

CAMPUS ANTI-HARASSMENT ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim 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-26-101, Utah Code Annotated 1953



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

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

36 Section 1. Section **53B-26-101** is enacted to read:

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

38 **Part 1. General Provisions**

39 **53B-26-101. Title.**

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

41 Section 2. Section **53B-26-102** is enacted to read:

42 **53B-26-102. Definition.**

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

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

45 Section 3. Section **53B-26-201** is enacted to read:

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

47 **53B-26-201. Title.**

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

49 Section 4. Section **53B-26-202** is enacted to read:

50 **53B-26-202. Definitions.**

51 As used in this part:

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

53 (a) unwelcome;

54 (b) discriminatory on the basis of ~~H~~→ ~~[race, color, national origin, disability, religion, age,~~

55 ~~sex, or sexual orientation]~~ **membership in a class protected under:**

55a **(i) Title 34A, Chapter 5, Utah Antidiscrimination Act, notwithstanding Section**

55b **34A-5-102.5; or**

55c **(ii) Title 57, Chapter 21, Utah Fair Housing Act, notwithstanding Section 57-21-2.5** ←~~H~~

55d ; **and**

56 (c) so severe, pervasive, and objectively offensive, and that so undermines and detracts

57 from a student's educational experience, that the student is effectively denied equal access to an

58 institution's resource or opportunity.

- 59 (2) "Student" means an individual enrolled at an institution.
- 60 (3) (a) "Student-on-student speech" means verbal, written, or other communication that
- 61 is:
- 62 (i) communicated by a student; and
- 63 (ii) directed at a student.
- 64 (b) "Student-on-student speech" does not include acts of physical contact between a
- 65 student and another student.

66 Section 5. Section **53B-26-203** is enacted to read:

67 **53B-26-203. Institution duties.**

- 68 (1) (a) If an institution gains actual knowledge of an act of discriminatory harassment
- 69 in the institution's program or activity, the institution shall:
- 70 (i) take immediate action to eliminate the known act of discriminatory harassment; and
- 71 (ii) address the effects of the known act of discriminatory harassment.
- 72 (b) An institution that is deliberately indifferent to a known act of discriminatory
- 73 harassment is in violation of this part.
- 74 (2) (a) An institution may not punish, as discriminatory harassment, student-on-student
- 75 speech that does not constitute discriminatory harassment.
- 76 (b) An institution is not liable under this part for failing to punish a student who
- 77 communicates student-on-student speech that is not discriminatory harassment.
- 78 (3) Nothing in this part prevents an institution from punishing student-on-student
- 79 speech that is otherwise not protected under the First Amendment to the United States
- 80 Constitution.

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

82 **53B-26-204. Causes of action.**

- 83 (1) The following persons may bring an action in any state court of competent
- 84 jurisdiction to enjoin a violation of this part:
- 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 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 of 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 7. Section **53B-26-205** is enacted to read:

105 **53B-26-205. 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-26-203\(2\)\(a\)](#), 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-26-203\(2\)\(a\)](#).

111 (3) (a) For an action alleging a violation of Subsection [53B-26-203\(1\)\(b\)](#), the cause of
112 action accrues on the day on which the institution receives knowledge of the act of
113 discriminatory 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.