

2022 South Dakota Legislature

Senate Bill 46**AMENDMENT 46E FOR THE SENATE 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 damages,~~ against the accredited school, school district, activities
23 association or organization, or institution of higher education under the control of either
24 the Board of Regents or the Board of Technical Education that caused the harm.

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

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

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

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

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

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

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

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

28 For any lawsuit brought or any complaint filed against an accredited school, a
29 school district, or an institution of higher education under the control of either the Board
30 of Regents or the Board of Technical Education, or an employee, board, or a member

1 thereof, as a result of compliance with section 1 of this Act, the attorney general shall
2 provide legal representation at no cost to that entity or individual.

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