COLLEGE THAT RESTRICT SPEECH ON CAMPUSES AND THAT ARE INCONSISTENT WITH THE STATEMENTS AND REQUIREMENTS PRESCRIBED IN THIS SECTION. EACH UNIVERSITY AND COMMUNITY COLLEGE SHALL REMOVE OR REVISE ANY PROVISIONS IN ITS POLICIES OR RULES IN ORDER TO COMPLY WITH THIS SECTION.

B. THE ARIZONA BOARD OF REGENTS AND EACH COMMUNITY COLLEGE DISTRICT GOVERNING BOARD MAY ADOPT RULES TO FURTHER THE PURPOSES OF THE POLICY ADOPTED PURSUANT TO SUBSECTION A OF THIS SECTION. THIS SECTION DOES NOT PREVENT UNIVERSITIES AND COMMUNITY COLLEGES FROM REGULATING STUDENT SPEECH OR ACTIVITY THAT IS PROHIBITED BY LAW. EXCEPT AS OTHERWISE PROVIDED BY THIS ARTICLE, UNIVERSITIES AND COMMUNITY COLLEGES MAY RESTRICT STUDENT EXPRESSION ONLY FOR EXPRESSIVE ACTIVITY THAT IS NOT PROTECTED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION, INCLUDING:

1. A VIOLATION OF STATE OR FEDERAL LAW.
2. AN EXPRESSION THAT A COURT HAS DEEMED UNPROTECTED DEFAMATION.
3. HARASSMENT, CONSISTING OF EITHER:

(a) PEER-ON-PEER HARASSMENT. FOR THE PURPOSES OF THIS SUBDIVISION, "PEER-ON-PEER HARASSMENT" MEANS DISCRIMINATORY CONDUCT THAT IS DIRECTED BY A STUDENT TOWARD ANOTHER INDIVIDUAL STUDENT AND THAT IS SO SEVERE, PERVASIVE AND OBJECTIVELY OFFENSIVE THAT THE CONDUCT EFFECTIVELY DEPRIVES THE VICTIM OF ACCESS TO THE EDUCATIONAL OPPORTUNITIES OR BENEFITS PROVIDED BY THE UNIVERSITY OR COMMUNITY COLLEGE.

(b) QUID PRO QUO SEXUAL HARASSMENT. FOR THE PURPOSES OF THIS SUBDIVISION, "QUID PRO QUO SEXUAL HARASSMENT" MEANS CONDUCT THAT EXPLICITLY OR IMPLICITLY CONDITIONS A STUDENT'S PARTICIPATION IN AN EDUCATIONAL PROGRAM OR ACTIVITY OR BASES AN EDUCATIONAL DECISION REGARDING THE STUDENT ON THE STUDENT'S SUBMISSION TO UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS OR OTHER VERBAL, NONVERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE.

4. A TRUE THREAT. FOR THE PURPOSES OF THIS PARAGRAPH, "TRUE THREAT" MEANS A STATEMENT THAT IS MEANT BY THE SPEAKER TO COMMUNICATE A SERIOUS EXPRESSION OF AN INTENT TO COMMIT AN ACT OF UNLAWFUL VIOLENCE AGAINST A PARTICULAR PERSON OR A GROUP OF PERSONS.

5. AN UNJUSTIFIABLE INVASION OF PRIVACY OR CONFIDENTIALITY THAT DOES NOT INVOLVE A MATTER OF PUBLIC CONCERN.

6. AN ACTION THAT UNLAWFULLY DISRUPTS THE FUNCTION OF THE UNIVERSITY OR COMMUNITY COLLEGE.

1 7. A REASONABLE TIME, PLACE AND MANNER RESTRICTION ON EXPRESSIVE
2 ACTIVITIES THAT ARE CONSISTENT WITH SECTION 15-1864.

3 15-1867. Committee on free expression; annual report;
4 committee termination

5 A. THE ARIZONA BOARD OF REGENTS AND THE COMMUNITY COLLEGE DISTRICT
6 GOVERNING BOARDS SHALL JOINTLY ESTABLISH A COMMITTEE ON FREE EXPRESSION
7 CONSISTING OF AT LEAST FIFTEEN MEMBERS.

8 B. THE COMMITTEE ON FREE EXPRESSION SHALL SUBMIT AN ANNUAL REPORT
9 ON OR BEFORE SEPTEMBER 1 TO THE ARIZONA BOARD OF REGENTS, EACH COMMUNITY
10 COLLEGE DISTRICT GOVERNING BOARD, THE GOVERNOR, THE SPEAKER OF THE HOUSE
11 OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE. THE ARIZONA BOARD OF
12 REGENTS AND EACH COMMUNITY COLLEGE DISTRICT SHALL POST A COPY OF THE
13 ANNUAL REPORT ON THEIR RESPECTIVE WEBSITES, AND THE ARIZONA BOARD OF
14 REGENTS SHALL SUBMIT A COPY OF THE ANNUAL REPORT TO THE SECRETARY OF
15 STATE. THE ANNUAL REPORT SHALL INCLUDE:

16 1. A DESCRIPTION OF ANY BARRIERS TO OR DISRUPTIONS OF FREE
17 EXPRESSION WITHIN THE UNIVERSITIES AND COMMUNITY COLLEGES IN THIS STATE.

18 2. A DESCRIPTION OF THE ADMINISTRATIVE HANDLING AND DISCIPLINE
19 RELATING TO BARRIERS TO OR DISRUPTIONS OF FREE EXPRESSION WITHIN THE
20 UNIVERSITIES AND COMMUNITY COLLEGES IN THIS STATE.

21 3. A DESCRIPTION OF SUBSTANTIAL DIFFICULTIES, CONTROVERSIES OR
22 SUCCESSES IN MAINTAINING A POSTURE OF ADMINISTRATIVE AND INSTITUTIONAL
23 NEUTRALITY.

24 4. ANY ASSESSMENTS, CRITICISMS, COMMENDATIONS OR RECOMMENDATIONS
25 THAT THE COMMITTEE DECIDES TO INCLUDE IN THE ANNUAL REPORT.

26 5. AN ACCOUNTING OF HOW STUDENT ACTIVITY FEES WERE ALLOCATED IN THE
27 PRIOR YEAR. FOR THE PURPOSES OF THIS PARAGRAPH, "STUDENT ACTIVITY FEES"
28 MEANS ANY FEE THAT IS CHARGED TO STUDENTS BY A UNIVERSITY OR COMMUNITY
29 COLLEGE IN THIS STATE AND THAT IS USED TO SUPPORT AND FACILITATE THE
30 EXPRESSION AND ACTIVITIES OF STUDENTS OR STUDENT ORGANIZATIONS.

31 C. THE COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION ENDS ON
32 JULY 1, 2026 PURSUANT TO SECTION 41-3103.

33 15-1868. Information on free expression; freshman orientation
34 programs

35 EACH UNIVERSITY AND COMMUNITY COLLEGE SHALL INCLUDE IN ITS FRESHMAN
36 ORIENTATION PROGRAM INFORMATION DESCRIBING THE POLICIES AND RULES
37 REGARDING FREE EXPRESSION IN A MANNER THAT IS CONSISTENT WITH THIS
38 ARTICLE.