

2022 South Dakota Legislature

Senate Bill 46**AMENDMENT 46A FOR THE INTRODUCED BILL**

1 **An Act to protect fairness in women's sports.**

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

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

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

10 (1) Females, women, or girls;

11 (2) Males, men, or boys; or

12 (3) Coeducational or mixed.

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

15 For purposes of this section, biological sex is either female or male-as-described-by
16 the sex listed on the athlete's official birth certificate issued at or near the time of the
17 athlete's birth and the sex listed on the student's official birth certificate may be relied
18 upon if the certificate was issued at or near the time of the student's birth. The failure to
19 comply with this section is a limited waiver of sovereign immunity for relief authorized
20 under this Act.

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

22 If-an-athlete a student suffers direct or indirect harm as a result of a violation of
23 section 1 of this Act, that-athlete student has a private cause of action for injunctive relief
24 and any other equitable relief available under law, against the accredited school, school

1 district, activities association or organization, or institution of higher education under the
2 control of either the Board of Regents or the Board of Technical Education that caused the
3 harm.

4 If ~~an athlete a student~~ is subjected to retaliation or other adverse action by an
5 accredited school, school district, activities association or organization, or institution of
6 higher education as a result of reporting a violation of section 1 of this Act to an employee
7 or representative of the school, school district, activities association or organization,
8 institution of higher education, or to a state or federal governmental entity having
9 oversight authority, that ~~athlete student~~ has a private cause of action for injunctive relief
10 and any other equitable relief available under law, against the school, school district,
11 activities association or organization, or institution of higher education. In addition, no
12 governmental entity may investigate a complaint or take any adverse action against an
13 accredited school, school district, activities association or organization, or institution of
14 higher education, or any employee or governing board member of the foregoing for
15 compliance with section 1 of this Act.

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

17 If an accredited school, school district, or institution of higher education ~~under the~~
18 ~~control of either the Board of Regents or the Board of Technical Education~~ suffers any
19 direct or indirect harm as a result of a violation of section 1 of this Act, that school, school
20 district, or institution of higher education has a private cause of action for injunctive relief
21 and any other equitable relief available under law, against the governmental entity,
22 licensing or accrediting organization, or activities association or organization.

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

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

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

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

31 **Section 5. That a NEW SECTION be added to title 13:**

1 For any lawsuit brought or any complaint filed against an accredited school, a
2 school district, or an institution of higher education under the control of either the Board
3 of Regents or the Board of Technical Education, or an employee, board, or a member
4 thereof, as a result of compliance with section 1 of this Act, the attorney general shall
5 provide legal representation at no cost to that entity or individual.

6 In addition to the expenses of representation, the state shall assume financial
7 responsibility for any other expense related to the lawsuit or complaint and incurred by
8 an accredited school, a school district, or an institution of higher education, or an
9 employee, board, or a member, including any award for attorney's fees and costs for which
10 that entity or individual would be otherwise responsible.