

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.

~~2.~~ 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.

~~3.~~ 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~~ MAY 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. ~~AND~~

~~2.~~ is protected by the first amendment to the United States Constitution unless the restrictions:

~~(a)~~ 1. Are reasonable.

~~(b)~~ 2. Are justified without reference to the content of the regulated speech.

1 ~~(c)~~ 3. Are ~~narrowly tailored to serve~~ NECESSARY TO ACHIEVE a
2 ~~significant~~ COMPELLING governmental interest.

3 4. ARE THE LEAST RESTRICTIVE MEANS TO FURTHER THAT COMPELLING
4 GOVERNMENT INTEREST.

5 ~~(d)~~ 5. Leave open ample alternative channels for communication of
6 the information.

7 6. PREVENTS SPONTANEOUS ASSEMBLY AND DISTRIBUTION OF LITERATURE.

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

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

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

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

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

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

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

39 1. The attorney general.

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

42 ~~I.~~ J. In an action brought under subsection ~~I~~ of this section,
43 if the court finds that a violation of this ~~section~~ ARTICLE occurred, the
44 court shall award the aggrieved person injunctive relief for the violation
45 and shall award reasonable court costs and reasonable attorney fees. THE

1 COURT SHALL ALSO AWARD DAMAGES OF ONE THOUSAND DOLLARS OR ACTUAL DAMAGES,
2 WHICHEVER IS GREATER.

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

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

13 15-1866. Free expression policy; rules; Arizona board of
14 regents; community college district governing
15 boards; requirements

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

19 1. THE PRIMARY FUNCTION OF AN INSTITUTION OF HIGHER EDUCATION IS
20 THE DISCOVERY, IMPROVEMENT, TRANSMISSION AND DISSEMINATION OF KNOWLEDGE BY
21 MEANS OF RESEARCH, TEACHING, DISCUSSION AND DEBATE. THIS STATEMENT SHALL
22 PROVIDE THAT, TO FULFILL THIS FUNCTION, THE UNIVERSITY OR COMMUNITY
23 COLLEGE MUST STRIVE TO ENSURE THE FULLEST DEGREE OF INTELLECTUAL FREEDOM
24 AND FREE EXPRESSION.

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

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

39 4. THERE IS A RANGE OF DISCIPLINARY ACTIONS FOR A STUDENT WHO IS
40 SUBJECT TO THE JURISDICTION OF A UNIVERSITY OR COMMUNITY COLLEGE AND WHO
41 ENGAGES IN INDIVIDUAL CONDUCT THAT MATERIALLY AND SUBSTANTIALLY INFRINGES
42 ON THE RIGHTS OF OTHER PERSONS TO ENGAGE IN OR LISTEN TO EXPRESSIVE
43 ACTIVITY.

1 5. IN ALL DISCIPLINARY PROCEEDINGS INVOLVING STUDENTS, INCLUDING
2 PROCEEDINGS INVOLVING EXPRESSIVE CONDUCT, A STUDENT IS ENTITLED TO A
3 DISCIPLINARY HEARING UNDER PUBLISHED PROCEDURES THAT INCLUDE, AT A
4 MINIMUM, ALL OF THE FOLLOWING:

5 (a) THE RIGHT TO RECEIVE ADVANCED WRITTEN NOTICE OF THE
6 ALLEGATIONS.

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

8 (c) THE RIGHT TO CONFRONT WITNESSES WHO TESTIFY AGAINST THAT
9 STUDENT.

10 (d) THE RIGHT TO PRESENT A DEFENSE.

11 (e) THE RIGHT TO CALL WITNESSES.

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

13 (g) THE RIGHT TO APPEAL.

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

17 6. IT IS THE SENSE OF THE LEGISLATURE THAT IF A STUDENT HAS
18 REPEATEDLY BEEN DETERMINED TO HAVE ENGAGED IN INDIVIDUAL CONDUCT THAT
19 MATERIALLY AND SUBSTANTIALLY INFRINGES ON THE RIGHTS OF OTHER PERSONS TO
20 ENGAGE IN OR LISTEN TO EXPRESSIVE ACTIVITY, A PUNISHMENT OF SUSPENSION OR
21 EXPULSION FROM THE UNIVERSITY OR COMMUNITY COLLEGE MAY BE APPROPRIATE.

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

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

35 1. A VIOLATION OF STATE OR FEDERAL LAW.

36 2. AN EXPRESSION THAT A COURT HAS DEEMED UNPROTECTED DEFAMATION.

37 3. HARASSMENT. FOR THE PURPOSES OF THIS PARAGRAPH, "HARASSMENT"
38 MEANS ONLY THAT EXPRESSION THAT IS SO SEVERE, PERVASIVE AND SUBJECTIVELY
39 AND OBJECTIVELY OFFENSIVE THAT IT UNREASONABLY INTERFERES WITH AN
40 INDIVIDUAL'S ACCESS TO EDUCATIONAL OPPORTUNITIES OR BENEFITS PROVIDED BY
41 THE UNIVERSITY OR COMMUNITY COLLEGE.

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

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

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

5 15-1867. Arizona board of regents; committee on free
6 expression; annual report; committee termination

7 A. THE ARIZONA BOARD OF REGENTS SHALL ESTABLISH A COMMITTEE ON FREE
8 EXPRESSION CONSISTING OF AT LEAST FIFTEEN MEMBERS.

9 B. THE COMMITTEE ON FREE EXPRESSION SHALL SUBMIT AN ANNUAL REPORT
10 ON OR BEFORE SEPTEMBER 1 TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF
11 REPRESENTATIVES AND THE PRESIDENT OF THE SENATE. THE ARIZONA BOARD OF
12 REGENTS SHALL POST A COPY OF THE ANNUAL REPORT ON ITS WEBSITE AND SHALL
13 SUBMIT A COPY OF THE ANNUAL REPORT TO THE SECRETARY OF STATE. THE ANNUAL
14 REPORT SHALL INCLUDE:

15 1. A DESCRIPTION OF ANY BARRIERS TO OR DISRUPTIONS OF FREE
16 EXPRESSION WITHIN THE UNIVERSITIES IN THIS STATE.

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

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

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

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

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

32 15-1868. Community college districts; committee on free
33 expression; annual report; committee termination

34 A. THE COMMUNITY COLLEGE DISTRICT GOVERNING BOARDS SHALL JOINTLY
35 ESTABLISH A COMMITTEE ON FREE EXPRESSION.

36 B. EACH COMMITTEE ON FREE EXPRESSION SHALL SUBMIT AN ANNUAL REPORT
37 ON OR BEFORE DECEMBER 1 TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF
38 REPRESENTATIVES AND THE PRESIDENT OF THE SENATE AND SUBMIT A COPY OF THE
39 ANNUAL REPORT TO THE SECRETARY OF STATE. EACH COMMUNITY COLLEGE DISTRICT
40 SHALL POST A COPY OF THE ANNUAL REPORT ON ITS RESPECTIVE WEBSITE. THE
41 ANNUAL REPORT SHALL INCLUDE:

42 1. A DESCRIPTION OF ANY BARRIERS TO OR DISRUPTIONS OF FREE
43 EXPRESSION WITHIN THE COMMUNITY COLLEGES IN THIS STATE.

1 2. A DESCRIPTION OF THE ADMINISTRATIVE HANDLING AND DISCIPLINE
2 RELATING TO BARRIERS TO OR DISRUPTIONS OF FREE EXPRESSION WITHIN THE
3 COMMUNITY COLLEGES IN THIS STATE.

4 3. A DESCRIPTION OF SUBSTANTIAL DIFFICULTIES, CONTROVERSIES OR
5 SUCCESSES IN MAINTAINING A POSTURE OF ADMINISTRATIVE AND INSTITUTIONAL
6 NEUTRALITY.

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

9 5. AN ACCOUNTING OF HOW STUDENT ACTIVITY FEES WERE ALLOCATED IN THE
10 PRIOR YEAR. FOR THE PURPOSES OF THIS PARAGRAPH, "STUDENT ACTIVITY FEES"
11 MEANS ANY FEE THAT IS CHARGED TO STUDENTS BY A COMMUNITY COLLEGE IN THIS
12 STATE AND THAT IS USED TO SUPPORT AND FACILITATE THE EXPRESSION AND
13 ACTIVITIES OF STUDENTS OR STUDENT ORGANIZATIONS.

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

16 15-1869. Information on free expression; freshman orientation
17 programs

18 EACH UNIVERSITY AND COMMUNITY COLLEGE SHALL INCLUDE IN ITS FRESHMAN
19 ORIENTATION PROGRAM INFORMATION DESCRIBING THE POLICIES AND RULES
20 REGARDING FREE EXPRESSION IN A MANNER THAT IS CONSISTENT WITH THIS
21 ARTICLE.