

House Engrossed

interscholastic athletics; biological sex

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HOUSE BILL 2706

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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 15-120.01. Designation of athletic teams: educational
5 institutions; cause of action; definition

6 A. AN INTERSCHOLASTIC OR INTRAMURAL ATHLETIC TEAM OR SPORT THAT IS
7 SPONSORED BY AN EDUCATIONAL INSTITUTION IN THIS STATE MUST BE EXPRESSLY
8 DESIGNATED AS ONE OF THE FOLLOWING BASED ON BIOLOGICAL SEX:

- 9 1. MALES, MEN OR BOYS.
10 2. FEMALES, WOMEN OR GIRLS.
11 3. COED OR MIXED SEX.

12 B. ATHLETIC TEAMS OR SPORTS DESIGNATED FOR FEMALES, WOMEN OR GIRLS
13 MAY NOT BE OPEN TO STUDENTS OF THE MALE SEX.

14 C. IF DISPUTED, A STUDENT MAY ESTABLISH THE STUDENT'S SEX BY
15 PRESENTING A SIGNED PHYSICIAN'S STATEMENT THAT INDICATES THE STUDENT'S SEX
16 BASED ON AN ANALYSIS OF THE STUDENT'S GENETIC MAKEUP.

17 D. A GOVERNMENTAL ENTITY, A LICENSING OR ACCREDITING ORGANIZATION
18 OR AN ATHLETIC ASSOCIATION OR ORGANIZATION MAY NOT ENTERTAIN A COMPLAINT,
19 OPEN AN INVESTIGATION OR TAKE ANY OTHER ADVERSE ACTION AGAINST AN
20 EDUCATIONAL INSTITUTION FOR MAINTAINING SEPARATE INTERSCHOLASTIC OR
21 INTRAMURAL ATHLETIC TEAMS OR SPORTS FOR STUDENTS OF THE FEMALE SEX.

22 E. ANY STUDENT WHO IS DEPRIVED OF AN ATHLETIC OPPORTUNITY OR
23 SUFFERS ANY DIRECT OR INDIRECT HARM AS A RESULT OF A VIOLATION OF THIS
24 SECTION HAS A PRIVATE CAUSE OF ACTION FOR INJUNCTIVE RELIEF, DAMAGES AND
25 ANY OTHER RELIEF AVAILABLE UNDER LAW AGAINST THE EDUCATIONAL INSTITUTION.

26 F. ANY STUDENT WHO IS SUBJECT TO RETALIATION OR OTHER ADVERSE
27 ACTION BY AN EDUCATIONAL INSTITUTION OR ATHLETIC ASSOCIATION OR
28 ORGANIZATION AS A RESULT OF REPORTING A VIOLATION OF THIS SECTION TO AN
29 EMPLOYEE OR REPRESENTATIVE OF THE EDUCATIONAL INSTITUTION OR ATHLETIC
30 ASSOCIATION OR ORGANIZATION OR TO ANY STATE OR FEDERAL AGENCY WITH
31 OVERSIGHT OF EDUCATIONAL INSTITUTIONS IN THIS STATE HAS A PRIVATE CAUSE OF
32 ACTION FOR INJUNCTIVE RELIEF, DAMAGES AND ANY OTHER RELIEF AVAILABLE UNDER
33 LAW AGAINST THE EDUCATIONAL INSTITUTION OR ATHLETIC ASSOCIATION OR
34 ORGANIZATION.

35 G. ANY ELIGIBLE INSTITUTION THAT SUFFERS ANY DIRECT OR INDIRECT
36 HARM AS A RESULT OF A VIOLATION OF THIS SECTION HAS A PRIVATE CAUSE OF
37 ACTION FOR INJUNCTIVE RELIEF, DAMAGES AND ANY OTHER RELIEF AVAILABLE UNDER
38 LAW AGAINST THE GOVERNMENTAL ENTITY, LICENSING OR ACCREDITING ORGANIZATION
39 OR ATHLETIC ASSOCIATION OR ORGANIZATION.

40 H. A CIVIL ACTION UNDER THIS SECTION MUST BE INITIATED WITHIN TWO
41 YEARS AFTER THE HARM OCCURS. A PERSON THAT PREVAILS ON A CLAIM BROUGHT
42 UNDER THIS SECTION IS ENTITLED TO MONETARY DAMAGES, INCLUDING FOR ANY
43 PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL HARM SUFFERED, ANY REASONABLE
44 ATTORNEY FEES AND COSTS AND ANY OTHER APPROPRIATE RELIEF.

1 I. FOR THE PURPOSES OF THIS SECTION, "EDUCATIONAL INSTITUTION"
2 MEANS ANY OF THE FOLLOWING:

3 1. A PUBLIC SCHOOL, WHETHER OR NOT THE PUBLIC SCHOOL IS A MEMBER OF
4 AN INTERSCHOLASTIC ATHLETIC ASSOCIATION OR ORGANIZATION.

5 2. A PRIVATE SCHOOL THAT IS A MEMBER OF AN INTERSCHOLASTIC ATHLETIC
6 ASSOCIATION OR ORGANIZATION.

7 3. A UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF
8 REGENTS, WHETHER OR NOT THE UNIVERSITY IS A MEMBER OF ANY ASSOCIATION
9 LISTED IN PARAGRAPH 5 OF THIS SUBSECTION.

10 4. A COMMUNITY COLLEGE AS DEFINED IN SECTION 15-1401, WHETHER OR
11 NOT THE COMMUNITY COLLEGE IS A MEMBER OF ANY ASSOCIATION LISTED IN
12 PARAGRAPH 5 OF THIS SUBSECTION.

13 5. ANY OTHER INSTITUTION OF HIGHER EDUCATION THAT IS A MEMBER OF
14 ANY OF THE FOLLOWING:

15 (a) A NATIONAL COLLEGIATE ATHLETIC ASSOCIATION.

16 (b) A NATIONAL ASSOCIATION OF INTERCOLLEGIATE ATHLETICS.

17 (c) A NATIONAL JUNIOR COLLEGE ATHLETIC ASSOCIATION.

18 Sec. 2. Legislative findings and purpose

19 The legislature finds that:

20 1. There are "'[i]nherent differences' between men and women," and
21 that these differences "remain cause for celebration, but not for
22 denigration of the members of either sex or for artificial constraints on
23 an individual's opportunity." United States v. Virginia, 518 U.S. 515,
24 533 (1996).

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

27 3. Men generally have "denser, stronger bones, tendons, and
28 ligaments" and "larger hearts, greater lung volume per body mass, a
29 higher red blood cell count, and higher hemoglobin." Neel Burton,
30 The Battle of the Sexes, PSYCHOL. TODAY, July 2, 2012,
31 [https://www.psychologytoday.com/us/blog/hide-and-see/201207/the-battle-](https://www.psychologytoday.com/us/blog/hide-and-see/201207/the-battle-the-sexes?amp)
32 [the-sexes?amp](https://www.psychologytoday.com/us/blog/hide-and-see/201207/the-battle-the-sexes?amp).

33 4. Men also have higher natural levels of testosterone, which
34 affects traits such as hemoglobin levels, body fat content, the storage
35 and use of carbohydrates and the development of Type 2 muscle fibers, all
36 of which result in men being able to generate higher speed and power
37 during physical activity. Doriane Lambelet Coleman, Sex in Sport, 80 LAW
38 & CONTEMP. PROBS. 63, 74 (2017) (quoting Gina Kolata, Men, Women and
39 Speed. 2 Words: Got Testosterone?, N.Y. TIMES, Aug. 21, 2008).

40 5. The biological differences between females and males, especially
41 as they relate to natural levels of testosterone, "explain the male and
42 female secondary sex characteristics which develop during puberty and have
43 lifelong effects, including those most important for success in sport:
44 categorically different strength, speed, and endurance." Doriane Lambelet
45 Coleman & Wickliffe Shreve, Comparing Athletic Performances: The Best

1 Elite Women to Boys and Men, DUKE LAW CTR. FOR SPORTS LAW AND POLICY,
2 [https://web.law.duke.edu/sports/sex-sport/comparative-athletic-](https://web.law.duke.edu/sports/sex-sport/comparative-athletic-performance/)
3 [performance/](https://web.law.duke.edu/sports/sex-sport/comparative-athletic-performance/) (last visited Feb. 10, 2020).

4 6. While classifications based on sex are generally disfavored, the
5 United States Supreme Court has recognized that "[s]ex classifications may
6 be used to compensate women for particular economic disabilities [they
7 have] suffered, . . . to promote equal employment opportunity, . . . [and]
8 to advance full development of the talent and capacities of our Nation's
9 people." United States v. Virginia, 518 U.S. 515, 533 (1996) (internal
10 citations and quotation marks omitted).

11 7. One place where sex classifications allow for the "full
12 development of the talent and capacities of our Nation's people" is in the
13 context of sports and athletics.

14 8. Courts have recognized that the inherent, physiological
15 differences between males and females result in different athletic
16 capabilities. See, e.g., Kleczek v. R.I. Interscholastic League, Inc.,
17 612 A.2d 734, 738 (R.I. 1992) ("Because of innate physiological
18 differences, boys and girls are not similarly situated as they enter
19 athletic competition."); Petrie v. Ill. High Sch. Ass'n, 394 N.E.2d 855,
20 861 (Ill. App. Ct. 1979) (noting that "high school boys [generally possess
21 physiological advantages over] their girl counterparts" and that those
22 advantages give them an unfair lead over girls in some sports like "high
23 school track").

24 9. A recent study of female and male Olympic performances since
25 1983 found that, although athletes from both sexes improved over the time
26 span, the "gender gap" between female and male performances remained
27 stable. "These suggest that women's performances at the high level will
28 never match those of men." Valerie Thibault, et al., Women and Men in
29 Sport Performance: The Gender Gap has not Evolved since 1983, 9 J. SPORTS
30 SCI. & MED. 214, 219 (2010).

31 10. As Duke Law professor and all-American track athlete Doriane
32 Coleman, tennis champion Martina Navratilova and Olympic track gold
33 medalist Sanya Richards-Ross recently wrote: "The evidence is unequivocal
34 that starting in puberty, in every sport except sailing, shooting and
35 riding, there will always be significant numbers of boys and men who would
36 beat the best girls and women in head-to-head competition. Claims to the
37 contrary are simply a denial of science." Doriane Coleman, Martina
38 Navratilova, et al., Pass the Equality Act, But Don't Abandon Title IX,
39 WASH. POST, Apr. 29, 2019, <https://wapo.st/2VK1NN1>.

40 11. The benefits that natural testosterone provides to male
41 athletes are not diminished through the use of puberty blockers and
42 cross-sex hormones. A recent study on the impact of such treatments found
43 that even "after 12 months of hormonal therapy," a man who identifies as a
44 woman and is taking cross-sex hormones "had an absolute advantage" over
45 female athletes and "will still likely have performance benefits" over

1 women. Tommy Lundberg, et al., Muscle strength, size and composition
2 following 12 months of gender-affirming treatment in transgender
3 individuals: retained advantage for the transwomen, Karolinksa Institutet,
4 (Sept. 26, 2019).

5 12. Having separate sex-specific teams furthers efforts to promote
6 sex equality. Sex-specific teams accomplish this by providing
7 opportunities for female athletes to demonstrate their skill, strength and
8 athletic abilities while also providing them with opportunities to obtain
9 recognition and accolades, college scholarships and the numerous other
10 long-term benefits that flow from success in athletic endeavors.

11 Sec. 3. Severability

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

17 Sec. 4. Short title

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