

1                   **HIGHER EDUCATION STUDENT SPEECH RIGHTS**

2                                   2018 GENERAL SESSION

3                                   STATE OF UTAH

4                   **Chief Sponsor: Kim F. Coleman**

5                   Senate Sponsor: \_\_\_\_\_

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7   **LONG TITLE**

8   **General Description:**

9           This bill enacts provisions related to discriminatory harassment and expression at an  
10 institution of higher education.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines terms;
- 14           ▶ enacts provisions related to discriminatory harassment at an institution of higher  
15 education, including provisions that:
- 16               • prohibit an institution from punishing certain acts of speech that do not  
17 constitute discriminatory harassment; and
  - 18               • create a cause of action related to discriminatory harassment at an institution of  
19 higher education;
- 20           ▶ prohibits an institution of higher education from discriminating against a student  
21 organization based on certain expression; and
- 22           ▶ enacts provisions related to the free expression policies of an institution of higher  
23 education.

24 **Money Appropriated in this Bill:**

25           None

26 **Other Special Clauses:**

27           None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **53B-27-301**, Utah Code Annotated 1953

31 **53B-27-302**, Utah Code Annotated 1953

32 **53B-27-303**, Utah Code Annotated 1953

33 **53B-27-304**, Utah Code Annotated 1953

34 **53B-27-401**, Utah Code Annotated 1953

35 **53B-27-402**, Utah Code Annotated 1953



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

38 Section 1. Section **53B-27-301** is enacted to read:

39 **Part 3. Campus Anti-Harassment**

40 **53B-27-301. Definitions.**

41 As used in this part:

42 (1) "Discriminatory harassment" means student-on-student speech that is:

43 (a) unwelcome;

44 (b) discriminatory on the basis of membership in a class protected under federal or  
45 state law; and

46 (c) so severe, pervasive, and objectively offensive, and that so undermines and detracts  
47 from a student's educational experience, that the student is effectively denied access to an  
48 institution's resource or opportunity.

49 (2) "Student" means an individual enrolled at an institution.

50 (3) (a) "Student-on-student speech" means verbal, written, or other communication that  
51 is:

52 (i) communicated by a student; and

53 (ii) directed at another student.

54 (b) "Student-on-student speech" does not include an act of physical contact between a  
55 student and another student.

56 Section 2. Section **53B-27-302** is enacted to read:

57 **53B-27-302. Institution duties.**

58 (1) An institution is in violation of this part if the institution:

59 (a) gains actual knowledge of discriminatory harassment in the institution's program or  
60 activity; and

61 (b) acts with deliberate indifference to the discriminatory harassment.

62 (2) (a) An institution may not punish, as discriminatory harassment, student-on-student  
63 speech that does not constitute discriminatory harassment.

64 (b) An institution is not liable under this part for failing to punish a student who  
65 communicates student-on-student speech that is not discriminatory harassment.

66 (3) Nothing in this part prevents an institution from punishing student-on-student  
67 speech that is otherwise not protected under the First Amendment to the United States  
68 Constitution.

69 Section 3. Section **53B-27-303** is enacted to read:

70 **53B-27-303. Cause of action.**

71 (1) The following persons may bring an action in a state court of competent jurisdiction  
72 to enjoin a violation of this part:

73 (a) the attorney general; or

74 (b) a person claiming to be aggrieved by a violation of this part.

75 (2) In an action brought under this part, if the court finds a violation of this part, the  
76 court:

77 (a) shall enjoin the violation;

78 (b) shall, if a person claiming to be aggrieved brought the suit, award the aggrieved  
79 person at least \$1,000; and

80 (c) may award a prevailing plaintiff:

81 (i) compensatory damages;

82 (ii) reasonable court costs;

83 (iii) reasonable attorney fees and reasonable expert fees; or

84 (iv) any other relief that the court considers appropriate.

85 (3) In an action brought under this part, the court may award a prevailing defendant  
86 reasonable attorney fees if the action was vexatious, frivolous, or brought to harass or  
87 embarrass the defendant.

88 (4) The state waives immunity under the Eleventh Amendment to the United States  
89 Constitution and consents to suit in a federal court for lawsuits arising out of this part.

90 (5) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, an  
91 institution that violates this part is not immune from suit or liability for the violation.

92 Section 4. Section **53B-27-304** is enacted to read:

93 **53B-27-304. Statute of limitations.**

94 (1) Except as provided in Subsection (3)(b), an action under this part may not be  
95 brought later than one year after the day on which the cause of action accrues.

96 (2) For an action alleging a violation of Subsection [53B-27-302\(2\)\(a\)](#), the cause of  
97 action accrues on the day on which the student receives final notice, from the institution, of  
98 punishment that violates Subsection [53B-27-302\(2\)\(a\)](#).

99 (3) (a) For an action alleging a violation of Subsection [53B-27-302\(1\)](#), the cause of  
100 action accrues on the day on which the institution receives knowledge of the discriminatory  
101 harassment.

102 (b) For an action described in Subsection (3)(a), the limitation described in Subsection  
103 (1) shall extend to one year after the day on which the most recent known act of discriminatory  
104 harassment, involving the same parties as a prior known act of discriminatory harassment,  
105 occurs.

106 Section 5. Section **53B-27-401** is enacted to read:

107 **Part 4. Student Association and Expression**

108 **53B-27-401. Nondiscrimination of student organization expression.**

109 (1) As used in this section, "student organization" means a club, group, or other  
110 organization:

111 (a) of which the majority of members is composed of students enrolled in an  
112 institution; and

113 (b) (i) that is officially recognized by the institution; or

114 (ii) that seeks to be officially recognized by the institution.

115 (2) An institution may not discriminate against a belief-based student organization,  
116 including denying a belief-based student organization a benefit or privilege that is available to  
117 another student organization, based on the belief-based student organization's:

118 (a) mission or purpose; or

119 (b) content or viewpoint of expression, including a requirement by the student  
120 organization that all members or leaders of the student organization:

- 121 (i) affirm or adhere to the student organization's sincerely held belief;
- 122 (ii) comply with the student organization's standards of conduct; or
- 123 (iii) further the student organization's mission as defined by the student organization.

124 Section 6. Section **53B-27-402** is enacted to read:

125 **53B-27-402. Free expression policies.**

126 (1) As used in this section, "free expression policy" means an institution's policy,  
127 regulation, or other expectation related to student expression.

128 (2) An institution shall:

129 (a) publish the institution's free expression policies:

130 (i) in the institution's student handbook; and

131 (ii) on the institution's website;

132 (b) include information about the institution's free expression policies in an orientation  
133 program for students enrolled in the institution; and

134 (c) develop a program, procedures, and materials to ensure that an individual who has  
135 responsibility for the discipline or education of a student at the institution understands the  
136 institution's free expression policies.

137 (3) An individual described in Subsection (2)(c) includes an institution:

138 (a) administrator;

139 (b) campus police officer;

140 (c) residence life official; and

141 (d) faculty member.

142 (4) An institution shall ensure that a free expression policy is consistent with the  
143 provisions of this chapter.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**