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**HEALTH EDUCATION AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carol Spackman Moss**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to health education.

**Highlighted Provisions:**

This bill:

- ▶ requires the State Board of Education (state board) to establish curriculum requirements that include instruction in:
  - consent, including what does not constitute consent;
  - coercion;
  - sexual violence behavior deterrence; and
  - sexual assault mitigation strategies;
- ▶ amends provisions related to when a student receives health education instruction;
- ▶ requires a local education agency (LEA) to review data on sexual assault for each county in which the LEA is located; and
- ▶ defines terms.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 **53G-10-402**, as last amended by Laws of Utah 2020, Chapters 354 and 408

29 **53G-10-403**, as last amended by Laws of Utah 2019, Chapter 293



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

32 Section 1. Section **53G-10-402** is amended to read:

33 **53G-10-402. Instruction in health -- Parental consent requirements -- Conduct**  
34 **and speech of school employees and volunteers -- Political and religious doctrine**  
35 **prohibited.**

36 (1) As used in this section:

37 (a) "LEA governing board" means a local school board or charter school governing  
38 board.

39 (b) "Refusal skills" means instruction:

40 (i) in a student's ability to clearly and expressly refuse sexual advances by a minor or  
41 adult;

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

44 (iii) informing a student of the student's right to report and seek counseling for  
45 unwanted sexual advances;

46 (iv) in sexual harassment; and

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

51 (c) "Consent" means freely-given, informed, and knowledgeable agreement:

52 (i) to do something; or

53 (ii) for something to happen.

54 (d) "Coercion" means persuasion to do something using force, threats, or intimidation.

55 (e) "Sexual violence behavior deterrence education" means instruction:

56 (i) regarding the legal consequences of criminally prohibited sexual behavior;

57 (ii) about the psychological effects of sexual assault; and

58 (iii) that encourages empathy for others.

59 (f) "Sexual assault mitigation strategies" means tools a student can use to:  
60 (i) mitigate the risk of sexual assault; and  
61 (ii) get help to address the physical and psychological effects of sexual assault if the  
62 student is sexually assaulted.

63 (2) (a) The state board shall establish curriculum requirements under Section  
64 **53E-3-501** that include instruction in:

- 65 (i) community and personal health;
- 66 (ii) physiology;
- 67 (iii) personal hygiene;
- 68 (iv) prevention of communicable disease;
- 69 (v) refusal skills; [~~and~~]
- 70 (vi) the harmful effects of pornography[-];
- 71 (vii) consent, including what does not constitute consent;
- 72 (viii) coercion;
- 73 (ix) sexual violence behavior deterrence education; and
- 74 (x) sexual assault mitigation strategies.

75 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
76 state board shall make rules that, and instruction shall:

- 77 (i) stress the importance of abstinence from all sexual activity before marriage and  
78 fidelity after marriage as methods for preventing certain communicable diseases;
- 79 (ii) stress personal skills that encourage individual choice of abstinence and fidelity;
- 80 (iii) prohibit instruction in:
  - 81 (A) the intricacies of intercourse, sexual stimulation, or erotic behavior;
  - 82 (B) the advocacy of premarital or extramarital sexual activity; or
  - 83 (C) the advocacy or encouragement of the use of contraceptive methods or devices; and
- 84 (iv) except as provided in Subsection (2)(d), allow instruction to include information  
85 about contraceptive methods or devices that stresses effectiveness, limitations, risks, and  
86 information on state law applicable to minors obtaining contraceptive methods or devices.

87 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
88 state board shall make rules for an LEA governing board that adopts instructional materials  
89 under Subsection (2)(g)(ii) that:

90 (i) require the LEA governing board to report on the materials selected and the LEA  
91 governing board's compliance with Subsection (2)(h); and

92 (ii) provide for an appeal and review process of the LEA governing board's adoption of  
93 instructional materials.

94 (d) The state board may not require an LEA to teach or adopt instructional materials  
95 that include information on contraceptive methods or devices.

96 (e) (i) At no time may instruction be provided, including responses to spontaneous  
97 questions raised by students, regarding any means or methods that facilitate or encourage the  
98 violation of any state or federal criminal law by a minor or an adult.

99 (ii) Subsection (2)(e)(i) does not preclude an instructor from responding to a  
100 spontaneous question as long as the response is consistent with the provisions of this section.

101 (f) The state board shall recommend instructional materials for use in the curricula  
102 required under Subsection (2)(a) after considering evaluations of instructional materials by the  
103 State Instructional Materials Commission.

104 (g) An LEA governing board may choose to adopt:

105 (i) the instructional materials recommended under Subsection (2)(f); or

106 (ii) other instructional materials in accordance with Subsection (2)(h).

107 (h) An LEA governing board that adopts instructional materials under Subsection  
108 (2)(g)(ii) shall:

109 (i) ensure that the materials comply with state law and board rules;

110 (ii) base the adoption of the materials on the recommendations of the LEA governing  
111 board's Curriculum Materials Review Committee; and

112 (iii) adopt the instructional materials in an open and regular meeting of the LEA  
113 governing board for which prior notice is given to parents of students attending the respective  
114 schools and an opportunity for parents to express their views and opinions on the materials at  
115 the meeting.

116 (3) (a) A student shall receive one hour of age-appropriate instruction in the courses  
117 described in Subsection (2) [~~on at least two occasions~~] every academic year during the period  
118 that begins with the beginning of grade [8] 1 and ends with the end of grade 12.

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

121 (4) (a) The state board shall adopt rules that:

122 (i) provide that the parental consent requirements of Sections 76-7-322 and 76-7-323  
123 are complied with; and

124 (ii) require a student's parent to be notified in advance and have an opportunity to  
125 review the information for which parental consent is required under Sections 76-7-322 and  
126 76-7-323.

127 (b) The state board shall also provide procedures for disciplinary action for violation of  
128 Section 76-7-322 or 76-7-323.

129 (5) (a) In keeping with the requirements of Section 53G-10-204, and because school  
130 employees and volunteers serve as examples to their students, school employees or volunteers  
131 acting in their official capacities may not support or encourage criminal conduct by students,  
132 teachers, or volunteers.

133 (b) To ensure the effective performance of school personnel, the limitations described  
134 in Subsection (5)(a) also apply to a school employee or volunteer acting outside of the school  
135 employee's or volunteer's official capacities if:

136 (i) the employee or volunteer knew or should have known that the employee's or  
137 volunteer's action could result in a material and substantial interference or disruption in the  
138 normal activities of the school; and

139 (ii) that action does result in a material and substantial interference or disruption in the  
140 normal activities of the school.

141 (c) The state board or an LEA governing board may not allow training of school  
142 employees or volunteers that supports or encourages criminal conduct.

143 (d) The state board shall adopt, in accordance with Title 63G, Chapter 3, Utah  
144 Administrative Rulemaking Act, rules implementing this section.

145 (e) Nothing in this section limits the ability or authority of the state board or an LEA  
146 governing board to enact and enforce rules or take actions that are otherwise lawful, regarding  
147 educators', employees', or volunteers' qualifications or behavior evidencing unfitness for duty.

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

150 (7) (a) An LEA governing board and an LEA governing board's employees shall  
151 cooperate and share responsibility in carrying out the purposes of this chapter.

152 (b) An LEA governing board shall provide appropriate professional development for  
153 the LEA governing board's teachers, counselors, and school administrators to enable them to  
154 understand, protect, and properly instruct students in the values and character traits referred to  
155 in this section and Sections 53E-9-202, 53E-9-203, 53G-10-202, 53G-10-203, 53G-10-204,  
156 and 53G-10-205, and distribute appropriate written materials on the values, character traits, and  
157 conduct to each individual receiving the professional development.

158 (c) An LEA governing board shall make the written materials described in Subsection  
159 (7)(b) available to classified employees, students, and parents of students.

160 (d) In order to assist an LEA governing board in providing the professional  
161 development required under Subsection (7)(b), the state board shall, as appropriate, contract  
162 with a qualified individual or entity possessing expertise in the areas referred to in Subsection  
163 (7)(b) to develop and disseminate model teacher professional development programs that an  
164 LEA governing board may use to train the individuals referred to in Subsection (7)(b) to  
165 effectively teach the values and qualities of character referenced in Subsection (7).

166 (e) In accordance with the provisions of Subsection (5)(c), professional development  
167 may not support or encourage criminal conduct.

168 (8) An LEA governing board shall review every two years:

169 (a) LEA governing board policies on instruction described in this section;

170 (b) for a local school board, data for each county that the school district is located in,  
171 or, for a charter school governing board, data for the county in which the charter school is  
172 located, on the following:

173 (i) teen pregnancy;

174 (ii) child sexual abuse; [~~and~~]

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

176 (iv) sexual assault; and

177 (c) the number of pornography complaints or other instances reported within the  
178 jurisdiction of the LEA governing board.

179 (9) If any one or more provision, subsection, sentence, clause, phrase, or word of this  
180 section, or the application thereof to any person or circumstance, is found to be  
181 unconstitutional, the balance of this section shall be given effect without the invalid provision,  
182 subsection, sentence, clause, phrase, or word.

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

184 **53G-10-403. Required parental consent for sex education instruction.**

185 (1) As used in this section:

186 (a) (i) "Sex education instruction" means any course material, unit, class, lesson,  
187 activity, or presentation that, as the focus of the discussion, provides instruction or information  
188 to a student about:

189 (A) sexual abstinence;

190 (B) human sexuality;

191 (C) human reproduction;

192 (D) reproductive anatomy;

193 (E) physiology;

194 (F) pregnancy;

195 (G) marriage;

196 (H) childbirth;

197 (I) parenthood;

198 (J) contraception;

199 (K) HIV/AIDS;

200 (L) sexually transmitted diseases; or

201 (M) refusal skills, consent, coercion, sexual violence behavior deterrence education, or  
202 assault mitigation strategies as those terms are defined in Section 53G-10-402.

203 (ii) "Sex education instruction" does not include child sexual abuse prevention  
204 instruction described in Section 53G-9-207.

205 (b) "School" means the same as that term is defined in Section 53G-10-205.

206 (2) A school shall obtain prior written consent from a student's parent before the school  
207 may provide sex education instruction to the student.

208 (3) If a student's parent chooses not to have the student participate in sex education  
209 instruction, a school shall:

210 (a) waive the requirement for the student to participate in the sex education instruction;

211 or

212 (b) provide the student with a reasonable alternative to the sex education instruction  
213 requirement.

214 (4) In cooperation with the student's teacher or school, a parent shall take responsibility  
215 for the parent's student's sex education instruction if a school:

216 (a) waives the student's sex education instruction requirement in Subsection (3)(a); or

217 (b) provides the student with a reasonable alternative to the sex education instruction  
218 requirement described in Subsection (3)(b).

219 (5) A student's academic or citizenship performance may not be penalized if the  
220 student's parent chooses not to have the student participate in sex education instruction as  
221 described in Subsection (3).