

## HB1007S01 compared with HB1007

~~text~~ shows text that was in HB1007 but was deleted in HB1007S01.

inserted text shows text that was not in HB1007 but was inserted into HB1007S01.

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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

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#### 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;~~and~~

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- ▶ 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~~(f)~~; 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.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

(3) (a) For purposes of this Subsection (3), "face covering" means the same as that term

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is defined in Section 53G-9-210.

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

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

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

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

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

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

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

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

(2) (a) The board may:

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

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

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

(B) authorize a higher education institution to make a rule that allows a resident of a dormitory located at the institution to request only roommates who are not licensed to carry a

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concealed firearm under Section 53-5-704 or 53-5-705.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) ~~{The}~~ Except as provided in Subsection (2)(d)(iii) or (iv), the board may not require

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an individual to wear a face covering as a condition of attendance for in-person instruction, institution-sponsored athletics, institution-sponsored extracurricular activities, in dormitories, or in any other place on a campus of an institution within the system of higher education at any time after the end of the spring semester in 2021.

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

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

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

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

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

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

- (a) demotion; or
- (b) termination.

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

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

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

(1) As used in this section:

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

(b) "COVID-19" means:

(i) severe acute respiratory syndrome coronavirus 2; or

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

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

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

~~(e)~~ (e) "In-person instruction" means instruction offered by a school that allows a student to choose to attend school in-person at least four days per week if the student:

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

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

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

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

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

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

(2) (a) An LEA shall:

(i) except as provided in Subsection (2)(b), beginning on March 22, 2021, ensure that a school offers in-person instruction; and

(ii) require a school that reaches the case threshold to:

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

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

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

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related to in-person instruction temporarily outweigh the value of in-person instruction.

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

(i) within the preceding 14 days:

(A) attended at least some in-person instruction at the school; and

(B) tested positive for COVID-19; and

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

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

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

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

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

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

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

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

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

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

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

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individual is immunocompromised.

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

Section 4. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.