AN ACT

AMENDING TITLE 15, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-120.01; RELATING TO INTERSCHOLASTIC ATHLETICS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 15, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 15-120.01, to read:

15-120.01. Designation of athletic teams; educational institutions; cause of action; definition

A. An interscholastic or intramural athletic team or sport that is sponsored by an educational institution in this state must be expressly designated as one of the following based on biological sex:

1. Males, men or boys.
2. Females, women or girls.
3. Coed or mixed sex.

B. Athletic teams or sports designated for females, women or girls may not be open to students of the male sex.

C. If disputed, a student may establish the student's sex by presenting a signed physician's statement that indicates the student's sex based on an analysis of the student's genetic makeup.

D. A governmental entity, a licensing or accrediting organization or an athletic association or organization may not entertain a complaint, open an investigation or take any other adverse action against an educational institution for maintaining separate interscholastic or intramural athletic teams or sports for students of the female sex.

E. Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this section has a private cause of action for injunctive relief, damages and any other relief available under law against the educational institution.

F. Any student who is subject to retaliation or other adverse action by an educational institution or athletic association or organization as a result of reporting a violation of this section to an employee or representative of the educational institution or athletic association or organization or to any state or federal agency with oversight of educational institutions in this state has a private cause of action for injunctive relief, damages and any other relief available under law against the educational institution or athletic association or organization.

G. Any eligible institution that suffers any direct or indirect harm as a result of a violation of this section has a private cause of action for injunctive relief, damages and any other relief available under law against the governmental entity, licensing or accrediting organization or athletic association or organization.

H. A civil action under this section must be initiated within two years after the harm occurs. A person that prevails on a claim brought under this section is entitled to monetary damages, including for any psychological, emotional and physical harm suffered, any reasonable attorney fees and costs and any other appropriate relief.
I. FOR THE PURPOSES OF THIS SECTION, "EDUCATIONAL INSTITUTION" MEANS ANY OF THE FOLLOWING:

1. A PUBLIC SCHOOL, WHETHER OR NOT THE PUBLIC SCHOOL IS A MEMBER OF AN INTERSCHOLASTIC ATHLETIC ASSOCIATION OR ORGANIZATION.
2. A PRIVATE SCHOOL THAT IS A MEMBER OF AN INTERSCHOLASTIC ATHLETIC ASSOCIATION OR ORGANIZATION.
3. A UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS, WHETHER OR NOT THE UNIVERSITY IS A MEMBER OF ANY ASSOCIATION LISTED IN PARAGRAPH 5 OF THIS SUBSECTION.
4. A COMMUNITY COLLEGE AS DEFINED IN SECTION 15-1401, WHETHER OR NOT THE COMMUNITY COLLEGE IS A MEMBER OF ANY ASSOCIATION LISTED IN PARAGRAPH 5 OF THIS SUBSECTION.
5. ANY OTHER INSTITUTION OF HIGHER EDUCATION THAT IS A MEMBER OF ANY OF THE FOLLOWING:
   (a) A NATIONAL COLLEGIATE ATHLETIC ASSOCIATION.
   (b) A NATIONAL ASSOCIATION OF INTERCOLLEGIATE ATHLETICS.
   (c) A NATIONAL JUNIOR COLLEGE ATHLETIC ASSOCIATION.

Sec. 2. Legislative findings and purpose

The legislature finds that:

1. 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).

2. These "inherent differences" range from chromosomal and hormonal differences to physiological differences.


4. 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 & CONTEMP. PROBS. 63, 74 (2017) (quoting Gina Kolata, Men, Women and Speed. 2 Words: Got Testosterone?, N.Y. TIMES, Aug. 21, 2008).

5. 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

6. 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).

7. 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.

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

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

10. As Duke Law professor and all-American track athlete Doriane Coleman, tennis champion Martina Navratilova and Olympic track gold medalist Sanya Richards-Ross recently wrote: "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 beat the best girls and women in head-to-head competition. Claims to the contrary are simply a denial of science." Doriane Coleman, Martina Navratilova, et al., Pass the Equality Act, But Don't Abandon Title IX, WASH. POST, Apr. 29, 2019, https://wapo.st/2VK1NN1.

11. The benefits that natural testosterone provides to male athletes are 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 12 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

12. 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 and accolades, college scholarships and the numerous other long-term benefits that flow from success in athletic endeavors.

Sec. 3. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 4. Short title

This act may be cited as the "Save Women's Sports Act".