

REFERENCE TITLE: interscholastic; intramural athletics; biological sex

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1165

Introduced by

Senators Barto: Borrelli, Gowan, Gray, Kerr, Leach, Livingston, Mesnard,
Petersen, Shope, Townsend; Representatives Bolick, Burges, Carroll,
Chaplik, Diaz, Fillmore, Griffin, Kaiser, Kavanagh, Nguyen, Parker, Toma,
Udall

AN ACT

AMENDING TITLE 15, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 15-120.02; RELATING TO 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 15-120.02, to read:

4 15-120.02. Interscholastic and intramural athletics;
5 designation of teams; biological sex; cause of
6 action; definition

7 A. EACH INTERSCHOLASTIC OR INTRAMURAL ATHLETIC TEAM OR SPORT THAT
8 IS SPONSORED BY A PUBLIC SCHOOL OR A PRIVATE SCHOOL WHOSE STUDENTS OR
9 TEAMS COMPETE AGAINST A PUBLIC SCHOOL SHALL BE EXPRESSLY DESIGNATED AS ONE
10 OF THE FOLLOWING BASED ON THE BIOLOGICAL SEX OF THE STUDENTS WHO
11 PARTICIPATE ON THE TEAM OR IN THE SPORT:

- 12 1. "MALES", "MEN" OR "BOYS".
- 13 2. "FEMALES", "WOMEN" OR "GIRLS".
- 14 3. "COED" OR "MIXED".

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

17 C. THIS SECTION DOES NOT RESTRICT THE ELIGIBILITY OF ANY STUDENT TO
18 PARTICIPATE IN ANY INTERSCHOLASTIC OR INTRAMURAL ATHLETIC TEAM OR SPORT
19 DESIGNATED AS BEING FOR "MALES", "MEN" OR "BOYS" OR DESIGNATED AS "COED"
20 OR "MIXED".

21 D. A GOVERNMENT ENTITY, ANY LICENSING OR ACCREDITING ORGANIZATION
22 OR ANY ATHLETIC ASSOCIATION OR ORGANIZATION MAY NOT ENTERTAIN A COMPLAINT,
23 OPEN AN INVESTIGATION OR TAKE ANY OTHER ADVERSE ACTION AGAINST A SCHOOL
24 FOR MAINTAINING SEPARATE INTERSCHOLASTIC OR INTRAMURAL ATHLETIC TEAMS OR
25 SPORTS FOR STUDENTS OF THE FEMALE SEX.

26 E. ANY STUDENT WHO IS DEPRIVED OF AN ATHLETIC OPPORTUNITY OR
27 SUFFERS ANY DIRECT OR INDIRECT HARM AS A RESULT OF A SCHOOL KNOWINGLY
28 VIOLATING THIS SECTION HAS A PRIVATE CAUSE OF ACTION FOR INJUNCTIVE
29 RELIEF, DAMAGES AND ANY OTHER RELIEF AVAILABLE UNDER LAW AGAINST THE
30 SCHOOL.

31 F. ANY STUDENT WHO IS SUBJECT TO RETALIATION OR ANOTHER ADVERSE
32 ACTION BY A SCHOOL OR AN ATHLETIC ASSOCIATION OR ORGANIZATION AS A RESULT
33 OF REPORTING A VIOLATION OF THIS SECTION TO AN EMPLOYEE OR REPRESENTATIVE
34 OF THE SCHOOL OR THE ATHLETIC ASSOCIATION OR ORGANIZATION, OR TO ANY STATE
35 OR FEDERAL AGENCY WITH OVERSIGHT OF SCHOOLS IN THIS STATE, HAS A PRIVATE
36 CAUSE OF ACTION FOR INJUNCTIVE RELIEF, DAMAGES AND ANY OTHER RELIEF
37 AVAILABLE UNDER LAW AGAINST THE SCHOOL OR THE ATHLETIC ASSOCIATION OR
38 ORGANIZATION.

39 G. ANY SCHOOL THAT SUFFERS ANY DIRECT OR INDIRECT HARM AS A RESULT
40 OF A VIOLATION OF THIS SECTION HAS A PRIVATE CAUSE OF ACTION FOR
41 INJUNCTIVE RELIEF, DAMAGES AND ANY OTHER RELIEF AVAILABLE UNDER LAW
42 AGAINST THE GOVERNMENT ENTITY, THE LICENSING OR ACCREDITING ORGANIZATION
43 OR THE ATHLETIC ASSOCIATION OR ORGANIZATION.

44 H. ALL CIVIL ACTIONS MUST BE INITIATED WITHIN TWO YEARS AFTER THE
45 ALLEGED VIOLATION OF THIS SECTION OCCURRED. A PERSON OR ORGANIZATION THAT

1 PREVAILS ON A CLAIM BROUGHT PURSUANT TO THIS SECTION IS ENTITLED TO
2 MONETARY DAMAGES, INCLUDING DAMAGES FOR ANY PSYCHOLOGICAL, EMOTIONAL OR
3 PHYSICAL HARM SUFFERED, REASONABLE ATTORNEY FEES AND COSTS AND ANY OTHER
4 APPROPRIATE RELIEF.

5 I. FOR THE PURPOSES OF THIS SECTION, "SCHOOL" MEANS EITHER:

6 1. A SCHOOL THAT PROVIDES INSTRUCTION IN ANY COMBINATION OF
7 KINDERGARTEN PROGRAMS OR GRADES ONE THROUGH TWELVE.

8 2. AN INSTITUTION OF HIGHER EDUCATION.

9 Sec. 2. Legislative findings and purpose

10 The legislature finds that:

11 1. "With respect to biological sex, one is either male or female."
12 Arnold De Loof, Only Two Sex Forms but Multiple Gender Variants:
13 How to Explain?, 11(1) COMMUNICATIVE & INTEGRATIVE BIOLOGY (2018),
14 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5824932>.

15 2. A person's "sex is determined at [fertilization] and revealed
16 at birth or, increasingly, *in utero*." Lucy Griffin et al., Sex, gender
17 and gender identity: a re-evaluation of the evidence, 45(5) BJPSYCH
18 BULLETIN 291 (2021), [https://www.cambridge.org/core/journals/bjpsych-
19 bulletin/article/sex-gender-and-gender-identity-a-reevaluation-of-the-
20 evidence/76A3DC54F3BD91E8D631B93397698B1A.](https://www.cambridge.org/core/journals/bjpsych-bulletin/article/sex-gender-and-gender-identity-a-reevaluation-of-the-evidence/76A3DC54F3BD91E8D631B93397698B1A)

21 3. "[B]iological differences between males and females
22 are determined genetically during embryonic development." Stefanie
23 Eggers & Andrew Sinclair, Mammalian sex determination—insights from
24 humans and mice, 20(1) CHROMOSOME RES. 215 (2012),
25 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3279640>.

26 4. "Secondary sex characteristics that develop during puberty . . .
27 generate anatomical divergence beyond the reproductive system, leading to
28 adult body types that are measurably different between sexes." Emma N.
29 Hilton & Tommy R. Lundberg, Transgender Women in the Female Category of
30 Sport: Perspectives on Testosterone Suppression and Performance Advantage,
31 51 SPORTS MED. 199 (2021), <https://doi.org/10.1007/s40279-020-01389-3>.

32 5. There are "'[i]nherent differences' between men and women," and
33 that these differences "remain cause for celebration, but not for
34 denigration of the members of either sex or for artificial constraints on
35 an individual's opportunity." United States v. Virginia, 518 U.S. 515,
36 533 (1996).

37 6. In studies of large cohorts of children from six years old,
38 "[b]oys typically scored higher than girls on cardiovascular endurance,
39 muscular strength, muscular endurance, and speed/agility, but lower on
40 flexibility." Konstantinos Tambalis et al., Physical fitness normative
41 values for 6-18-year-old Greek boys and girls, using the empirical
42 distribution and the lambda, mu, and sigma statistical method, 16(6)
43 EUR J. SPORT SCI. 736 (2016), <https://pubmed.ncbi.nlm.nih.gov/26402318>.
44 See also, Mark J Catley & Grant R Tomkinson, Normative Health-related
45 fitness values for children: analysis of 85347 test results on 9-17 year

1 old Australians since 1985, 47(2) BRIT. J. SPORTS MED. 98 (2013),
2 <https://pubmed.ncbi.nlm.nih.gov/22021354>.

3 7. Physiological differences between males and females relevant to
4 sports performance "include a larger body size with more skeletal-muscle
5 mass, a lower percentage of body fat, and greater maximal delivery of
6 anaerobic and aerobic energy." Øyvind Sandbakk et al., Sex Differences in
7 World-Record Performance: The Influence of Sport Discipline and
8 Competition Duration, 13(1) INT'L J. SPORTS PHYSIOLOGY & PERFORMANCE 2 (2018),
9 <https://pubmed.ncbi.nlm.nih.gov/28488921>.

10 8. Men also have higher natural levels of testosterone, which
11 affects traits such as hemoglobin levels, body fat content, the storage
12 and use of carbohydrates, and the development of Type 2 muscle fibers, all
13 of which result in men being able to generate higher speed and power
14 during physical activity. Doriane Lambelet Coleman, Sex in Sport, 80 LAW &
15 CONTEMP. PROBS. 63, 74 (2017) (quoting Gina Kolata, Men, Women and Speed.
16 2 Words: Got Testosterone?, N.Y. TIMES (Aug. 21, 2008).

17 9. There is a sports performance gap between males and females,
18 such that "the physiological advantages conferred by biological sex
19 appear, on assessment of performance data, insurmountable." Hilton, *supra*
20 at 200.

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

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

31 12. Courts have recognized that the inherent, physiological
32 differences between males and females result in different athletic
33 capabilities. See, e.g., Kleczek v. Rhode Island Interscholastic League,
34 Inc., 612 A.2d 734, 738 (R.I. 1992) ("Because of innate physiological
35 differences, boys and girls are not similarly situated as they enter
36 athletic competition."); Petrie v. Ill. High Sch. Ass'n, 394 N.E.2d 855,
37 861 (Ill. App. Ct. 1979) (noting that "high school boys [generally possess
38 physiological advantages over] their girl counterparts" and that those
39 advantages give them an unfair lead over girls in some sports like "high
40 school track").

41 13. The benefits that natural testosterone provides to male
42 athletes is not diminished through the use of testosterone suppression. A
43 recent study on the impact of such treatments found that policies like
44 those of the International Olympic Committee requiring biological males to
45 undergo at least one year of testosterone suppression before competing in

1 women's sports do not create a level playing field. "[T]he reduction in
2 testosterone levels required by [policies like those of the International
3 Olympic Committee] is insufficient to remove or reduce the male advantage,
4 in terms of muscle mass and strength, by any meaningful degree." The
5 study concluded that "[t]he data presented here demonstrate that superior
6 anthropometric, muscle mass and strength parameters achieved by males at
7 puberty, and underpinning a considerable portion of the male performance
8 advantage over females, are not removed by the current regimen of
9 testosterone suppression" permitted by the International Olympic Committee
10 and other sports organizations. Rather, the study found that male
11 performance advantage over females "remains substantial" and "raises
12 obvious concerns about fair and safe competition." Hilton, *supra* at
13 207, 209.

14 14. Having separate sex-specific teams furthers efforts to promote
15 sex equality by providing opportunities for female athletes to demonstrate
16 their skill, strength and athletic abilities while also providing them
17 with opportunities to obtain recognition, accolades, college scholarships
18 and the numerous other long-term benefits that flow from success in
19 athletic endeavors.

20 Sec. 3. Severability

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

26 Sec. 4. Short title

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