

## HB0209S06 compared with HB0209S05

~~text~~ shows text that was in HB0209S05 but was deleted in HB0209S06.

text shows text that was not in HB0209S05 but was inserted into HB0209S06.

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Senator Lincoln Fillmore proposes the following substitute bill:

### **PARTICIPATION IN EXTRACURRICULAR ACTIVITIES**

#### **AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jordan D. Teuscher**

Senate Sponsor: Lincoln Fillmore

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#### **LONG TITLE**

##### **General Description:**

This bill amends provisions amending student participation in extracurricular activities.

##### **Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ allows a private school student, a home school student, a charter school student, or an online school student to participate in extracurricular activities outside of the student's public school of residence under certain circumstances;
- ▶ prohibits a public school from participation in an athletics association that does not collect a birth certificate or other identifying documents during the registration

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process;

- ▶ allows athletes without access to a birth certificate to provide alternative documentation to an athletic association in certain circumstances; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

**53G-6-703**, as last amended by Laws of Utah 2019, Chapter 293

**53G-6-704**, as last amended by Laws of Utah 2019, Chapter 293

**53G-6-705**, as last amended by Laws of Utah 2019, Chapter 293

**53G-6-1001**, as enacted by Laws of Utah 2022, Chapter 478

**53G-7-1102**, as renumbered and amended by Laws of Utah 2018, Chapter 3

### Utah Code Sections Affected by Coordination Clause:

**53G-6-703**, as last amended by Laws of Utah 2019, Chapter 293

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

Section 1. Section **53G-6-703** is amended to read:

**53G-6-703. Private school and home school students' participation in extracurricular activities in a public school.**

(1) As used in this section:

(a) "Academic eligibility requirements" means the academic eligibility requirements that a home school student is required to meet to participate in an extracurricular activity in a public school.

(b) "Association" means the same as that term is defined in Section 53G-7-1101.

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

(d) "Initial establishment of eligibility requirements" means an association's eligibility requirements, policies, procedures, and transfer rules that a school student in grade 9 or 10

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must meet, and to which the student is bound, to participate on a high school sports team when the student:

(i) attends the high school in which the student is selected for membership on a high school sports team; or

(ii) does not attend the high school in which the student tries out for and is selected for membership on a high school sports team.

~~(b)~~ (e) "Minor" means the same as that term is defined in Section 53G-6-201.

~~(c)~~ (f) "Parent" means the same as that term is defined in Section 53G-6-201.

~~(d)~~ (g) "Principal" means the principal of the school in which a home school student participates or intends to participate in an extracurricular activity.

(2) (a) A minor who is enrolled in a private school or a home school ~~[shall be]~~ is eligible to participate in an extracurricular activity at a public school as provided in this section.

(b) A private school student may only participate in an extracurricular activity at a public school that is not offered by the student's private school.

(c) (i) Except as provided in Subsection (2)(d), a private school student or a home school student may only participate in an extracurricular activity at:

~~(i)~~ (A) the school ~~[within whose]~~ with attendance boundaries within which the student's custodial parent resides; or

~~(ii)~~ (B) the school from which the student withdrew for the purpose of attending a private or home school.

(ii) A private school student or a home school student retains the ability to participate in an extracurricular activity at a school described in Subsection (2)(c)(i) if the student did not initially establish the student's eligibility at another school in grade 9 or 10.

(d) A school other than a school described in Subsection (2)(c)(i) ~~[or (ii)]~~ may allow a private school student or a home school student to participate in an extracurricular activity ~~[other than:]~~ that the public school sponsors and supports if:

(i) for an interscholastic competition of athletic teams [sponsored and supported by a public school; or], the private school student or the home school student meets the initial establishment of eligibility requirements;

(ii) for an interscholastic contest or competition for music, drama, or forensic groups or

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teams [~~sponsored and supported by a public school.~~], the private school student, subject to Subsection (2)(b), or the home school student meets the entry requirements for participation;

(iii) the private school student or the home school student meets the eligibility requirements under this section; and

(iv) the private school student or the home school student meets the enrollment requirements for public school in accordance with Part 4, School District Enrollment.

(3) (a) Except as provided in Subsections (4) through (13), a private school student or a home school student [~~shall be~~] is eligible to participate in an extracurricular activity at a public school consistent with eligibility standards:

(i) applied to a fully enrolled public school student;

(ii) of the public school where the private school student or the home school student participates in an extracurricular activity; and

(iii) for the extracurricular activity in which the private school or the home school student participates.

(b) A school district or public school may not impose additional requirements on a private school student or a home school student to participate in an extracurricular activity that are not imposed on a fully enrolled public school student.

(c) (i) A private school student or a home school student who participates in an extracurricular activity at a public school shall pay the same fees as required of a fully enrolled public school student to participate in an extracurricular activity.

(ii) If a local school board or a charter school governing board imposes a mandatory student activity fee for a student enrolled in a public school, the fee may be imposed on a private school student or a home school student who participates in an extracurricular activity at the public school if the same benefits of paying the mandatory student activity fee that are available to a fully enrolled public school student are available to a private school student or a home school student who participates in an extracurricular activity at the public school.

(4) Eligibility requirements based on school attendance are not applicable to a home school student.

(5) A home school student meets academic eligibility requirements to participate in an extracurricular activity if:

(a) the student is mastering the material in each course or subject being taught; and

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(b) the student is maintaining satisfactory progress towards achievement or promotion.

(6) (a) To establish a home school student's academic eligibility, a parent, teacher, or organization providing instruction to the student shall submit an affidavit to the principal indicating the student meets academic eligibility requirements.

(b) Upon submission of an affidavit pursuant to Subsection (6)(a), a home school student shall:

(i) be considered to meet academic eligibility requirements; and

(ii) retain academic eligibility for all extracurricular activities during the activity season for which the affidavit is submitted, until:

(A) a panel established under Subsection (10) determines the home school student does not meet academic eligibility requirements; or

(B) the person who submitted the affidavit under Subsection (6)(a) provides written notice to the school principal that the student no longer meets academic eligibility requirements.

(7) (a) A home school student who loses academic eligibility pursuant to Subsection (6)(b)(ii)(B) may not participate in an extracurricular activity until the person who submitted the affidavit under Subsection (6)(a) provides written notice to the school principal that the home school student has reestablished academic eligibility.

(b) If a home school student reestablishes academic eligibility pursuant to Subsection (7)(a), the home school student may participate in extracurricular activities for the remainder of the activity season for which an affidavit was submitted under Subsection (6)(a).

(8) A person who has probable cause to believe a home school student does not meet academic eligibility requirements may submit an affidavit to the principal:

(a) asserting the home school student does not meet academic eligibility requirements; and

(b) providing information indicating that the home school student does not meet the academic eligibility requirements.

(9) A principal shall review the affidavit submitted under Subsection (8), and if the principal determines it contains information which constitutes probable cause to believe a home school student may not meet academic eligibility requirements, the principal shall request a panel established pursuant to Subsection (10) to verify the student's compliance with

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academic eligibility requirements.

(10) (a) A school district superintendent shall:

(i) appoint a panel of three individuals to verify a home school student's compliance with academic eligibility requirements when requested by a principal pursuant to Subsection (9); and

(ii) select the panel members from nominees submitted by national, state, or regional organizations whose members are home school students and parents.

(b) Of the members appointed to a panel under Subsection (10)(a):

(i) one member shall have experience teaching in a public school as a licensed teacher and in home schooling high school-age students;

(ii) one member shall have experience teaching in a higher education institution and in home schooling; and

(iii) one member shall have experience in home schooling high school-age students.

(11) A panel appointed under Subsection (10):

(a) shall review the affidavit submitted under Subsection (8);

(b) may confer with the person who submitted the affidavit under Subsection (8);

(c) shall request the home school student to submit test scores or a portfolio of work documenting the student's academic achievement to the panel;

(d) shall review the test scores or portfolio of work; and

(e) shall determine whether the home school student meets academic eligibility requirements.

(12) A home school student who meets academic eligibility requirements pursuant to Subsection (11), retains academic eligibility for all extracurricular activities during the activity season for which an affidavit is submitted pursuant to Subsection (6).

(13) (a) A panel's determination that a home school student does not comply with academic eligibility requirements is effective for an activity season and all extracurricular activities that have academic eligibility requirements.

(b) A home school student who is not in compliance with academic eligibility requirements as determined by a panel appointed under Subsection (11) may seek to establish academic eligibility under this section for the next activity season.

(14) (a) A public school student who has been declared to be academically ineligible to

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participate in an extracurricular activity and who subsequently enrolls in a home school shall lose eligibility for participation in the extracurricular activity until the student:

(i) demonstrates academic eligibility by providing test results or a portfolio of the student's work to the school principal, provided that a student may not reestablish academic eligibility under this Subsection (14)(a) during the same activity season in which the student was declared to be academically ineligible;

(ii) returns to public school and reestablishes academic eligibility; or

(iii) enrolls in a private school and establishes academic eligibility.

(b) A public school student who has been declared to be behaviorally ineligible to participate in an extracurricular activity and who subsequently enrolls in a home school shall lose eligibility for participation in the extracurricular activity until the student meets eligibility standards as provided in Subsection (3).

(15) When selection to participate in an extracurricular activity at a public school is made on a competitive basis, a private school student [~~and~~] or a home school student [~~shall be~~] is eligible to try out for and participate in the activity as provided in this section.

(16) (a) If a student exits a public school to enroll in a private school or a home school mid-semester or during an activity season, and the student desires to participate in an extracurricular activity at the public school, the public school shall issue an interim academic assessment based on the student's work in each class.

(b) A student's academic eligibility to participate in an extracurricular activity under the circumstances described in Subsection (16)(a) [~~shall be based~~] is dependent on the student meeting public school academic eligibility standards at the time of exiting public school.

(c) A student may appeal an academic eligibility determination made under Subsection (16)(b) in accordance with procedures for appealing a public school student's academic eligibility.

Section 2. Section **53G-6-704** is amended to read:

**53G-6-704. Charter school students' participation in extracurricular activities at other public schools.**

(1) As used in this section:

(a) "Association" means the same as that term is defined in Section 53G-7-1101.

(b) "Extracurricular activity" means the same as that term is defined in Section

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53G-7-501.

(c) "Initial establishment of eligibility requirements" means the same as that term is defined in Section 53G-6-703.

~~[(1)]~~ (2) A charter school student is eligible to participate in an extracurricular activity not offered by the student's charter school at:

(a) the school ~~[within whose]~~ with attendance boundaries within which the student's custodial parent resides, if, for an interscholastic competition of athletic teams, the student did not initially establish the student's eligibility at another public school in grade 9 or 10;

(b) the public school from which the student withdrew for the purpose of attending a charter school; or

(c) a public school that is not a charter school if the student's charter school is located on the campus of the public school or has local school board approval to locate on the campus of the public school.

~~[(2)]~~ (3) In addition to the public schools listed in Subsection ~~[(1);]~~ (2), the state board may establish rules to allow a charter school student to participate in an extracurricular activity at a public school other than a public school listed in Subsection ~~[(1);]~~ (2).

~~[(3)]~~ (4) A school other than a school described in Subsection ~~[(1)(a), (b), or (c)]~~ (2) may allow a charter school student to participate in ~~[extracurricular activities other than:]~~ an extracurricular activity a public school sponsors and supports if:

(a) for interschool competitions of athletic teams [sponsored and supported by a public school; or], the charter school student meets the initial establishment of eligibility requirements;

(b) for interschool contests or competitions for music, drama, or forensic groups or teams [sponsored and supported by a public school;], the charter school student meets the entry requirements for participation;

(c) the charter school student meets the eligibility requirements under this section; and

(d) the charter school student meets the enrollment requirements for public school in accordance with Part 4, School District Enrollment.

~~[(4)]~~ (5) A charter school student is eligible for an extracurricular ~~[activities]~~ activity at a public school consistent with eligibility standards as applied to full-time students of the public school.



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~~[(5)]~~ (6) A school district or a public school may not impose additional requirements on a charter school student to participate in an extracurricular ~~[activities]~~ activity that are not imposed on full-time students of the public school.

~~[(6)]~~ (7) (a) The state board shall make rules establishing fees for charter school students' participation in an extracurricular ~~[activities]~~ activity at school district schools.

(b) The rules shall provide that:

(i) charter school students pay the same fees as other students to participate in an extracurricular ~~[activities]~~ activity;

(ii) charter school students are eligible for fee waivers pursuant to Section 53G-7-504;

(iii) for each charter school student who participates in an extracurricular activity at a school district school, the charter school shall pay a share of the school district's costs for the extracurricular activity; and

(iv) a charter school's share of the costs of an extracurricular activity shall reflect state and local tax revenues expended, except capital facilities expenditures, for an extracurricular activity in a school district or a school divided by total student enrollment of the school district or the school.

(c) In determining a charter school's share of the costs of an extracurricular activity under Subsections ~~[(6)(b)(iii) and (iv)]~~ (7)(b)(iii) and (iv), the state board may establish uniform fees statewide based on average costs statewide or average costs within a sample of school districts.

~~[(7)]~~ (8) When selection to participate in an extracurricular activity at a public school is made on a competitive basis, a charter school student is eligible to try out for and participate in the activity as provided in this section.

Section 3. Section **53G-6-705** is amended to read:

### **53G-6-705. Online students' participation in extracurricular activities.**

(1) As used in this section:

(a) "Association" means the same as that term is defined in Section 53G-7-1101.

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

(c) "Initial establishment of eligibility requirements" means the same as that term is defined in Section 53G-6-703.

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~~[(a)]~~ (d) "Online education" means the use of information and communication technologies to deliver educational opportunities to a student in a location other than a school.

~~[(b)]~~ (e) "Online student" means a student who:

(i) participates in an online education program sponsored or supported by the state board, a school district, or a charter school; and

(ii) generates funding for the school district or the school pursuant to Subsection ~~[[53F-2-102(4)]~~ ~~[[53F-2-102(5)]]~~ and rules of the state board.

(2) An online student is eligible to participate in an extracurricular ~~[activities]~~ activity at:

(a) the school ~~[within whose]~~ with attendance boundaries within which the student's custodial parent resides, if, for an interscholastic competition of athletic teams, the student did not initially establish the student's eligibility at another public school in grade 9 or 10; or

(b) the public school from which the student withdrew for the purpose of participating in an online education program.

(3) A public school other than a school described in Subsection ~~[(2)(a) or (b)]~~ (2) may allow an online student to participate in an extracurricular ~~[activities other than]~~ activity that the public school sponsors and supports if:

(a) for interschool competitions of athletic teams sponsored and supported by a public school[; or], the online school student meets the initial establishment of eligibility requirements;

(b) for interschool contests or competitions for music, drama, or forensic groups or teams sponsored and supported by a public school[-], the online school student meets the entry requirements for participation;

(c) the online school student meets the eligibility requirements under this section; and

(d) the online school student meets the enrollment requirements for public school in accordance with Part 4, School District Enrollment.

(4) An online student is eligible ~~[for]~~ to participate in an extracurricular ~~[activities]~~ activity at a public school consistent with eligibility standards as applied to full-time students of the public school.

(5) A school district or public school may not impose additional requirements on an online school student to participate in an extracurricular ~~[activities]~~ activity that are not

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imposed on full-time students of the public school.

(6) (a) The state board shall make rules establishing fees for an online school student's participation in an extracurricular [~~activities~~] activity at school district schools.

(b) The rules shall provide that:

(i) online school students pay the same fees as other students to participate in an extracurricular [~~activities~~] activity;

(ii) online school students are eligible for fee waivers pursuant to Section 53G-7-504;

(iii) for each online school student who participates in an extracurricular activity at a school district school, the online school shall pay a share of the school district's costs for the extracurricular activity; and

(iv) an online school's share of the costs of an extracurricular activity shall reflect state and local tax revenues expended, except capital facilities expenditures, for an extracurricular activity in a school district or school divided by total student enrollment of the school district or school.

(c) In determining an online school's share of the costs of an extracurricular activity under Subsections (6)(b)(iii) and (iv), the state board may establish uniform fees statewide based on average costs statewide or average costs within a sample of school districts.

(7) When selection to participate in an extracurricular activity at a public school is made on a competitive basis, an online student is eligible to try out for and participate in the activity as provided in this section.

Section 4. Section 53G-6-1001 is amended to read:

### **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.

~~[(2)]~~ (2) "Birth certificate" means an official record of an individual's date of birth, place of birth, sex, and parentage, including a supplementary certificate of birth or birth certificate amendment and amendment history as provided in Sections 26-2-10 and 26-2-11.

~~[(2)]~~ (3) "Commission" means the School Activity Eligibility Commission created in Section 53G-6-1003.

(4) "Does not correspond with the sex designation" means that a student's sex

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designation for an interscholastic activity in which a student seeks participation does not correspond with the sex designation on the student's birth certificate or an amendment, including the amendment history, to the student's birth certificate that the Division of Vital Records and Statistics provides.

~~[(3)]~~ (5) "Female-designated" means that an interscholastic activity is designated specifically for female students.

~~[(4)]~~ (6) "Gender-designated" means that an interscholastic activity or facility is designated specifically for female or male students.

~~[(5)]~~ (7) "Gender identity" means the same as that term is defined in Section 34A-5-102.

~~[(6)]~~ (8) "Interscholastic activity" means an activity in which a student represents the student's school in the activity in competition against another school.

~~[(7)]~~ (9) "Male-designated" means that an interscholastic activity is designated specifically for male students.

~~[(8)]~~ (10) "Student" means a student who is enrolled in a public school that participates in interscholastic activities.

Section ~~{4}~~ 5. Section **53G-7-1102** is amended to read:

### **53G-7-1102. Public schools prohibited from membership.**

(1) A public school may not be a member of or pay dues to an association that:

(a) is not in compliance [~~on or after July 1, 2017;~~] with:

~~[(a)]~~ (i) this part;

~~[(b)]~~ (ii) Title 52, Chapter 4, Open and Public Meetings Act;

~~[(c)]~~ (iii) Title 63G, Chapter 2, Government Records Access and Management Act; and

~~[(d)]~~ (iv) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act[~~;~~];

(b) does not collect each student's birth certificate, as that term is defined in Section 53G-6-1001, or equivalent documentation, as described in Subsection (2), to determine eligibility as a condition of the association's registration process for an athletic team, event, or category; or

(c) does not require a student to provide the athlete's date of birth and sex as a condition of the registration process for an athletic team, event, or category.

(2) Except as provided in Subsection (3), for a student who is homeless or not a United

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States citizen and who is unable to provide a birth certificate, the association may collect the student's:

(a) state-issued identification document, including a driver's license or passport; or

(b) federally recognized identification document, including a document that the

Department of Homeland Security issues.

(3) Subsection (1)(b) or (2) do not apply to an association for a student who is a homeless child or youth, as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sec. 11431 et seq.

(4) Nothing in this section limits or impairs an LEA's requirement to verify a student's initial **review of** eligibility to participate in an athletic team, event, or category under applicable state or federal law or state board rule, including the student's:

(a) residency status;

(b) age;

(c) sex, **verified by the student's birth certificate as that term is defined in Section**

**53G-6-1001;**

(d) academic requirements; or

(e) school enrollment capacity.

~~(2)~~ (5) Unless otherwise specified, an association's compliance with or an association employee or officer's compliance with the provisions described in Subsection (1) does not alter:

(a) the association's public or private status; or

(b) the public or private employment status of the employee or officer.

**Section ~~5~~6. Coordinating H.B. 209 with S.B. 166 -- Substantive and technical amendments.**

If this H.B. 209 and S.B. 166, Education Entity Amendments, both pass and become law, the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by amending Subsections 53G-6-703(2)(c) and (d) to read:

"(c) (i) Except as provided in Subsection (2)(d), a private school student or a home school student may only participate in an extracurricular activity at:

~~(i)~~ (A) the school [~~within whose~~] with attendance boundaries within which the student's custodial parent resides; or

~~(ii)~~ (B) the school from which the student withdrew for the purpose of attending a

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private or home school.

(ii) A private school student, a micro-education entity student, a home school student, or a home-based education entity student retains the ability to participate in an extracurricular activity at a school described in Subsection (2)(c)(i) if the student did not initially establish the student's eligibility at another school in grade 9 or 10.

(d) A school other than a school described in Subsection (2)(c)(i) ~~[or (ii)]~~ may allow a private school student or a home school student to participate in an extracurricular activity ~~[other than]~~ that the public school sponsors and supports if:

(i) for an interscholastic competition of athletic teams [sponsored and supported by a public school, or] ~~or~~, the private school student, the micro-education entity student, the home school student, or the home-based education entity student meets the initial establishment of eligibility requirements;

(ii) for an interscholastic contest or competition for music, drama, or forensic groups or teams [sponsored and supported by a public school.];

(A) subject to Subsection (2)(b), the private school student or the micro-education entity student meets the entry requirements for participation; or

(B) the home school student or the home-based education entity student meets the entry requirements for participation;

(iii) the private school student, the micro-education entity student, the home school student, or the home-based education entity student meets the eligibility requirements under this section; and

(iv) the private school student, the micro-education entity student, the home school student, or the home-based education entity student meets the enrollment requirements for public school in accordance with Part 4, School District Enrollment."