

2022 South Dakota Legislature

Senate Bill 46**AMENDMENT 46C FOR THE SENATE STATE AFFAIRS
ENGROSSED 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 students:

- 10 (1) Females, women, or girls;
11 (2) Males, men, or boys; or
12 (3) Coeducational or mixed.

13 Only female students, based on their biological sex, may participate in any team,
14 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 and the sex
16 listed on the student's official birth certificate may be relied upon if the certificate was
17 issued at or near the time of the student's birth. The failure to comply with this section is
18 a limited waiver of sovereign immunity for relief authorized under this Act.

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

20 If a student suffers direct or indirect harm as a result of a violation of section 1 of
21 this Act, that student has a private cause of action for injunctive, ~~mandamus, and~~
22 declaratory relief ~~and any other equitable relief available under law,~~ against the accredited
23 school, school district, activities association or organization, or institution of higher

1 education under the control of either the Board of Regents or the Board of Technical
2 Education that caused the harm.

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

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

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

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

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

30 **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.