

ARKANSAS SENATE
94th General Assembly - Regular Session, 2023
Amendment Form

Subtitle of Senate Bill No. 125

TO AMEND THE RESTRICTIONS AN INSTITUTION OF HIGHER EDUCATION MAY IMPOSE ON FREE EXPRESSION; AND TO AMEND THE AREAS THAT CONSTITUTE A PUBLIC FORUM FOR MEMBERS OF A CAMPUS COMMUNITY.

Amendment No. 2 to Senate Bill 125

Amend Senate Bill No. 125 as engrossed S2/9/23 (version: 2/9/2023 9:50:53 AM):

Page 1, delete lines 12 through 14, and substitute the following:
"EDUCATION MAY IMPOSE ON FREE EXPRESSION; TO AMEND THE LAW CONCERNING FREE SPEECH RIGHTS AT STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety, and substitute the following:

"TO AMEND RESTRICTIONS AN INSTITUTION OF HIGHER EDUCATION MAY IMPOSE ON FREE EXPRESSION UNDER THE FORMING OPEN AND ROBUST MINDS (FORUM) ACT; AND CONCERNING FREE SPEECH RIGHTS AT STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION."

AND

Delete everything after the enacting clause, and substitute the following:
"SECTION 1. Arkansas Code § 6-60-1004 is amended to read as follows:
6-60-1004. Protected expressive activities.

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

- (1) Communicating through any lawful verbal, written, or electronic means;
- (2) Participating in peaceful assembly;
- (3) Protesting;
- (4) Making speeches, including without limitation those of guest speakers;



- (5) Distributing literature;
- (6) Making comments to the media;
- (7) Carrying signs; and
- (8) Circulating petitions.

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

(1) Ensure that members of the campus community have the fullest degree of intellectual and academic freedom permitted by law; and

(2) Not restrict speech merely because an individual may find it controversial, uncollegial, disagreeable, or offensive;

(3) Not restrict members of the campus community from communicating with members of the public on matters not prohibited by state or federal law, including without limitation contract law.

(c) A policy of a state-supported institution of higher education may prohibit any individual from engaging in conduct that materially and substantially disrupts, as defined under § 6-60-1003:

(1) A class;

(2) A lecture;

(3) A presentation;

(4) An event; or

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

SECTION 2. Arkansas Code Title 6, Chapter 60, is amended to add an additional subchapter to read as follows:

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

6-60-1401. Legislative intent.

The General Assembly finds that:

(1) The First Amendment to the United States Constitution and Article 2, Section 6, of the Arkansas Constitution protect the right of free speech, including the speech of students enrolled in state-supported institutions of higher education and other members of campus communities;

(2) Student expression and the academic exchange of ideas is the primary way in which institutions of higher education fulfill educational missions; and

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

6-60-1402. Definitions.

As used in this subchapter:

(1) "Campus community" means:

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

(B) Persons legally present on campus;

(2) "Campus forum" means:

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

or

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

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

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

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

6-60-1403. Protected expression.

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

(1) Viewpoint of the expression; or

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

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

6-60-1404. Limitations.

Nothing in this subchapter shall be interpreted as:

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

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

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

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

(i) Is reasonable;

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

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

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

6-60-1405. Protection against compelled speech.

(a) The General Assembly finds that:

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

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

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

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

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

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

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

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

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

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

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

(1) Injunctive relief;

(2) Monetary damages;

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

(4) Any other appropriate relief.

6-60-1406. Policy – Required.

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

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

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

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator D. Sullivan

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Secretary