

**Senator Todd Weiler** proposes the following substitute bill:

**HIGHER EDUCATION STUDENT SPEECH RIGHTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kim F. Coleman**

Senate Sponsor: Todd Weiler

6	Cosponsors:	Phil Lyman	Douglas V. Sagers
7	Cheryl K. Acton	A. Cory Maloy	Travis M. Seegmiller
8	Kyle R. Andersen	Calvin R. Musselman	Norman K. Thurston
9	Stewart E. Barlow	Merrill F. Nelson	Raymond P. Ward
10	Kay J. Christofferson	Susan Pulsipher	Mike Winder
11	Brad M. Daw	Paul Ray	
	Marsha Judkins		

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**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;



- 24 • create a cause of action for the attorney general related to discriminatory
- 25 harassment at an institution of higher education; and
- 26 • provide for an administrative review for a claimed violation;
- 27 ▶ enacts provisions related to the free expression policies of an institution of higher
- 28 education.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 ENACTS:

- 35 **53B-27-401**, Utah Code Annotated 1953
- 36 **53B-27-402**, Utah Code Annotated 1953
- 37 **53B-27-403**, Utah Code Annotated 1953
- 38 **53B-27-404**, Utah Code Annotated 1953
- 39 **53B-27-501**, Utah Code Annotated 1953



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

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

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

44 **53B-27-401. Definitions.**

45 As used in this part:

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

47 (a) is unwelcome;

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

49 and

50 (c) is so severe, pervasive, and objectively offensive, and that so undermines and

51 distracts from a student's educational experience, that the student is effectively denied access to

52 an institution's resource or opportunity.

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

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

55 is:

56 (i) communicated by a student; and

57 (ii) directed at another student.

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

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

61 **53B-27-402. Institution duties.**

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

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

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

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

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

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

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

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

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

79 **53B-27-403. Cause of action.**

80 The attorney general may bring an action to enjoin a violation of this part, in a state  
81 court of competent jurisdiction, against an institution or an institution's agent acting in the  
82 agent's official capacity.

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

84 **53B-27-404. Statute of limitations.**

85 (1) Except as provided in Subsection (3)(b), the attorney general may not bring an

86 action under this part later than one year after the day on which the cause of action accrues.

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

90 (3) (a) For an action alleging a violation of Subsection 53B-27-402(1), the cause of  
91 action accrues on the day on which the institution gains knowledge of the discriminatory  
92 harassment.

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

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

98 **53B-27-501. Free expression policies.**

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

101 (2) An institution shall:

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

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

104 (ii) on the institution's website;

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

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

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

111 (a) administrator;

112 (b) campus police officer;

113 (c) residence life official; and

114 (d) faculty member.

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

