

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.

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

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

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

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

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

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

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

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

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

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

