

PRESERVING SPORTS FOR FEMALE STUDENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses participation in athletic activities reserved for female students in public and higher education.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires schools, local education agencies, and institutions to designate athletic activities by sex;
- ▶ prohibits a student of the male sex from participating in an athletic activity designated for female students;
- ▶ prohibits certain complaints or investigations based on a school, local education agency, or institution of higher education for maintaining separate athletic activities for female students;
- ▶ provides for certain causes of action and waives governmental immunity for those causes of action; and
- ▶ provides severability clauses.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

31 ENACTS:

32 **53B-16-601**, Utah Code Annotated 1953

33 **53B-16-602**, Utah Code Annotated 1953

34 **53B-16-603**, Utah Code Annotated 1953

35 **53B-16-604**, Utah Code Annotated 1953

36 **53G-6-901**, Utah Code Annotated 1953

37 **53G-6-902**, Utah Code Annotated 1953

38 **53G-6-903**, Utah Code Annotated 1953

39 **53G-6-904**, Utah Code Annotated 1953



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

42 Section 1. Section **53B-16-601** is enacted to read:

43 **Part 6. Preserving Sports for Female Students**

44 **53B-16-601. Definitions.**

45 As used in this part:

46 (1) "Collegiate athletic activity" means an interscholastic or intramural athletic or
47 sporting activity that a public or private institution sponsors.

48 (2) "Institution" means an institution of higher education described in Subsection
49 52B-1-102(1).

50 (3) "Interscholastic" means that a student represents the student's institution in the
51 collegiate athletic activity in competition against another institution.

52 (4) "Sex" means the biological, physical condition of being male or female, determined
53 by an individual's genetics and anatomy at birth.

54 Section 2. Section **53B-16-602** is enacted to read:

55 **53B-16-602. Participation in collegiate athletic activities.**

56 Notwithstanding any board rule or policy:

57 (1) an institution, or a private institution that competes against an institution, shall
58 expressly designate collegiate athletic activities as one of the following, based on sex:

59 (a) "male" or "men's";

60 (b) "female" or "women's"; or

61 (c) "coed" or "mixed";

62 (2) a member of the male sex may not participate, and an institution may not allow a
63 student of the male sex to participate, in a collegiate athletic activity designated as "female" or
64 "women's"; and

65 (3) a government entity, licensing or accrediting organization, or athletic association or
66 organization may not entertain a complaint, open an investigation, or take any other adverse
67 action against an institution described in Subsection (1) for maintaining separate collegiate
68 athletic activities for students of the female sex.

69 Section 3. Section **53B-16-603** is enacted to read:

70 **53B-16-603. Cause of action.**

71 (1) Except as provided in Subsection (2):

72 (a) a student who is deprived of an athletic opportunity or suffers any direct or indirect
73 harm as a result of a violation of this part may bring a private cause of action under this part for
74 injunctive relief, damages, and any other relief available under law against the institution that
75 caused the deprivation or harm;

76 (b) any individual who is subject to retaliation or other adverse action by an institution
77 or athletic association or organization as a result of reporting a violation of this part to an
78 employee or representative of the institution or athletic association or organization, or to any
79 state or federal agency with oversight of institutions in the state, may bring a private cause of
80 action under this part for injunctive relief, damages, and any other relief available under law
81 against the institution or athletic association or organization that retaliated or took the adverse
82 action; and

83 (c) an institution that suffers any direct or indirect harm as a result of a violation of this
84 part may bring a private cause of action under this part for injunctive relief, damages, and any
85 other relief available under law against the government entity, licensing or accrediting
86 organization, or athletic association or organization that caused the harm.

87 (2) A person may not bring a civil action under this part later than two years after the
88 day on which the harm underlying the cause of action occurs.

89 (3) A person who prevails on a claim brought under this part is entitled to:

- 90 (a) monetary damages, including for psychological, emotional, and physical harm;
- 91 (b) reasonable attorney fees and costs; and
- 92 (c) any other appropriate relief, at the court's discretion.

93 Section 4. Section **53B-16-604** is enacted to read:

94 **53B-16-604. Severability.**

95 (1) If any provision of this part or the application of any provision of this part to any
96 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,
97 the remainder of this part shall be given effect without the invalidated provision or application.

98 (2) The provisions of this part are severable.

99 Section 5. Section **53G-6-901** is enacted to read:

100 **Part 9. Preserving Sports for Female Students**

101 **53G-6-901. Definitions.**

102 As used in this part:

103 (1) "Athletic association" means an association, as that term is defined in Section
104 [53G-7-1101](#).

105 (2) "Interscholastic" means that a student represents the student's school or LEA in the
106 school athletic activity in competition against another school or LEA.

107 (3) "School athletic activity" means an interscholastic or intramural athletic or sporting
108 activity that an LEA sponsors.

109 (4) "Sex" means the biological, physical condition of being male or female, determined
110 by an individual's genetics and anatomy at birth.

111 Section 6. Section **53G-6-902** is enacted to read:

112 **53G-6-902. Participation in school athletic activities.**

113 Notwithstanding any state board rule or policy of an athletic association:

114 (1) a public school or LEA, or a private school that competes against a public school or
115 LEA, shall expressly designate school athletic activities as one of the following, based on sex:

- 116 (a) "male" or "boys";
- 117 (b) "female" or "girls"; or
- 118 (c) "coed" or "mixed";

119 (2) a student of the male sex may not participate, and an institution may not allow a
120 student of the male sex to participate, in a school athletic activity designated as "female" or

121 "girls"; and

122 (3) a government entity, licensing or accrediting organization, or athletic association
123 may not entertain a complaint, open an investigation, or take any other adverse action against a
124 school or LEA described in Subsection (1) for maintaining separate school athletic activities
125 for students of the female sex.

126 Section 7. Section **53G-6-903** is enacted to read:

127 **53G-6-903. Cause of action.**

128 (1) Except as provided in Subsection (2):

129 (a) a student who is deprived of an athletic opportunity or suffers any direct or indirect
130 harm as a result of a violation of this part may bring a private cause of action under this part for
131 injunctive relief, damages, and any other relief available under law against the school or LEA
132 that caused the deprivation or harm;

133 (b) any individual who is subject to retaliation or other adverse action by a school,
134 LEA, or athletic association as a result of reporting a violation of this part to an employee or
135 representative of the school, LEA, or athletic association, or to any state or federal agency with
136 oversight of schools or LEAs in the state, may bring a private cause of action under this part for
137 injunctive relief, damages, and any other relief available under law against the school, LEA, or
138 athletic association that retaliated or took the adverse action; and

139 (c) a school or LEA that suffers any direct or indirect harm as a result of a violation of
140 this part may bring a private cause of action under this part for injunctive relief, damages, and
141 any other relief available under law against the government entity, licensing or accrediting
142 organization, or athletic association or organization that caused the harm.

143 (2) A person may not bring a civil action under this part later than two years after the
144 day on which the harm underlying the cause of action occurs.

145 (3) A person who prevails on a claim brought under this part is entitled to:

146 (a) monetary damages, including for psychological, emotional, and physical harm;

147 (b) reasonable attorney fees and costs; and

148 (c) any other appropriate relief, at the court's discretion.

149 Section 8. Section **53G-6-904** is enacted to read:

150 **53G-6-904. Severability.**

151 (1) If any provision of this part or the application of any provision of this part to any

152 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,
153 the remainder of this part shall be given effect without the invalidated provision or application.

154 (2) The provisions of this part are severable.

155 Section 9. Section **63G-7-301** is amended to read:

156 **63G-7-301. Waivers of immunity.**

157 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
158 obligation.

159 (b) Actions arising out of contractual rights or obligations are not subject to the
160 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

161 (c) The Division of Water Resources is not liable for failure to deliver water from a
162 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
163 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
164 condition, or safety condition that causes a deficiency in the amount of available water.

165 (2) Immunity from suit of each governmental entity is waived:

166 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
167 personal property;

168 (b) as to any action brought to foreclose mortgages or other liens on real or personal
169 property, to determine any adverse claim on real or personal property, or to obtain an
170 adjudication about any mortgage or other lien that the governmental entity may have or claim
171 on real or personal property;

172 (c) as to any action based on the negligent destruction, damage, or loss of goods,
173 merchandise, or other property while it is in the possession of any governmental entity or
174 employee, if the property was seized for the purpose of forfeiture under any provision of state
175 law;

176 (d) subject to Subsection [63G-7-302](#)(1), as to any action brought under the authority of
177 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
178 governmental entity when the governmental entity has taken or damaged private property for
179 public uses without just compensation;

180 (e) subject to Subsection [63G-7-302](#)(2), as to any action brought to recover attorney
181 fees under Sections [63G-2-405](#) and [63G-2-802](#);

182 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees

183 Act;

184 (g) as to any action brought to obtain relief from a land use regulation that imposes a
185 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
186 Land Use Act;

187 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

188 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
189 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

190 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
191 or other public improvement;

192 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury
193 proximately caused by a negligent act or omission of an employee committed within the scope
194 of employment; [~~and~~]

195 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
196 a sexual battery, as provided in Section 76-9-702.1, committed:

197 (i) against a student of a public elementary or secondary school, including a charter
198 school; and

199 (ii) by an employee of a public elementary or secondary school or charter school who:

200 (A) at the time of the sexual battery, held a position of special trust, as defined in
201 Section 76-5-404.1, with respect to the student;

202 (B) is criminally charged in connection with the sexual battery; and

203 (C) the public elementary or secondary school or charter school knew or in the exercise
204 of reasonable care should have known, at the time of the employee's hiring, to be a sex
205 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
206 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
207 background check under Section 53G-11-402[-]; and

208 (k) as to a cause of action described in Sections 53B-16-603 and 53G-6-903 regarding
209 the preservation of sports for female students.

210 (3) (a) As used in this Subsection (3):

211 (i) "Code of conduct" means a code of conduct that:

212 (A) is not less stringent than a model code of conduct, created by the State Board of
213 Education, establishing a professional standard of care for preventing the conduct described in

214 Subsection (3)(a)(i)(D);

215 (B) is adopted by the applicable local education governing body;

216 (C) regulates behavior of a school employee toward a student; and

217 (D) includes a prohibition against any sexual conduct between an employee and a
218 student and against the employee and student sharing any sexually explicit or lewd
219 communication, image, or photograph.

220 (ii) "Local education agency" means:

221 (A) a school district;

222 (B) a charter school; or

223 (C) the Utah Schools for the Deaf and the Blind.

224 (iii) "Local education governing board" means:

225 (A) for a school district, the local school board;

226 (B) for a charter school, the charter school governing board; or

227 (C) for the Utah Schools for the Deaf and the Blind, the state board.

228 (iv) "Public school" means a public elementary or secondary school.

229 (v) "Sexual abuse" means the offense described in Subsection [76-5-404.1\(2\)](#).

230 (vi) "Sexual battery" means the offense described in Section [76-9-702.1](#), considering
231 the term "child" in that section to include an individual under age 18.

232 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a
233 claim against a local education agency for an injury resulting from a sexual battery or sexual
234 abuse committed against a student of a public school by a paid employee of the public school
235 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

236 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
237 code of conduct; and

238 (ii) before the sexual battery or sexual abuse occurred, the public school had:

239 (A) provided training on the code of conduct to the employee; and

240 (B) required the employee to sign a statement acknowledging that the employee has
241 read and understands the code of conduct.

242 (4) (a) As used in this Subsection (4):

243 (i) "Higher education institution" means an institution included within the state system
244 of higher education under Section [53B-1-102](#).

- 245 (ii) "Policy governing behavior" means a policy adopted by a higher education
246 institution or the Utah Board of Higher Education that:
- 247 (A) establishes a professional standard of care for preventing the conduct described in
248 Subsections (4)(a)(ii)(C) and (D);
- 249 (B) regulates behavior of a special trust employee toward a subordinate student;
- 250 (C) includes a prohibition against any sexual conduct between a special trust employee
251 and a subordinate student; and
- 252 (D) includes a prohibition against a special trust employee and subordinate student
253 sharing any sexually explicit or lewd communication, image, or photograph.
- 254 (iii) "Sexual battery" means the offense described in Section [76-9-702.1](#).
- 255 (iv) "Special trust employee" means an employee of a higher education institution who
256 is in a position of special trust, as defined in Section [76-5-404.1](#), with a higher education
257 student.
- 258 (v) "Subordinate student" means a student:
- 259 (A) of a higher education institution; and
- 260 (B) whose educational opportunities could be adversely impacted by a special trust
261 employee.
- 262 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a
263 claim for an injury resulting from a sexual battery committed against a subordinate student by a
264 special trust employee, unless:
- 265 (i) the institution proves that the special trust employee's behavior that otherwise would
266 constitute a sexual battery was:
- 267 (A) with a subordinate student who was at least 18 years old at the time of the
268 behavior; and
- 269 (B) with the student's consent; or
- 270 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
271 a policy governing behavior; and
- 272 (B) before the sexual battery occurred, the higher education institution had taken steps
273 to implement and enforce the policy governing behavior.