

2020 Regular Session

SENATE BILL NO. 172

BY SENATOR MIZELL

AMUSEMENTS/SPORTS. Provides for the Save Women's Sports Act. (8/1/20)

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AN ACT

To enact Chapter 7-A of Title 4 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 4:441 through 446, relative to school athletic programs and sporting events; to require that schools designate interscholastic or intramural athletic teams according to the biological sex of the students; to provide that teams that are designated for females are not open to participation by biological males; to provide protections for schools from adverse actions by licensing or accrediting organizations; to provide for causes of action; to provide for legislative findings; to provide for definitions; to provide for remedies; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

CHAPTER 7-A. SAVE WOMEN'S SPORTS ACT

§441. Short title

This Chapter shall be known as and may be cited as the "Save Women's Sports Act".

§442. Legislative findings

1 **The legislature finds and declares that:**

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

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

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

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

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

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

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

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

15 **H. Scientific studies have established that the benefits that natural**
16 **testosterone provides to male athletes is not diminished through the use of**
17 **puberty blockers and cross-sex hormones. A recent study on the impact of such**
18 **treatments found that even after twelve months of hormonal therapy, a man**
19 **who identifies as a woman and is taking cross-sex hormones had an absolute**
20 **advantage over female athletes and will still likely have performance benefits**
21 **over women.**

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

28 **§443. Definitions**

29 **In this Chapter, unless otherwise indicated, the following definitions**

1 shall apply:

2 (1) "Post secondary education board member" means a person who
3 serves as a board member or officer for a postsecondary education management
4 board.

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

7 (3) "School" means all of the following:

8 (a) A public elementary or secondary school.

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

10 (c) A public postsecondary educational institution.

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

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

16 (5) "School board" means a school board or school governing authority
17 subject to the provisions of R.S. 17:81 or any nonpublic school governing
18 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
21 postsecondary institution under the authority of a postsecondary education
22 management board.

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

26 §444. Designation of athletic teams

27 A. Interscholastic or intramural athletic teams or sporting events that
28 are sponsored by a school shall be expressly designated, based upon biological
29 sex, as one of the following:

1 (1) A male, boys', or men's team or event shall be for those students who
2 are biological males.

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

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

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

9 C. If a dispute arises as to the biological sex of a student who participates
10 or desires to participate on a female, girls', or women's school athletic team or
11 in a school sporting event, the student's biological sex may be established by a
12 signed physician's statement completed by the student's family medical doctor
13 or other physician of the student's choice, which shall indicate the student's
14 biological sex based solely upon all of the following:

15 (1) The student's internal and external reproductive anatomy.

16 (2) The student's normal endogenously produced levels of testosterone.

17 (3) An analysis of the student's genetic makeup.

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

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

25 A. No government entity, nor any licensing or accrediting organization,
26 nor any athletic association shall entertain a complaint, open an investigation,
27 or take any other adverse action against a school, school board, or
28 postsecondary education management board for maintaining a separate
29 interscholastic or intramural athletic team or athletic event that are reserved

1 for students of the female biological sex.

2 B. No cause of action may be maintained against any school coach,
3 school, school board, employee of a school or school board, or board member
4 of a school board that prohibits a biological male from participating in a female,
5 girls', or women's athletic team or sporting event pursuant to the requirements
6 of this Chapter.

7 §446. Remedies; cause of action

8 A. A biological female student who is deprived of an athletic opportunity
9 or suffers or is likely to suffer from any direct or indirect harm as a result of a
10 violation of this Chapter may assert that violation as a cause of action for
11 remedies provided for in Subsection D of this Section.

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

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

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

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

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

29 E. All civil actions under this Chapter must be initiated within two years

1 **from the date that the harm occurred.**

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 172 Original

2020 Regular Session

Mizell

Proposed law provides for the "Save Women's Sports Act".

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 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 is for both students who are biological males and 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, if a student's sex is disputed, the student may establish biological sex by a signed physician's statement completed by the student's family medical doctor or other physician of the student's choice, which verifies the student's biological sex based solely upon the student's internal and external reproductive anatomy, the student's normal endogenously produced levels of testosterone, and an analysis of the student's genetic makeup.

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 or athletic association from entertaining a complaint, opening an investigation, or taking any other adverse action against a school, school board, or post secondary education management board for maintaining separate teams for females and males as provided by proposed law.

Proposed law provides that no cause of action may be maintained against any coach, school, school board, school employee, school board member, postsecondary education management board or board member that prohibits 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 to an employee or representative of the school, athletic association, or to any local, state, or federal agency with oversight of schools.
- (3) Any school coach, school, school board, employee of a school or school board, or board member of a school board 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) A court ordered injunction, 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.

Proposed law provides for the following definitions:

- (1) "Post secondary education board member" means a person who serves as a board member or officer for a postsecondary education management board.
- (2) "Postsecondary education management board" means a board that govern post secondary educational institutions.
- (3) "School" means a public elementary or secondary school, a nonpublic elementary or secondary school that receives state funds, a public postsecondary educational institution, or a nonpublic post secondary educational institution that receives state funds.
- (4) "School coach" means a person who is a coach, assistant coach, or volunteer coach of a school interscholastic or intramural athletic team or sporting event.
- (5) "School board" means a school board or school governing authority subject to the provisions of present law or any nonpublic school governing authority.
- (6) "School employee" means a person who is employed by a school or by a school board.
- (7) "School board member" means a person who serves as a board member or officer for a school board or school governing authority subject to the provisions of present law or for any nonpublic school governing authority.

Proposed law provides that the legislature finds and declares all of the following:

- (1) Federal law, enacted in 1972, was designed to ensure that women are free from discrimination on the basis of sex in both education and athletics so that women would be afforded the opportunity to compete for athletic scholarships and to

- potentially launch their own athletic careers after they have completed their education.
- (2) The U.S. Supreme Court has recognized that there are inherent 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.
 - (3) Inherent differences between men and women range from chromosomal and hormonal differences to physiological differences resulting in men generally having denser and stronger bones, tendons, and ligaments, larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher hemoglobin as well as 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 II muscle fibers, all of which result in men being able to generate higher speed and power during physical activity.
 - (4) The biological differences between females and males, especially as it relates 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, they are strength, speed, and endurance generally found in greater degrees in biological males than biological females.
 - (5) While classifications based on sex are generally disfavored, the U.S. Supreme Court has recognized that sex classifications may be used to compensate women for particular economic disabilities suffered, to promote equal employment opportunity, and to advance full development of the talent and capacities of our nation's people.
 - (6) 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.
 - (7) A recent study of female and male Olympic performances found that, although athletes from both sexes improved over the time span, the gender gap between female and male performances remained stable. These studies suggest that women's performances at the high level will never match those of men. The evidence is unequivocal that starting in puberty, in every sport except sailing, shooting, and riding, there will always be significant numbers of boys and men who would prevail over the best girls and women in head-to-head competition. Claims to the contrary are simply a denial of science.
 - (8) The benefits that natural testosterone provides to male athletes is not diminished through the use of puberty blockers and cross-sex hormones. A recent study on the impact of such treatments found that even after twelve 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.
 - (9) Having separate sex-specific teams furthers efforts to promote sex equality. Sex-specific teams accomplish this by providing opportunities for female athletes to demonstrate their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition, accolades, scholarships, better physical and mental health, and the numerous other long-term benefits that flow from success in athletic endeavors.

Effective August 1, 2020.

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