

## HB0398S01 compared with HB0398

~~text~~ shows text that was in HB0398 but was deleted in HB0398S01.

Inserted text shows text that was not in HB0398 but was inserted into HB0398S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Kim F. Coleman proposes the following substitute bill:

### HIGHER EDUCATION STUDENT SPEECH RIGHTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kim F. Coleman**

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

---

#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts provisions related to discriminatory harassment at an institution of higher education, including provisions that:
  - prohibit an institution from punishing certain acts of speech that do not constitute discriminatory harassment; and
  - create a cause of action related to discriminatory harassment at an institution of higher education;~~text~~

## HB0398S01 compared with HB0398

~~prohibits an institution of higher education from discriminating against a student organization based on certain expression;~~ and

- ▶ enacts provisions related to the free expression policies of an institution of higher education.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

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

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

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

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

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

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

---

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

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

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

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

As used in this part:

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

(a) unwelcome;

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

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

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

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

## HB0398S01 compared with HB0398

is:

(i) communicated by a student; and

(ii) directed at another student.

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

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

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

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

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

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

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

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

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

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

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

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

(a) the attorney general; or

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

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

(a) shall enjoin the violation;

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

(c) may award a prevailing plaintiff:

(i) compensatory damages;

## HB0398S01 compared with HB0398

(ii) reasonable court costs;

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

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

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

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

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

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

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

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

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

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

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

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

### **Part 4. Student ~~Association and Expression~~**

#### **~~53B-27-401. Nondiscrimination of student organization expression:~~**

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

**~~(a) of which the majority of members is composed of students enrolled in an institution;~~**

**~~and~~**

## HB0398S01 compared with HB0398

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

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

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

~~(a) mission or purpose; or~~

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

~~(i) affirm or adhere to the student organization's sincerely held belief;~~

~~(ii) comply with the student organization's standards of conduct; or~~

~~(iii) further the student organization's mission as defined by the student organization.~~

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

### ~~53B-27-402} Expression Policies~~

~~**53B-27-401.** Free expression policies.~~

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

~~(2) An institution shall:~~

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

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

~~(ii) on the institution's website;~~

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

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

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

~~(a) administrator;~~

~~(b) campus police officer;~~

~~(c) residence life official; and~~

~~(d) faculty member.~~

## HB0398S01 compared with HB0398

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

†

~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel†~~