

## The Protection of Girls' Sports Act

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AN ACT requiring public school athletic teams to be based on biological sex, unless designated as coed or mixed, and providing for a private cause of action and enforcement by the attorney general.

*Be it enacted by the Legislature of the State of [State]:*

### **Sec. 1 Legislative findings.**

(1) The opportunity to participate in athletic events and compete on a fair playing field should be available to all individuals, both male and female.

(2) The United States Senate has stated that although “the share of athletic participation opportunities of high school girls has increased more than sixfold since the passage of Title IX of the Education Amendments of 1972 . . . high school girls still experience . . . a lower share of athletic participation opportunities than high school boys.” S. Res. 398, 115th Cong. (2018).

(3) As Justice Ruth Bader Ginsburg stated for a majority of the United States Supreme Court, there are “inherent differences between men and women” and these differences “remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual’s opportunity.” *United States v. Virginia*, 518 U.S. 515, 533 (1996).

(4) Courts have recognized that the inherent, physiological differences between males and females result in different athletic capabilities. See, e.g., *Kleczek v. Rhode Island Interscholastic League, Inc.*, 612 A.2d 13 734, 738 (R.I. 1992) (“Because of innate physiological differences, boys and girls are not similarly situated as they enter athletic competition.”); *Petrie v. Ill. High Sch. Ass’n*, 394 N.E.2d 855, 861 (Ill. App. Ct. 1979) (noting that “high school boys [generally possess physiological advantages over] their girl counterparts” and that those advantages give them an unfair lead over girls in some sports like “high school track”).

(5) The benefits that natural testosterone provides to male athletes are not meaningfully diminished through the use of puberty blockers and cross-sex hormones. A recent study on the impact of such treatments found that even “after 12 months of hormonal therapy,” a man who identifies as a woman and is taking cross-sex hormones “had an absolute advantage” over female athletes and “will still likely have performance benefits” over women. Tommy Lundberg *et al.*, “Muscle strength, size and composition following 12 months of gender-affirming treatment in transgender individuals: retained advantage for the transwomen,” Karolinksa Institute (Sept. 26, 2019).

### **Sec. 2. Definitions.**

As used in this act:

(a) “Sex” means a person’s immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth.

### **Sec. 3. Protection of fairness in girls’ and women’s sports.**

(a) Interscholastic, intercollegiate, intramural or club athletic teams or sports that are sponsored by a public elementary or secondary school, a postsecondary educational institution, or any school or other postsecondary educational institution whose students or teams compete against a public school or postsecondary educational institution shall be expressly designated as one of the following based on biological sex:

- (1) Males, men or boys;
- (2) females, women or girls; or

(3) coed or mixed.

(b) Athletic teams or sports designated for females, women or girls shall not be open to students of the male sex.

(c) Rules for the administration of this section shall be adopted as follows:

(1) The [State public school sports governing entity] shall adopt rules and regulations for its member schools for the implementation of this section.

(2) The state board of regents and the governing body for each municipal university, community college and technical college shall adopt rules and regulations for the postsecondary educational institutions governed by each such entity, respectively, for the implementation of this section.

#### **Sec. 4. Protection of schools.**

No governmental entity, licensing or accrediting organization or athletic association or organization shall entertain a complaint, open an investigation or take any other adverse action against a school or postsecondary educational institution for maintaining separate interscholastic, intercollegiate, intramural or club athletic teams or sports for students of the female sex.

#### **Sec. 5. Private cause of action.**

(a) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of section 3, and amendments thereto, shall have a private cause of action for declaratory relief, injunctive relief, damages and attorney's fees against the public elementary or secondary school or postsecondary educational institution.

(b) Any student who is subject to retaliation or other adverse action by a public elementary or secondary school or postsecondary educational institution or athletic association or organization as a result of reporting a violation of section 3, and amendments thereto, to an employee or representative of such school, postsecondary educational institution or athletic association or organization, or to any state or federal agency with oversight of schools or postsecondary educational institutions in this state, shall have a private cause of action for declaratory relief, injunctive relief, damages and attorney's fees against the school, institution or athletic association or organization.

(c) Any school or postsecondary educational institution that suffers any direct or indirect harm as a result of a violation of section 3 or 4, and amendments thereto, shall have a private cause of action for declaratory relief, injunctive relief, damages and attorney's fees against the governmental entity, licensing or accrediting organization or athletic association or organization.

(d) All civil actions must be initiated within two years after the harm occurred. Persons or organizations that prevail on a claim brought pursuant to this section shall be entitled to monetary damages, including for any psychological, emotional and physical harm suffered, reasonable attorney fees and costs, and any other appropriate relief.

#### **Sec. 6. Enforcement by the attorney general.**

(a) The attorney general may bring a cause of action for any relief available under the law or in equity against:

(1) A public elementary or secondary school or postsecondary educational institution that knowingly violates this chapter; and

(2) The directors, officers, agents, and employees of a public elementary or secondary school or postsecondary educational institution that knowingly violates this chapter.

(b) A court that finds a public elementary or secondary school or postsecondary educational institution has knowingly violated this chapter shall, in addition to awarding any relief requested

under subsection (a) of this section, enter an injunction barring the public elementary or secondary school or postsecondary educational institution from receiving funds from any public source for a period of one (1) year.

**Sec. 7. Severability.**

The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.