

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: Kathleen A. Riebe

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;
 - sexual violence behavior prevention; and
 - sexual assault 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 county in which the LEA is located; and
- ▶ defines terms.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **53G-10-402**, as last amended by Laws of Utah 2020, Chapters 354 and 408

28 **53G-10-403**, as last amended by Laws of Utah 2019, Chapter 293

29

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

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

32 **53G-10-402. Instruction in health -- Parental consent requirements -- Conduct**
33 **and speech of school employees and volunteers -- Political and religious doctrine**
34 **prohibited.**

35 (1) As used in this section:

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

38 (b) "Refusal skills" means instruction:

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

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

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

45 (iv) in sexual harassment; and

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

50 (c) "Consent" means agreement to take an action or for an action to occur that is:

51 (i) freely-given;

52 (ii) informed;

53 (iii) knowledgeable; and

54 (iv) given by a person who is not legally prevented from consenting because of the
55 person's:

56 (A) age; or

57 (B) lack of capacity.

58 (d) "Sexual assault resource strategies" means tools a student can use to get help to
59 address the physical and psychological effects of sexual assault if the student is sexually
60 assaulted.

61 (e) "Sexual violence behavior prevention education" means instruction that:

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

64 (ii) is free from victim shaming;

65 (iii) focuses on developing a student's communication skills so that the student is able
66 to communicate about, and show respect for, other individuals' boundaries; and

67 (iv) provides information about the early signs of:

68 (A) coercion;

69 (B) emotional manipulation; and

70 (C) grooming strategies.

71 (2) (a) The state board shall establish curriculum requirements under Section
72 53E-3-501 that include instruction in:

73 (i) community and personal health;

74 (ii) physiology;

75 (iii) personal hygiene;

76 (iv) prevention of communicable disease;

77 (v) refusal skills; [~~and~~]

78 (vi) the harmful effects of pornography[~~-~~];

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

80 (viii) sexual violence behavior prevention education; and

81 (ix) sexual assault resource strategies.

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

84 (i) stress the importance of abstinence from all sexual activity before marriage and
85 fidelity after marriage as methods for preventing certain communicable diseases;

86 (ii) stress personal skills that encourage individual choice of abstinence and fidelity;

87 (iii) prohibit instruction in:

- 88 (A) the intricacies of intercourse, sexual stimulation, or erotic behavior;
- 89 (B) the advocacy of premarital or extramarital sexual activity; or
- 90 (C) the advocacy or encouragement of the use of contraceptive methods or devices; and
- 91 (iv) except as provided in Subsection (2)(d), allow instruction to include information
- 92 about contraceptive methods or devices that stresses effectiveness, limitations, risks, and
- 93 information on state law applicable to minors obtaining contraceptive methods or devices.

94 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

95 state board shall make rules for an LEA governing board that adopts instructional materials

96 under Subsection (2)(g)(ii) that:

97 (i) require the LEA governing board to report on the materials selected and the LEA

98 governing board's compliance with Subsection (2)(h); and

99 (ii) provide for an appeal and review process of the LEA governing board's adoption of

100 instructional materials.

101 (d) The state board may not require an LEA to teach or adopt instructional materials

102 that include information on contraceptive methods or devices.

103 (e) (i) At no time may instruction be provided, including responses to spontaneous

104 questions raised by students, regarding any means or methods that facilitate or encourage the

105 violation of any state or federal criminal law by a minor or an adult.

106 (ii) Subsection (2)(e)(i) does not preclude an instructor from responding to a

107 spontaneous question as long as the response is consistent with the provisions of this section.

108 (f) The state board shall recommend instructional materials for use in the curricula

109 required under Subsection (2)(a) after considering evaluations of instructional materials by the

110 State Instructional Materials Commission.

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

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

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

114 (h) An LEA governing board that adopts instructional materials under Subsection

115 (2)(g)(ii) shall:

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

117 (ii) base the adoption of the materials on the recommendations of the LEA governing

118 board's Curriculum Materials Review Committee; and

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

123 (3) (a) A student shall receive age-appropriate instruction in the courses described in
124 Subsection (2) on at least two occasions during the period that begins with the beginning of
125 grade [8] 7 and ends with the end of grade 12.

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

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

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

131 (ii) require a student's parent to be notified in advance and have an opportunity to
132 review the information for which parental consent is required under Sections 76-7-322 and
133 76-7-323.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (i) teen pregnancy;

- 181 (ii) child sexual abuse; [~~and~~]
- 182 (iii) sexually transmitted diseases and sexually transmitted infections; and
- 183 (iv) sexual assault; and
- 184 (c) the number of pornography complaints or other instances reported within the
- 185 jurisdiction of the LEA governing board.

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

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

191 **53G-10-403. Required parental consent for sex education instruction.**

192 (1) As used in this section:

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

- 196 (A) sexual abstinence;
- 197 (B) human sexuality;
- 198 (C) human reproduction;
- 199 (D) reproductive anatomy;
- 200 (E) physiology;
- 201 (F) pregnancy;
- 202 (G) marriage;
- 203 (H) childbirth;
- 204 (I) parenthood;
- 205 (J) contraception;
- 206 (K) HIV/AIDS;
- 207 (L) sexually transmitted diseases; or
- 208 (M) refusal skills, consent, sexual violence behavior prevention education, or assault
209 resource strategies as those terms are defined in Section 53G-10-402.

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

- 212 (b) "School" means the same as that term is defined in Section [53G-10-205](#).
- 213 (2) A school shall obtain prior written consent from a student's parent before the school
214 may provide sex education instruction to the student.
- 215 (3) If a student's parent chooses not to have the student participate in sex education
216 instruction, a school shall:
- 217 (a) waive the requirement for the student to participate in the sex education instruction;
218 or
- 219 (b) provide the student with a reasonable alternative to the sex education instruction
220 requirement.
- 221 (4) In cooperation with the student's teacher or school, a parent shall take responsibility
222 for the parent's student's sex education instruction if a school:
- 223 (a) waives the student's sex education instruction requirement in Subsection (3)(a); or
224 (b) provides the student with a reasonable alternative to the sex education instruction
225 requirement described in Subsection (3)(b).
- 226 (5) A student's academic or citizenship performance may not be penalized if the
227 student's parent chooses not to have the student participate in sex education instruction as
228 described in Subsection (3).