

**PROHIBITING DIVERSITY, EQUITY, AND INCLUSION  
IN HIGHER EDUCATION**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John D. Johnson**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill prohibits the funding or maintenance of diversity, equity, and inclusion offices or officers in the system of higher education.

**Highlighted Provisions:**

This bill:

- defines terms;
- prohibits the funding or maintenance of diversity, equity, and inclusion offices or officers in the system of higher education;
- prohibits the expenditure of funds in the upcoming fiscal year until an institution's board of trustees files a report regarding compliance with this bill;
- allows for certain litigation to compel compliance; and
- provides for severability.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

ENACTS:

**53B-2-114**, Utah Code Annotated 1953



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

Section 1. Section **53B-2-114** is enacted to read:

**53B-2-114. Prohibition on diversity, equity, and inclusion.**

(1) As used in this section:

(a) "Diversity, equity, and inclusion" means:

(i) any effort to manipulate or otherwise influence the composition of the faculty or student body with reference to sex, race, color, ethnicity, gender identity, or sexual orientation, apart from ensuring color-blind and sex-neutral admissions and hiring in accordance with state and federal anti-discrimination laws;

(ii) any effort to promote differential treatment of or provide special benefits to individuals on the basis of sex, race, color, ethnicity, gender identity, or sexual orientation;

(iii) any effort to promote or promulgate policies or procedures designed or implemented with reference to sex, race, color, ethnicity, gender identity, or sexual orientation;

(iv) any effort to promote or promulgate trainings, programming, or activities designed or implemented with reference to sex, race, color, ethnicity, gender identity, or sexual orientation; and

(v) any effort to promote, as the official position of the administration or any associated administrative unit of an institution of higher education, a particular and widely contested opinion referencing unconscious or implicit bias, cultural appropriation, allyship, transgender ideology, microaggressions, group marginalization, anti-racism, systemic oppression, social justice, intersectionality, neo-pronouns, heteronormativity, disparate impact, gender theory, racial or sexual privilege, or any related formulation of a concept described in this section.

(b) (i) "Diversity, equity, and inclusion office" means any division, office, center, or other associated administrative unit of an institution of higher education that is responsible for creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, or procedures relating to diversity, equity, and inclusion.

(ii) "Diversity, equity, and inclusion office" does not include an office that is staffed exclusively by licensed attorneys with paralegal and secretarial support and that the attorney general certifies as operating with the sole and exclusive mission of ensuring legal compliance

with the obligations of the institution of higher education under:

(A) Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq., as amended;

(B) Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., as amended;

(C) the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. 621 et seq., as amended;

(D) Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000d, et seq., as amended;

(E) applicable court orders; or

(F) other applicable state and federal law.

(iii) "Diversity, equity, and inclusion office" does not include:

(A) an academic department or unit of an institution of higher education that exists primarily for the purpose of offering courses for degree credit and that does not establish policy or procedures to which other units of the institution are subject;

(B) an office solely engaged in new student recruitment; or

(C) a registered student organization.

(c) (i) "Diversity, equity, and inclusion officer" means an individual:

(A) who is a full- or part-time employee of an institution of higher education or a component of an institution of higher education or an independent contractor of an institution of higher education; and

(B) whose duties for the institution include coordinating, creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, or procedures relating to diversity, equity, and inclusion.

(ii) "Diversity, equity, and inclusion officer" does not include:

(A) any full- or part-time employee who is a licensed attorney and whose sole job duties related to diversity, equity, and inclusion are to ensure compliance with the obligations of the institution of higher education described in Subsection (1)(b)(ii);

(B) any faculty member while engaged in teaching, research, and the production of creative works, including the dissemination of the faculty member's research and creative works, or while advising a registered student organization; or

90 (C) a guest speaker or performer with a short-term engagement.

91 (2) (a) An institution of higher education may not expend appropriated funds or  
92 otherwise expend any funds derived from bequests, charges, deposits, donations, endowments,  
93 fees, grants, gifts, income, receipts, tuition, or any other source, to:

94 (i) establish, sustain, support, or staff a diversity, equity, and inclusion office; or

95 (ii) contract, employ, engage, or hire an individual to serve as a diversity, equity, and  
96 inclusion officer.

97 (b) Any funds that would otherwise have been expended as prohibited under  
98 Subsection (2)(a) in Fiscal Year 2023 may be reallocated, at the discretion of the board of  
99 trustees of the institution of higher education:

100 (i) for merit scholarships for lower- and middle-income students; and

101 (ii) to reduce tuition for in-state students.

102 (c) An institution of higher education may not expend any funding in fiscal year 2024  
103 until the institution's board of trustees files a report with the commissioner that:

104 (i) discloses:

105 (A) the steps the institution, the board of trustees, associated staff, institution  
106 administration, and faculty have taken to comply with this section;

107 (B) the number and job titles of the individuals that are required by the obligations of  
108 the institution of higher education described in Subsection (1)(b)(ii); and

109 (ii) certifies that the institution of higher education and the board of trustees are fully  
110 compliant with this section.

111 (d) Each institution of higher education shall also make the report described in  
112 Subsection (2)(c) available for the public on the institution's website.

113 (3) (a) Any person may notify the attorney general of a violation or potential violation  
114 of this section.

115 (b) The attorney general may file suit for a writ of mandamus compelling the  
116 institution of higher education to comply with this section.

117 (4) (a) The following may bring an action against an institution of higher education for  
118 a violation of this section:

119 (i) a student enrolled at the institution;

120 (ii) a faculty member of an institution; or

121 (iii) a member of the alumni of the institution.

122 (b) If the claimant described in Subsection (4)(a) shows that the institution of higher  
123 education violated this section, the claimant is entitled to injunctive relief.

124 (5) Notwithstanding any of other provision of law, a claimant may bring a civil action  
125 under this section in:

126 (a) the county in which all or a substantial part of the events or omissions giving rise to  
127 the claim occurs;

128 (b) the county of residence of any individual defendant at the time the cause of action  
129 accrues;

130 (c) the county of the principal office of any defendant that is not an individual; or

131 (d) the county of residence for the claimant if the claimant is a natural person residing  
132 in this state.

133 (6) Nothing in this section:

134 (a) affects an institution of higher education's funding of:

135 (i) academic course instruction;

136 (ii) research and creative works by the institution's students, faculty, or other research  
137 personnel, including the institution's dissemination of the research and creative works;

138 (iii) activities of registered student organizations;

139 (iv) arrangements for guest speakers and performers with short-term engagements;

140 (v) mental or physical health services provided by licensed professionals; or

141 (b) prohibits the use of bona fide qualifications based on sex which are reasonably  
142 necessary to the normal operation of public higher education.

143 (7) If a court holds any provision of this section, or the application of any provision of  
144 this section to any person or circumstance, to be invalid, the remainder of this section and the  
145 application of the section's provisions to any other person or circumstance shall remain in  
146 effect.

147 **Section 2. Effective date.**

148 If approved by two-thirds of all the members elected to each house, this bill takes effect  
149 upon approval by the governor, or the day following the constitutional time limit of Utah  
150 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
151 the date of veto override.