

HB0302S01 compared with HB0302

~~{deleted text}~~ shows text that was in HB0302 but was deleted in HB0302S01.

inserted text shows text that was not in HB0302 but was inserted into HB0302S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Kera Birkeland proposes the following substitute bill:

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~~{,}~~ and 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~~{,}~~ or local education agency~~{, or institution of higher education}~~ for maintaining separate

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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

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

~~{ 53B-16-601, Utah Code Annotated 1953~~

~~53B-16-602, Utah Code Annotated 1953~~

~~53B-16-603, Utah Code Annotated 1953~~

~~53B-16-604, Utah Code Annotated 1953~~

{ 53G-6-901, Utah Code Annotated 1953

53G-6-902, Utah Code Annotated 1953

53G-6-903, Utah Code Annotated 1953

53G-6-904, Utah Code Annotated 1953

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

Section 1. Section ~~{53B-16-601}~~ 53G-6-901 is enacted to read:

~~{Part 6. Preserving Sports for Female Students~~

~~53B-16-601. Definitions:~~

~~As used in this part:~~

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

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

~~(3) "Interscholastic" means that a student represents the student's institution in the collegiate~~

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~~athletic activity in competition against another institution:~~

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

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

~~53B-16-602. Participation in collegiate athletic activities:~~

~~Notwithstanding any board rule or policy:~~

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

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

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

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

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

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

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

~~53B-16-603. Cause of action:~~

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

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

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

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~~action; and~~

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

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

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

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

~~(b) reasonable attorney fees and costs; and~~

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

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

~~53B-16-604. Severability.~~

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

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

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

~~Part 9. Preserving Sports for Female Students~~

~~53G-6-901. Definitions.~~

~~As used in this part:~~

~~(1) "Athletic association" means an association, as that term is defined in Section 53G-7-1101.~~

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

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

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

Section ~~6~~2. Section ~~53G-6-902~~ is enacted to read:

~~53G-6-902. Participation in school athletic activities.~~

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

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

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

(2) a student of the male sex may not participate, and ~~an institution~~ a public school or LEA may not allow a student of the male sex to participate, in a school athletic activity designated as "female" or "girls"; and

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

Section ~~{7}~~3. Section **53G-6-903** is enacted to read:

53G-6-903. Cause of action.

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

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

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

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

(2) A person may not bring a civil action under this part later than two years after the

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day on which the harm underlying the cause of action occurs.

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

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

(b) reasonable attorney fees and costs; and

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

Section ~~8~~4. Section **53G-6-904** is enacted to read:

53G-6-904. Severability.

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

(2) The provisions of this part are severable.

Section ~~9~~5. Section **63G-7-301** is amended to read:

63G-7-301. Waivers of immunity.

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

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

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

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

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

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

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

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law;

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex

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and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402[-]; and

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

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

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

(A) is not less stringent than a model code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);

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

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

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

(ii) "Local education agency" means:

(A) a school district;

(B) a charter school; or

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

(iii) "Local education governing board" means:

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

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

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

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

(v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

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

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

(i) at the time of the sexual battery or sexual abuse, the public school was subject to a

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code of conduct; and

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

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

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

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

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

(ii) "Policy governing behavior" means a policy adopted by a higher education institution or the Utah Board of Higher Education that:

(A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);

(B) regulates behavior of a special trust employee toward a subordinate student;

(C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and

(D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.

(iii) "Sexual battery" means the offense described in Section 76-9-702.1.

(iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.

(v) "Subordinate student" means a student:

(A) of a higher education institution; and

(B) whose educational opportunities could be adversely impacted by a special trust employee.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:

(i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:

(A) with a subordinate student who was at least 18 years old at the time of the

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behavior; and

(B) with the student's consent; or

(ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and

(B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.