COMMITTEE REPORT

March 29, 2022

**S. 531**

Introduced by Senators Cash, Kimbrell, M. Johnson, Loftis, Shealy, Hembree, Verdin, Rice, Adams, Garrett, Young, Gustafson, Climer, Goldfinch, Massey, Grooms, Turner, Talley, Gambrell, Cromer, Bennett, Corbin, Campsen and Peeler

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Read the first time February 9, 2021.

**THE COMMITTEE ON EDUCATION**

To whom was referred a Bill (S. 531) to enact the “Save Women’s Sports Act”; to amend Article 5, Chapter 1, Title 59 of the 1976 Code, relating to miscellaneous educational provisions, by adding Section, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by striking all after the title and inserting:

/ 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 elementary or 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 shall 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.

(5) A private school or a private institution sponsoring an athletic team or sport in which its students or teams compete against a public school or institution must also comply with this section for the applicable team or sport,

(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 postsecondary institution.

(2) A student who is subject to retaliation or other adverse action by a school, 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 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 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 act, 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. /

Renumber sections to conform.

Amend title to conform.

GREG HEMBREE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill requires middle school-level and high school-level interscholastic or intramural athletic teams or sports that are sponsored by a public school or a private school and the school’s students or teams compete against a public 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 females, women, or girls must not be open to male students.

A governmental entity, a licensing or accrediting organization, or an athletic association or organization many not entertain a complaint, open an investigation, or take another adverse action against a school for maintaining separate interscholastic or intramural athletic teams or sports for female students. A student who is deprived of an athletic opportunity or who suffers direct or indirect harm as a result of the provisions of the bill has a private cause of action for injunctive relief, damages, and other relief available under the law against a school. Additionally, a student who is subject to retaliation or other adverse action by a school or athletic association or organization as a result of reporting a violation to an employee or representative of the school, athletic association or organization, or to a state or federal agency with oversight of schools has a private cause of action for injunctive relief, damages, and other relief available under the law against the school or athletic association or organization. A school 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 the 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.** SDE indicated on similar legislation that e the bill does not alter the duties or responsibilities of the agency, but the agency could experience some legal costs associated with the bill. However, SDE expects that any expenses associated with legal costs can be managed within current appropriations. Therefore, the bill will have no expenditure impact on SDE.

**State Agency Schools.** The Wil Lou Gray Opportunity School, The Governor’s School for the Arts and Humanities, and the Governor’s School for Science and Mathematics indicated on similar legislation that the bill would have no expenditure impact since it does not alter the duties or responsibilities of the agencies. Also, the Governor’s School for Agriculture at John de la Howe previously indicated that any expenses associated with the bill could be managed within current appropriations. Based upon these responses, we anticipate that any expenses for the School for the Deaf and Blind could also be managed within existing appropriations. Therefore, this bill is not expected to have an expenditure impact on the state agency schools.

**Judicial Department.** The department indicated on similar legislation that the bill creates a new cause of action and there is no data available to estimate the number of filings, hearings, or trials that may be impacted as a result.  The department also reported that these changes will have a minimal impact on the Judicial Branch and could be managed within their existing appropriations.  Therefore, the bill will have no expenditure impact on the department.

**Local Expenditure**

This bill requires middle school-level and high school-level interscholastic or intramural athletic teams or sports that are sponsored by a public school or a private school whose students or teams compete against a public 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 females, women, or girls may not be open to male students. Further, the bill provides for the legal action that may be taken if a student or school suffers direct or indirect harm as a result of the provisions of this bill.

SDE previously surveyed the seventy-nine regular school districts on similar legislation 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, SDE indicated that there could be some expenses associated with legal costs, but expects the expenses could be managed within the existing budgets of the districts. Therefore, the bill will have no expenditure impact on local school districts.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO ENACT THE “SAVE WOMEN’S SPORTS ACT”; TO AMEND ARTICLE 5, CHAPTER 1, TITLE 59 OF THE 1976 CODE, RELATING TO MISCELLANEOUS EDUCATIONAL PROVISIONS, BY ADDING SECTION 59‑1‑500, TO PROVIDE THAT PUBLIC AND PRIVATE MIDDLE SCHOOL‑LEVEL AND HIGH SCHOOL‑LEVEL TEAMS AND SPORTS MUST BE DESIGNATED BASED ON BIOLOGICAL SEX, TO PROVIDE THAT TEAMS OR SPORTS DESIGNATED FOR FEMALES MUST BE RESTRICTED TO STUDENTS OF THE FEMALE SEX, TO PROVIDE CERTAIN PROTECTIONS FOR PUBLIC AND PRIVATE SCHOOLS, AND TO PROVIDE CERTAIN RELIEF FOR VIOLATIONS.

Whereas, the General Assembly finds that there are two biological sexes, female and male, and that the sex of a person is objectively determined by the genetics and anatomy existing at the time of birth; and

Whereas, the General Assembly finds that there are inherent differences between men and women and that these differences remain cause for celebration, not for the denigration of the members of either sex or for artificial constraints on an individual’s opportunity; and

Whereas, the General Assembly finds that, while classifications based on sex are generally disfavored, the Supreme Court has recognized that sex classifications may be used to compensate women for particular economic disabilities they have suffered, to promote equal employment opportunity, and to advance the full development of the talent and capacities of our nation’s people; and

Whereas, the General Assembly finds that the one place where sex classifications allow for the full development of the talent and capacities of our nation’s people is in the context of sports and athletics; and

Whereas, the General Assembly finds that having separate sex‑specific teams furthers efforts to promote sex equality by providing opportunities for female athletes to demonstrate their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college scholarships, and numerous other long‑term benefits that arise from success in athletic endeavors. 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) A middle school‑level or high school‑level interscholastic or intramural athletic team or sport that is sponsored by a public school or a private school, if the school’s students or teams compete against a public school, must be expressly designated as one of the following based on biological sex:

(a) ‘males’, ‘men’, or ‘boys’;

(b) ‘females’, ‘women’, or ‘girls’; or

(c) ‘coed’ or ‘mixed’.

(2) An athletic team or sport that is designated for ‘females’, ‘women’, or ‘girls’ must not be open to students of the male sex.

(B) A governmental entity, a licensing or accrediting organization, or an athletic association or organization may not entertain a complaint, open an investigation, or take another adverse action against a school for maintaining separate interscholastic or intramural athletic teams or sports for students of the female sex.

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

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

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

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

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

(2) reasonable attorneys’ fees and costs; and

(3) other relief considered appropriate by the court.”

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, then 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 act 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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