

2021 Regular Session

HOUSE BILL NO. 542

BY REPRESENTATIVES AMEDEE, CREWS, DEVILLIER, EDMONDS, EDMONSTON, EMERSON, FIRMENT, FRIEMAN, GADBERRY, GAROFALO, HODGES, HORTON, MACK, MCCORMICK, MIGUEZ, ORGERON, CHARLES OWEN, SCHAMERHORN, TARVER, THOMAS, AND VILLIO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AMUSEMENTS/SPORTS: Provides for the Fairness in Women's Sports Act relative to a school's ability to offer opportunities to each student to participate in team sporting events on an equal basis

1 AN ACT

2 To enact Chapter 7-A of Title 4 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 4:441 through 446, relative to athletic activities; to require that schools
4 designate intercollegiate, interscholastic, or intramural athletic teams according to
5 the biological sex of the team members; to provide that teams designated for females
6 are not open to participation by biological males; to provide immunity protections
7 for schools from certain adverse actions; to provide for causes of action; to provide
8 for legislative findings; to provide for definitions; to provide for remedies; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 7-A of Title 4 of the Louisiana Revised Statutes of 1950, to be
12 comprised of R.S. 4:441 through 446, is hereby enacted to read as follows:

13 CHAPTER 7-A. FAIRNESS IN WOMEN'S SPORTS ACT

14 §441. Short title

15 This Chapter shall be known as and may be cited as the "Fairness in Women's
16 Sports Act".

17 §442. Legislative findings

18 The legislature finds and declares that:

1 (1) Title IX of the Education Amendments Act of 1972, 20 U.S.C. §1681 et
2 seq., was designed to ensure that women are free from discrimination on the basis
3 of sex in both education and athletics so that women would be afforded the
4 opportunity to compete for athletic scholarships and to potentially launch their own
5 athletic careers after they have completed their education.

6 (2) The United States Supreme Court has recognized that there are
7 "[i]nherent differences' between men and women", and that these differences
8 "remain cause for celebration, but not for denigration of the members of either sex
9 or for artificial constraints on an individual's opportunity" in *United States v.*
10 *Virginia, et al*, 518 U.S. 515, 533 (1996).

11 (3) Inherent differences between men and women range from chromosomal
12 and hormonal differences to physiological differences resulting in men generally
13 having denser and stronger bones, tendons, and ligaments, larger hearts, greater lung
14 volume per body mass, a higher red blood cell count, and higher hemoglobin as well
15 as higher natural levels of testosterone, which affects traits such as hemoglobin
16 levels, body fat content, the storage and use of carbohydrates, and the development
17 of Type II muscle fibers, all of which result in men being able to generate higher
18 speed and power during physical activity.

19 (4) The biological differences between females and males, especially as it
20 relates to natural levels of testosterone, explain the male and female secondary sex
21 characteristics which develop during puberty and have lifelong effects, including
22 those most important for success in sports; categorically, they are strength, speed,
23 and endurance generally found in greater degrees in biological males than biological
24 females.

25 (5) While classifications based on sex are generally disfavored, the United
26 States Supreme Court has recognized that "sex classifications may be used to
27 compensate women for particular economic disabilities suffered, to promote equal
28 employment opportunity, (and) to advance full development of the talent and

1 capacities of our Nation's people" in *United States v. Virginia, et al*, 518 U.S. 515,
2 533-534 (1996).

3 (6) In furtherance of the goals set forth in *United States v. Virginia, et al*, 518
4 U.S. at 533-534, one area where sex classifications should allow for the "full
5 development of the talent and capacities of our Nation's people", is in the area of
6 sports and athletics.

7 (7) A recent study of female and male Olympic performances found that,
8 although athletes from both sexes improved over the time span, the "gender gap"
9 between female and male performances remained stable. These studies suggest that
10 women's performances at the high level will never match those of men. The
11 evidence is unequivocal that starting in puberty, in every sport except sailing,
12 shooting, and riding, there will always be significant numbers of boys and men who
13 would prevail over the best girls and women in head-to-head competition. Claims
14 to the contrary are simply a denial of science.

15 (8) Scientific studies have established that the benefits that natural
16 testosterone provides to male athletes is not diminished through the use of
17 testosterone suppression. A recent study on the impact of such treatments found that
18 even after twelve months of testosterone suppression, the "superior anthropometric,
19 muscle mass and strength parameters achieved by males at puberty, and
20 underpinning a considerable portion of the male performance advantage over
21 females, are not removed".

22 (9) Having separate sex-specific teams furthers efforts to promote sex
23 equality. Sex-specific teams accomplish this by providing opportunities for female
24 athletes to demonstrate their skill, strength, and athletic abilities while also providing
25 them with opportunities to obtain recognition, accolades, scholarships, better
26 physical and mental health, and the numerous other long-term benefits that flow
27 from success in athletic endeavors.

1 §443. Definitions

2 In this Chapter, unless otherwise indicated, the following definitions shall
3 apply:

4 (1) "Postsecondary education board member" means a person who serves as
5 a board member or officer for a postsecondary education management board.

6 (2) "Postsecondary education management board" means a board which
7 governs postsecondary educational institutions, pursuant to R.S. 17:3351.

8 (3) "Schools" means all of the following:

9 (a) A public elementary or secondary school.

10 (b) A nonpublic elementary or secondary school that receives state funds.

11 (c) A public postsecondary educational institution.

12 (d) A nonpublic postsecondary educational institution that receives state
13 funds.

14 (4) "School coach" means a person who is a coach, assistant coach, or
15 volunteer coach of a school intercollegiate, interscholastic, or intramural athletic
16 team or sporting event.

17 (5) "School board" means a school board or school governing authority
18 subject to the provisions of R.S. 17:81 or any nonpublic school governing authority.

19 (6) "School employee" means a person who is employed by a school, a
20 school board, a postsecondary education management board, or any postsecondary
21 institution under the authority of a postsecondary education management board.

22 (7) "School board member" means a person who serves as a board member
23 or officer for a school board or school governing authority subject to the provisions
24 of R.S. 17:81 or for any nonpublic school governing authority.

25 §444. Designation of athletic teams

26 A. Intercollegiate, interscholastic, or intramural athletic teams or sporting
27 events that are sponsored by a school and that receive state funding shall be
28 expressly designated, based upon biological sex, as only one of the following:

1 (1) Except as provided in Subsection C of this Section, a male, boys', or
2 men's team or event shall be for those students who are biological males.

3 (2) A female, girls', or women's team or event shall be for those students who
4 are biological females.

5 (3) A coeducational or mixed team or event shall be open for participation
6 by biological females and biological males.

7 B. Athletic teams or sporting events designated for females, girls, or women
8 shall not be open to students who are not biologically female.

9 C. Nothing in this Chapter shall be construed to restrict the eligibility of any
10 student to participate in any intercollegiate, interscholastic, or intramural athletic
11 teams or sports designated as "males", "men", or "boys", or designated as "coed", or
12 "mixed".

13 D. Nothing in this Chapter is intended to prevent any school from
14 implementing or maintaining a coeducational or mixed athletic team or sporting
15 event which is open to both biological males and biological females so long as a
16 female, girls', or women's athletic team or sporting event is not disbanded for the
17 purpose of creating a coeducational or mixed team or event which would thereby
18 result to the detriment of students of the female biological sex.

19 §445. Protection of educational institutions; limitation on liability

20 A. No government entity, nor any licensing or accrediting organization, nor
21 any athletic association shall entertain a complaint, open an investigation, or take any
22 other adverse action against a school, school board, or postsecondary education
23 management board for maintaining a separate intercollegiate, interscholastic, or
24 intramural athletic team or athletic event reserved for students of the female
25 biological sex.

26 B. No cause of action may be maintained against any school coach, school,
27 school board, employee of a school or school board, school board member, or
28 postsecondary education board member who prohibits a biological male from

1 participating in a female, girls', or women's athletic team or sporting event pursuant
2 to the requirements of this Chapter.

3 §446. Remedies; cause of action

4 A. A biological female student who is deprived of an athletic opportunity or
5 suffers or is likely to suffer from any direct or indirect harm as a result of a violation
6 of this Chapter may assert that violation as a cause of action for remedies provided
7 for in Subsection D of this Section. Requiring a biological woman to compete
8 against a biological male on a team that is designated as a "female", "girls'", or
9 "women's" team is inherently discriminatory to biological women and is a cognizable
10 harm to biological women under this Chapter.

11 B. A biological female student who is subjected to retaliation or other
12 adverse action by a school, athletic association, or other organization as a result of
13 reporting a violation of this Chapter to an employee or representative of the school,
14 athletic association, or to any local, state, or federal agency with oversight of schools
15 shall have a cause of action for remedies provided for in Subsection D of this
16 Section.

17 C. A school coach, school, school board, or employee of a school or school
18 board, school board member, or postsecondary education board member who suffers
19 any direct or indirect harm for prohibiting a biological male from participating in a
20 female, girls', or women's athletic team or sporting event pursuant to the
21 requirements of this Chapter shall have a cause of action for remedies provided for
22 in Subsection D of this Section.

23 D. Any person who brings a cause of action pursuant to this Chapter may
24 obtain appropriate relief, including but not limited to:

25 (1) Injunctive relief, protective order, writ of mandamus or a prohibition, or
26 declaratory relief to prevent any violation of this Chapter.

27 (2) Actual damages, reasonable attorney fees, and costs.

28 E. All civil actions under this Chapter must be initiated within two years
29 from the date that the harm occurred.

1 Section 2. If any provision or item of this Act, or the application thereof, is held
2 invalid, such invalidity shall not affect other provisions, items, or applications of the Act
3 which can be given effect without the invalid provision, item, or application and to this end
4 the provisions of this Act are hereby declared severable.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 542 Original

2021 Regular Session

Amedee

Abstract: Provides relative to the sex of members of school athletic teams.

Proposed law requires that an athletic team or sporting event sponsored by a school will be designated, based upon the biological sex of team members, as only one of the following:

- (1) A team for males, boys, or men, which means that it is for students who are biological males.
- (2) A team for females, girls, or women, which means that it is for students who are biological females.
- (3) A team that is coeducational or mixed, which means that it is for students who are biological males and students who are biological females.

Proposed law prohibits a team designated for females, girls, or women from being open to students who are not biologically female.

Proposed law provides that nothing in proposed law is intended to prevent any school from implementing or maintaining a coed athletic team or sporting event which is open to both biological males and biological females so long as a female athletic team or sporting event is not disbanded for the purpose of creating a coed team or event which would thereby result to the detriment of biological female students.

Proposed law prohibits any governmental entity, licensing or accrediting organization, or athletic association from entertaining a complaint, opening an investigation, or taking any other adverse action against a school, school board, or postsecondary education management board for maintaining a separate team or event for biological females as provided by proposed law.

Proposed law provides that no cause of action may be maintained against any coach, school, school board, school employee, or school or postsecondary education management board member, for prohibiting a biological male from participating in a female, girls', or women's athletic team or sporting event pursuant to the requirements of proposed law.

Proposed law provides that certain persons are entitled to legal causes of action and legal remedies under proposed law as follows:

- (1) A biological female student who is deprived of an athletic opportunity or suffers or is likely to suffer from any direct or indirect harm as a result of a violation of proposed law.

- (2) Any biological female student who is subjected to retaliation or other adverse action by a school, athletic association, or other organization as a result of reporting a violation of proposed law.
- (3) Any school coach, school, school board, school employee, or school or postsecondary education management board member that suffers any direct or indirect harm for prohibiting a biological male from participating in a girls' or women's athletic team or sporting event.

Proposed law provides that any person who is entitled to bring a cause of action pursuant to proposed law may obtain the following relief:

- (1) Injunctive relief, a protective order, a writ of mandamus or prohibition, or a declaratory judgment to prevent any violation of proposed law.
- (2) Actual damages suffered, reasonable attorney fees, and costs.

Proposed law provides that any civil action pursuant to proposed law must be initiated within two years from the date that the harm occurred.

(Adds R.S. 4:441-446)