

**Representative Justin L. Fawson** proposes the following substitute bill:

**REPRODUCTIVE EDUCATION AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Justin L. Fawson**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill amends and enacts provisions related to instruction in health and sex education.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ modifies instruction in health to include instruction in the harmful effects of pornography and refusal skills;
- ▶ clarifies ambiguous language, updates outdated terminology, and repeals repetitive language;
- ▶ amends definitions for required parental consent; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26 [53G-10-402](#), as renumbered and amended by Laws of Utah 2018, Chapter 3

27 [53G-10-403](#), as enacted by Laws of Utah 2018, Chapter 3

28

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

30 Section 1. Section [53G-10-402](#) is amended to read:

31 **[53G-10-402. Instruction in health -- Parental consent requirements -- Conduct](#)**  
 32 **[and speech of school employees and volunteers -- Political and religious doctrine](#)**  
 33 **[prohibited.](#)**

34 (1) As used in this section:

35 (a) "Board" means the State Board of Education.

36 (b) "Local school board" means:

37 (i) a local board of education elected in accordance with Section [53G-4-201](#); or

38 (ii) a charter school governing board, as defined in Section [53G-5-102](#).

39 (c) "Parent" means a parent or legal guardian.

40 (d) "Refusal skills" means instruction:

41 (i) in a student's ability to clearly and expressly refuse ~~H→~~ **[unwanted]** ~~←H~~ sexual  
 41a advances by a  
 42 minor or adult;

43 (ii) in a student's obligation to stop the student's sexual advances if refused by another  
 44 individual;

45 (iii) informing a student of the student's ~~H→~~ **[options to]** right to ~~←H~~ report and  
 45a seek counseling for  
 46 unwanted sexual advances;

47 (iv) in sexual harassment; and

48 (v) informing a student that a student may not consent to criminally prohibited  
 49 activities or activities for which the student is legally prohibited from giving consent, including  
 50 the electronic transmission of sexually explicit images by an individual of the individual or  
 51 another.

52 ~~[(1)]~~ (2) (a) The ~~[State Board of Education]~~ board shall establish curriculum  
 53 requirements under Section [53E-3-501](#) that include instruction in:

54 (i) community and personal health;

55 (ii) physiology;

56 (iii) personal hygiene; ~~[and]~~

57 (iv) prevention of communicable disease[-];

58 (v) refusal skills; and

59 (vi) the harmful effects of pornography.

60 (b) (i) That instruction shall stress:

61 (A) the importance of abstinence from all sexual activity before marriage and fidelity  
62 after marriage as methods for preventing certain communicable diseases; and

63 (B) personal skills that encourage individual choice of abstinence and fidelity.

64 (ii) (A) At no time may instruction be provided, including responses to spontaneous  
65 questions raised by students, regarding any means or methods that facilitate or encourage the  
66 violation of any state or federal criminal law by a minor or an adult.

67 (B) Subsection [(+) (2)(b)(ii)(A)] does not preclude an instructor from responding to a  
68 spontaneous question as long as the response is consistent with the provisions of this section.

69 (c) (i) The board shall recommend instructional materials for use in the curricula  
70 required under Subsection [(+) (2)(a)] after considering evaluations of instructional materials  
71 by the State Instructional Materials Commission.

72 (ii) A local school board may choose to adopt:

73 (A) the instructional materials recommended under Subsection [(+) (2)(c)(i)]; or

74 (B) other instructional materials as provided in [state] board rule.

75 (iii) The [state] board rule made under Subsection [(+) (2)(c)(ii)(B)] shall include, at a  
76 minimum:

77 (A) that the materials adopted by a local school board under Subsection [(+)]  
78 (2)(c)(ii)(B) shall be based upon recommendations of the school district's or charter school's  
79 Curriculum Materials Review Committee that comply with state law and [state] board rules  
80 emphasizing abstinence before marriage and fidelity after marriage, and prohibiting instruction  
81 in:

82 (I) the intricacies of intercourse, sexual stimulation, or erotic behavior;

83 (II) the advocacy of premarital or extramarital sexual activity; or

84 (III) the advocacy or encouragement of the use of contraceptive methods or devices;

85 [~~(IV) the advocacy of sexual activity outside of marriage;~~]

86 (B) that the adoption of instructional materials shall take place in an open and regular  
87 meeting of the local school board for which prior notice is given to parents [~~and guardians~~] of

88 students attending the respective schools [~~in the district~~] and an opportunity for [~~them~~] parents  
 89 to express their views and opinions on the materials at the meeting;

90 (C) provision for an appeal and review process of the local school board's decision; and

91 (D) provision for a report by the local school board to the [~~State Board of Education~~]  
 92 board of the action taken and the materials adopted by the local school board under Subsections  
 93 [~~(1)~~] (2)(c)(ii)(B) and [~~(1)~~] (2)(c)(iii).

94 [~~(2)~~] (3) (a) [~~Instruction~~] A student shall receive instruction in the courses described in  
 95 Subsection ~~H~~ → [~~(1)~~] (2) ← ~~H~~ [~~shall be consistent and systematic in grades eight through~~] on  
 95a at least two

96 occasions during the period that begins with the beginning of grade 8 and the end of grade 12.

97 (b) At the request of the board, the Department of Health shall cooperate with the  
 98 board in developing programs to provide instruction in those areas.

99 [~~(3)~~] (4) (a) The board shall adopt rules that:

100 (i) provide that the parental consent requirements of Sections [76-7-322](#) and [76-7-323](#)  
 101 are complied with; and

102 (ii) require a student's parent [~~or legal guardian~~] to be notified in advance and have an  
 103 opportunity to review the information for which parental consent is required under Sections  
 104 [76-7-322](#) and [76-7-323](#).

105 (b) The board shall also provide procedures for disciplinary action for violation of  
 106 Section [76-7-322](#) or [76-7-323](#).

107 [~~(4)~~] (5) (a) In keeping with the requirements of Section [53G-10-204](#), and because  
 108 school employees and volunteers serve as examples to their students, school employees or  
 109 volunteers acting in their official capacities may not support or encourage criminal conduct by  
 110 students, teachers, or volunteers.

111 (b) To ensure the effective performance of school personnel, the limitations described  
 112 in Subsection [~~(4)~~] (5)(a) also apply to a school [~~employees or volunteers acting outside of~~  
 113 ~~their~~] employee or volunteer acting outside of the school employee's or volunteer's official  
 114 capacities if:

115 (i) [~~they~~] the employee or volunteer knew or should have known that [~~their~~] the  
 116 employee's or volunteer's action could result in a material and substantial interference or  
 117 disruption in the normal activities of the school; and

118 (ii) that action does result in a material and substantial interference or disruption in the

119 normal activities of the school.

120 (c) [~~Neither the State Board of Education nor local school districts may~~] The board or a  
121 local school board may not allow training of school employees or volunteers that supports or  
122 encourages criminal conduct.

123 (d) The [~~State Board of Education~~] board shall adopt rules implementing this section.

124 (e) Nothing in this section limits the ability or authority of the [~~State Board of~~  
125 ~~Education and~~] board or a local school [boards] board to enact and enforce rules or take actions  
126 that are otherwise lawful, regarding educators', employees', or volunteers' qualifications or  
127 behavior evidencing unfitness for duty.

128 [(5)] (6) Except as provided in Section 53G-10-202, political, atheistic, sectarian,  
129 religious, or denominational doctrine may not be taught in the public schools.

130 [(6)] (7) (a) [~~Local school boards and their~~] A local school board and a local school  
131 board's employees shall cooperate and share responsibility in carrying out the purposes of this  
132 chapter.

133 (b) [~~Each school district~~] A local school board shall provide appropriate [~~inservice~~  
134 ~~training for its~~] professional development for the local school board's teachers, counselors, and  
135 school administrators to enable them to understand, protect, and properly instruct students in  
136 the values and character traits referred to in this section and Sections 53E-9-202, 53E-9-203,  
137 53G-10-202, 53G-10-203, 53G-10-204, and 53G-10-205, and distribute appropriate written  
138 materials on the values, character traits, and conduct to each individual receiving the [~~inservice~~  
139 ~~training~~] professional development.

140 (c) [~~The written materials shall also be made~~] A local school board shall make the  
141 written materials described in Subsection (7)(b) available to classified employees, students, and  
142 parents [~~and guardians~~] of students.

143 (d) In order to assist [~~school districts~~] a local school board in providing the [~~inservice~~  
144 ~~training~~] professional development required under Subsection [(6)] (7)(b), the [~~State Board of~~  
145 ~~Education~~] board shall, as appropriate, contract with a qualified individual or entity possessing  
146 expertise in the areas referred to in Subsection [(6)] (7)(b) to develop and disseminate model  
147 teacher [~~inservice programs which districts~~] professional development programs that a local  
148 school board may use to train the individuals referred to in Subsection [(6)] (7)(b) to effectively  
149 teach the values and qualities of character referenced in [~~that subsection~~] Subsection (7).

150 (e) In accordance with the provisions of Subsection ~~[(4)]~~ (5)(c), ~~[inservice training]~~  
 151 professional development may not support or encourage criminal conduct.

152 (8) A local school board shall review every two years:

153 (a) local school board policies on instruction described in this section;

154 (b) for a local board of education of a school district, data for each county that the  
 155 school district is located in, or, for a charter school governing board, data for the county in  
 156 which the charter school is located, on the following:

157 (i) teen pregnancy;

158 (ii) child sexual abuse; and

159 (iii) sexually transmitted diseases and sexually transmitted infections; and

160 (c) the number of pornography complaints or other instances reported within the  
 161 jurisdiction of the local school board.

162 ~~[(7)]~~ (9) If any one or more provision, subsection, sentence, clause, phrase, or word of  
 163 this section, or the application thereof to any person or circumstance, is found to be  
 164 unconstitutional, the balance of this section shall be given effect without the invalid provision,  
 165 subsection, sentence, clause, phrase, or word.

166 Section 2. Section 53G-10-403 is amended to read:

167 **53G-10-403. Required parental consent for ~~H~~→ [human sexuality]**

167a **sex education ←~~H~~ instruction.**

168 (1) As used in this section:

168a **Ŝ→ (a) (i) "Harmful effects of pornography instruction" means instruction, a course,**  
 168b **material, a unit, class, or lesson in the harmful effects of pornography. ←Ŝ**

168c **Ŝ→ (ii) "Harmful effects of pornography instruction" does not include instruction,**  
 168d **materials, a lesson, or other information given in an assembly. ←Ŝ**

169 **Ŝ→ ~~(a)~~ (b) ←Ŝ "Parent" means the same as that term is defined in Section [53G-10-205](#).**

170 **~~(a)~~ Ŝ→ ~~(b)~~ (c) ←Ŝ (i) "[~~Human sexuality~~] Sex education instruction" means any course**  
 170a **material,**

171 **unit, class, lesson, activity, or presentation that, as the focus of the discussion, provides**  
 172 **instruction or information to a student about:**

173 (A) **sexual abstinence;**

174 (B) **human sexuality;**

175 (C) **human reproduction;**

176 (D) **reproductive anatomy;**

177 (E) **physiology;**

178 (F) **pregnancy;**

179 (G) **marriage;**

180 (H) **childbirth;**

181 (I) parenthood;

182 (J) contraception;

183 (K) HIV/AIDS; [or]

184 (L) sexually transmitted diseases[-]; ~~§~~ → or ← ~~§~~

185 (M) refusal skills, as defined in Section [53G-10-402](#) ~~§~~ → [i] . ← ~~§~~ ~~§~~ → [or

186 ~~(N) the harmful effects of pornography.] ← ~~§~~~~

187 (ii) "[~~Human sexuality~~] Sex education instruction" does not include child sexual abuse  
188 prevention instruction described in Section [53G-9-207](#).

189 [~~(b) "Parent" means the same as that term is defined in Section [53G-10-205](#);~~

190 ~~§~~ → [(e)] (d) ← ~~§~~ "School" means the same as that term is defined in Section [53G-10-205](#).

191 (2) A school shall obtain prior written consent from a student's parent before the school  
192 may provide [~~human sexuality~~] sex education instruction ~~§~~ → or **harmful effects of pornography**  
192a **instruction** ← ~~§~~ to the student.

193 (3) If a student's parent chooses not to have the student participate in [~~human sexuality~~]  
194 sex education instruction ~~§~~ → or **harmful effects of pornography instruction** ← ~~§~~ , a school shall:

195 (a) waive the requirement for the student to participate in the [~~human sexuality~~] sex  
196 education instruction ~~§~~ → or **harmful effects of pornography instruction** ← ~~§~~ ; or

197 (b) provide the student with a reasonable alternative to the [~~human sexuality~~] sex  
198 education instruction ~~§~~ → or **harmful effects of pornography instruction** ← ~~§~~ requirement.

199 (4) In cooperation with the student's teacher or school, a parent shall take responsibility  
200 for the parent's student's [~~human sexuality~~] sex education instruction ~~§~~ → or **harmful effects of**  
200a **pornography instruction** ← ~~§~~ if a school:

201 (a) waives the student's [~~human sexuality~~] sex education instruction ~~§~~ → or **harmful effects**  
201a **of pornography instruction** ← ~~§~~ requirement in

202 Subsection (3)(a); or

203 (b) provides the student with a reasonable alternative to the [~~human sexuality~~] sex  
204 education instruction ~~§~~ → or **harmful effects of pornography instruction** ← ~~§~~ requirement  
204a described in Subsection (3)(b).

205 (5) A student's academic or citizenship performance may not be penalized if the  
206 student's parent chooses not to have the student participate in [~~human sexuality~~] sex education  
207 instruction ~~§~~ → or **harmful effects of pornography instruction** ← ~~§~~ as described in Subsection (3).