

HB3001S03 compared with HB3001S02

~~{deleted text}~~ shows text that was in HB3001S02 but was deleted in HB3001S03.

inserted text shows text that was not in HB3001S02 but was inserted into HB3001S03.

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~~{Representative Kera Birkeland}~~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;~~{and}~~
- ▶ provides that a local education agency or school is responsible for enforcement of

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state limitations on student competition in interscholastic athletic activities designated for students of the female sex~~(s)~~; 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.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

53G-6-904, Utah Code Annotated 1953

53G-6-1007, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

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

(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)] (1)(b); and

(B) the association's ad hoc appointment to the commission described in Subsection 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

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(2)(a); and

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

(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;

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

(iii) the commission shall:

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

(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-5-102, 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-6-1003(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.

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(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 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.

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

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

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

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

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

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

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

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

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

Section ~~3~~4. **Appropriation.**

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

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ITEM 1

To Attorney General - Attorney General

From General Fund, One-time 500,000

Schedule of Programs:

Civil 500,000

The Legislature intends that appropriations provided under this section be used for the purposes described in Sections 53G-6-904 and 53G-6-1007. Under Section 63J-1-603 appropriations provided under this section do not lapse at the close of fiscal year 2023. The use of any nonlapsing funds is limited to the indemnification described in Section 53G-6-904.

Section ~~(4)~~5. **Effective date.**

This bill takes effect on July 1, 2022.