SPONSOR: Sen. Richardson & Rep. Dukes
Sens. Bonini, Hocker, Lawson; Reps. Collins, Vanderwende

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 227

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE FAIRNESS IN WOMEN'S SPORTS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part V, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 84. Fairness in Women's Sports Act.

§ 8401. Short title.

This chapter is known as the "Fairness in Women's Sports Act".

§ 8402. Findings; purpose.

(a) The General Assembly finds as follows:

(1) Historically, males participate in interscholastic athletics at a higher rate than females, and a noticeable disparity continues between the athletic participation rates of students who are female and students who are male in sports tracked by the Delaware Interscholastic Athletic Association.

(2) Courts have recognized a legitimate and important governmental interest in redressing past discrimination against females in athletics on the basis of sex and promoting equality of athletic opportunity between the sexes under Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.).

(3) Courts have recognized that classification by sex is the only feasible classification to promote the governmental interest of providing for interscholastic athletic opportunities for females.

(b) The purpose of this chapter is to do all of the following:

(1) Provide 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 result from success in athletic endeavors.

(2) Promote sex equality by requiring the designation of separate sex-specific athletic teams or sports.

§ 8403. Definitions.

(a) For purposes of this chapter:

(1) “Charter school” means a public school established under Chapter 5 of this title.

(2) “Department” means the Department of Education.

(3) “Higher education institution” means Delaware State University, the University of Delaware, and Delaware Technical and Community College.

(4) “Member school” means as defined under § 302 of this title.

(5) “School district” means a clearly defined geographic subdivision of this State organized for the purpose of administering public education in that area and includes a district specifically created to administer a system of vocational or technical education.

§ 8404. Designation of athletic teams or sports based on sex of athlete; prohibitions.

(a) A school district, charter school, member school, or higher education institution shall designate an athletic team or sport sponsored by the school district, charter school, member school, or higher education institution as one of the following based on biological sex:

(1) Males, men’s, or boys.

(2) Females, women’s, or girls.

(3) Coed or mixed.

(b)(1) Except as provided under subsection (c) of this section, a school district, charter school, member school, or higher education institution may not allow a student to compete for an athletic team or in a sport designated for the biological sex opposite to the student’s biological sex as correctly stated on one of the following:

a. The students’ official birth certificate.

b. If the student’s official birth certificate is unobtainable, another government record.

(2) For purposes of this subsection, a student’s biological sex is correctly stated only if the statement meets one of the following:

a. It was entered at or near the time of the student’s birth.

b. It was modified to correct a scrivener or clerical error in the student’s biological sex.

(c) A school district, charter school, member school, or higher education institution may allow a female student to compete for an athletic team or in a sport designated for male students if a corresponding athletic team or sport for female students is not offered or available.

§ 8405. Protections for compliance with this chapter.

A governmental entity, licensing or accrediting organization, or athletic association or organization may not entertain a complaint, open an investigation, or take any other adverse action against a school district, charter school, member school, or higher education institution for complying with this chapter.

§ 8406. Cause of action; civil remedies.

(a) A student who is deprived of an athletic opportunity or who suffers a direct or indirect harm as a result of a violation of § 8404 of this title may bring a cause of action for injunctive relief, damages, and any other relief available under law against a school district, charter school, member school, or higher education institution.

(b) A student who is subject to retaliation or other adverse action by a school district, charter school, member school, higher education institution, or athletic association or organization as a result of reporting a violation of § 8404 of this title to an employee or representative of the school district, charter school, member school, higher education institution, or athletic association or organization, or to any state or federal agency with oversight of a school district, charter school, member school, higher education institution, or athletic association or organization in this State may bring a cause of action for injunctive relief, damages, and any other relief available under law against the school district, charter school, member school, higher education institution, or athletic association or organization.

(c) A school district, charter school, member school, or higher education institution that suffers a direct or indirect harm as a result of a violation of this chapter may bring a cause of action for injunctive relief, damages, and any other relief available under law against the government entity, licensing or accrediting organization, or athletic association or organization.

(d) A civil action brought under this section must be initiated within 2 years after the alleged harm occurred.

(e) A student, school district, charter school, member school, or higher education institution that prevails on a claim brought under this section is entitled to all of the following:

(1) Monetary damages, including for any psychological, emotional, or physical harm suffered.

(2) Reasonable attorney fees and costs.

(3) Any other appropriate relief.

§ 8407. Regulatory authority.

The Delaware Interscholastic Athletic Association shall adopt regulations necessary to implement and enforce this chapter.

Section 2. This Act is effective immediately and is to be implemented beginning with the 2022 through 2023 school year.

SYNOPSIS

This Act generally requires a student athlete to compete for athletic teams or in sports associated with their biological sex, as determined at or near birth and based on the student's birth certificate or other government record if a birth certificate is unobtainable. An exception is permitted to allow female athletes to compete in male sports if a corresponding female sport is not available.

To facilitate this Act, a school district, charter school, Delaware Interscholastic Athletic Association member school, or higher education institution must designate an athletic team or sport sponsored by the school district, charter school, Delaware Interscholastic Athletic Association member school, or higher education institution based on the biological sex of students.

Author: Senator Richardson