



House of Representatives *State of Utah*

UTAH STATE CAPITOL COMPLEX • 350 STATE CAPITOL
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March 7, 2016

Mr. Speaker:

The Judiciary Committee recommends **H.B. 337**, STUDENT RIGHT TO ACTIVE COUNSEL, by Representative K. Coleman, be replaced and reports a favorable recommendation on **1st Sub.**

H.B. 337, STUDENT RIGHT TO ACTIVE COUNSEL with the following amendments:

1. *Page 1, Lines 16 through 21:*

- 16 representation at a disciplinary proceeding;
- 17 • governing the exchange of evidence at a disciplinary proceeding; and
- 18 • prohibiting certain conflicts of interest in a disciplinary
proceeding and {~~and~~
- 19 ~~authorizing a cause of action; and~~
- 20 ~~amends applicable governmental immunity provisions.~~}
- 21 Money Appropriated in this Bill:

2. *Page 1, Line 25 through Page 2, Line 39:*

- 25 Utah Code Sections Affected:
- 26 {~~AMENDS:~~
- 27 ~~63G-7-301, as last amended by Laws of Utah 2015, Chapter 342~~}
- 28 ENACTS:
- 29 53B-26-101, Utah Code Annotated 1953
- 30 53B-26-102, Utah Code Annotated 1953
- 31 53B-26-201, Utah Code Annotated 1953
- 32 53B-26-203, Utah Code Annotated 1953
- 33 53B-26-204, Utah Code Annotated 1953

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34 53B-26-205, Utah Code Annotated 1953
35 53B-26-206, Utah Code Annotated 1953
36 53B-26-207, Utah Code Annotated 1953
37 ~~{53B-26-208, Utah Code Annotated 1953}~~
38

39 *Be it enacted by the Legislature of the state of Utah:*

3. *Page 3, Lines 73 through 80:*

73 (f) demonstrative evidence.
74 (6) (a) "Full participation" means the opportunity in a student or student
organization
75 disciplinary proceeding to {:
76 ~~—(a) make opening and closing statements;~~
77 ~~—(b) examine and cross-examine a witness; and~~
78 ~~—(c) provide an accused student, an accused student organization, or an alleged~~
victim
79 support, guidance, or advice.} **participate to the full extent that the student or**
student organization would otherwise be allowed to participate under an
institution's policy or rule and provide an accused student, accused student
organization, or an alleged victim support, guidance, or advice.
(b) "Full participation" includes the ability to make opening and closing
statements or, in accordance with Section 53B-26-207, present and question a
witness.
(c) "Full participation" does not include a procedural right other than a right
described in Subsection (6)(a) or (b).
80 (7) "Legal representation" means an attorney or, at a person's sole discretion, a

4. *Page 6, Lines 167 through 175:*

167 (b) an investigator;
168 (c) an {~~institutional prosecutor~~} **administrator presenting arguments**
and evidence on behalf of the institution ; or
169 (d) an advisor to a person described in Subsection (1)(a), (b), or (c).
170 (2) If an individual employed by the institution or otherwise representing an



institution
171 serves as an investigator and an ~~{institutional prosecutor}~~ administrator
presenting arguments and evidence on behalf of the institution for the alleged
violation of a policy or
172 rule, the institution shall advise an accused student, accused student organization, or an
alleged
173 victim prior to the investigation proceeding.
174 (3) An individual may not serve as an investigator or ~~{institutional~~
~~prosecutor}~~ administrator presenting arguments and evidence on behalf of the
institution and an
175 advocate for an accused student, accused student organization, or an alleged victim.

5. Page 7, Line 185 through Page 9, Line 247:

185 party first to a hearing officer.
186 ~~{Section 9. Section 53B-26-208 is enacted to read:~~
187 ~~— 53B-26-208. Cause of action:~~
188 ~~— (1) An accused student, accused student organization, or alleged victim may~~
~~bring an~~
189 ~~action in a court of competent jurisdiction for an alleged violation of this part by an~~
~~institution:~~
190 ~~— (2) If the court finds that an institution committed a violation under Subsection~~
~~(1), the~~
191 ~~court may award, as applicable, the accused student, accused student organization,~~
~~or alleged~~
192 ~~victim:~~
193 ~~— (a) compensatory damages;~~
194 ~~— (b) reasonable court costs incurred;~~
195 ~~— (c) reasonable attorney fees incurred;~~
196 ~~— (d) monetary damages;~~
197 ~~— (i) in an amount equal to or more than the cost of tuition paid by or on behalf~~
~~of the~~
198 ~~accused student or alleged victim to the institution for the academic period in which~~
~~the~~
199 ~~violation occurred; and~~



200 ~~——(ii) in an amount equal to or more than the amount of scholarship funding an~~
201 ~~accused~~
202 ~~student has lost as a result of the outcome of a student disciplinary proceeding; and~~
203 ~~——(c) any other relief the court determines just.~~
204 ~~——(3) An action based upon a cause of action under this part shall be commenced~~
205 ~~within~~
206 ~~one year after the date that an accused student, accused student organization, or~~
207 ~~alleged victim~~
208 ~~receives final notice of the outcome of the student or student organization~~
209 ~~disciplinary~~
210 ~~proceeding.~~
211 ~~——Section 10. Section 63G-7-301 is amended to read:~~
212 ~~——63G-7-301. Waivers of immunity:~~
213 ~~——(1) (a) Immunity from suit of each governmental entity is waived as to any~~
214 ~~contractual~~
215 ~~obligation:~~
216 ~~——(b) Actions arising out of contractual rights or obligations are not subject to the~~
217 ~~requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601:~~
218 ~~——(c) The Division of Water Resources is not liable for failure to deliver water~~
219 ~~from a~~
220 ~~reservoir or associated facility authorized by Title 73, Chapter 26, Bear River~~
221 ~~Development~~
222 ~~Act, if the failure to deliver the contractual amount of water is due to drought, other~~
223 ~~natural~~
224 ~~condition, or safety condition that causes a deficiency in the amount of available~~
225 ~~water:~~
226 ~~——(2) Immunity from suit of each governmental entity is waived:~~
227 ~~——(a) as to any action brought to recover, obtain possession of, or quiet title to~~
228 ~~real or~~
229 ~~personal property;~~
230 ~~——(b) as to any action brought to foreclose mortgages or other liens on real or~~
231 ~~personal~~
232 ~~property, to determine any adverse claim on real or personal property, or to obtain~~
233 ~~an~~

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222 ~~adjudication about any mortgage or other lien that the governmental entity may~~
223 ~~have or claim~~
223 ~~on real or personal property;~~
224 ~~—(c) as to any action based on the negligent destruction, damage, or loss of~~
225 ~~goods,~~
225 ~~merchandise, or other property while it is in the possession of any governmental~~
226 ~~entity or~~
226 ~~employee, if the property was seized for the purpose of forfeiture under any~~
227 ~~provision of state~~
227 ~~law;~~
228 ~~—(d) subject to Subsection 63G-7-302(1), as to any action brought under the~~
229 ~~authority of~~
229 ~~Utah Constitution, Article I, Section 22, for the recovery of compensation from the~~
230 ~~governmental entity when the governmental entity has taken or damaged private~~
231 ~~property for~~
231 ~~public uses without just compensation;~~
232 ~~—(e) subject to Subsection 63G-7-302(2), as to any action brought to recover~~
233 ~~attorney~~
233 ~~fees under Sections 63G-2-405 and 63G-2-802;~~
234 ~~—(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public~~
235 ~~Employees~~
235 ~~Act;~~
236 ~~—(g) as to any action brought to obtain relief from a land use regulation that~~
237 ~~imposes a~~
237 ~~substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah~~
238 ~~Religious~~
238 ~~Land Use Act;~~
239 ~~—(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:~~
240 ~~—(i) a defective, unsafe, or dangerous condition of any highway, road, street,~~
241 ~~alley,~~
241 ~~crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on~~
242 ~~them; or~~
242 ~~—(ii) any defective or dangerous condition of a public building, structure, dam,~~
243 ~~reservoir;~~

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- 243 ~~or other public improvement; [and]~~
244 ~~— (i) subject to Subsection 63G-7-201(4), as to any injury proximately caused by a~~
245 ~~negligent act or omission of an employee committed within the scope of~~
~~employment[.]; and~~
246 ~~— (j) as to any action brought to obtain relief under Title 53B, Chapter 26, Part 2,~~
~~Student~~
247 ~~Legal Representation.}~~

Respectfully,

LaVar Christensen
Committee Chair

Voting: 10-1-0

7 HB0337.HC1.WPD 3/7/16 5:52 pm ggirvan/GAG VA/TAS

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