

Senator Luz Escamilla proposes the following substitute bill:

SEX-DESIGNATED INTERSCHOLASTIC ATHLETICS

INDEMNIFICATION

2022 THIRD SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill addresses liability regarding state limitations on student competition in interscholastic athletic activities designated for students of the female sex.

Highlighted Provisions:

This bill:

- ▶ provides for defense and indemnification regarding state limitations on student competition in interscholastic athletic activities designated for students of the female sex;
- ▶ provides that a local education agency or school is responsible for enforcement of state limitations on student competition in interscholastic athletic activities designated for students of the female sex; and
- ▶ clarifies the scope of the School Activity Eligibility Commission to limit liability related to the commission's review of student eligibility.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2023:

- ▶ To the Attorney General - Attorney General - Civil as a one-time appropriation:
 - From the General Fund, One-time, \$500,000.



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **53G-6-1004 (Effective 07/01/22)**, as enacted by Laws of Utah 2022, Chapter 478

31 ENACTS:

32 **53G-6-904**, Utah Code Annotated 1953

33 **53G-6-1007**, Utah Code Annotated 1953



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

36 Section 1. Section **53G-6-904** is enacted to read:

37 **53G-6-904. Indemnification -- Enforcement.**

38 (1) The state shall defend, indemnify, and hold harmless a person acting under color of
39 state law to enforce this part for any claims or damages, including court costs and attorney fees,
40 that:

41 (a) are brought or incurred as a result of this part; and

42 (b) are not covered by the person's insurance policies or by any coverage agreement
43 issued by the State Risk Management Fund.

44 (2) An LEA or school within the public education system with a team that competes in
45 an interscholastic athletic activity is responsible for the enforcement of this part in relation to
46 the LEA's or school's teams.

47 Section 2. Section **53G-6-1004 (Effective 07/01/22)** is amended to read:

48 **53G-6-1004 (Effective 07/01/22). Eligibility for interscholastic activities.**

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

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

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

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

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

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

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

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

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

73 (B) the association's ad hoc appointment to the commission described in Subsection
74 [53G-6-1003\(2\)\(a\)\(iv\)](#); and

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

77 (b) The commission shall:

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

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

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

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

- 88 (A) the gender-designated interscholastic activities for which the student seeks
89 eligibility;
- 90 (B) the gender-designated interscholastic activities in which the student has previously
91 participated; and
- 92 (C) the student's physical characteristics or medical treatments that support the
93 student's eligibility for the specific gender-designated interscholastic activity;
- 94 (ii) the commission may request additional evidence from the student that is:
- 95 (A) limited to the extent possible to protect the student's privacy; and
96 (B) only directly relevant to the commission's eligibility determination; and
- 97 (iii) the commission may offer the student a voucher to cover the cost of a diagnostic
98 assessment if the commission makes a request for medical information under Subsection
99 (2)(c)(ii) for which the student's insurance does not provide coverage or reimbursement for the
100 diagnostic that:
- 101 (A) would provide the requested information; and
102 (B) is not free or otherwise readily available to the student.
- 103 (d) During the meeting described in Subsection (2)(b):
- 104 (i) only the following individuals may be present or participate electronically:
- 105 (A) the student for whom the commission is meeting to make an eligibility
106 determination;
- 107 (B) the student's parents or guardians;
- 108 (C) the members and necessary staff of the commission; and
109 (D) any medical professionals or other witnesses the student chooses to include to
110 support the student's eligibility;
- 111 (ii) attendees may participate in person or electronically; and
112 (iii) the commission shall:
- 113 (A) hear the information that supports the student's eligibility;
114 (B) deliberate the facts relevant to the student's physical characteristics and eligibility
115 in camera or otherwise after temporarily excusing from the meeting the student, the student's
116 parents or legal guardians, and any medical professionals or other witnesses whom the student
117 includes; and
- 118 (C) render the commission's eligibility determination in accordance with Subsection

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

122 (3) In making an eligibility determination, the commission, after considering whether
123 the student's assertion of a gender identity is consistent with the statutory definition of gender
124 identity as that term is defined in Section 34A-5-102, including the implications for the
125 student's mental health of participating in the gender-designated interscholastic activity, shall:

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

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

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

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

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

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

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

142 (b) The commission shall disclose the commission's determination of a student's
143 eligibility for a given gender-designated interscholastic activity to the relevant athletic
144 association, only for the purpose of confirming whether the student is eligible for the
145 interscholastic activity.

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

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

150 (d) Except for a review that an athletic association initiates under Subsection
151 (2)(a)(ii)(A):

152 (i) the commission may not review a student's eligibility to compete in a
153 gender-designated interscholastic activity; and

154 (ii) a person may not initiate the commission's review of a student's eligibility to
155 compete in a gender-designated interscholastic activity.

156 Section 3. Section **53G-6-1007** is enacted to read:

157 **53G-6-1007. Indemnification -- Enforcement.**

158 (1) The state shall defend, indemnify, and hold harmless a person acting under color of
159 state law to enforce this part for any claims or damages, including court costs and attorney fees,
160 that:

161 (a) are brought or incurred as a result of this part; and

162 (b) are not covered by the person's insurance policies or by any coverage agreement
163 issued by the State Risk Management Fund.

164 (2) An LEA or school within the public education system with a team that competes in
165 an interscholastic athletic activity is responsible for the enforcement of this part in relation to
166 the LEA's or school's teams.

167 Section 4. **Appropriation.**

168 The following sums of money are appropriated for the fiscal year beginning July 1,
169 2022, and ending June 30, 2023. These are additions to amounts previously appropriated for
170 fiscal year 2023. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
171 Act, the Legislature appropriates the following sums of money from the funds or accounts
172 indicated for the use and support of the government of the state of Utah.

173 ITEM 1

174 To Attorney General - Attorney General

175 From General Fund, One-time 500,000

176 Schedule of Programs:

177 Civil 500,000

178 The Legislature intends that appropriations provided under this section be used for the
179 purposes described in Sections [53G-6-904](#) and [53G-6-1007](#). Under Section [63J-1-603](#)
180 appropriations provided under this section do not lapse at the close of fiscal year 2023. The use

181 of any nonlapsing funds is limited to the indemnification described in Section [53G-6-904](#).

182 Section 5. **Effective date.**

183 This bill takes effect on July 1, 2022.