

## HB0302S03 compared with HB0302S02

~~deleted text~~ shows text that was in HB0302S02 but was deleted in HB0302S03.

inserted text shows text that was not in HB0302S02 but was inserted into HB0302S03.

**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: \_\_\_\_\_

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

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#### LONG TITLE

#### General Description:

This bill addresses the participation of students in athletic activities reserved for female students in public education.

#### Highlighted Provisions:

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This bill:

- ▶ defines terms;
- ▶ requires schools and local education agencies to designate athletic ~~{activities}~~teams by sex;
- ▶ prohibits a student of the male sex from ~~{participating in an athletic activity}~~competing against another school on a team designated for female students;
- ▶ prohibits certain complaints or investigations based on a school or local education agency maintaining separate athletic activities for female students;
- ▶ provides for ~~{certain causes of action and waives governmental immunity for those causes of action}~~indemnification of local education agencies and schools; and
- ▶ provides for 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:~~

~~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~~

53G-6-905, Utah Code Annotated 1953

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

Section 1. 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) "Coed" or "mixed" means that a team is composed of members of both sexes who

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traditionally compete together.

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

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

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

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

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

(1) Notwithstanding any state board rule:

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

(~~a~~)**i**) "male" or "boys";

(~~b~~)**ii**) "female" or "girls"; or

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

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

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

(2) **Nothing in this section prohibits an LEA or school from allowing a student of either gender from participating with a team designated as "female" or "girls," consistent with school policy, outside of competition in an interscholastic athletic activity, in accordance with Subsection (1)**b**).**

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

### **53G-6-903. ~~Cause of action.~~**

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

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~~— (a) a student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a knowing or willful 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 or LEA as a result of reporting a knowing or willful violation of this part to an employee or representative of the school or LEA 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 or LEA 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 knowing or willful 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 or licensing or accrediting 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} **Committee study.**~~

~~The Education Interim Committee shall study findings from relevant athletic organizations on the competitive advantage of males in sports.~~

Section 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 5. Section ~~{63G-7-301}~~**53G-6-905** is ~~{amended}~~**enacted** to read:

~~{63G-7-301}~~**53G-6-905.** ~~{~~**Waivers of immunity.**

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~~—— (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 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;~~

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~~(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 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 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? Indemnification.~~

The state shall indemnify and hold harmless an LEA or school within the public education system with a team that competes in an interscholastic athletic activity for any claims or damages, including court costs and attorney fees, that:

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(1) are brought to or incurred as a result of an action required of the LEA or school in this part; and

(2) are not covered by the LEA or school's insurance policies or by any coverage agreement issued 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 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~~

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~~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 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~~



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

~~Risk Management Fund.~~