

ACADEMIC FREEDOM AND PROTECTION ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions related to expression of a faculty member at an institution of higher education.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits an institution of higher education from taking adverse action against a faculty member in retaliation for certain expression;
- creates a cause of action related to retaliation against a faculty member for certain expression; and
- enacts other provisions related to faculty member expression at an institution of higher education.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

53B-27-101, Utah Code Annotated 1953

53B-27-102, Utah Code Annotated 1953



28 [53B-27-201](#), Utah Code Annotated 1953
29 [53B-27-202](#), Utah Code Annotated 1953
30 [53B-27-203](#), Utah Code Annotated 1953
31 [53B-27-204](#), Utah Code Annotated 1953
32 [53B-27-205](#), Utah Code Annotated 1953

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

35 Section 1. Section **53B-27-101** is enacted to read:

36 **CHAPTER 27. CAMPUS INDIVIDUAL RIGHTS ACT**

37 **Part 1. General Provisions**

38 **53B-27-101. Title.**

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

40 Section 2. Section **53B-27-102** is enacted to read:

41 **53B-27-102. Definition.**

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

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

44 Section 3. Section **53B-27-201** is enacted to read:

45 **Part 2. Academic Freedom and Protection Act**

46 **53B-27-201. Title.**

47 This part is known as the "Academic Freedom and Protection Act."

48 Section 4. Section **53B-27-202** is enacted to read:

49 **53B-27-202. Definitions.**

50 As used in this part:

51 (1) "Adverse action" means to:

52 (a) dismiss a faculty member;

53 (b) reduce a faculty member's compensation;

54 (c) fail to increase the faculty member's compensation by an amount that the faculty
55 member is otherwise entitled to or was promised;

56 (d) fail to promote the faculty member if the faculty member would have otherwise
57 been promoted;

58 (e) cause the faculty member to resign by subjecting the faculty member to conditions

that a reasonable person would consider intolerable; or

(f) threaten to take an action described in Subsections (1)(a) through (e).

(2) (a) "Faculty member" means an individual who is tasked by an institution to provide, on an ongoing basis, scholarship, academic research, or teaching at the institution, regardless of whether the institution compensates the individual.

(b) "Faculty member" includes:

(i) a tenured or nontenured professor;

(ii) an adjunct professor;

(iii) a visiting professor;

(iv) a lecturer; or

(v) a graduate student instructor.

(c) "Faculty member" does not include an individual whose primary responsibilities for an institution are administrative or managerial.

Section 5. Section **53B-27-203** is enacted to read:

53B-27-203. Adverse action prohibited -- Institution policy to establish independent personnel board.

(1) (a) Except as provided in Subsection (1)(b), an institution may not take adverse action against a faculty member in retaliation for the faculty member's:

(i) expression related to scholarship, academic research, or teaching; or

(ii) expression related to a matter of institutional policy.

(b) An institution may take adverse action against a faculty member for the faculty member's expression described in Subsection (1)(a) if:

(i) the institution's interests, as an employer, in promoting the efficiency of the institution's public service outweigh the faculty member's interests in the expression; or

(ii) the expression:

(A) is expressed during a class instructed by the faculty member;

(B) is not reasonably germane to the subject matter of the class; and

(C) comprises a substantial portion of classroom instruction.

(2) Any existing or new institution policy that violates Subsection (1) is void.

(3) In accordance with Section [67-21-3.7](#), an institution may adopt a policy to establish an independent personnel board to address a complaint alleging adverse action described in this

part.

Section 6. Section **53B-27-204** is enacted to read:

53B-27-204. Cause of action.

(1) (a) Except as provided in Subsection (1)(b), a faculty member claiming that the faculty member's expressive rights, as described in this part, were violated may bring an action in a state court of competent jurisdiction.

(b) A faculty member may only bring an action described in Subsection (1)(a) if the faculty member exhausts:

(i) administrative grievance procedures if available at the institution; and

(ii) administrative grievance procedures if available under an applicable collective bargaining agreement.

(2) (a) An institution violates this part if, except as provided in Subsection (2)(b), a court finds that expression protected under this part was a significant motivating factor in the institution's decision to take adverse action against the plaintiff.

(b) An institution does not violate this part if the court finds the institution would have taken the adverse action against the plaintiff in absence of the plaintiff's expression described in Subsection (2)(a).

(3) In an action brought under this part, if the court finds a violation of this part, the court may award the plaintiff:

(a) compensatory damages;

(b) reasonable court costs;

(c) reasonable attorney fees and expert fees; or

(d) any other relief that the court considers appropriate.

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

Section 7. Section **53B-27-205** is enacted to read:

53B-27-205. Statute of limitations.

An action under this part may not be brought after the later of:

(1) one year after the day on which an institution takes adverse action against a faculty member in violation of this part; or

(2) 60 days after the day on which the faculty member receives final notice of an

121 outcome of an administrative grievance procedure described in Section [53B-27-204](#) that
122 violates this part.

Legislative Review Note
Office of Legislative Research and General Counsel