

On page 1, line 3, of the Introduced bill, after "Dakota:" delete "Section 1. That a NEW SECTION be added:

"

On page 1, line 4, of the Introduced bill, after "added:" delete "LEGISLATIVE FINDINGS."

On page 1, line 4, of the Introduced bill, after "FINDINGS." delete "

The Legislature finds that:

(1) "With respect to biological sex, one is either male or female. "

Arnold De Loof, Only Two Sex Forms but Multiple Gender Variants: How to Explain?, 11(1) Communicative & Integrative Biology, (2018), at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5824932>;

(2) A person's "sex is determined at fertilization and revealed at birth or, increasingly, in utero. "

Lucy Griffin, et al. , Sex, gender and gender identity: a re-evaluation of the evidence, BJPsych Bulletin July 21; 1-9. (2020) at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6677266>;

(3) "[B]iological differences between males and females are determined genetically during embryonic development. "

Stefanie Eggers, et al. , Mammalian sex determination-insights from humans and mice (2012) Chromosome Research 20(1): 215–238 (2012) at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3279640>;

(4) "Secondary sex characteristics that develop during puberty . . . generate anatomical divergence beyond the reproductive system, leading to adult body types that are measurably different between sexes. "

Emma Hilton, et al. , Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage, Sports Med (2020);

(5) There are ""[i]nherent differences" between men and women . . . [and these] "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);

(6) In studies of large cohorts of children from 6 years old, "[b]oys typically scored higher than girls on cardiovascular endurance, muscular strength, muscular endurance, and speed/agility, but lower on flexibility. "

Konstantinos Tambalis, et al. , Physical fitness normative values for 6-18-year-old Greek boys and girls, using the empirical distribution and the lambda, mu, and sigma statistical method (2015) Eur J Sport Sci. Sep;16(6):736-46 at <https://pubmed.ncbi.nlm.nih.gov/26402318>; see also, M. J. Catley, et al. , Normative Health-related fitness values for children: analysis of 85347 test results on 9-17

year old Australians since 1985 (2013) *Br J Sports Med*. Jan; 47(2) at <https://pubmed.ncbi.nlm.nih.gov/22021354/>;

(7) Physiological differences between males and females relevant to sports performance "include a larger body size with more skeletal muscle mass, a lower percentage of body fat, as well as greater maximal delivery of anaerobic and aerobic energy. "

O. Sandbakk, et al. , Sex Differences in World-Record Performance: The Influence of Sport Discipline and Competition Duration (2018) *Int J Sports Physiol Perform*, Jan 1;13(1):2-8 at <https://pubmed.ncbi.nlm.nih.gov/28488921/>;

(8) Physiological differences between males and females include "those most important for success in sport: categorically different strength, speed, and endurance. "

Doriane Lambelet Coleman, et al. , Comparing Athletic Performances – The Best Elite Women to Boys and Men, Duke Center for Sports Law and Policy, at <https://web.law.duke.edu/sports/sex-sport/comparative-athletic-performance>;

(9) Physiological differences between men and women provide competitive sports advantage for men, permitting, among other advantages, "males [being] able to generate higher speed and power during physical activity. "

Doriane Lambelet Coleman, *Sex in Sport*, 80 *Law and Contemporary Problems* 63 (2017) at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4849&context=lcp>;

(10) There is a sports performance gap between males and females, such that "the physiological advantages conferred by biological sex appear, on assessment of performance data, insurmountable. "

Emma Hilton, et al. , Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage, *Sports Med* (2020);

(11) 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 promot[e] equal employment opportunities, [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);

(12) 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;

(13) Courts have recognized that the inherent, physiological differences between males and females result in different athletic capabilities and have stated that "because of innate physiological differences, boys and girls are not similarly situated as they enter athletic competition "

Kleczek v. Rhode Island Interscholastic League, Inc. , 612 A. 2d 13 734, 738 (R. I. 1992);

(14) The benefits that natural testosterone provides to male athletes is not diminished through the use of testosterone suppression. A recent study on the impact of such treatments found that policies like those of the International Olympic Committee requiring biological males to undergo at least one year of testosterone suppression before competing in women's sports do not create a level playing field. "[T]he reduction in testosterone levels required by [policies like those of the International Olympic Committee] is insufficient to remove or reduce the male advantage, in terms of muscle mass and strength, by any meaningful degree. " The study concluded that "[t]he data presented here demonstrate that superior anthropometric, muscle mass and strength parameters achieved by males at puberty, and underpinning a consideration portion of the male performance advantage over females, are not removed by the current regimen of testosterone suppression" permitted by the

International Olympic Committee and other sports organizations. Rather, the study found that male performance advantage over females "remains substantial. "

Emma Hilton, et al. , Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage, Sports Med (2020); and

(15) Having separate sex-specific teams furthers the promotion of sex equality by providing opportunities for female athletes to demonstrate their skills, strengths, and athletic abilities, while also providing them with opportunities to obtain accolades, recognition, college scholarships, and numerous other long-term benefits associated with successful athletic endeavors."

On page 4, line 6, of the Introduced bill, delete "2" and insert 1

On page 4, line 7, of the Introduced bill, delete "13-67-2" and insert " 13-67-1"

On page 4, line 16, of the Introduced bill, delete " 13-67-3" and insert " 13-67-2"

On page 4, line 17, of the Introduced bill, delete "3" and insert 2

On page 4, line 18, of the Introduced bill, delete "13-67-3" and insert " 13-67-2"

On page 5, line 1, of the Introduced bill, delete "4" and insert 3

On page 5, line 2, of the Introduced bill, delete "13-67-4" and insert " 13-67-3"

On page 5, line 7, of the Introduced bill, delete " 13-67-2" and insert " 13-67-1"

On page 5, line 8, of the Introduced bill, delete "5" and insert 4

On page 5, line 9, of the Introduced bill, delete "13-67-5" and insert " 13-67-4"