

**Representative Kim F. Coleman** proposes the following substitute bill:

**HIGHER EDUCATION STUDENT SPEECH RIGHTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kim F. Coleman**

Senate Sponsor: \_\_\_\_\_

|    |                       |                     |                      |
|----|-----------------------|---------------------|----------------------|
| 6  | Cosponsors:           | John Knotwell       | Travis M. Seegmiller |
| 7  | Cheryl K. Acton       | Phil Lyman          | Rex P. Shipp         |
| 8  | Carl R. Albrecht      | A. Cory Maloy       | Norman K. Thurston   |
| 9  | Kyle R. Andersen      | Calvin R. Musselman | Steve Waldrip        |
| 10 | Stewart E. Barlow     | Merrill F. Nelson   | Raymond P. Ward      |
| 11 | Kay J. Christofferson | Susan Pulsipher     | Christine F. Watkins |
| 12 | Brad M. Daw           | Paul Ray            | Logan Wilde          |
| 13 | Ken Ivory             | Adam Robertson      | Mike Winder          |
| 14 | Dan N. Johnson        | Douglas V. Sagers   |                      |
|    | 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



24 education, including provisions that:

- 25 • prohibit an institution from punishing certain acts of speech that do not
- 26 constitute discriminatory harassment; and
- 27 • create a cause of action related to discriminatory harassment at an institution of
- 28 higher education; and
- 29 ▶ enacts provisions related to the free expression policies of an institution of higher
- 30 education.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 ENACTS:

- 37 **53B-27-401**, Utah Code Annotated 1953
- 38 **53B-27-402**, Utah Code Annotated 1953
- 39 **53B-27-403**, Utah Code Annotated 1953
- 40 **53B-27-404**, Utah Code Annotated 1953
- 41 **53B-27-501**, Utah Code Annotated 1953



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

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

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

46 **53B-27-401. Definitions.**

47 As used in this part:

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

49 (a) is unwelcome;

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

51 and

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

53 detracts from a student's educational experience, that the student is effectively denied access to

54 an institution's resource or opportunity.

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

56 (3) (a) "Student-on-student speech" means verbal, written, or other communication that  
57 is:

58 (i) communicated by a student; and

59 (ii) directed at another student.

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

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

63 **53B-27-402. Institution duties.**

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

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

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

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

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

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

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

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

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

81 **53B-27-403. Cause of action.**

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

85 (a) the attorney general; or

86 (b) a person claiming to be aggrieved by a violation of this part.  
87 (2) In an action brought under this part, if the court finds a violation of this part, the  
88 court:  
89 (a) shall enjoin the violation;  
90 (b) shall, if a person claiming to be aggrieved brought the suit, award the aggrieved  
91 person at least \$1,000; and  
92 (c) may award a prevailing plaintiff:  
93 (i) compensatory damages;  
94 (ii) reasonable court costs;  
95 (iii) reasonable attorney fees and reasonable expert fees; or  
96 (iv) any other relief that the court considers appropriate.  
97 (3) In an action brought under this part, the court may award a prevailing defendant  
98 reasonable attorney fees if the action was vexatious, frivolous, or brought to harass or  
99 embarrass the defendant.  
100 (4) The state waives immunity under the Eleventh Amendment to the United States  
101 Constitution and consents to suit in a federal court for lawsuits arising out of this part.  
102 (5) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, an  
103 institution that violates this part is not immune from suit or liability for the violation.  
104 Section 4. Section **53B-27-404** is enacted to read:  
105 **53B-27-404. Statute of limitations.**  
106 (1) Except as provided in Subsection (3)(b), an action under this part may not be  
107 brought later than one year after the day on which the cause of action accrues.  
108 (2) For an action alleging a violation of Subsection [53B-27-402\(2\)\(a\)](#), the cause of  
109 action accrues on the day on which the student receives final notice, from the institution, of  
110 punishment that violates Subsection [53B-27-402\(2\)\(a\)](#).  
111 (3) (a) For an action alleging a violation of Subsection [53B-27-402\(1\)](#), the cause of  
112 action accrues on the day on which the institution receives knowledge of the discriminatory  
113 harassment.  
114 (b) For an action described in Subsection (3)(a), the limitation described in Subsection  
115 (1) shall extend to one year after the day on which the most recent known act of discriminatory  
116 harassment, involving the same parties as a prior known act of discriminatory harassment,

117 occurs.

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

119 **Part 5. Student Expression Policies**

120 **53B-27-501. Free expression policies.**

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

123 (2) An institution shall:

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

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

126 (ii) on the institution's website;

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

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

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

133 (a) administrator;

134 (b) campus police officer;

135 (c) residence life official; and

136 (d) faculty member.

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