

**PROHIBITING DIVERSITY, EQUITY, AND INCLUSION
IN HIGHER EDUCATION**

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John D. Johnson

House Sponsor: Michael J. Petersen

LONG TITLE

General Description:

This bill prohibits the funding or maintenance of diversity, equity, and inclusion offices or officers in the system of higher education.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits the funding or maintenance of diversity, equity, and inclusion offices or officers in the system of higher education;
- ▶ prohibits the expenditure of funds in the upcoming fiscal year until an institution's board of trustees files a report regarding compliance with this bill;
- ▶ allows for certain litigation to compel compliance; and
- ▶ provides for severability.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

ENACTS:

53B-2-114, Utah Code Annotated 1953



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

Section 1. Section **53B-2-114** is enacted to read:

53B-2-114. Prohibition on diversity, equity, and inclusion.

(1) As used in this section:

(a) "Diversity, equity, and inclusion" means:

(i) any effort to manipulate or otherwise influence the composition of the faculty or student body with reference to sex, race, color, ethnicity, gender identity, or sexual orientation, apart from ensuring color-blind and sex-neutral admissions and hiring in accordance with state and federal anti-discrimination laws;

(ii) any effort to promote differential treatment of or provide special benefits to individuals on the basis of sex, race, color, ethnicity, gender identity, or sexual orientation;

(iii) any effort to promote or promulgate policies or procedures designed or implemented with reference to sex, race, color, ethnicity, gender identity, or sexual orientation;

(iv) any effort to promote or promulgate trainings, programming, or activities designed or implemented with reference to sex, race, color, ethnicity, gender identity, or sexual orientation; and

(v) any effort to promote, as the official position of the administration or any associated administrative unit of an institution of higher education, a particular and widely contested opinion referencing unconscious or implicit bias, cultural appropriation, allyship, transgender ideology, microaggressions, group marginalization, anti-racism, systemic oppression, social justice, intersectionality, neo-pronouns, heteronormativity, disparate impact, gender theory, racial or sexual privilege, or any related formulation of a concept described in this section.

(b) (i) "Diversity, equity, and inclusion office" means any division, office, center, or other associated administrative unit of an institution of higher education that is responsible for creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, or procedures relating to diversity, equity, and inclusion.

(ii) "Diversity, equity, and inclusion office" does not include an office that is staffed exclusively by licensed attorneys with paralegal and secretarial support and that the attorney general certifies as operating with the sole and exclusive mission of ensuring legal compliance

59 with the obligations of the institution of higher education under:

60 (A) Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq., as
61 amended;

62 (B) Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., as
63 amended;

64 (C) the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. 621 et seq., as
65 amended;

66 (D) Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000d, et seq., as
67 amended;

68 (E) applicable court orders; or

69 (F) other applicable state and federal law.

70 (iii) "Diversity, equity, and inclusion office" does not include:

71 (A) an academic department or unit of an institution of higher education that exists
72 primarily for the purpose of offering courses for degree credit and that does not establish policy
73 or procedures to which other units of the institution are subject;

74 (B) an office solely engaged in new student recruitment; or

75 (C) a registered student organization.

76 (c) (i) "Diversity, equity, and inclusion officer" means an individual:

77 (A) who is a full- or part-time employee of an institution of higher education or a
78 component of an institution of higher education or an independent contractor of an institution
79 of higher education; and

80 (B) whose duties for the institution include coordinating, creating, developing,
81 designing, implementing, organizing, planning, or promoting policies, programming, training,
82 practices, activities, or procedures relating to diversity, equity, and inclusion.

83 (ii) "Diversity, equity, and inclusion officer" does not include:

84 (A) any full- or part-time employee who is a licensed attorney and whose sole job
85 duties related to diversity, equity, and inclusion are to ensure compliance with the obligations
86 of the institution of higher education described in Subsection (1)(b)(ii);

87 (B) any faculty member while engaged in teaching, research, and the production of
88 creative works, including the dissemination of the faculty member's research and creative
89 works, or while advising a registered student organization; or

90 (C) a guest speaker or performer with a short-term engagement.
91 (2) (a) An institution of higher education may not expend appropriated funds or
92 otherwise expend any funds derived from bequests, charges, deposits, donations, endowments,
93 fees, grants, gifts, income, receipts, tuition, or any other source, to:
94 (i) establish, sustain, support, or staff a diversity, equity, and inclusion office; or
95 (ii) contract, employ, engage, or hire an individual to serve as a diversity, equity, and
96 inclusion officer.
97 (b) Any funds that would otherwise have been expended as prohibited under
98 Subsection (2)(a) in Fiscal Year 2023 may be reallocated, at the discretion of the board of
99 trustees of the institution of higher education:
100 (i) for merit scholarships for lower- and middle-income students; and
101 (ii) to reduce tuition for in-state students.
102 (c) An institution of higher education may not expend any funding in fiscal year 2024
103 until the institution's board of trustees files a report with the commissioner that:
104 (i) discloses:
105 (A) the steps the institution, the board of trustees, associated staff, institution
106 administration, and faculty have taken to comply with this section;
107 (B) the number and job titles of the individuals that are required by the obligations of
108 the institution of higher education described in Subsection (1)(b)(ii); and
109 (ii) certifies that the institution of higher education and the board of trustees are fully
110 compliant with this section.
111 (d) Each institution of higher education shall also make the report described in
112 Subsection (2)(c) available for the public on the institution's website.
113 (3) (a) Any person may notify the attorney general of a violation or potential violation
114 of this section.
115 (b) The attorney general may file suit for a writ of mandamus compelling the
116 institution of higher education to comply with this section.
117 (4) (a) The following may bring an action against an institution of higher education for
118 a violation of this section:
119 (i) a student enrolled at the institution;
120 (ii) a faculty member of an institution; or

121 (iii) a member of the alumni of the institution.

122 (b) If the claimant described in Subsection (4)(a) shows that the institution of higher
123 education violated this section, the claimant is entitled to injunctive relief.

124 (5) Notwithstanding any of other provision of law, a claimant may bring a civil action
125 under this section in:

126 (a) the county in which all or a substantial part of the events or omissions giving rise to
127 the claim occurs;

128 (b) the county of residence of any individual defendant at the time the cause of action
129 accrues;

130 (c) the county of the principal office of any defendant that is not an individual; or

131 (d) the county of residence for the claimant if the claimant is a natural person residing
132 in this state.

133 (6) Nothing in this section:

134 (a) affects an institution of higher education's funding of:

135 (i) academic course instruction;

136 (ii) research and creative works by the institution's students, faculty, or other research
137 personnel, including the institution's dissemination of the research and creative works;

138 (iii) activities of registered student organizations;

139 (iv) arrangements for guest speakers and performers with short-term engagements;

140 (v) mental or physical health services provided by licensed professionals; or

141 (b) prohibits the use of bona fide qualifications based on sex which are reasonably
142 necessary to the normal operation of public higher education.

143 (7) If a court holds any provision of this section, or the application of any provision of
144 this section to any person or circumstance, to be invalid, the remainder of this section and the
145 application of the section's provisions to any other person or circumstance shall remain in
146 effect.

147 **Section 2. Effective date.**

148 If approved by two-thirds of all the members elected to each house, this bill takes effect
149 upon approval by the governor, or the day following the constitutional time limit of Utah
150 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
151 the date of veto override.