

1 **HIGHER EDUCATION STUDENT SPEECH RIGHTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: _____

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

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 ENACTS:



- 28 [53B-27-401](#), Utah Code Annotated 1953
- 29 [53B-27-402](#), Utah Code Annotated 1953
- 30 [53B-27-403](#), Utah Code Annotated 1953
- 31 [53B-27-404](#), Utah Code Annotated 1953
- 32 [53B-27-501](#), Utah Code Annotated 1953

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

35 Section 1. Section **53B-27-401** is enacted to read:

36 **Part 4. Campus Anti-Harassment**

37 **53B-27-401. Definitions.**

38 As used in this part:

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

40 (a) unwelcome;

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

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

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

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

49 (i) communicated by a student; and

50 (ii) directed at another student.

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

53 Section 2. Section **53B-27-402** is enacted to read:

54 **53B-27-402. Institution duties.**

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

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

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

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

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

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

66 Section 3. Section **53B-27-403** is enacted to read:

67 **53B-27-403. Cause of action.**

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

70 (a) the attorney general; or

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

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

74 (a) shall enjoin the violation;

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

77 (c) may award a prevailing plaintiff:

78 (i) compensatory damages;

79 (ii) reasonable court costs;

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

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

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

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

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

89 Section 4. Section **53B-27-404** is enacted to read:

90 **53B-27-404. Statute of limitations.**

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

93 (2) For an action alleging a violation of Subsection 53B-27-402(2)(a), the cause of
94 action accrues on the day on which the student receives final notice, from the institution, of
95 punishment that violates Subsection 53B-27-402(2)(a).

96 (3) (a) For an action alleging a violation of Subsection 53B-27-402(1), the cause of
97 action accrues on the day on which the institution receives knowledge of the discriminatory
98 harassment.

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

103 Section 5. Section 53B-27-501 is enacted to read:

104 **Part 5. Student Expression Policies**

105 **53B-27-501. Free expression policies.**

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

108 (2) An institution shall:

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

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

111 (ii) on the institution's website;

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

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

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

118 (a) administrator;

119 (b) campus police officer;

120 (c) residence life official; and

121 (d) faculty member.

122 (4) An institution shall ensure that a free expression policy is consistent with the

123 provisions of this chapter.