2022 South Dakota Legislature

Senate Bill 46

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

An Act to protect fairness in women's sports.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added to title 13:

Any interscholastic, intercollegiate, intramural, or club athletic team, sport, or athletic event that is sponsored or sanctioned by an accredited school, school district, an activities association or organization, or an institution of higher education under the control of either the Board of Regents or the Board of Technical Education must be designated as one of the following, based on the biological sex at birth of the participating athletes:

(1) Females, women, or girls;

(2) Males, men, or boys; or

(3) Coeducational or mixed.

Only female athletes, based on their biological sex, may participate in any team, sport, or athletic event designated as being for females, women, or girls.

For purposes of this section, biological sex is either female or male as described by the sex listed on the athlete's official birth certificate issued at or near the time of the athlete’s birth. The failure to comply with this section is a waiver of sovereign immunity.

Section 2. That a NEW SECTION be added to title 13:

If an athlete suffers direct or indirect harm as a result of a violation of section 1 of this Act, that athlete has a private cause of action for injunctive relief and any other equitable relief available under law, against the accredited school, school district, activities association or organization, or institution of higher education under the control of either the Board of Regents or the Board of Technical Education that caused the harm.

If an athlete is subjected to retaliation or other adverse action by an accredited school, school district, activities association or organization, or institution of higher

education as a result of reporting a violation of section 1 of this Act to an employee or representative of the school, school district, activities association or organization, institution of higher education, or to a state or federal governmental entity having oversight authority, that athlete has a private cause of action for injunctive relief and any other equitable relief available under law, against the school, school district, activities association or organization, or institution of higher education. In addition, no governmental entity may investigate a complaint or take any adverse action against an accredited school, school district, activities association or organization, or institution of higher education, or any employee or governing board member of the foregoing for compliance with section 1 of this Act.

Section 3. That a NEW SECTION be added to title 13:

If an accredited school, school district, or institution of higher education suffers any direct or indirect harm as a result of a violation of section 1 of this Act, that school, school district, or institution of higher education has a private cause of action for injunctive relief and any other equitable relief available under law, against the governmental entity, licensing or accrediting organization, or activities association or organization.

Section 4. That a NEW SECTION be added to title 13:

No governmental entity, accredited school, school district, or institution of higher education may be liable to any athlete for its compliance with section 1 of this Act.

A civil action under sections 2 or 3 of this Act must be initiated within two years from the date the alleged harm occurred.

Any party prevailing on a claim brought under sections 2 or 3 of this Act is entitled to reasonable attorney's fees and costs.