

# HB0158S01 compared with HB0158

~~text~~ shows text that was in HB0158 but was deleted in HB0158S01.

Inserted text shows text that was not in HB0158 but was inserted into HB0158S01.

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Representative Kim F. Coleman proposes the following substitute bill:

## HIGHER EDUCATION STUDENT SPEECH RIGHTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kim F. Coleman**

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

Cosponsors:

Cheryl K. Acton

Carl R. Albrecht

Kyle R. Andersen

Stewart E. Barlow

Kay J. Christofferson

Brad M. Daw

Ken Ivory

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Rex P. Shipp

Norman K. Thurston

Steve Waldrip

Raymond P. Ward

Christine F. Watkins

Logan Wilde

Mike Winder

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**LONG TITLE**

**General Description:**

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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; 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-27-401**, Utah Code Annotated 1953

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

**53B-27-403**, Utah Code Annotated 1953

**53B-27-404**, Utah Code Annotated 1953

**53B-27-501**, Utah Code Annotated 1953

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

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

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

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

As used in this part:

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

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(a) is unwelcome;

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

(c) is 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 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-27-402** is enacted to read:

### **53B-27-402. 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.

(4) Nothing in this part prevents an institution from responding to student-on-student speech that is not discriminatory harassment by taking nonpunitive actions designed to promote a welcoming, inclusive environment.

(5) Nothing in this part prevents an institution from maintaining policies prohibiting stalking or other criminal activity.

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

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

(1) The following persons may bring an action to enjoin a violation of this part, in a state court of competent jurisdiction ~~to enjoin a violation of this part~~, against an institution or an institution's agent acting in the agent's official capacity:

- (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;
- (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-27-404** is enacted to read:

### **53B-27-404. 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-27-402(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-27-402(2)(a).

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(3) (a) For an action alleging a violation of Subsection 53B-27-402(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-27-501** is enacted to read:

### **Part 5. Student Expression Policies**

#### **53B-27-501. 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.

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