

**Representative Kera Birkeland** proposes the following substitute bill:

**PRESERVING SPORTS FOR FEMALE STUDENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kera Birkeland**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses participation in athletic activities reserved for female students in public education.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires schools and local education agencies to designate athletic activities by sex;
- ▶ prohibits a student of the male sex from participating in an athletic activity designated for female students;
- ▶ prohibits certain complaints or investigations based on a school or local education agency for maintaining separate athletic activities for female students;
- ▶ provides for certain causes of action and waives governmental immunity for those causes of action; and
- ▶ provides severability clauses.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

29 ENACTS:

30 **53G-6-901**, Utah Code Annotated 1953

31 **53G-6-902**, Utah Code Annotated 1953

32 **53G-6-903**, Utah Code Annotated 1953

33 **53G-6-904**, Utah Code Annotated 1953



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

36 Section 1. Section **53G-6-901** is enacted to read:

37 **Part 9. Preserving Sports for Female Students**

38 **53G-6-901. Definitions.**

39 As used in this part:

40 (1) "Athletic association" means an association, as that term is defined in Section

41 53G-7-1101.

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

44 (3) "School athletic activity" means an interscholastic or intramural athletic or sporting  
45 activity that an LEA sponsors.

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

48 Section 2. Section **53G-6-902** is enacted to read:

49 **53G-6-902. Participation in school athletic activities.**

50 Notwithstanding any state board rule or policy of an athletic association:

51 (1) a public school or LEA, or a private school that competes against a public school or  
52 LEA, shall expressly designate school athletic activities as one of the following, based on sex:

53 (a) "male" or "boys";

54 (b) "female" or "girls"; or

55 (c) "coed" or "mixed";

56 (2) a student of the male sex may not participate, and a public school or LEA may not

57 allow a student of the male sex to participate, in a school athletic activity designated as  
58 "female" or "girls"; and

59 (3) a government entity, licensing or accrediting organization, or athletic association  
60 may not entertain a complaint, open an investigation, or take any other adverse action against a  
61 school or LEA described in Subsection (1) for maintaining separate school athletic activities  
62 for students of the female sex.

63 Section 3. Section **53G-6-903** is enacted to read:

64 **53G-6-903. Cause of action.**

65 (1) Except as provided in Subsection (2):

66 (a) a student who is deprived of an athletic opportunity or suffers any direct or indirect  
67 harm as a result of a violation of this part may bring a private cause of action under this part for  
68 injunctive relief, damages, and any other relief available under law against the school or LEA  
69 that caused the deprivation or harm;

70 (b) any individual who is subject to retaliation or other adverse action by a school,  
71 LEA, or athletic association as a result of reporting a violation of this part to an employee or  
72 representative of the school, LEA, or athletic association, or to any state or federal agency with  
73 oversight of schools or LEAs in the state, may bring a private cause of action under this part for  
74 injunctive relief, damages, and any other relief available under law against the school, LEA, or  
75 athletic association that retaliated or took the adverse action; and

76 (c) a school or LEA that suffers any direct or indirect harm as a result of a violation of  
77 this part may bring a private cause of action under this part for injunctive relief, damages, and  
78 any other relief available under law against the government entity, licensing or accrediting  
79 organization, or athletic association or organization that caused the harm.

80 (2) A person may not bring a civil action under this part later than two years after the  
81 day on which the harm underlying the cause of action occurs.

82 (3) A person who prevails on a claim brought under this part is entitled to:

83 (a) monetary damages, including for psychological, emotional, and physical harm;

84 (b) reasonable attorney fees and costs; and

85 (c) any other appropriate relief, at the court's discretion.

86 Section 4. Section **53G-6-904** is enacted to read:

87 **53G-6-904. Severability.**

88           (1) If any provision of this part or the application of any provision of this part to any  
89 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,  
90 the remainder of this part shall be given effect without the invalidated provision or application.

91           (2) The provisions of this part are severable.

92           Section 5. Section **63G-7-301** is amended to read:

93           **63G-7-301. Waivers of immunity.**

94           (1) (a) Immunity from suit of each governmental entity is waived as to any contractual  
95 obligation.

96           (b) Actions arising out of contractual rights or obligations are not subject to the  
97 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

98           (c) The Division of Water Resources is not liable for failure to deliver water from a  
99 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development  
100 Act, if the failure to deliver the contractual amount of water is due to drought, other natural  
101 condition, or safety condition that causes a deficiency in the amount of available water.

102           (2) Immunity from suit of each governmental entity is waived:

103           (a) as to any action brought to recover, obtain possession of, or quiet title to real or  
104 personal property;

105           (b) as to any action brought to foreclose mortgages or other liens on real or personal  
106 property, to determine any adverse claim on real or personal property, or to obtain an  
107 adjudication about any mortgage or other lien that the governmental entity may have or claim  
108 on real or personal property;

109           (c) as to any action based on the negligent destruction, damage, or loss of goods,  
110 merchandise, or other property while it is in the possession of any governmental entity or  
111 employee, if the property was seized for the purpose of forfeiture under any provision of state  
112 law;

113           (d) subject to Subsection [63G-7-302](#)(1), as to any action brought under the authority of  
114 Utah Constitution, Article I, Section 22, for the recovery of compensation from the  
115 governmental entity when the governmental entity has taken or damaged private property for  
116 public uses without just compensation;

117           (e) subject to Subsection [63G-7-302](#)(2), as to any action brought to recover attorney  
118 fees under Sections [63G-2-405](#) and [63G-2-802](#);

119 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
120 Act;

121 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
122 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
123 Land Use Act;

124 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

125 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
126 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

127 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
128 or other public improvement;

129 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury  
130 proximately caused by a negligent act or omission of an employee committed within the scope  
131 of employment; [and]

132 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from  
133 a sexual battery, as provided in Section 76-9-702.1, committed:

134 (i) against a student of a public elementary or secondary school, including a charter  
135 school; and

136 (ii) by an employee of a public elementary or secondary school or charter school who:

137 (A) at the time of the sexual battery, held a position of special trust, as defined in  
138 Section 76-5-404.1, with respect to the student;

139 (B) is criminally charged in connection with the sexual battery; and

140 (C) the public elementary or secondary school or charter school knew or in the exercise  
141 of reasonable care should have known, at the time of the employee's hiring, to be a sex  
142 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex  
143 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a  
144 background check under Section 53G-11-402[-]; and

145 (k) as to a cause of action described in Section 53G-6-903 regarding the preservation of  
146 sports for female students.

147 (3) (a) As used in this Subsection (3):

148 (i) "Code of conduct" means a code of conduct that:

149 (A) is not less stringent than a model code of conduct, created by the State Board of

150 Education, establishing a professional standard of care for preventing the conduct described in  
151 Subsection (3)(a)(i)(D);

152 (B) is adopted by the applicable local education governing body;

153 (C) regulates behavior of a school employee toward a student; and

154 (D) includes a prohibition against any sexual conduct between an employee and a  
155 student and against the employee and student sharing any sexually explicit or lewd  
156 communication, image, or photograph.

157 (ii) "Local education agency" means:

158 (A) a school district;

159 (B) a charter school; or

160 (C) the Utah Schools for the Deaf and the Blind.

161 (iii) "Local education governing board" means:

162 (A) for a school district, the local school board;

163 (B) for a charter school, the charter school governing board; or

164 (C) for the Utah Schools for the Deaf and the Blind, the state board.

165 (iv) "Public school" means a public elementary or secondary school.

166 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

167 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering  
168 the term "child" in that section to include an individual under age 18.

169 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a  
170 claim against a local education agency for an injury resulting from a sexual battery or sexual  
171 abuse committed against a student of a public school by a paid employee of the public school  
172 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

173 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a  
174 code of conduct; and

175 (ii) before the sexual battery or sexual abuse occurred, the public school had:

176 (A) provided training on the code of conduct to the employee; and

177 (B) required the employee to sign a statement acknowledging that the employee has  
178 read and understands the code of conduct.

179 (4) (a) As used in this Subsection (4):

180 (i) "Higher education institution" means an institution included within the state system

181 of higher education under Section 53B-1-102.

182 (ii) "Policy governing behavior" means a policy adopted by a higher education  
183 institution or the Utah Board of Higher Education that:

184 (A) establishes a professional standard of care for preventing the conduct described in  
185 Subsections (4)(a)(ii)(C) and (D);

186 (B) regulates behavior of a special trust employee toward a subordinate student;

187 (C) includes a prohibition against any sexual conduct between a special trust employee  
188 and a subordinate student; and

189 (D) includes a prohibition against a special trust employee and subordinate student  
190 sharing any sexually explicit or lewd communication, image, or photograph.

191 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

192 (iv) "Special trust employee" means an employee of a higher education institution who  
193 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education  
194 student.

195 (v) "Subordinate student" means a student:

196 (A) of a higher education institution; and

197 (B) whose educational opportunities could be adversely impacted by a special trust  
198 employee.

199 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a  
200 claim for an injury resulting from a sexual battery committed against a subordinate student by a  
201 special trust employee, unless:

202 (i) the institution proves that the special trust employee's behavior that otherwise would  
203 constitute a sexual battery was:

204 (A) with a subordinate student who was at least 18 years old at the time of the  
205 behavior; and

206 (B) with the student's consent; or

207 (ii) (A) at the time of the sexual battery, the higher education institution was subject to  
208 a policy governing behavior; and

209 (B) before the sexual battery occurred, the higher education institution had taken steps  
210 to implement and enforce the policy governing behavior.