

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

State of Arkansas  
92nd General Assembly  
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As Engrossed: S2/18/19  
**A Bill**

SENATE BILL 232

By: Senator K. Hammer

### **For An Act To Be Entitled**

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

### **Subtitle**

TO CREATE THE FREEDOM OF CONTRACT IN  
HIGHER EDUCATION ACT.

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

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

Subchapter 17 – Freedom of Contract in Higher Education Act

6-61-1701. Title.

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

6-61-1702. Definitions.

As used in this subchapter:

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

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

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

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



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

6-61-1703. Scope.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6-61-1706. Application to existing contracts.

(a) This subchapter applies in full to all contractual and employment relationships between a faculty member and an institution, including without limitation contractual and employment relationships that began before the effective date of this subchapter.

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

(1) Is granted tenure by the institution; or

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

(c) A faculty member may assert his or her rights under this subchapter against an institutional rule that concerns tenure, including without limitation an institutional rule that was adopted by the institution before the effective date of this subchapter.

6-61-1707. Penalties.

(a) The remedies established by this section are in addition to any other applicable remedies under law or rule of the institution at which the

faculty member is employed.

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

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

(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.

*/s/K. Hammer*