

CAMPUS ANTI-HARASSMENT ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions related to harassment at an institution of higher education.

Highlighted Provisions:

This bill:

- defines terms;
- enacts requirements related to how an institution of higher education addresses discriminatory harassment;
- prohibits an institution of higher education from punishing certain acts of speech that do not constitute discriminatory harassment;
- creates causes of action related to discriminatory harassment at an institution of higher education; and
- enacts other provisions related to discriminatory harassment 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



28 **53B-27-102**, Utah Code Annotated 1953
29 **53B-27-201**, Utah Code Annotated 1953
30 **53B-27-202**, Utah Code Annotated 1953
31 **53B-27-203**, Utah Code Annotated 1953
32 **53B-27-204**, Utah Code Annotated 1953
33 **53B-27-205**, Utah Code Annotated 1953

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

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

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

38 **Part 1. General Provisions**

39 **53B-27-101. Title.**

40 (1) This chapter is known as the "Campus Individual Rights Act."

41 (2) This part is known as "General Provisions."

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

43 **53B-27-102. 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-27-201** is enacted to read:

47 **Part 2. Campus Anti-Harassment Act**

48 **53B-27-201. Title.**

49 This part is known as the "Campus Anti-Harassment Act."

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

51 **53B-27-202. Definitions.**

52 As used in this part:

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

54 (a) unwelcome;

55 (b) discriminatory on the basis of race, color, national origin, disability, religion, age,
56 or sex; and

57 (c) so severe, pervasive, and objectively offensive, and that so undermines and detracts
58 from a student's educational experience, that the student is effectively denied equal access to an

59 institution's resource or opportunity.

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

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

63 (i) communicated by a student; and

64 (ii) directed at a student.

65 (b) "Student-on-student speech" does not include acts of physical contact between a
66 student and another student.

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

68 **53B-27-203. Institution duties.**

69 (1) (a) If an institution gains actual knowledge of an act of discriminatory harassment
70 in the institution's program or activity, the institution shall:

71 (i) take immediate action to eliminate the known act of discriminatory harassment; and

72 (ii) address the effects of the known act of discriminatory harassment.

73 (b) An institution that is deliberately indifferent to a known act of discriminatory
74 harassment is in violation of this part.

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

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

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

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

83 **53B-27-204. Causes of action.**

84 (1) The following persons may bring an action in any state court of competent
85 jurisdiction to enjoin a violation of this part:

86 (a) the attorney general; or

87 (b) a person claiming to be aggrieved by a violation of this part.

88 (2) In an action brought under this part, if the court finds a violation of this part, the
89 court:

(a) shall enjoin the violation;

(b) shall, if a person claiming to be aggrieved brought the suit, award the aggrieved person at least \$1,000; and

(c) may award a prevailing plaintiff:

(i) compensatory damages;

(ii) reasonable court costs;

(iii) reasonable attorney fees and expert fees; or

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

(3) In an action brought under this part, the court may award a prevailing defendant reasonable attorney fees if the action was vexatious, frivolous, or brought to harass or embarrass the defendant.

(4) The state waives immunity under the Eleventh Amendment to the United States Constitution and consents to suit in a federal court for lawsuits arising out of this part.

(5) 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.

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

(2) For an action alleging a violation of Subsection [53B-27-203\(2\)\(a\)](#), the cause of action accrues on the day on which the student receives final notice, from the institution, of punishment that violates Subsection [53B-27-203\(2\)\(a\)](#).

(3) (a) For an action alleging a violation of Subsection [53B-27-203\(1\)\(b\)](#), the cause of action accrues on the day on which the institution receives knowledge of the act of discriminatory harassment.

(b) For an action described in Subsection (3)(a), the limitation described in Subsection (1) shall extend to one year after the day on which the most recent known act of discriminatory harassment, involving the same parties as a prior known act of discriminatory harassment, occurs.

Legislative Review Note
Office of Legislative Research and General Counsel