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| 1 | HIGHER EDUCATION SPEECH 2021 GENERAL SESSION | | | | | |
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| 3 | STATE OF UTAH | | | | | |
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| 10 | Marsha Judkins | Mark A. Strong | | | | |
| | | | | | | |
| 11 | | | | | | |
| 12 | LONG TITLE | | | | | |
| 13 | General Description: | | | | | |
| 14 | This bill enacts provisions related to discriminatory harassment and expression at an | | | | | |
| 15 | institution of higher education. | | | | | |
| 16 | Highlighted Provisions: | | | | | |
| 17 | This bill: | | | | | |
| 18 | defines terms; | | | | | |
| 19 | enacts provisions | related to discriminatory harassme | ent at an institution of higher | | | |
| 20 | education, including provisions that: | | | | | |
| 21 | prohibit an institution from sanctioning or disciplining certain acts of speech | | | | | |
| 22 | that do not constitute discriminatory harassment; and | | | | | |
| 23 | • create a cause | of action for the attorney general | related to discriminatory | | | |
| 24 | harassment at an institution of | of higher education; and | | | | |
| 25 | enacts provisions | related to the free expression of pe | olicies of an institution of higher | | | |
| 26 | education. | | | | | |
| 27 | Money Appropriated in this Bill: | | | | | |
| 28 | None | | | | | |

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| 29 | Other Special Clauses: | | | |
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| 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 | | | |
| 38 | | | | |
| 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 | <u>and</u> | | | |
| 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 | <u>is:</u> | | | |
| 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 | | | |

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| | student and another student. | | |
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| | 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 sanction or discipline, 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 sanction or discipline a | | |
| | student who communicates student-on-student speech that is not discriminatory harassment. | | |
| | (3) Nothing in this part prevents an institution from sanctioning or disciplining | | |
| 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. | | | |
| Section 3. Section 53B-27-403 is enacted to read: | | | |
| | <u>53B-27-403.</u> Cause of action. | | |
| | The attorney general may bring an action to enjoin a violation of this part, in a state | | |
| court of competent jurisdiction, against an institution or an institution's agent acting in the | | | |
| agent's official capacity. | | | |
| | Section 4. Section 53B-27-404 is enacted to read: | | |
| | 53B-27-404. Statute of limitations. | | |
| | (1) Except as provided in Subsection (3)(b), the attorney general may not bring an | | |
| | action under this part later than one year after the day on which the cause of action accrues | | |

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| 85 | (2) For an action alleging a violation of Subsection 53B-27-402(2)(a), the cause of | | |
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| 86 | action accrues on the day on which the student receives final notice, from the institution, of | | |
| 87 | sanction or discipline that violates Subsection 53B-27-402(2)(a). | | |
| 88 | (3) (a) For an action alleging a violation of Subsection 53B-27-402(1), the cause of | | |
| 89 | action accrues on the day on which the institution gains knowledge of the discriminatory | | |
| 90 | harassment. | | |
| 91 | (b) For an action described in Subsection (3)(a), the limitation described in Subsection | | |
| 92 | (1) extends to one year after the day on which the most recent known act of discriminatory | | |
| 93 | harassment, involving the same parties as a prior known act of discriminatory harassment, | | |
| 94 | occurs. | | |
| 95 | Section 5. Section 53B-27-501 is enacted to read: | | |
| 96 | Part 5. Free Expression Policies | | |
| 97 | 53B-27-501. Free expression policies. | | |
| 98 | (1) As used in this section, "free expression policy" means an institution's policy, | | |
| 99 | regulation, or other expectation related to student expression. | | |
| 100 | (2) An institution shall: | | |
| 101 | (a) publish the institution's free expression policies: | | |
| 102 | (i) in the institution's student handbook; and | | |
| 103 | (ii) on the institution's website; | | |
| 104 | (b) include information about the institution's free expression policies in an orientation | | |
| 105 | program for students enrolled in the institution; and | | |
| 106 | (c) develop a program, procedures, and materials to ensure that an individual who has | | |
| 107 | responsibility for the discipline or education of a student at the institution understands the | | |
| 108 | institution's free expression policies. | | |
| 109 | (3) An individual described in Subsection (2)(c) includes an institution: | | |
| 110 | (a) administrator; | | |
| 111 | (b) campus police officer; | | |
| 112 | (c) residence life official; and | | |

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| (d) faculty member. | |

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

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