

Senator Kathleen A. Riebe proposes the following substitute bill:

FACE COVERING REQUIREMENTS

2021 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill prohibits a face covering requirement in the system of higher education and in the public education system.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits an institution of higher education from requiring a face covering to participate in or attend instruction, activities, or in any other place on the campus of the institution after the end of the spring semester in 2021;
- ▶ prohibits the Utah Board of Higher Education from requiring a face covering to participate in or attend instruction, activities, or in any other place on the campus of the institution after the end of the spring semester in 2021;
- ▶ prohibits a face covering requirement to participate in or attend instruction, activities, or in any other place on the school campus or facilities in the system of public education after the end of the 2020-2021 school year; and
- ▶ provides an exception to the prohibition on face covering requirements if certain criteria are met or if a school, class, or other school group has a certain percentage of immunocompromised individuals.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53B-2-113**, as enacted by Laws of Utah 2021, Chapter 258

33 **53B-3-103**, as last amended by Laws of Utah 2021, Chapter 258

34 **53G-9-210**, as enacted by Laws of Utah 2021, Chapter 435

35

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

37 Section 1. Section **53B-2-113** is amended to read:

38 **53B-2-113. Vaccination requirements -- Exemptions -- Face covering**
39 **requirements.**

40 (1) An institution of higher education described in Section **53B-2-101** may not require
41 proof of vaccination as a condition for enrollment or attendance unless the institution allows
42 for the following exemptions:

43 (a) a medical exemption if the student provides to the institution a statement that the
44 claimed exemption is for a medical reason; and

45 (b) a personal exemption if the student provides to the institution a statement that the
46 claimed exemption is for a personal or religious belief.

47 (2) An institution that offers both remote and in-person learning options may not deny
48 a student who is exempt from a requirement to receive a vaccine under Subsection (1) to
49 participate in an in-person learning option based upon the student's vaccination status.

50 (3) (a) For purposes of this Subsection (3), "face covering" means the same as that term
51 is defined in Section **53G-9-210**.

52 (b) Except as provided in Subsection (3)(c), an institution of higher education
53 described in Section **53B-2-101** may not require an individual to wear a face covering to attend
54 or participate in in-person instruction, institution-sponsored athletics, institution-sponsored
55 extracurricular activities, in dormitories, or in any other place on a campus of an institution
56 within the system of higher education at any time after the end of the spring semester in 2021.

57 (c) The restriction on requiring an individual to wear a face covering described in
58 Subsection (3)(b) does not apply if:

- 59 (i) the state's 14-day COVID-19 case rate is greater than 191 per 100,000 people;
60 (ii) the statewide seven-day average COVID-19 ICU utilization is more than 15%; and
61 (iii) the total number of individuals in the state that have been vaccinated against
62 COVID-19 is less than 70% of the total population of the state.

63 [~~3~~] (4) Subsections (1) [~~and~~], (2), and (3) do not apply to a student studying in a
64 medical setting at an institution of higher education.

65 [~~4~~] (5) Nothing in this section restricts a state or local health department from acting
66 under applicable law to contain the spread of an infectious disease.

67 Section 2. Section **53B-3-103** is amended to read:

68 **53B-3-103. Power of board to adopt rules and enact regulations.**

69 (1) The board may enact regulations governing the conduct of university and college
70 students, faculty, and employees.

71 (2) (a) The board may:

72 (i) enact and authorize higher education institutions to enact traffic, parking, and
73 related regulations governing all individuals on campuses and other facilities owned or
74 controlled by the institutions or the board; and

75 (ii) acknowledging that the Legislature has the authority to regulate, by law, firearms at
76 higher education institutions:

77 (A) authorize higher education institutions to establish no more than one secure area at
78 each institution as a hearing room as prescribed in Section 76-8-311.1, but not otherwise
79 restrict the lawful possession or carrying of firearms; and

80 (B) authorize a higher education institution to make a rule that allows a resident of a
81 dormitory located at the institution to request only roommates who are not licensed to carry a
82 concealed firearm under Section 53-5-704 or 53-5-705.

83 (b) In addition to the requirements and penalty prescribed in Subsections
84 76-8-311.1(3), (4), (5), and (6), the board shall make rules to ensure that:

85 (i) reasonable means such as mechanical, electronic, x-ray, or similar devices are used
86 to detect firearms, ammunition, or dangerous weapons contained in the personal property of or
87 on the person of any individual attempting to enter a secure area hearing room;

88 (ii) an individual required or requested to attend a hearing in a secure area hearing
89 room is notified in writing of the requirements related to entering a secured area hearing room
90 under this Subsection (2)(b) and Section [76-8-311.1](#);

91 (iii) the restriction of firearms, ammunition, or dangerous weapons in the secure area
92 hearing room is in effect only during the time the secure area hearing room is in use for
93 hearings and for a reasonable time before and after its use; and

94 (iv) reasonable space limitations are applied to the secure area hearing room as
95 warranted by the number of individuals involved in a typical hearing.

96 (c) (i) The board may not require proof of vaccination as a condition for enrollment or
97 attendance within the system of higher education unless the board allows for the following
98 exemptions:

99 (A) a medical exemption if the student provides to the institution a statement that the
100 claimed exemption is for a medical reason; and

101 (B) a personal exemption if the student provides to the institution a statement that the
102 claimed exemption is for a personal or religious belief.

103 (ii) An institution that offers both remote and in-person learning options may not deny
104 a student who is exempt from a requirement to receive a vaccine under Subsection (2)(c)(i) to
105 participate in an in-person learning option based upon the student's vaccination status.

106 (iii) Subsections (2)(c)(i) and (ii) do not apply to a student studying in a medical setting
107 at an institution of higher education.

108 (iv) Nothing in this section restricts a state or local health department from acting
109 under applicable law to contain the spread of an infectious disease.

110 (d) (i) For purposes of this Subsection (2)(d), "face covering" means the same as that
111 term is defined in Section [53G-9-210](#).

112 (ii) Except as provided in Subsection (2)(d)(iii) or (iv), the board may not require an
113 individual to wear a face covering as a condition of attendance for in-person instruction,
114 institution-sponsored athletics, institution-sponsored extracurricular activities, in dormitories,
115 or in any other place on a campus of an institution within the system of higher education at any
116 time after the end of the spring semester in 2021.

117 (iii) Subsection (2)(d)(ii) does not apply to an individual in a medical setting at an
118 institution of higher education.

119 (iv) The restriction on requiring an individual to wear a face covering described in
120 Subsection (2)(d)(ii) does not apply if:

121 (A) the state's 14-day COVID-19 case rate is greater than 191 per 100,000 people;

122 (B) the statewide seven-day average COVID-19 ICU utilization is more than 15%; and

123 (C) the total number of individuals in the state that have been vaccinated against
124 COVID-19 is less than 70% of the total population of the state.

125 (3) The board shall enact regulations that require all testimony be given under oath
126 during an employee grievance hearing for a non-faculty employee of an institution of higher
127 education if the grievance hearing relates to the non-faculty employee's:

128 (a) demotion; or

129 (b) termination.

130 (4) The board and institutions may enforce these rules and regulations in any
131 reasonable manner, including the assessment of fees, fines, and forfeitures, the collection of
132 which may be by withholding from money owed the violator, the imposition of probation,
133 suspension, or expulsion from the institution, the revocation of privileges, the refusal to issue
134 certificates, degrees, and diplomas, through judicial process or any reasonable combination of
135 these alternatives.

136 Section 3. Section **53G-9-210** is amended to read:

137 **53G-9-210. Requirement for in-person instruction -- Test to stay programs --**
138 **Face coverings.**

139 (1) As used in this section:

140 (a) "Case threshold" means as applicable, the number of students in a school, or
141 percentage of students in a school who meet the conditions described in Subsection (3).

142 (b) "COVID-19" means:

143 (i) severe acute respiratory syndrome coronavirus 2; or

144 (ii) the disease caused by severe acute respiratory syndrome coronavirus 2.

145 (c) "Face covering" means a mask, shield, or other device that is intended to be worn in
146 a manner to cover the mouth, nose, or face to prevent the spread of COVID-19.

147 (d) "Extracurricular activity" means the same as that term is defined in Section
148 53G-7-501.

149 [~~e~~] (e) "In-person instruction" means instruction offered by a school that allows a

150 student to choose to attend school in-person at least four days per week if the student:

- 151 (i) is enrolled in a school that is not implementing a test to stay program; or
- 152 (ii) (A) is enrolled in a school that is implementing a test to stay program; and
- 153 (B) meets the test to stay program's criteria for attending school in person.

154 [~~(f)~~] (f) "Local Education Agency" or LEA means:

- 155 (i) a school district;
- 156 (ii) a charter school, other than an online-only charter school; or
- 157 (iii) the Utah Schools for the Deaf and the Blind.

158 [~~(g)~~] (g) "School" means a school other than an online-only charter school or an
159 online-only public school.

160 [~~(h)~~] (h) "Test to stay program" means a program through which an LEA provides
161 testing for COVID-19 for students during an outbreak of COVID-19 at a school in order to:

- 162 (i) identify cases of COVID-19; and
- 163 (ii) allow individuals who test negative for COVID-19 to attend school in person.

164 (2) (a) An LEA shall:

- 165 (i) except as provided in Subsection (2)(b), beginning on March 22, 2021, ensure that a
166 school offers in-person instruction; and
- 167 (ii) require a school that reaches the case threshold to:

168 (A) fulfill the requirement described in Subsection (2)(a)(i) by initiating a test to stay
169 program for the school; and

170 (B) provide a remote learning option for students who do not wish to attend in person.

171 (b) The requirement to provide in-person instruction described in Subsection (2)(a)
172 does not apply for a temporary period if the governor, the president of the Senate, the speaker
173 of the House of Representatives, and the state superintendent of public instruction jointly
174 concur with an LEA's assessment that due to public health emergency circumstances, the risks
175 related to in-person instruction temporarily outweigh the value of in-person instruction.

176 (3) (a) For purposes of determining whether a school has reached the school's case
177 threshold, a student is included in positive cases for the school if the student:

- 178 (i) within the preceding 14 days:
 - 179 (A) attended at least some in-person instruction at the school; and
 - 180 (B) tested positive for COVID-19; and

181 (ii) did not receive the student's positive COVID-19 test results through regular
182 periodic testing required to participate in LEA-sponsored athletics or another LEA-sponsored
183 extracurricular activity.

184 (b) (i) A school with 1,500 or more students meets the case threshold if at least 2% of
185 the school's students meet the conditions described in Subsection (3)(a).

186 (ii) A school with fewer than 1,500 students meets the case threshold if 30 or more of
187 the school's students meet the conditions described in Subsection (3)(a).

188 (4) (a) An LEA may not test a student for COVID-19 who is younger than 18 years old
189 without the consent of the student's parent.

190 (b) An LEA may seek advance consent from a student's parent for future testing for
191 COVID-19.

192 (5) Except as provided in Subsection (6), an LEA, an LEA governing board, the state
193 board, the state superintendent, or a school may not require an individual to wear a face
194 covering to attend or participate in in-person instruction, LEA-sponsored athletics, or another
195 LEA-sponsored extracurricular activity, or in any other place on the campus of a school or
196 school facility after the end of the 2020-2021 school year.

197 (6) (a) The restriction on requiring an individual to wear a face covering described in
198 Subsection (5) does not apply if:

199 (i) the state's 14-day COVID-19 case rate is greater than 191 per 100,000 people;

200 (ii) the statewide seven-day average COVID-19 ICU utilization is more than 15%; and

201 (iii) the total number of individuals in the state that have been vaccinated against
202 COVID-19 is less than 70% of the total population of the state.

203 (b) (i) The restriction on requiring an individual to wear a face covering described in
204 Subsection (5) does not apply if more than 75% of the population of the relevant school, LEA,
205 class, or other body within an LEA has a Section 504 accommodation plan indicating that the
206 individual is immunocompromised.

207 (ii) If more than 75% of the population of an LEA, a school, or a class within an LEA
208 is immunocompromised, the LEA may require a face covering for an individual in the
209 respective LEA, school, or class.

210 Section 4. **Effective date.**

211 If approved by two-thirds of all the members elected to each house, this bill takes effect

212 upon approval by the governor, or the day following the constitutional time limit of Utah
213 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
214 the date of veto override.