

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4
5 By: Senator K. Hammer
6

A Bill

SENATE BILL 232

For An Act To Be Entitled

8 AN ACT TO CREATE THE FREEDOM OF CONTRACT IN HIGHER
9 EDUCATION ACT; AND FOR OTHER PURPOSES.

Subtitle

12 TO CREATE THE FREEDOM OF CONTRACT IN
13 HIGHER EDUCATION ACT.

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code Title 6, Chapter 61, is amended to add an
20 additional subchapter to read as follows:

21 Subchapter 17 – Freedom of Contract in Higher Education Act

22
23 6-61-1701. Title.

24 This subchapter shall be known and may be cited as the "Freedom of
25 Contract in Higher Education Act".

26
27 6-61-1702. Definitions.

28 As used in this subchapter:

29 (1) "Faculty member" means a person who is employed as a member
30 of the academic staff at an institution of higher education;

31 (2) "Institution" means a public school of higher education,
32 including without limitation a college or university;

33 (3) "Tenure" means the right to continuous employment that is
34 awarded by an institution to an eligible member of the faculty, typically
35 after the successful completion of a probationary period; and

36 (4) "Tenure-track" means an appointment of a faculty member by



1 an institution to a position that could reasonably be expected to lead to a
 2 tenured position at the institution.

3
 4 6-61-1703. Scope.

5 (a) This subchapter applies to all institutions in the state.

6 (b) To the extent that a rule adopted by an institution, including
 7 without limitation a board of trustee’s policy, conflicts with the language
 8 or structure of this subchapter, the subchapter controls.

9
 10 6-61-1704. Nonretroactivity of institution rules and faculty opt-in
 11 rights – Tenured faculty.

12 (a) Except as provided in subsection (b) of this section, the state
 13 laws and the rules of an institution concerning tenure that are in effect at
 14 the time the faculty member’s tenure becomes effective govern the faculty
 15 member’s contractual and employment relationship with the institution for the
 16 duration of the relationship between the faculty member and the institution.

17 (b)(1) An institution shall not apply an amendment to a rule
 18 concerning tenure to a faculty member whose tenure became effective before
 19 the adoption of the amendment to the rule.

20 (2)(A) A faculty member whose tenure becomes effective before
 21 the effective date of an amendment to an institution’s rule concerning tenure
 22 may elect at any time to have his or her contractual and employment
 23 relationship with the institution, including his or her tenure rights,
 24 governed by the institution’s amendment to the rule.

25 (B) To exercise the right granted under subdivision
 26 (b)(2)(A) of this section, a faculty member shall provide a written, signed
 27 notice to his or her institution in a manner established by the institution.

28 (C) Once a faculty member exercises his or her right under
 29 subdivision (b)(2)(A) of this section, the election is nonrevocable as to the
 30 amendment for which the election was made.

31
 32 6-61-1705. Non-retroactivity of institution rules and faculty opt-in
 33 rights – Tenure-track faculty.

34 (a) Except as provided in subsection (b) of this section, the state
 35 laws and the rules of an institution concerning tenure that are in effect at
 36 the time a faculty member receives notice of appointment to a faculty

1 position govern the faculty member's contractual and employment relationship
 2 with the institution for the duration of the relationship between the faculty
 3 member and the institution.

4 (b)(1) An institution shall not apply an amendment to a rule
 5 concerning tenure to a faculty member who receives his or her notice of
 6 appointment to a faculty position before the adoption of the amendment to the
 7 rule.

8 (2)(A) A faculty member who receives notice of appointment to a
 9 faculty position before the effective date of an amendment to the
 10 institution's rule concerning tenure may elect at any time to have his or her
 11 contractual and employment relationship with the institution, including his
 12 or her tenure rights, governed by the institution's amendment to the rule.

13 (B) To exercise the right granted under (b)(2)(A) of this
 14 section, a faculty member shall provide a written, signed notice to his or
 15 her institution in a manner established by the institution.

16 (C) Once a faculty member exercises his or her right under
 17 subdivision (b)(2)(A) of this section, it is non-revocable as to the
 18 amendment for which the election was made.

19
 20 6-61-1706. Application to existing contracts.

21 (a) This subchapter applies to all existing tenure contracts in
 22 institutions.

23 (b) A faculty member may assert his or her rights under this act
 24 regardless of when the faculty member:

25 (1) Is granted tenure by the institution; or

26 (2) Receives notice of appointment to a faculty position.

27
 28 6-61-1707. Penalties.

29 (a) The remedies established by this section are in addition to any
 30 other applicable remedies under law or rule of the institution at which the
 31 faculty member is employed.

32 (b) A person who negligently violates this subchapter is guilty of a
 33 Class A misdemeanor.

34 (c) A person whose rights under this subchapter are violated by an
 35 institution or any agent of an institution may bring an action in a court of
 36 competent jurisdiction to:

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(1) Enjoin a violation of this act; and

(2) Recover reasonable court costs and attorney's fees.

(d) If a court of competent jurisdiction finds that a violation occurred in an action brought under this subchapter, the court shall award the aggrieved party:

(1) Injunctive relief for the violation; and

(2) Reasonable court costs and attorney's fees.