

Representative Kera Birkeland proposes the following substitute bill:

1 **PRESERVING SPORTS FOR FEMALE STUDENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kera Birkeland**

5 Senate Sponsor: Curtis S. Bramble

6	Cosponsors:	Steven J. Lund	Mark A. Strong
7	Cheryl K. Acton	Phil Lyman	Jordan D. Teuscher
8	Melissa G. Ballard	Michael J. Petersen	Norman K. Thurston
9	Jefferson S. Burton	Candice B. Pierucci	Christine F. Watkins
10	Steve R. Christiansen	Susan Pulsipher	Ryan D. Wilcox
11	Michael L. Kohler	Adam Robertson	
12	Karianne Lisonbee	Jeffrey D. Stenquist	

13

14 **LONG TITLE**

15 **General Description:**

16 This bill addresses participation in athletic activities reserved for female students in
17 public education.

18 **Highlighted Provisions:**

- 19 This bill:
- 20 ▶ defines terms;
 - 21 ▶ requires schools and local education agencies to designate athletic activities by sex;
 - 22 ▶ prohibits a student of the male sex from participating in an athletic activity
23 designated for female students;
 - 24 ▶ prohibits certain complaints or investigations based on a school or local education



- 25 agency maintaining separate athletic activities for female students;
- 26 ▶ provides for certain causes of action and waives governmental immunity for those
- 27 causes of action; and
- 28 ▶ provides severability clauses.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

36 ENACTS:

37 **53G-6-901**, Utah Code Annotated 1953

38 **53G-6-902**, Utah Code Annotated 1953

39 **53G-6-903**, Utah Code Annotated 1953

40 **53G-6-904**, Utah Code Annotated 1953



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

43 Section 1. Section **53G-6-901** is enacted to read:

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

45 **53G-6-901. Definitions.**

46 As used in this part:

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

49 (2) "School athletic activity" means an interscholastic or intramural athletic or sporting
50 activity that an LEA sponsors.

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

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

54 **53G-6-902. Participation in school athletic activities.**

55 Notwithstanding any state board rule:

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

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

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

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

68 Section 3. Section **53G-6-903** is enacted to read:

69 **53G-6-903. Cause of action.**

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

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

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

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

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

- 87 (3) A person who prevails on a claim brought under this part is entitled to:
- 88 (a) monetary damages, including for psychological, emotional, and physical harm;
- 89 (b) reasonable attorney fees and costs; and
- 90 (c) any other appropriate relief, at the court's discretion.

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

92 **53G-6-904. Severability.**

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

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

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

98 **63G-7-301. Waivers of immunity.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145 (C) the public elementary or secondary school or charter school knew or in the exercise
146 of reasonable care should have known, at the time of the employee's hiring, to be a sex
147 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
148 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a

149 background check under Section [53G-11-402](#)[.]; and

150 (k) as to a cause of action described in Section [53G-6-903](#) regarding the preservation of
151 sports for female students.

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

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

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

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

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

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

162 (ii) "Local education agency" means:

163 (A) a school district;

164 (B) a charter school; or

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

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

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

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

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

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

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

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

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

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

180 (ii) before the sexual battery or sexual abuse occurred, the public school had:
181 (A) provided training on the code of conduct to the employee; and
182 (B) required the employee to sign a statement acknowledging that the employee has
183 read and understands the code of conduct.

184 (4) (a) As used in this Subsection (4):
185 (i) "Higher education institution" means an institution included within the state system
186 of higher education under Section 53B-1-102.
187 (ii) "Policy governing behavior" means a policy adopted by a higher education
188 institution or the Utah Board of Higher Education that:
189 (A) establishes a professional standard of care for preventing the conduct described in
190 Subsections (4)(a)(ii)(C) and (D);
191 (B) regulates behavior of a special trust employee toward a subordinate student;
192 (C) includes a prohibition against any sexual conduct between a special trust employee
193 and a subordinate student; and
194 (D) includes a prohibition against a special trust employee and subordinate student
195 sharing any sexually explicit or lewd communication, image, or photograph.
196 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.
197 (iv) "Special trust employee" means an employee of a higher education institution who
198 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
199 student.
200 (v) "Subordinate student" means a student:
201 (A) of a higher education institution; and
202 (B) whose educational opportunities could be adversely impacted by a special trust
203 employee.
204 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
205 claim for an injury resulting from a sexual battery committed against a subordinate student by a
206 special trust employee, unless:
207 (i) the institution proves that the special trust employee's behavior that otherwise would
208 constitute a sexual battery was:
209 (A) with a subordinate student who was at least 18 years old at the time of the
210 behavior; and

211 (B) with the student's consent; or
212 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
213 a policy governing behavior; and
214 (B) before the sexual battery occurred, the higher education institution had taken steps
215 to implement and enforce the policy governing behavior.