

# HB0177S01 compared with HB0177

~~{deleted text}~~ shows text that was in HB0177 but was deleted in HB0177S01.

inserted text shows text that was not in HB0177 but was inserted into HB0177S01.

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Representative Carol Spackman Moss proposes the following substitute bill:

## 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}~~ prevention; and

- sexual assault ~~{mitigation}~~ resource 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

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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:

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

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

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

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

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

(1) As used in this section:

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

(b) "Refusal skills" means instruction:

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

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

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

(iv) in sexual harassment; and

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

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

(i) to do something; or

(ii) for something to happen.

(d) ~~"Coercion" means persuasion to do something using force, threats, or intimidation;~~ "Sexual assault resource strategies" means tools a student can use to get help to address the physical and psychological effects of sexual assault if the student is sexually assaulted.

(e) "Sexual violence behavior ~~deterrence~~ prevention education" means instruction

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

~~(ii) about the psychological effects of sexual assault;~~ that:

(i) leads to a student understanding that no one has the right to touch an individual in a sexual manner if that individual does not want to be touched;

(ii) is free from victim shaming; and

~~(iii) that encourages empathy for others.~~

~~(f) "Sexual assault mitigation strategies" means tools a student can use to:~~

~~(i) mitigate the risk of sexual assault; and~~

~~(ii) get help to address the physical and psychological effects of sexual assault if;~~ focuses on developing a student's communication skills so that the student is ~~sexually assaulted~~ able to communicate about, and show respect for, other individuals' boundaries.

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

(i) community and personal health;

(ii) physiology;

(iii) personal hygiene;

(iv) prevention of communicable disease;

(v) refusal skills; ~~and~~

(vi) the harmful effects of pornography[.];

(vii) consent, including what does not constitute consent;

~~(viii) coercion;~~

~~(ix) (viii) sexual violence behavior ~~deterrence~~ prevention education; and~~

~~(ix) sexual assault ~~mitigation~~ resource strategies.~~

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

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

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

- (i) require the LEA governing board to report on the materials selected and the LEA governing board's compliance with Subsection (2)(h); and
- (ii) provide for an appeal and review process of the LEA governing board's adoption of instructional materials.

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

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

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

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

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

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

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

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

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

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

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

(3) (a) A student shall receive one hour of age-appropriate, culturally relevant instruction in the courses described in Subsection (2) [~~on at least two occasions~~] every academic year during the period that begins with the beginning of grade ~~8~~ 11 and ends with the end of grade 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) In accordance with the provisions of Subsection (5)(c), professional development

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may not support or encourage criminal conduct.

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

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

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

(i) teen pregnancy;

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

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

(iv) sexual assault; and

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

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

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

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

(1) As used in this section:

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

(A) sexual abstinence;

(B) human sexuality;

(C) human reproduction;

(D) reproductive anatomy;

(E) physiology;

(F) pregnancy;

(G) marriage;

(H) childbirth;

(I) parenthood;

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(J) contraception;

(K) HIV/AIDS;

(L) sexually transmitted diseases; or

(M) refusal skills, consent, ~~coercion~~, sexual violence behavior

~~deterrence~~ prevention education, or assault ~~mitigation~~ resource strategies as those terms are defined in Section 53G-10-402.

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

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

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

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

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

or

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

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

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

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

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