

1 **CAMPUS FREE EXPRESSION ACT**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kim Coleman**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts provisions related to expressive activity at an institution of higher
10 education.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ designates outdoor areas of campuses at institutions of higher education as
15 traditional public forums;
- 16 ▶ creates requirements for institutions of higher education related to expressive
17 activity;
- 18 ▶ creates a cause of action related to a violation of expressive activity at an institution
19 of higher education; and
- 20 ▶ enacts other provisions related to expressive activity at an institution of higher
21 education.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 ENACTS:



- 28 [53B-26-101](#), Utah Code Annotated 1953
- 29 [53B-26-102](#), Utah Code Annotated 1953
- 30 [53B-26-201](#), Utah Code Annotated 1953
- 31 [53B-26-202](#), Utah Code Annotated 1953
- 32 [53B-26-203](#), Utah Code Annotated 1953
- 33 [53B-26-204](#), Utah Code Annotated 1953
- 34 [53B-26-205](#), Utah Code Annotated 1953



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

37 Section 1. Section [53B-26-101](#) is enacted to read:

38 **CHAPTER 26. CAMPUS INDIVIDUAL RIGHTS ACT**

39 **Part 1. General Provisions**

40 **[53B-26-101](#). Title.**

41 This chapter is known as the "Campus Individual Rights Act."

42 Section 2. Section [53B-26-102](#) is enacted to read:

43 **[53B-26-102](#). Definition.**

44 As used in this chapter, "institution" means an institution of higher education listed in

45 Section [53B-1-102](#).

46 Section 3. Section [53B-26-201](#) is enacted to read:

47 **Part 2. Campus Free Expression Act**

48 **[53B-26-201](#). Title.**

49 This part is known as the "Campus Free Expression Act."

50 Section 4. Section [53B-26-202](#) is enacted to read:

51 **[53B-26-202](#). Definitions.**

52 As used in this part, "expressive activity" includes:

- 53 (1) peacefully assembling, protesting, or speaking;
- 54 (2) distributing literature;
- 55 (3) carrying a sign; or
- 56 (4) circulating a petition.

57 Section 5. Section [53B-26-203](#) is enacted to read:

58 **[53B-26-203](#). Expressive activities at an institution.**

- 59 (1) An outdoor area of an institution's campus is a traditional public forum.
- 60 (2) An institution may maintain and enforce reasonable time, place, and manner
- 61 restrictions on an expressive activity in an outdoor area of the institution's campus, if the
- 62 restrictions:
 - 63 (a) are narrowly tailored to serve a significant institutional interest;
 - 64 (b) are based on published, content-neutral, and viewpoint-neutral criteria; and
 - 65 (c) leave open ample alternative channels for communication.
- 66 (3) Subject to Subsection (2), an institution may not prohibit:
 - 67 (a) a member of the institution's community or the public from spontaneously and
 - 68 contemporaneously assembling in an outdoor area of the institution's campus; or
 - 69 (b) a person from freely engaging in noncommercial expressive activity in an outdoor
 - 70 area of the institution's campus if the person's conduct is lawful.
- 71 (4) This part does not apply to expressive activity in an area on an institution's campus
- 72 other than an outdoor area.

73 Section 6. Section **53B-26-204** is enacted to read:

74 **53B-26-204. Cause of action.**

- 75 (1) The following persons may bring an action in a state court of competent jurisdiction
- 76 to enjoin a violation of this part or to recover compensatory damages, reasonable court costs, or
- 77 reasonable attorney fees:
 - 78 (a) the attorney general; or
 - 79 (b) a person claiming that the person's expressive rights, as described in this part, were
 - 80 violated.
- 81 (2) In an action brought under this part, if the court finds a violation of this part, the
- 82 court:
 - 83 (a) shall enjoin the violation;
 - 84 (b) shall, if a person whose expressive rights were violated brought the action, award
 - 85 the person:
 - 86 (i) at least \$500 for an initial violation; and
 - 87 (ii) \$50 for each day the violation continues after the initial violation; and
 - 88 (c) may award a prevailing plaintiff:
 - 89 (i) compensatory damages;

90 (ii) reasonable court costs; or

91 (iii) reasonable attorney fees.

92 (3) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, an
93 institution that violates this part is not immune from suit or liability for the violation.

94 Section 7. Section **53B-26-205** is enacted to read:

95 **53B-26-205. Statute of limitations.**

96 (1) Except as provided in Subsection (3), an action under this part may not be brought
97 later than one year after the day on which the cause of action accrues.

98 (2) Each day that a violation continues after an initial violation, and each day that an
99 institution's policy in violation of this part remains in effect, shall constitute a continuing
100 violation of this part.

101 (3) For a continuing violation described in Subsection (2), the limitation described in
102 Subsection (1) shall extend to one year after the day on which the most recent violation occurs.

Legislative Review Note
Office of Legislative Research and General Counsel