

**HIGHER EDUCATION SPEECH**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jordan D. Teuscher**

Senate Sponsor: Todd D. Weiler

|    |                       |                      |                    |
|----|-----------------------|----------------------|--------------------|
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| 10 | Marsha Judkins        | Mark A. Strong       |                    |



**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 sanctioning or disciplining certain acts of speech that do not constitute discriminatory harassment; and
  - create a cause of action for the attorney general related to discriminatory harassment at an institution of higher education; and
- ▶ enacts provisions related to the free expression of policies of an institution of higher education.

**Money Appropriated in this Bill:**

None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **53B-27-401**, Utah Code Annotated 1953

34 **53B-27-402**, Utah Code Annotated 1953

35 **53B-27-403**, Utah Code Annotated 1953

36 **53B-27-404**, Utah Code Annotated 1953

37 **53B-27-501**, Utah Code Annotated 1953



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

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

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

42 **53B-27-401. Definitions.**

43 As used in this part:

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

45 (a) is unwelcome;

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

47 and

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

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

50 an institution's resource or opportunity.

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

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

53 is:

54 (i) communicated by a student; and

55 (ii) directed at another student.

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

57 student and another student.

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

59 **53B-27-402. Institution duties.**

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

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

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

64 (2) (a) An institution may not sanction or discipline, as discriminatory harassment,  
65 student-on-student speech that does not constitute discriminatory harassment.

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

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

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

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

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

77 **53B-27-403. Cause of action.**

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

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

82 **53B-27-404. Statute of limitations.**

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



113            (d) faculty member.

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