

HIGHER EDUCATION STUDENT SPEECH RIGHTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: Todd Weiler

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; 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:



- 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:

40 (a) is unwelcome;

41 (b) discriminates on the basis of a classification protected under federal or state law;

42 and

43 (c) is so severe, pervasive, and objectively offensive, and that so undermines and
44 distracts from a student's educational experience, that the student is effectively denied access to
45 an 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 (4) Nothing in this part prevents an institution from responding to student-on-student
67 speech that is not discriminatory harassment by taking nonpunitive actions designed to promote
68 a welcoming, inclusive environment.

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

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

72 **53B-27-403. Cause of action.**

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

76 (a) the attorney general; or

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

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

80 (a) shall enjoin the violation;

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

83 (c) may award a prevailing plaintiff:

84 (i) compensatory damages;

85 (ii) reasonable court costs;

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

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

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

90 embarrass the defendant.

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

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

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

96 **53B-27-404. Statute of limitations.**

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

99 (2) For an action alleging a violation of Subsection [53B-27-402\(2\)\(a\)](#), the cause of
100 action accrues on the day on which the student receives final notice, from the institution, of
101 punishment that violates Subsection [53B-27-402\(2\)\(a\)](#).

102 (3) (a) For an action alleging a violation of Subsection [53B-27-402\(1\)](#), the cause of
103 action accrues on the day on which the institution gains knowledge of the discriminatory
104 harassment.

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

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

110 **53B-27-501. Free expression policies.**

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

113 (2) An institution shall:

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

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

116 (ii) on the institution's website;

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

119 (c) develop a program, procedures, and materials to ensure that an individual who has
120 responsibility for the discipline or education of a student at the institution understands the

121 institution's free expression policies.

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

123 (a) administrator;

124 (b) campus police officer;

125 (c) residence life official; and

126 (d) faculty member.

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

128 provisions of this chapter.