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

HOUSE BILL 2563

AN ACT

AMENDING SECTIONS 15-1861 AND 15-1864, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 14, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 15-1866, 15-1867, 15-1868 AND 15-1869; RELATING TO STUDENTS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-1861, Arizona Revised Statutes, is amended to read:

15-1861. Definitions
In this article, unless the context otherwise requires:
1. "Community college" has the same meaning prescribed in section 15-1401.

2. "INDIVIDUAL CONDUCT THAT MATERIALLY AND SUBSTANTIALLY INFRINGES ON THE RIGHTS OF OTHER PERSONS TO ENGAGE IN OR LISTEN TO EXPRESSIVE ACTIVITY" MEANS CONDUCT BY A PERSON WHO, WITH THE INTENT TO OR THE KNOWLEDGE OF DOING SO, MATERIALLY AND SUBSTANTIALLY PREVENTS THE COMMUNICATION OF A MESSAGE OR PREVENTS THE TRANSACTION OF THE BUSINESS OF A LAWFUL MEETING, GATHERING OR PROCESSION BY DOING ANY OF THE FOLLOWING:
(a) ENGAGING IN FIGHTING OR VIOLENT OR OTHER UNLAWFUL BEHAVIOR.
(b) PHYSICALLY BLOCKING OR USING THREATS OF VIOLENCE TO PREVENT ANOTHER PERSON FROM ATTENDING, LISTENING TO, VIEWING OR OTHERWISE PARTICIPATING IN AN EXPRESSIVE ACTIVITY.
(c) PREVENTING ANOTHER PERSON FROM ATTENDING, LISTENING TO, VIEWING OR OTHERWISE PARTICIPATING IN AN EXPRESSIVE ACTIVITY THAT IS HELD AT A LOCATION THAT IS NOT A PUBLIC FORUM, SUCH AS AN AUDITORIUM OR LECTURE HALL.

3. "Public forum" includes both a traditional public forum, which is any open, outdoor area on the campus of a university or community college, and a designated public forum, which is any facility, building or part of a building that the university or community college has opened to students or student organizations for expression.

4. "University" means a university under the jurisdiction of the Arizona board of regents.

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

15-1864. Students' right to speak in a public forum; protests and demonstrations; invited speakers; court actions
A. A university or community college shall not restrict a student's right to speak, including verbal speech, holding a sign or distributing fliers or other materials, in a public forum.

B. A university or community college shall not impose restrictions on the time, place and manner of student speech that:
1. Occurs in a public forum.
2. Is protected by the first amendment to the United States Constitution unless the restrictions:
   (a) Are reasonable.
   (b) Are justified without reference to the content of the regulated speech.
(c) Are narrowly tailored to serve NECESSARY TO ACHIEVE a significant COMPELLING governmental interest.

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

(e) Leave open ample alternative channels for communication of the information.

3. PROVIDES FOR SPONTANEOUS ASSEMBLY AND DISTRIBUTION OF LITERATURE.

C. A PERSON WHO IS LAWFULLY PRESENT ON A UNIVERSITY OR COMMUNITY COLLEGE CAMPUS MAY PROTEST OR DEMONSTRATE ON THAT CAMPUS. INDIVIDUAL CONDUCT THAT MATERIALLY AND SUBSTANTIALLY INFRINGES ON THE RIGHTS OF OTHER PERSONS TO ENGAGE IN OR LISTEN TO EXPRESSIVE ACTIVITY IS NOT ALLOWED AND IS SUBJECT TO SANCTION. THIS SUBSECTION DOES NOT PROHIBIT FACULTY MEMBERS FROM MAINTAINING ORDER IN THE CLASSROOM.

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

E. UNIVERSITY AND COMMUNITY COLLEGE CAMPUSSES ARE OPEN TO ANY SPEAKER WHO A STUDENT, STUDENT GROUP OR FACULTY MEMBER HAS INVITED.

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

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

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

I. The following persons may bring an action in a court of competent jurisdiction to enjoin any violation of this section ARTICLE by ANY UNIVERSITY, COMMUNITY COLLEGE, FACULTY MEMBER OR ADMINISTRATOR or to recover reasonable court costs and reasonable attorney fees:

1. The attorney general.

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

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

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

Sec. 3. Title 15, chapter 14, article 6, Arizona Revised Statutes,
is amended by adding sections 15-1866, 15-1867, 15-1868 and 15-1869, to
read:

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

A. THE ARIZONA BOARD OF REGENTS AND EACH COMMUNITY COLLEGE DISTRICT
GOVERNING BOARD SHALL DEVELOP AND ADOPT A POLICY ON FREE EXPRESSION THAT
CONTAINS AT LEAST THE FOLLOWING STATEMENTS AND REQUIREMENTS:
1. THE PRIMARY FUNCTION OF AN INSTITUTION OF HIGHER EDUCATION IS
THE DISCOVERY, IMPROVEMENT, TRANSMISSION AND DISSEMINATION OF KNOWLEDGE BY
MEANS OF RESEARCH, TEACHING, DISCUSSION AND DEBATE. THIS STATEMENT SHALL
PROVIDE THAT, TO FULFILL THIS FUNCTION, THE UNIVERSITY OR COMMUNITY
COLLEGE MUST STRIVE TO ENSURE THE FULLEST DEGREE OF INTELLECTUAL FREEDOM
AND FREE EXPRESSION.

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

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

4. THERE IS A RANGE OF DISCIPLINARY ACTIONS FOR A STUDENT WHO IS
SUBJECT TO THE JURISDICTION OF A UNIVERSITY OR COMMUNITY COLLEGE AND WHO
ENGAGES IN INDIVIDUAL CONDUCT THAT MATERIALLY AND SUBSTANTIALLY INFRINGES
ON THE RIGHTS OF OTHER PERSONS TO ENGAGE IN OR LISTEN TO EXPRESSIVE
ACTIVITY.
5. In all disciplinary proceedings involving students, including proceedings involving expressive conduct, a student is entitled to a disciplinary hearing under published procedures that include, at a minimum, all of the following:
   (a) the right to receive advanced written notice of the allegations.
   (b) the right to review the evidence in support of the allegations.
   (c) the right to confront witnesses who testify against that student.
   (d) the right to present a defense.
   (e) the right to call witnesses.
   (f) a decision by an impartial person or panel.
   (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 engaged in individual conduct that materially and substantially infringes on the rights of other persons to engage in or listen to expressive activity, 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.

8. 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 1 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. For the purposes of this paragraph, "harassment" means only that expression that is so severe, pervasive and subjectively and objectively offensive that it unreasonably interferes with an individual’s access to educational opportunities or benefits provided by the university or community college.
   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.
7. A REASONABLE TIME, PLACE AND MANNER RESTRICTION ON EXPRESSIVE ACTIVITIES THAT ARE CONSISTENT WITH SECTION 15-1864.

15-1867. Arizona board of regents; committee on free expression; annual report; committee termination
A. THE ARIZONA BOARD OF REGENTS SHALL ESTABLISH A COMMITTEE ON FREE EXPRESSION CONSISTING OF AT LEAST FIFTEEN MEMBERS.
B. THE COMMITTEE ON FREE EXPRESSION SHALL SUBMIT AN ANNUAL REPORT ON OR BEFORE SEPTEMBER 1 TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE. THE ARIZONA BOARD OF REGENTS SHALL POST A COPY OF THE ANNUAL REPORT ON ITS WEBSITE AND SHALL SUBMIT A COPY OF THE ANNUAL REPORT TO THE SECRETARY OF STATE. THE ANNUAL REPORT SHALL INCLUDE:
   1. A DESCRIPTION OF ANY BARRIERS TO OR DISRUPTIONS OF FREE EXPRESSION WITHIN THE UNIVERSITIES IN THIS STATE.
   2. A DESCRIPTION OF THE ADMINISTRATIVE HANDLING AND DISCIPLINE RELATING TO BARRIERS TO OR DISRUPTIONS OF FREE EXPRESSION WITHIN THE UNIVERSITIES IN THIS STATE.
   3. A DESCRIPTION OF SUBSTANTIAL DIFFICULTIES, CONTROVERSIES OR SUCCESSES IN MAINTAINING A POSTURE OF ADMINISTRATIVE AND INSTITUTIONAL NEUTRALITY.
   4. ANY ASSESSMENTS, CRITICISMS, COMMENDATIONS OR RECOMMENDATIONS THAT THE COMMITTEE DECIDES TO INCLUDE IN THE ANNUAL REPORT.
   5. AN ACCOUNTING OF HOW STUDENT ACTIVITY FEES WERE ALLOCATED IN THE PRIOR YEAR. FOR THE PURPOSES OF THIS PARAGRAPH, "STUDENT ACTIVITY FEES" MEANS ANY FEE THAT IS CHARGED TO STUDENTS BY A UNIVERSITY IN THIS STATE AND THAT IS USED TO SUPPORT AND FACILITATE THE EXPRESSION AND ACTIVITIES OF STUDENTS OR STUDENT ORGANIZATIONS.
C. THE COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION ENDS ON JULY 1, 2026 PURSUANT TO SECTION 41-3103.

15-1868. Community college districts; committee on free expression; annual report; committee termination
A. THE COMMUNITY COLLEGE DISTRICT GOVERNING BOARDS SHALL JOINTLY ESTABLISH A COMMITTEE ON FREE EXPRESSION CONSISTING OF AT LEAST FIFTEEN MEMBERS.
B. THE COMMITTEE ON FREE EXPRESSION SHALL SUBMIT AN ANNUAL REPORT ON OR BEFORE SEPTEMBER 1 TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE. EACH COMMUNITY COLLEGE DISTRICT SHALL POST A COPY OF THE ANNUAL REPORT ON ITS RESPECTIVE WEBSITE, AND A COMMUNITY COLLEGE DISTRICT THAT IS IN A COUNTY WITH A POPULATION OF AT LEAST TWO MILLION PERSONS SHALL SUBMIT A COPY OF THE ANNUAL REPORT TO THE SECRETARY OF STATE. THE ANNUAL REPORT SHALL INCLUDE:
1. A description of any barriers to or disruptions of free expression within the community colleges in this state.

2. A description of the administrative handling and discipline relating to barriers to or disruptions of free expression within the community colleges in this state.

3. A description of substantial difficulties, controversies or successes in maintaining a posture of administrative and institutional neutrality.

4. Any assessments, criticisms, commendations or recommendations that the committee decides to include in the annual report.

5. An accounting of how student activity fees were allocated in the prior year. For the purposes of this paragraph, "student activity fees" means any fee that is charged to students by a community college in this state and that is used to support and facilitate the expression and activities of students or student organizations.

C. The committee established pursuant to this section ends on July 1, 2026 pursuant to section 41-3103.

15-1869. Information on free expression; freshman orientation programs

Each university and community college shall include in its freshman orientation program information describing the policies and rules regarding free expression in a manner that is consistent with this article.