

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 358
Mar 22, 2021
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10141-MK-55A

Short Title: Save Women's Sports Act.

(Public)

Sponsors: Representatives Brody, McElraft, Wheatley, and Dixon (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT THE SAVE WOMEN'S SPORTS ACT TO PROTECT THE OPPORTUNITIES FOR WOMEN AND GIRLS IN ATHLETICS BY ENSURING WOMEN ARE NOT FORCED TO COMPETE AGAINST MEN PLAYING ON WOMEN'S SPORTS TEAMS.

Whereas, there are "[i]nherent differences" between men and women," and that 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); and

Whereas, these "inherent differences" range from chromosomal and hormonal differences to physiological differences; and

Whereas, men generally have "denser, stronger bones, tendons, and ligaments" and "larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher hemoglobin." Neel Burton, *The Battle of the Sexes*, PSYCHOL. TODAY, (July 2, 2012), <https://www.psychologytoday.com/us/blog/hidden-and-see/201207/the-battle-the-sexes>; and

Whereas, men also have higher natural levels of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of Type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity. Doriane Lambelet Coleman, *Sex in Sport*, 80 LAW & CONTEMPORARY PROBLEMS 63, 74 (2017) (quoting Gina Kolata, *Men, Women and Speed. 2 Words: Got Testosterone?*, N.Y. TIMES, Aug. 21, 2008); and

Whereas, the biological differences between females and males, especially as they relate to natural levels of testosterone, "explain the male and female secondary sex characteristics which develop during puberty and have lifelong effects, including those most important for success in sport: categorically different strength, speed, and endurance." Doriane Lambelet Coleman & Wickliffe Shreve, "Comparing Athletic Performances: The Best Elite Women to Boys and Men," Duke Law Center for Sports Law and Policy, <https://web.law.duke.edu/sports/sex-sport/comparative-athletic-performance>; and

Whereas, while classifications based on sex are generally disfavored, the United States Supreme Court has recognized that "[s]ex classifications may be used to compensate women for particular economic disabilities [they have] suffered, to promote equal employment opportunity, [and] to advance full development of the talent and capacities of our Nation's people." *United States v. Virginia*, 518 U.S. 515, 533 (1996) (internal citations and quotation marks omitted); and

Whereas, one place where sex classifications allow for the "full development of the talent and capacities of our Nation's people" is in the context of sports and athletics; and



* D R H 1 0 1 4 1 - M K - 5 5 A *

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

8 Whereas, a recent study of female and male Olympic performances since 1983 found
9 that, although athletes from both sexes improved over the time span, the "gender gap" between
10 female and male performances remained stable. "These suggest that women's performances at
11 the high level will never match those of men." Valerie Thibault, et al., *Women and Men in Sport*
12 *Performance: The Gender Gap has not Evolved since 1983*, 9 J. SPORTS SCI. & MED. 214,
13 219 (2010); and

14 Whereas, as Duke Law professor and all-American track athlete Doriane Coleman,
15 tennis champion Martina Navratilova and Olympic track gold medalist Sanya Richards-Ross
16 recently wrote: "The evidence is unequivocal that starting in puberty, in every sport except
17 sailing, shooting and riding, there will always be significant numbers of boys and men who would
18 beat the best girls and women in head-to-head competition. Claims to the contrary are simply a
19 denial of science." Doriane Coleman, Martina Navratilova, et al., *Pass the Equality Act, But Don't*
20 *Abandon Title IX*, WASHINGTON POST, (Apr. 29, 2019), <https://wapo.st/2VKINN1>; and

21 Whereas, the benefits that natural testosterone provides to male athletes are not
22 diminished through the use of puberty blockers and cross-sex hormones. A recent study on the
23 impact of such treatments found that policies like those of the International Olympic Committee
24 that require biological males to undergo at least one year of testosterone suppression before
25 competing in women's sports do not create a level playing field. "[T]he reduction in testosterone
26 levels required by many sports federation transgender policies is insufficient to remove or reduce
27 the male advantage by any meaningful degree." For example, "the muscle mass advantage males
28 possess over females, and potentially the performance implications thereof, are not removed by
29 12 months of testosterone suppression." Instead, the study concluded that "The data presented
30 here demonstrates that the male physical performance advantage over females, attributed to
31 superior anthropometric and muscle mass/strength parameters achieved at puberty, is not
32 removed by the current regimen of testosterone suppression permitting participation of
33 transgender women in female sports categories. Rather, it appears that the male performance
34 advantage is largely retained by transgender women and thus remains substantial." Hilton, E.N.;
35 Lundberg, T.R. *Transgender Women in The Female Category of Sport: Is the Male Performance*
36 *Advantage Removed by Testosterone Suppression?*. Preprints 2020, 2020050226 (doi:
37 10.20944/preprints202005.0226.v1); and

38 Whereas, having separate sex-specific teams furthers efforts to promote sex equality.
39 Sex-specific teams accomplish this by providing opportunities for female athletes to demonstrate
40 their skill, strength, and athletic abilities while also providing them with opportunities to obtain
41 recognition and accolades, college scholarships, and the numerous other long-term benefits that
42 flow from success in athletic endeavors; Now, therefore,
43 The General Assembly of North Carolina enacts:

44 **SECTION 1.** This act shall be known as "The Save Women's Sports Act."

45 **SECTION 2.(a)** Chapter 115C of the General Statutes is amended by adding a new
46 Article to read:

47 "Article 29E.

48 "Biological Sex-Specific Athletic Teams.

49 "§ 115C-407.40. Designation of athletic teams.

1 (a) All athletic teams for middle and secondary school students participating in
2 interscholastic or intramural athletic activities conducted by a public school unit shall be
3 expressly designated as one of the following based on biological sex:

4 (1) Males, men, or boys.

5 (2) Females, women, or girls.

6 (3) Coed or mixed.

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

9 (c) Sex shall be recognized based solely on a person's reproductive biology and genetics
10 at birth.

11 **"§ 115C-407.41. Protection for schools.**

12 No governmental entity, licensing or accrediting organization, or athletic association or
13 organization shall consider a complaint, open an investigation, or take an adverse action against
14 a school or public school unit for maintaining separate athletic teams or sports for students of the
15 female sex in accordance with this Article.

16 **"§ 115C-407.42. Cause of action; remedies.**

17 (a) A biological female student who is deprived of an athletic opportunity or suffers or is
18 likely to suffer from any direct or indirect harm as a result of a violation of this Article may assert
19 that violation as a cause of action for remedies provided for in subsection (d) of this section.

20 (b) A biological female student who is subjected to retaliation or other adverse action by
21 a public school unit, athletic association, or other organization as a result of reporting a violation
22 of this Article to an employee or representative of the public school unit, athletic association, or
23 to any local, State, or federal agency with oversight of the public school unit shall have a cause
24 of action for remedies provided for in subsection (d) of this section.

25 (c) Any public school unit or its representatives or employees who suffer any direct or
26 indirect harm for prohibiting a biological male student from participating on a female, girls', or
27 women's athletic team pursuant to the requirements of this Article shall have a cause of action
28 for remedies provided for in subsection (d) of this section.

29 (d) Any person who brings a cause of action pursuant to this Article may obtain
30 appropriate relief, including the following:

31 (1) Injunctive relief, protective order, writ of mandamus or prohibition, or
32 declaratory relief to prevent any violation of this Article.

33 (2) Actual damages, including for psychological, emotional, or physical harm,
34 reasonable attorney fees, and costs.

35 (e) All civil actions under this Article must be initiated within two years from the date
36 that the harm occurred."

37 **SECTION 2.(b)** G.S. 115C-12(23) reads as rewritten:

38 "(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. –
39 The State Board of Education shall adopt rules governing interscholastic
40 athletic activities conducted by local boards of education, including eligibility
41 for student ~~participation~~–participation and designation of teams consistent
42 with the provisions of Article 29E of this Chapter. With regard to middle
43 schools and high schools, the rules shall provide for the following:

44"

45 **SECTION 2.(c)** G.S. 115C-218.75 is amended by adding a new subsection to read:

46 "(i) Biological Sex-Specific Athletic Teams. – Article 29E of this Chapter shall apply to
47 a charter school organizing athletic teams for middle or secondary school students to participate
48 in interscholastic or intramural athletic activities."

49 **SECTION 3.** Article 39 of Chapter 115C of the General Statutes is amended by
50 adding a new section to read:

51 **"§ 115C-566.10. Biological sex-specific athletic teams.**

1 Article 29E of this Chapter shall apply to any nonpublic school that is a member of a
2 State-level association, including the North Carolina High School Athletic Association
3 (NCHSAA), that governs participation in interscholastic athletic activities at the high school
4 level."

5 **SECTION 4.** Chapter 116 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 38.

8 "Biological Sex-Specific Athletic Teams.

9 **"§ 116-400. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Institution of higher education. – A constituent institution of The University
12 of North Carolina, a community college under the jurisdiction of the State
13 Board of Community Colleges, or a private college or university located in
14 North Carolina.
- 15 (2) Intercollegiate athletic program. – A sport program played at the collegiate
16 level for which eligibility requirements for participation by a student are
17 established by a national association for the promotion or regulation of
18 intercollegiate athletics, including the National Collegiate Athletic
19 Association (NCAA), the National Association of Intercollegiate Athletics
20 (NAIA), and the National Junior College Athletic Association (NJCAA).
- 21 (3) Intramural athletics. – Recreational sports organized by a constituent
22 institution of The University of North Carolina or a community college under
23 the jurisdiction of the State Board of Community Colleges.

24 **"§ 116-401. Designation of athletic teams.**

25 (a) All intramural athletic teams and teams that are part of an intercollegiate athletic
26 program of an institution of higher education shall be expressly designated as one of the
27 following based on biological sex:

- 28 (1) Males, men, or boys.
- 29 (2) Females, women, or girls.
- 30 (3) Coed or mixed.

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

33 (c) Sex shall be recognized based solely on a person's reproductive biology and genetics
34 at birth.

35 **"§ 116-402. Protection for institutions of higher education.**

36 No governmental entity, licensing or accrediting organization, or athletic association or
37 organization shall consider a complaint, open an investigation, or take an adverse action against
38 an institution of higher education for maintaining separate athletic teams or sports for students of
39 the female sex in accordance with this Article.

40 **"§ 116-403. Cause of action; remedies.**

41 (a) A biological female student who is deprived of an athletic opportunity or suffers or is
42 likely to suffer from any direct or indirect harm as a result of a violation of this Article may assert
43 that violation as a cause of action for remedies provided for in subsection (d) of this section.

44 (b) A biological female student who is subjected to retaliation or other adverse action by
45 an institution of higher education, athletic association, or other organization as a result of
46 reporting a violation of this Article to an employee or representative of the institution of higher
47 education, athletic association, or to any local, State, or federal agency with oversight of the
48 institution shall have a cause of action for remedies provided for in subsection (d) of this section.

49 (c) Any institution of higher education or its representatives or employees who suffer any
50 direct or indirect harm for prohibiting a biological male student from participating on a female,

1 girls', or women's athletic team pursuant to the requirements of this Article shall have a cause of
2 action for remedies provided for in subsection (d) of this section.

3 (d) Any person who brings a cause of action pursuant to this Article may obtain
4 appropriate relief, including the following:

5 (1) Injunctive relief, protective order, writ of mandamus or prohibition, or
6 declaratory relief to prevent any violation of this Article.

7 (2) Actual damages, including for psychological, emotional, or physical harm,
8 reasonable attorney fees, and costs.

9 (e) All civil actions under this Article must be initiated within two years from the date
10 that the harm occurred."

11 **SECTION 5.** If any section or provision of this act is declared unconstitutional or
12 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
13 the part so declared to be unconstitutional or invalid.

14 **SECTION 6.** This act is effective when it becomes law. Sections 2 and 3 of this act
15 apply beginning with the 2021-2022 school year. Section 4 of this act applies beginning with the
16 2021-2022 academic year.