COMMITTEE REPORT

March 31, 2022

**H. 4608**

Introduced by Reps. Trantham, Oremus, Burns, McCravy, G.R. Smith, M.M. Smith, B. Cox, Bennett, McGarry, Taylor, Jones, Gilliam, Yow, Hixon, Hill, Gagnon, Whitmire, Haddon, Bannister, Magnuson, May, Dabney, Long, Willis, McCabe, Morgan, Bryant, V.S. Moss, Nutt, T. Moore, Forrest, Bailey, West, Thayer, White, McKnight, Atkinson and Fry

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Read the first time January 11, 2022.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 4608) to amend the Code of Laws of South Carolina, 1976, to enact the “Save Women’s Sports Act” by adding Section 59‑1‑500 so as to express, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

MERITA A. ALLISON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill requires interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public secondary school or public postsecondary school to be expressly designated based on biological sex. The designations are males, men, or boys; females, women, or girls; or coed or mixed. Athletic teams or sports designated for males, men, or boys may be open to students of the female sex. Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.

A student who is deprived of an athletic opportunity or suffers direct or indirect harm as a result of a violation of the provisions of the bill has a private cause of action for injunctive relief, damages, and other relief available under law against the school or public postsecondary institution. Additionally, a student who is subject to retaliation or other adverse action by a school, public postsecondary institution, or athletic association or organization as a result of reporting a violation to an employee or representative of the school, institution, or athletic association or organization, or to a state or federal agency with oversight of schools or public postsecondary education has a private cause of action for injunctive relief, damages, and other relief available under law against the school, institution, or athletic association or organization. A school or public postsecondary institution that suffers direct or indirect harm as a result of a violation of this bill has a private cause of action for injunctive relief, damages, and other relief available under law against the governmental entity, licensing or accrediting organization, or athletic association or organization. A civil action brought pursuant to this bill must be initiated within two years after the harm occurred. A person or organization that prevails on a claim pursuant to the provisions of this bill is entitled to monetary damages, reasonable attorney’s fees, and other relief considered appropriate by the court.

**State Department of Education.** SCDE previously indicated on similar legislation that while the bill does not alter the duties or responsibilities of the agency, it could experience some legal costs associated with the bill. However, the agency indicated that any expenses associated with legal costs could be managed within current appropriations. Therefore, the bill is not expected to have an expenditure impact on SCDE. We will update this impact statement if the agency provides a different response.

**State Agency Schools.** The Governor’s School for the Arts and Humanities, the Governor’s School for Science and Mathematics, the Governor’s School for Agriculture at John de La Howe, the Wil Lou Gray Opportunity School, and the School for the Deaf and Blind indicate that this bill will have no expenditure impact since any expenses can be managed within existing appropriations.

**Commission on Higher Education.** CHE reports that any expenses resulting from the provisions of this bill can be managed within existing appropriations. Therefore the bill will have no expenditure impact. *This section of the fiscal impact statement has been updated to include a response from CHE.*

**Colleges and Universities.** SC Revenue and Fiscal Affairs (RFA) surveyed all state colleges and universities, and received responses from seven universities. Six indicate that this bill will have no expenditure impact. Lander University reports that an additional part-time employee to assist with NCAA compliance would be necessary as a result of this bill and would increase general fund expenditures for the university by approximately $26,000 beginning in FY 2022-23.

Additionally, two colleges and universities indicate that this bill could be in violation of NCAA guidance and regulation. The expenditure impact resulting from any litigation costs resulting from violations is undetermined. *This section of the fiscal impact statement has been updated to include responses from state colleges and universities.*

**Judicial.** Judicial indicates that this bill may increase the number of cases in Common Pleas and Summary Courts. Since the bill creates a new cause of action, there is no data with which to estimate the number of filings. However, Judicial intends to use existing general fund appropriations to manage any modifications in caseloads. Therefore, this bill will have no expenditure impact on Judicial.

**State Revenue**

As noted above, a civil action brought pursuant to this bill must be initiated within two years after the harm occurred. A person or organization that prevails on a claim pursuant to the provisions of this bill is entitled to monetary damages, reasonable attorney’s fees, and other relief considered appropriate by the court.

This portion of the bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the general fund, other funds, and local funds. Therefore, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill may result in an undetermined increase in general fund revenue and other funds revenue due to the potential increase in court fines and fees.

Additionally, two colleges and universities indicate that because this bill violates NCAA guidance and regulation, the NCAA could levy sanctions or bans against the institution, which could reduce athletic revenue to the school. However, any sanctions or bans from the NCAA as a result of this bill is currently unknown. Therefore, the revenue impact on state colleges and universities is undetermined. *This section of the fiscal impact statement has been updated to include responses from the state colleges and universities.*

**Local Expenditure**

As noted above, this bill requires interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public secondary school or public postsecondary school to be expressly designated based on biological sex.

SCDE previously surveyed the regular school districts and received responses from thirty-five districts. The responding districts indicated that the bill would have no expenditure impact since it does not alter the duties or responsibilities of the districts. However, SCDE indicated that there could be some expenses associated with legal costs, but expected the expenses could be managed within the existing budgets of the districts. Therefore, the bill is not expected to have an expenditure impact on local school districts. We will update this impact statement if the districts provide different responses.

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**Introduced on January 11, 2022**

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A student who is deprived of an athletic opportunity or suffers direct or indirect harm as a result of a violation of the provisions of the bill has a private cause of action for injunctive relief, damages, and other relief available under law against the school or public postsecondary institution. Additionally, a student who is subject to retaliation or other adverse action by a school, public postsecondary institution, or athletic association or organization as a result of reporting a violation to an employee or representative of the school, institution, or athletic association or organization, or to a state or federal agency with oversight of schools or public postsecondary education has a private cause of action for injunctive relief, damages, and other relief available under law against the school, institution, or athletic association or organization. A school or public postsecondary institution that suffers direct or indirect harm as a result of a violation of this bill has a private cause of action for injunctive relief, damages, and other relief available under law against the governmental entity, licensing or accrediting organization, or athletic association or organization. A civil action brought pursuant to this bill must be initiated within two years after the harm occurred. A person or organization that prevails on a claim pursuant to the provisions of this bill is entitled to monetary damages, reasonable attorney’s fees, and other relief considered appropriate by the court.

**State Department of Education.** SCDE previously indicated on similar legislation that while the bill does not alter the duties or responsibilities of the agency, it could experience some legal costs associated with the bill. However, the agency indicated that any expenses associated with legal costs could be managed within current appropriations. Therefore, the bill is not expected to have an expenditure impact on SCDE. We will update this impact statement if the agency provides a different response.

**State Agency Schools.** The Governor’s School for the Arts and Humanities, the Governor’s School for Science and Mathematics, the Governor’s School for Agriculture at John de La Howe, the Wil Lou Gray Opportunity School, and the School for the Deaf and Blind indicate that this bill will have no expenditure impact since any expenses can be managed within existing appropriations.

**Commission on Higher Education.** The expenditure impact of this bill on CHE is pending, contingent upon a response.

**Colleges and Universities.** The expenditure impact of this bill on public postsecondary institutions is pending, contingent upon a response.

**Judicial.** Judicial indicates that this bill may increase the number of cases in Common Pleas and Summary Courts. Since the bill creates a new cause of action, there is no data with which to estimate the number of filings. However, Judicial intends to use existing general fund appropriations to manage any modifications in caseloads. Therefore, this bill will have no expenditure impact on Judicial.

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Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SAVE WOMEN’S SPORTS ACT” BY ADDING SECTION 59‑1‑500 SO AS TO EXPRESS LEGISLATIVE INTENT AND MAKE CERTAIN FINDINGS; TO REQUIRE GENDER‑BASED OR COEDUCATIONAL DESIGNATION OF CERTAIN PUBLIC SECONDARY AND POSTSECONDARY SCHOOL SPORTS TEAMS; TO PROVIDE SUCH SPORTS TEAMS DESIGNATED FOR MALES MAY BE OPEN TO FEMALE STUDENT PARTICIPANTS; TO PROVIDE SUCH SPORTS TEAMS DESIGNATED FOR FEMALES MAY NOT BE OPEN TO MALE PARTICIPANTS; TO PROVIDE ASSUMPTIONS CONCERNING THE CORRECTNESS OF BIOLOGICAL GENDER STATEMENTS ON OFFICIAL BIRTH CERTIFICATES OF STUDENTS; AND TO PROVIDE REMEDIES TO STUDENTS AND SCHOOLS FOR VIOLATIONS OF THE PROVISIONS OF THIS ACT.

Whereas, the General Assembly finds that participation in extracurricular sports is beneficial for children and their development; and

Whereas, it is in the state’s best interest to ensure that fair opportunities are preserved for all children to compete in sports. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Save Women’s Sports Act”.

SECTION 2. Article 5, Chapter 1, Title 59 of the 1976 Code is amended by adding:

Section 59‑1‑500. (A)(1) The intent of the General Assembly is to maintain opportunities for female athletes to demonstrate their strength, skills, and athletic abilities and to provide them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long‑term benefits that result from participating and competing in athletic endeavors.

(2) The General Assembly finds that:

(a) maintaining the fairness for women’s athletic opportunities is an important state interest; and

(b) requiring the designation of separate sex‑specific athletic teams or sports is necessary to maintain fairness for women’s athletic opportunities.

(B)(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public secondary school or public postsecondary institution must be expressly designated as one of the following based on the biological sex at birth of team members:

(a) males, men, or boys;

(b) females, women, or girls; or

(c) coed or mixed, including both males and females.

(2) Athletic teams or sports designated for males, men, or boys may be open to students of the female sex.

(3) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.

(4) For purposes of this section, a statement of a student’s biological sex on the student’s official birth certificate is considered to have correctly stated the student’s biological sex at birth if the statement was filed at or near the time of the student’s birth.

(C)(1) A student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this section has a private cause of action for injunctive relief, damages, and any other relief available under law against the school or public postsecondary institution.

(2) A student who is subject to retaliation or other adverse action by a school, public postsecondary institution, or athletic association or organization as a result of reporting a violation of this section to an employee or representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or public postsecondary institutions in this State, has a private cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization.

(3) A school or public postsecondary institution that suffers any direct or indirect harm as a result of a violation of this section has a private cause of action for injunctive relief, damages, and any other relief available under law against the governmental entity, licensing or accrediting organization, or athletic association or organization.

(4) A civil action brought under this section must be initiated within two years after the alleged harm occurred. A person or organization who prevails on a claim brought under this section is entitled to:

(a) monetary damages, including for any psychological, emotional, or physical harm suffered;

(b) reasonable attorney fees and costs; and

(c) any other appropriate relief.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this , and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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