

## HB0011S04 compared with HB0011S03

~~deleted text~~ shows text that was in HB0011S03 but was deleted in HB0011S04.

inserted text shows text that was not in HB0011S03 but was inserted into HB0011S04.

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Senator ~~Curtis S. Bramble~~Daniel McCay proposes the following substitute bill:

### STUDENT ELIGIBILITY IN INTERSCHOLASTIC ACTIVITIES

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kera Birkeland**

Senate Sponsor: Curtis S. Bramble

Cosponsors:	Karianne Lisonbee	Judy Weeks Rohner
Cheryl K. Acton	Candice B. Pierucci	Christine F. Watkins
Melissa G. Ballard	Susan Pulsipher	
Marsha Judkins		

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#### LONG TITLE

##### General Description:

This bill addresses student athlete participation in gender-designated sports in the public education system.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ imposes limits on participation in female sports, by:

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- requiring schools and local education agencies to designate athletic activities by sex;
- prohibiting a student of the male sex from competing against another school on a team designated for female students;
- prohibiting certain complaints or investigations based on a school or local education agency maintaining separate athletic activities for female students;
- providing for indemnification of local education agencies and schools; and
- providing for severability;

▶ in the alternative if a court invalidates the above policy:

- conditions student athlete participation in gender-designated sports in the public education system on the student's birth certificate;
- establishes the School Activity Eligibility Commission (commission) and provides the commission's membership and duties;
- requires the commission to establish a baseline range of students in a given gender-designated interscholastic activity for a given age;
- provides that records of the commission related to a specific student are protected;
- provides immunity from suit for members of the commission;
- allows a student to participate in a gender-designated interscholastic activity that does not correspond to the sex designation on the student's birth certificate or in the case of a gender transition if the student receives the commission's eligibility approval;
- provides processes for

an athletic association to notify the commission when a student registers to participate in a gender-designated sport in a situation that requires the commission's eligibility approval;

- provides processes for the commission to receive information and evidence;
- provides for the confidentiality of the proceedings, commission vote, eligibility determination, and student's identity; and
- establishes a standard for the commission's considerations in rendering an eligibility determination;

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- ~~{+}~~ • allows for commission meetings in which the commission discusses and votes on a specific student's request to be closed under the Open and Public Meetings Act;
- ~~{+}~~ • provides for reasonable accommodations in school facilities related to gender identity for students participating in interscholastic activities; and
- ~~{+}~~ • provides for severability; and
  - ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

**52-4-205**, as last amended by Laws of Utah 2021, Chapters 179 and 231

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}~~ **53G-6-1001**, Utah Code Annotated 1953

**53G-6-1002**, Utah Code Annotated 1953

**53G-6-1003**, Utah Code Annotated 1953

**53G-6-1004**, Utah Code Annotated 1953

**53G-6-1005**, Utah Code Annotated 1953

**53G-6-1006**, Utah Code Annotated 1953

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

Section 1. Section **52-4-205** is amended to read:

**52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed meetings.**

(1) A closed meeting described under Section 52-4-204 may only be held for:

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(a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

(iii) the terms of the sale are publicly disclosed before the public body approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct;

(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;

(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);

(j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;

(k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;

(l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;

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(m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:

(i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;

(ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or

(iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;

(n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary in order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

(o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:

(i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and

(ii) the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process;

(p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:

(i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and

(ii) discussion of the information is necessary for the governing board to properly discharge the board's duties and conduct the board's business; or

(q) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);

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(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);

(c) a meeting of the Opioid and Overdose Fatality Review Committee, created in Section 26-7-13, to review and discuss an individual case, as described in Subsection 26-7-13(10);

(d) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law;

(e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for the purpose of reviewing petitions for a medical cannabis card in accordance with Section 26-61a-105; ~~and~~

(f) a meeting of the Colorado River Authority of Utah if:

(i) the purpose of the meeting is to discuss an interstate claim to the use of the water in the Colorado River system; and

(ii) failing to close the meeting would:

(A) reveal the contents of a record classified as protected under Subsection 63G-2-305(82);

(B) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;

(C) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or

(D) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system~~[-]; and~~

(g) a meeting of the School Activity Eligibility Commission, described in Section ~~53G-6-902~~ 53G-6-1003, if the commission is in effect in accordance with Section 53G-6-1002, to consider, discuss, or determine, in accordance with Section ~~53G-6-903~~ 53G-6-1004, an individual student's eligibility to participate in an interscholastic

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activity, as that term is defined in Section ~~53G-6-901~~53G-6-1001, including the commission's determinative vote on the student's eligibility.

(3) In a closed meeting, a public body may not:

(a) interview a person applying to fill an elected position;

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or

(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Section 2. Section **53G-6-901** is enacted to read:

### **Part 9. ~~{Student Eligibility}~~Participation in {Interscholastic Activities}~~Female Sports~~**

#### **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 traditionally compete together.

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

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

Section 3. Section **53G-6-902** is enacted to read:

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

(1) Notwithstanding any state board rule:

(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:

(i) designated for students of the male sex;

(ii) designated for students of the female sex; or

(iii) "coed" or "mixed";

(b) a student of the male sex may not compete, and a public school or LEA may not

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allow a student of the male sex to compete, with a team designated for students of the female sex in an interscholastic athletic activity; and

(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 for students of the female sex, consistent with school policy, outside of competition in an interscholastic athletic activity, in accordance with Subsection (1)(b).

Section 4. Section 53G-6-903 is enacted to read:

### **53G-6-903. 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-6-904 is enacted to read:

### **53G-6-904. 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:

(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 Risk Management Fund.

Section 6. Section 53G-6-1001 is enacted to read:

## **Part 10. Student Eligibility in Interscholastic Activities**

### **53G-6-1001. Definitions.**

As used in this part:

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



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(2) "Commission" means the School Activity Eligibility Commission created in Section ~~{53G-6-902}~~53G-6-1003.

(3) "Female-designated" means that an interscholastic activity is designated specifically for female students.

(4) "Gender-designated" means that an interscholastic activity or facility is designated specifically for female or male students.

(5) "Gender identity" means the same as that term is defined in Section ~~{24A-5-102}~~34A-5-102.

(6) "Interscholastic activity" means an activity in which a student represents the student's school in the activity in competition against another school.

(7) "Male-designated" means that an interscholastic activity is designated specifically for male students.

(8) "Student" means a student who is enrolled in a public school that participates in interscholastic activities.

Section ~~{3}~~7. Section ~~{53G-6-902}~~53G-6-1002 is enacted to read:

**53G-6-1002. Effect contingent on court ruling.**

**This part becomes effective if a court of competent jurisdiction invalidates or enjoins**

**Title 53G, Chapter 6, Part 9, Participation in Female Sports.**

**Section 8. Section 53G-6-1003 is enacted to read:**

**~~{53G-6-902}~~53G-6-1003. School Activity Eligibility Commission -- Baseline range.**

(1) There is created the School Activity Eligibility Commission.

(2) (a) The commission shall consist of the following members:

(i) the following two members whom the president of the Senate appoints:

(A) a mental health professional; and

(B) a statistician with expertise in the analysis of medical data;

(ii) the following two members whom the speaker of the House of Representatives

appoints:

(A) a board-certified physician with expertise in gender identity healthcare; and

(B) a sports physiologist;

(iii) the following two members whom the governor appoints:

(A) a representative of an athletic association; and

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(B) an athletic trainer who serves student athletes on the collegiate level; and

(iv) one ad hoc member, serving on a case-by-case basis, who is:

(A) appointed by the athletic association in which the relevant student's school competes; and

(B) a certified high school coach or official who coaches or officiates in a separate region or classification from the relevant student's school and in the sport in which the relevant student seeks eligibility.

(b) An athletic association may prepare and communicate the association's sport-specific appointments described in Subsection (2)(a)(iv) in preparation for student requests in a given sport.

(3) (a) A member of the commission described in Subsections (2)(a)(i) through (iii) shall serve an initial term of one year, subject to reappointment for subsequent terms of two years.

(b) If a vacancy occurs in the membership of the commission, the individual responsible for the appointment of the vacant seat as described in Subsection (2) shall fill the vacancy in the same manner as the original appointment.

(4) (a) (i) Except as provided in Subsection (4)(a)(ii), all members of the commission constitute a quorum of the commission for a meeting to determine the eligibility of a student.

(ii) All members of the commission described in Subsections (2)(a)(i) through (iii) constitute a quorum for any meeting other than the meeting described in Subsection (4)(a)(i).

(b) An action of a majority of a quorum constitutes an action of the commission.

(5) A majority of the commission members described in Subsections (2)(a)(i) through (iii) shall elect a chair from among the members described in Subsections (2)(a)(i) through (iii) to:

(a) schedule meetings of the commission;

(b) set the agenda of commission meetings; and

(c) facilitate discussion among the commission's members.

(6) A commission member:

(a) may not receive compensation or benefits for the member's service on the commission; and

(b) may receive per diem and reimbursement for travel expenses that the commission

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member incurs as a commission member at the rates that the Division of Finance establishes under:

(i) Sections 63A-3-106 and 63A-3-107; and

(ii) rules that the Division of Finance makes under Sections 63A-3-106 and 63A-3-107.

(7) The commission may enter into an agreement with an athletic association to provide staff support to the commission.

(8) (a) The commission shall establish a baseline range of physical characteristics for students participating in a specific gender-designated activity at a specific age to provide the context for the evaluation of an individual student's eligibility for a given gender-designated interscholastic activity under Section ~~53G-6-903~~53G-6-1004.

(b) In creating the baseline ranges described in Subsection (8)(a), the commission shall include the physical characteristics for the age and gender group in a given gender-designated interscholastic activity that are relevant to the specific interscholastic activity.

(c) The physical characteristics described in Subsection (8)(b) may include height, weight, physical characteristics relevant to the application of the standard described in Subsection ~~53G-6-903~~53G-6-1004(3), or the extent of physical characteristics affected by puberty, giving consideration to the practicability of considering the physical characteristic when making an assessment of an individual student's eligibility under Section ~~53G-6-903~~53G-6-1004.

(9) Any record of the commission, including any communication between an athletic association and the commission, that relates to a specific student shall be classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(10) Members of the commission are immune from suit with respect to all acts done and actions taken in good faith in carrying out the purposes of this part.

(11) The commission has no authority in relation to eligibility questions other than participation in a gender-designated interscholastic activity under this part.

Section ~~4~~9. Section ~~53G-6-903~~53G-6-1004 is enacted to read:

~~53G-6-903~~53G-6-1004. **Eligibility for interscholastic activities.**

(1) (a) Notwithstanding any state board rule or policy of an athletic association, and except as provided in Subsections (1)(b) and (c):

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(i) once a student has obtained the eligibility approval of the commission under Subsection (2), the student may participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's birth certificate; and

(ii) if a student does not obtain the eligibility approval of the commission under Subsection (2), the student may not participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's birth certificate.

(b) A student who has undergone or is undergoing a gender transition shall obtain the eligibility approval of the commission under Subsection (2) to participate in a gender-designated interscholastic activity that corresponds with the student's gender identity.

(c) Nothing in this subsection prohibits a student from participating in a gender-designated interscholastic activity in accordance with 34 C.F.R. Sec. 106.41(b).

(2) (a) When a student registers with an athletic association to participate in a gender-designated interscholastic activity:

(i) a student who has undergone or is undergoing a gender transition shall notify the athletic association of the student's transition and the need for the commission's eligibility approval as described in Subsection (1)(b);

(ii) the athletic association shall notify the commission of:

(A) a student for whom an eligibility determination of the commission is required due to the sex designation on the student's birth certificate not corresponding with the gender designation of the gender-designated interscholastic activity in which the student seeks to participate or the student's notice of a gender transition under Subsection (1)(a)(ii); and

(B) the association's ad hoc appointment to the commission described in Subsection ~~53G-6-902~~53G-6-1003(2)(a)(iv); and

(iii) the commission shall notify the student described in Subsection (2)(a) regarding the process for determining the student's eligibility for the activity under this section.

(b) The commission shall:

(i) schedule a closed meeting to consider a student's eligibility to be held within 30 days after the day on which the commission receives the notification described in Subsection (2)(a); and

(ii) notify the relevant athletic association and the student's parents or legal guardians of the scheduled meeting.

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(c) Before the meeting described in Subsection (2)(b):

(i) the student for whom the commission has scheduled the meeting or the student's parent or guardian is not required but may submit to the commission any information the student wishes to disclose to the commission that may be relevant to the commission's eligibility determination, including information regarding:

(A) the gender-designated interscholastic activities for which the student seeks eligibility;

(B) the gender-designated interscholastic activities in which the student has previously participated; and

(C) the student's physical characteristics or medical treatments that support the student's eligibility for the specific gender-designated interscholastic activity;

(ii) the commission may request additional evidence from the student that is:

(A) limited to the extent possible to protect the student's privacy; and

(B) only directly relevant to the commission's eligibility determination; and

(iii) the commission may offer the student a voucher to cover the cost of a diagnostic assessment if the commission makes a request for medical information under Subsection (2)(c)(ii) for which the student's insurance does not provide coverage or reimbursement for the diagnostic that:

(A) would provide the requested information; and

(B) is not free or otherwise readily available to the student.

(d) During the meeting described in Subsection (2)(b):

(i) only the following individuals may be present or participate electronically:

(A) the student for whom the commission is meeting to make an eligibility determination;

(B) the student's parents or guardians;

(C) the members and necessary staff of the commission; and

(D) any medical professionals or other witnesses the student chooses to include to support the student's eligibility;

(ii) attendees may participate in person or electronically; and

(iii) the commission shall:

(A) hear the information that supports the student's eligibility;

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(B) deliberate the facts relevant to the student's physical characteristics and eligibility in camera or otherwise after temporarily excusing from the meeting the student, the student's parents or legal guardians, and any medical professionals or other witnesses whom the student includes; and

(C) render the commission's eligibility determination in accordance with Subsection (3) or request additional information and schedule an additional commission meeting to be held within 30 days of the meeting and in accordance with this Subsection (2)(d) to discuss the additional information and render the commission's eligibility determination.

(3) In making an eligibility determination, the commission, after considering whether the student's assertion of a gender identity is consistent with the statutory definition of gender identity as that term is defined in Section 34A-5-101, including the implications for the student's mental health of participating in the gender-designated interscholastic activity, shall:

(a) make a determination regarding whether, when measured against the relevant baseline range described in Subsection ~~53G-6-902~~53G-6-1003(8), granting the student's eligibility would:

(i) present a substantial safety risk to the student or others that is significantly greater than the inherent risks of the given activity; or

(ii) likely give the student a material competitive advantage when compared to students of the same age competing in the relevant gender-designated activity, including consideration of the student's previous history of participation in gender-designated interscholastic activities; and

(b) record the commission's decision and rationale in writing and provide the written decision to the student within 30 days after the day on which the commission renders an eligibility decision under Subsection (3)(a) in a meeting described in Subsection (2)(b).

(4) (a) Notwithstanding any other provision of law and except as provided in Subsections (3)(b) and (4)(b), the commission may not disclose:

(i) the name of a student whose eligibility the commission will consider, is considering, or has considered; or

(ii) the commission's determination regarding a student's eligibility.

(b) The commission shall disclose the commission's determination of a student's eligibility for a given gender-designated interscholastic activity to the relevant athletic

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association, only for the purpose of confirming whether the student is eligible for the interscholastic activity.

(c) (i) Notwithstanding any other provision of law, an athletic association may not disclose the information described in Subsections (4)(a)(i) and (ii).

(ii) Nothing in this Subsection (4) prohibits an athletic association from affirming that a student is eligible if the eligibility of a student is questioned.

Section ~~{5}~~01. Section ~~{53G-6-904}~~53G-6-1005 is enacted to read:

~~{53G-6-904}~~53G-6-1005. **Reasonable accommodations.**

Nothing in this part prohibits an athletic association, LEA, or school from adopting reasonable ~~safety and~~ privacy ~~{and safety }~~rules and policies that designate facilities, including restrooms, shower facilities, and dressing facilities, provided that the rules and policies described in this section afford reasonable accommodations based on gender identity to all students.

Section ~~{6}~~11. Section ~~{53G-6-905}~~53G-6-1006 is enacted to read:

~~{53G-6-905}~~53G-6-1006. **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 ~~{7}~~21. **Effective date.**

This bill takes effect on July 1, 2022.