

2022 Regular Session

SENATE BILL NO. 44

BY SENATOR MIZELL AND REPRESENTATIVE SCHLEGEL

AMUSEMENTS/SPORTS. Provides for the Fairness in Womens Sports Act relative to a school's ability to offer equal opportunities to each student to participate in team sporting events on an equal basis. (8/1/22)

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,

12 comprised of R.S. 4:441 through 446, is hereby enacted to read as follows:

13 **CHAPTER 7-A. FAIRNESS IN WOMENS SPORTS ACT**

14 **§441. Short title**

15 **This Chapter shall be known as and may be cited as the "Fairness in**

16 **Womens 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 generally being able to generate higher speed and power during physical**
20 **activity.**

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

27 **(5) While classifications based on sex are generally disfavored, the**
28 **United States Supreme Court has recognized that sex classifications may be**
29 **used to compensate women "for particular economic disabilities [they have]**

1 suffered," (see *Califano v. Webster*, 430 U.S. 313, 320 (1977)(per curiam)), to
2 promote equal employment opportunity and "to guarantee women the basic
3 right to participate fully and equally," (see *California Fed. Sav. & Loan Assn.*
4 *v. Guerra*, 479 U.S. 272, 289 (1987)), and "to advance full development of the
5 talent and capacities of our Nation's people." (see *United States v. Virginia, et al.*,
6 *supra*, 518 U.S. 515, 533 (1996)).

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

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

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

27 (9) Having separate sex-specific teams furthers efforts to promote sex
28 equality. Sex-specific teams accomplish this by providing opportunities for
29 female athletes to demonstrate their skill, strength, and athletic abilities while

1 also providing them with opportunities to obtain recognition, accolades,
2 scholarships, better physical and mental health, and the numerous other
3 long-term benefits that flow from success in athletic endeavors.

4 §443. Definitions

5 In this Chapter, unless otherwise indicated, the following definitions
6 shall apply:

7 (1) "Biological sex" means a statement of a student's biological sex on
8 the student's official birth certificate which is entered at or near the time of the
9 student's birth.

10 (2) "Postsecondary education board member" means a person who
11 serves as a board member or officer of a postsecondary education management
12 board.

13 (3) "Postsecondary education management board" means a board which
14 governs postsecondary educational institutions, pursuant to R.S. 17:3351.

15 (4) "Schools" means all of the following:

16 (a) A public elementary or secondary school.

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

18 (c) A public postsecondary educational institution.

19 (d) A nonpublic postsecondary educational institution that receives state
20 funds.

21 (5) "School coach" means a person who is a coach or assistant coach,
22 whether paid or on a volunteer basis, of a school intercollegiate, interscholastic,
23 or intramural athletic team or sporting event.

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

27 (7) "School employee" means a person who is employed by a school, a
28 school board, a postsecondary education management board, or any
29 postsecondary institution under the authority of a postsecondary education

1 management board.

2 (8) "School board member" means a person who serves as a board
3 member or officer for a school board or school governing authority subject to
4 the provisions of R.S. 17:81 or for any nonpublic school governing authority.

5 §444. Designation of athletic teams

6 A. Each intercollegiate, interscholastic, or intramural athletic team or
7 sporting event that is sponsored by a school and that receives state funding shall
8 be expressly designated, based upon biological sex, as only one of the following:

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

11 (2) A female, girls, or womens team or event shall be for those students
12 who are biological females.

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

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

17 C. Nothing in this Chapter shall be construed to restrict the eligibility of
18 any student to participate in any intercollegiate, interscholastic, or intramural
19 athletic team or sport designated as "male", "mens", or "boys", or designated
20 as "coed" or "mixed".

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

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

28 A. No government entity, licensing or accrediting organization, or
29 athletic association shall entertain a complaint, open an investigation, or take

1 any other adverse action against a school, school board, or postsecondary
2 education management board for maintaining a separate intercollegiate,
3 interscholastic, or intramural athletic team or athletic event reserved for
4 students of the female biological sex.

5 B. No cause of action may be maintained against any school, school
6 coach, school employee, school board, school board employee, school board
7 member, postsecondary education board, or postsecondary education board
8 member who prohibits a biological male from participating in a female, girls,
9 or womens athletic team or sporting event pursuant to the requirements of this
10 Chapter.

11 §446. Remedies; cause of action

12 A. A biological female student who is deprived of an athletic opportunity
13 or suffers or is likely to suffer from any direct or indirect harm as a result of a
14 violation of this Chapter may assert that violation as a cause of action for
15 remedies provided for in Subsection E of this Section. Requiring a biological
16 female to compete against a biological male on a team that is designated as a
17 "female", "girls", or "womens" team is inherently discriminatory to biological
18 females and is a cognizable harm to biological females under this Chapter.

19 B. A biological female student who is subjected to retaliation or other
20 adverse action by a school, athletic association, or other organization as a result
21 of reporting a violation of this Chapter to an employee or representative of the
22 school, athletic association, or to any local, state, or federal agency with
23 oversight of schools shall have a cause of action for remedies provided for in
24 Subsection E of this Section.

25 C. For purposes of this Chapter, the designation of "female" entered on
26 the student's official birth certificate at or near the time of the student's birth
27 creates a rebuttable presumption that the student's biological sex is female.

28 D. A school, school coach, school employee, school board, school board
29 employee, school board member, postsecondary education board, or

1 postsecondary education board member who suffers any direct or indirect harm
 2 for prohibiting a biological male from participating in a female, girls, or
 3 womens athletic team or sporting event pursuant to the requirements of this
 4 Chapter shall have a cause of action for remedies provided for in Subsection E
 5 of this Section.

6 E. Any person who brings a cause of action pursuant to this Chapter
 7 may obtain appropriate relief, including but not limited to:

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

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

11 F. All civil actions under this Chapter must be initiated within two years
 12 from the date that the harm occurred.

13 Section 2. If any provision or item of this Act, or the application thereof, is held
 14 invalid, such invalidity shall not affect other provisions, items, or applications of the Act
 15 which can be given effect without the invalid provision, item, or application and to this end
 16 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 Cheryl Serrett.

SB 44 Engrossed	DIGEST 2022 Regular Session	Mizell
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Proposed law, the "Fairness in Womens 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 mens team or event only for students who are biological males.
- (2) A females, girls, or womens 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 provides for definitions. Proposed law provides that "biological sex" means a statement of a student's biological sex on the student's official birth certificate which is entered at or near the time of the student's birth.

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 the designation of "female" entered on the student's official birth certificate at or near the time of the student's birth creates a legal presumption that the student's biological sex is 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 separate teams for females and males as provided by proposed law.

Proposed law provides that no cause of action may be maintained against any school, school board, school coach, 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 womens 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 female to compete against a biological male on a team that is designated as a "female", "girls", or "womens" team is inherently discriminatory to biological females 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, school coach, school employee, school board, school board employee, school board member, postsecondary education board, or postsecondary education board member that suffers any direct or indirect harm for prohibiting a biological male from participating in a female, girls, or womens 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.

Effective August 1, 2022.

(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. Makes technical changes.