

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 208

As Amended by Senate Committee on
Education

Brief*

SB 208, as amended, would create the Fairness in Women's Sports Act (Act) and require interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by public educational institutions to be designated based on biological sex.

Legislative Findings

The bill would contain findings of the Legislature regarding the differences between biological males and females. The findings would further discuss the biological differences with regard to athletics.

Athletic Team Criteria

The bill would require all interscholastic, intercollegiate, intramural, and club athletic teams that are sponsored by public elementary, secondary, and postsecondary institutions that compete against teams from other public educational institutions to be expressly designated as one of the following, based on the biological sex of the team members:

- Males, men, or boys;
- Females, women, or girls; or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Coed or mixed.

The bill would further clarify that athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.

[*Note:* The bill would not exclude students of the female sex from participating on athletic teams designated for males, men, or boys.]

Rules and Regulations

The bill would also require the Kansas State High School Activities Association (KSHSAA), the State Board of Regents, and the governing bodies for municipal universities, community colleges, and technical colleges to adopt rules and regulations for the implementation of the designations of their athletic teams.

Prohibition of Complaints

The bill would prohibit governmental entities, licensing organizations, accrediting organizations, or athletic associations or organizations from taking the following actions against public educational institutions that maintain separate teams for students of the female sex:

- Entertaining a complaint;
- Opening an investigation; or
- Taking other adverse actions.

Resolving Violations

In the event of a violation of the Act, the bill would allow the following individuals and organizations to file civil suit and seek relief in the form of monetary damages, reasonable attorney fees, and other appropriate relief:

- Any student deprived of an athletic opportunity or who suffers direct or indirect harm by a violation of the Act;
- Any student subjected to retaliation or other adverse action by a public educational institution or athletic association for reporting a violation of the Act; or
- Any public education institution that suffers direct or indirect harm as a result of a violation of the Act.

The bill would require all civil actions to be initiated no later than two years after the harm occurred.

Severability

The bill would declare all sections of the Act to be severable in the event one or more sections are determined to be invalid.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Erickson.

Senate Committee on Education

In the Senate Committee hearing, **proponent** testimony was provided by Senator Erickson and Representative Ehardt of Idaho. Proponent testimony was also provided by

representatives of the Alliance Defending Freedom, Concerned Women for America, Family Policy Alliance, Save Women's Sports, and the Women's Liberation Front and by three private citizens. Written-only proponent testimony was provided by a representative of the Women's Human Rights Campaign and four private citizens. The proponents generally indicated the bill is necessary to ensure biological females can fairly participate in athletics due to the distinct physiological advantages held by biological males over biological females.

Opponent testimony was provided by Representative Byers; representatives of Equality Kansas, GLSEN Kansas, and the Kansas National Education Association; and six private citizens. Written-only opponent testimony was provided by Representative Woodard; representatives of the ACLU of Kansas, the Episcopal Diocese of Kansas, and the Human Rights Campaign; and 24 private citizens. Opponents generally indicated the bill would harm transgender children by excluding them from participating in athletic activities under the gender they identify as. They also noted there are no examples of transgender athletes excelling in athletic competition due to the physiological advantages related to sex.

Neutral testimony was provided by a representative of the Kansas Association of School Boards. Written-only neutral testimony was provided by representatives of the Kansas State Board of Education. The neutral conferees generally discussed overall concerns regarding jurisdictional authority.

The Senate Committee amended the bill to remove language to establish a mechanism for individuals to challenge the biological sex of an athlete and the means by which a student's biological sex could be proven in response to such a complaint.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of the Attorney General indicates enactment of the bill would likely be challenged in court and costs incurred for litigation would be dependent upon the outcomes in court. The Kansas Board of Regents (Board) indicates the bill would have no fiscal impact upon its member institutions. However, the Board indicates that if the bill conflicts with National Collegiate Athletic Association (NCAA) policies, the state's ability to host NCAA events and their associated revenues could be jeopardized. The Office of Judicial Administration indicates it would anticipate increased civil cases as a result of the bill, which would lead to increased revenues and expenditures associated with the cases.

None of the agencies provided estimates of the fiscal effects addressed in the fiscal note.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Sports; athletics; education; elementary schools; secondary schools; postsecondary educational institutions; transgender; sex