

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S2/9/23 S3/14/23

A Bill

SENATE BILL 125

5 By: Senator D. Sullivan
6 By: Representative Beck
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE FORMING OPEN AND ROBUST
10 UNIVERSITY MINDS (FORUM) ACT; TO AMEND THE
11 RESTRICTIONS A STATE-SUPPORTED INSTITUTION OF HIGHER
12 EDUCATION MAY IMPOSE ON FREE EXPRESSION; TO AMEND THE
13 LAW CONCERNING FREE SPEECH RIGHTS AT STATE-SUPPORTED
14 INSTITUTIONS OF HIGHER EDUCATION; AND FOR OTHER
15 PURPOSES.
16
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Subtitle

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19 TO AMEND RESTRICTIONS AN INSTITUTION OF
20 HIGHER EDUCATION MAY IMPOSE ON FREE
21 EXPRESSION UNDER THE FORMING OPEN AND
22 ROBUST MINDS (FORUM) ACT; AND CONCERNING
23 FREE SPEECH RIGHTS AT STATE-SUPPORTED
24 INSTITUTIONS OF HIGHER EDUCATION.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code § 6-60-1004 is amended to read as follows:
30 6-60-1004. Protected expressive activities.

31 (a) Expressive activities protected under this subchapter consist of
32 speech and other conduct protected by the First Amendment to the United
33 States Constitution, including without limitation:

34 (1) Communicating through any lawful verbal, written, or
35 electronic means;

36 (2) Participating in peaceful assembly;



- 1 (3) *Protesting;*
- 2 (4) *Making speeches, including without limitation those of guest*
- 3 *speakers;*
- 4 (5) *Distributing literature;*
- 5 (6) *Making comments to the media;*
- 6 (7) *Carrying signs; and*
- 7 (8) *Circulating petitions.*

8 (b) A state-supported institution of higher education shall:

9 (1) Ensure that members of the campus community have the fullest

10 degree of intellectual and academic freedom permitted by law; and

11 (2) Not restrict speech merely because an individual may find it

12 controversial, uncollegial, disagreeable, or offensive;

13 (3) Not restrict members of the campus community from

14 communicating with members of the public on matters not prohibited by state

15 or federal law, including without limitation contract law.

16 (c) A policy of a state-supported institution of higher education may

17 prohibit any individual from engaging in conduct that materially and

18 substantially disrupts, as defined under § 6-60-1003:

19 (1) A class;

20 (2) A lecture;

21 (3) A presentation;

22 (4) An event; or

23 (5) An administrative office, area, or facility.

24

25 SECTION 2. Arkansas Code Title 6, Chapter 60, is amended to add an

26 additional subchapter to read as follows:

27 Subchapter 14 – Free Speech Rights at State-Supported Institutions of Higher

28 Education

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30 6-60-1401. Legislative intent.

31 The General Assembly finds that:

32 (1) The First Amendment to the United States Constitution and

33 Article 2, Section 6, of the Arkansas Constitution protect the right of free

34 speech, including the speech of students enrolled in state-supported

35 institutions of higher education and other members of campus communities;

36 (2) Student expression and the academic exchange of ideas is the

1 primary way in which institutions of higher education fulfill educational
2 missions; and

3 (3) It is a matter of statewide interest to protect the rights
4 of students and other members of campus communities to exercise their freedom
5 of speech rights on campuses of state-supported institutions of higher
6 education, while also recognizing the right of those state-supported
7 institutions of higher education to enact reasonable, viewpoint-neutral
8 restrictions that preserve their ability to fulfill their educational
9 missions.

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11 6-60-1402. Definitions.

12 As used in this subchapter:

13 (1) "Campus community" means:

14 (A) The same as defined in § 6-60-1003(2); and

15 (B) Persons legally present on campus;

16 (2) "Campus forum" means:

17 (A) Outdoor areas of campus as defined in § 6-60-1003(7);

18 or

19 (B) Any publicly open indoor portion of a facility that a
20 state-supported institution of higher education has traditionally made
21 available to members of the campus community for non-academic activities;

22 (3) "Expression" means any lawful verbal, written, or other
23 expressive means by which an individual may communicate an idea to another
24 individual;

25 (4) "State-supported institution of higher education" means the
26 same as defined in § 6-60-1003(8); and

27 (5) "Student" means any person who is enrolled on a full-time or
28 part-time basis in a state-supported institution of higher education.

29
30 6-60-1403. Protected expression.

31 (a) A state-supported institution of higher education shall not limit
32 or restrict the expression of a member of the campus community in a campus
33 forum based on the:

34 (1) Viewpoint of the expression; or

35 (2) Reaction or opposition from listeners to or observers of the
36 expression.

1 (b) Except as required by state or federal law or as permitted under
2 this subchapter, a state-supported institution of higher education shall not
3 abridge the expression of a member of the campus community.

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5 6-60-1404. Limitations.

6 Nothing in this subchapter shall be interpreted as:

7 (1) Giving a member of the campus community the right to disrupt
8 a previously scheduled or otherwise reserved activity; or

9 (2) Authorizing a member of the campus community to violate:

10 (A) State and federal laws on discrimination and
11 harassment; or

12 (B) A state-supported institution of higher education's
13 restrictions on the time, place, or manner of expression in or on a campus
14 forum, provided the restriction on the time, place, or manner of expression:

15 (i) Is reasonable;

16 (ii) Is justified without reference to the viewpoint
17 of the speaker;

18 (iii) Is narrowly tailored to serve a significant
19 state interest; and

20 (iv) Leaves open ample alternative channels for
21 communication of the information or message contained in the expression.

22
23 6-60-1405. Protection against compelled speech.

24 (a) The General Assembly finds that:

25 (1) Faculty members and employees of state-supported
26 institutions of higher education do not shed their rights to freedom of
27 speech or expression at work;

28 (2) Protecting the right to free speech for faculty members and
29 employees of state-supported institutions of higher education promotes
30 important state interests, which include:

31 (A) Students' interests in receiving informed opinions on
32 matters of public concern or educational interests;

33 (B) Faculty members' and employees' rights to disseminate
34 their own opinions; and

35 (C) The public's interest in exposing students and future
36 leaders to different viewpoints; and

1 (3) The selection and use of pronouns in classrooms of state-
2 supported institutions of higher education, on campuses of state-supported
3 institutions of higher education, and elsewhere is a matter of free speech
4 and academic freedom because it communicates a message on a matter of public
5 concern and shapes classroom discussions and debates, and is not merely an
6 administrative or ministerial act by faculty members and employees of state-
7 supported institutions of higher education.

8 (b) A faculty member or other employee of a state-supported
9 institution of higher education, regardless of the scope of his or her
10 official duties:

11 (1) Is not required to use a student's or coworker's preferred
12 pronoun when referring to the student or coworker if the preferred pronoun is
13 not consistent with the student's or coworker's biological sex;

14 (2) Is not civilly, criminally, or administratively liable for
15 using a pronoun that is consistent with the biological sex of a person to
16 whom the faculty member or other employee of a state-supported institution of
17 higher education is referring, even if the pronoun is not the person's
18 preferred pronoun; and

19 (3) Shall not be subject to adverse employment action for using
20 a pronoun that is consistent with the biological sex of a person to whom the
21 faculty member or other employee of a state-supported institution of higher
22 education is referring, even if the pronoun is not the person's preferred
23 pronoun.

24 (d) A person who is harmed by a violation of this section may bring a
25 cause of action for:

26 (1) Injunctive relief;

27 (2) Monetary damages;

28 (3) Reasonable attorney's fees and costs; and

29 (4) Any other appropriate relief.

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31 6-60-1406. Policy – Required.

32 Each state-supported institution of higher education shall promulgate
33 and implement a policy that:

34 (1) Protects the rights established by this subchapter; and

35 (2) Allows a member of the campus community to present his or
36 her concerns to an appropriate administrator through a grievance procedure.

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/s/D. Sullivan