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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Chairperson Thomas
Members of the House Committee on Education

From: The Office of Revisor of Statutes

Date: February 13, 2023

Subject: HB 2238 – Fairness in Women’s Sports Act.

House Bill No. 2238 (HB 2238) would create the Fairness in Women's Sports Act (Act). Section 3 of the Act would require that all teams or sports sponsored by a public elementary or secondary school or a public college or university designate such teams or sports as being in one of three categories:

- Males, men, or boys
- Females, women, or girls
- Coed or mixed

This designation requirement would also apply to any students or teams of any private elementary or secondary school or college or university that competes against a public school, college or university.

SB 2238 further requires that any team or sports designated for females, women, or girls cannot be open to students of the male sex. The gender of the participant is to be determined by their biological sex. The term “biological sex” is defined under the bill as the gender indicated at birth by the individual’s chromosomes, hormones, or genitalia, without regard to the individual’s psychological, chosen, or subjective experience of gender.

Section 4 of SB 2238 prohibits any governmental entity or any licensing, accrediting, or athletic organization from taking any adverse action against any school or college that complies with the requirements of the Act.

Section 5 provides three causes of action arising from a violation of Section 3. First, any student who is deprived of an athletic opportunity or who suffers any harm due to a violation of Section 3 can bring a lawsuit. Second, any student who is subjected to retaliation or other

adverse action due to the student reporting a violation of Section 3 can bring a lawsuit. Finally, any school or college that suffers any harm due to a violation of Section 3 can bring a lawsuit. Any such lawsuit must be brought within two years after the harm has occurred. The plaintiff in any such lawsuit may seek monetary damages and attorney fees and court costs.

The substantive provisions of HB 2238 passed during the 2022 Session in SB 160. The Governor vetoed SB 160 on April 15, 2022, and the motion to override the veto was passed by the Senate, but failed in the House.

If enacted, HB 2238 would become effective on July 1, 2023.