

2021 Regular Session

SENATE BILL NO. 156

BY SENATOR MIZELL AND REPRESENTATIVES EDMONDS, EDMONSTON,
HODGES 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. (8/1/21)

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**

16 **Women's Sports Act".**

17 **§442. Legislative findings**

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

2 **(1) 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 **(2) 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 **(3) 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 **(4) The biological differences between females and males, especially as**
21 **they relate 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 sports; categorically, they**
24 **are strength, speed, and endurance generally found in greater degrees in**
25 **biological males than biological females.**

26 **(5) While classifications based on sex are generally disfavored, the**
27 **United States Supreme Court has recognized that "[S]ex classifications may be**
28 **used to compensate women "for particular economic disabilities [they have]**
29 **suffered," *Califano v. Webster*, 430 U. S. 313, 320 (1977) (per curiam), to**

1 "promot[e] equal employment opportunity," see *California Fed. Sav. & Loan*
2 *Assn. v. Guerra*, 479 U. S. 272, 289 (1987), to advance full development of the
3 talent and capacities of our Nation's people" in *United States v. Virginia, et al*,
4 518 U.S. 515, 533-534 (1996).

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

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

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

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

1 **§443. Definitions**

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

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

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

9 **(3) "Schools" means all of the following:**

10 **(a) A public elementary or secondary school.**

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

12 **(c) A public postsecondary educational institution.**

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

15 **(4) "School coach" means a person who is a coach or assistant coach,**
16 **whether paid or on a volunteer basis, of a school intercollegiate, interscholastic,**
17 **or intramural athletic team or sporting event.**

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

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

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

28 **§444. Designation of athletic teams**

29 **A. Intercollegiate, interscholastic, or intramural athletic teams or**

1 sporting events that are sponsored by a school and that receive state funding
2 shall be expressly designated, based upon biological sex, as only one of the
3 following:

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

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

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

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

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

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

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

23 A. No government entity, licensing or accrediting organization, or
24 athletic association shall entertain a complaint, open an investigation, or take
25 any other adverse action against a school, school board, or postsecondary
26 education management board for maintaining a separate intercollegiate,
27 interscholastic, or intramural athletic team or athletic event reserved for
28 students of the female biological sex.

29 B. No cause of action may be maintained against any school coach,

1 school, school board, employee of a school or school board, school board
2 member, or postsecondary education board member who prohibits a biological
3 male from participating in a female, girls', or women's athletic team or sporting
4 event pursuant to the requirements of this Chapter.

5 §446. Remedies; cause of action

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

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

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

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

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

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

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

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

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by LG Sullivan.

DIGEST

SB 156 Reengrossed

2021 Regular Session

Mizell

Proposed law, the "Fairness in Women's Sports Act", requires an athletic team or sporting event sponsored by an elementary, secondary, or postsecondary educational institution to be designated, based upon the biological sex of team members, as only one of the following:

- (1) A males', boys', or men's team or event only for students who are biological males.
- (2) A females', girls', or women's team or event only for students who are biological females.
- (3) A coeducational or mixed team or event for students who are biological males or 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 will be construed to restrict the eligibility of any student to participate in any intercollegiate, interscholastic, or intramural athletic teams or sports designated as "males", "men", or "boys" or designated as "coed" or "mixed".

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 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 postsecondary education 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. Proposed law provides that requiring a biological woman to compete against a biological male on a team that is designated as a "female", "girls'", or "women's" team is inherently discriminatory to biological women and is a cognizable harm under 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, school board member, or post secondary education board member that suffers any direct or indirect harm for prohibiting a biological male from participating in a female, 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 legislative findings and definitions.

Effective August 1, 2021.

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

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Education to the original bill

1. Make technical changes.

Senate Floor Amendments to engrossed bill

1. Make technical changes.