HOUSE BILL 304

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Zachary J. Cook and Rod Montoya and James G. Townsend and
Rachel A. Black and Stefani Lord

AN ACT

RELATING TO SPORTS; ENACTING THE WOMEN'S SPORTS PROTECTION ACT;
PROVIDING FOR DESIGNATIONS OF ATHLETIC TEAMS BASED ON
BIOLOGICAL SEX; REQUIRING SCHOOLS TO PROHIBIT MALE
PARTICIPATION ON FEMALE ATHLETIC TEAMS; PROHIBITING ADVERSE
ACTION AGAINST SCHOOLS COMPLYING WITH THE WOMEN'S SPORTS
PROTECTION ACT; PROVIDING FOR CIVIL CAUSES OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Women's Sports Protection Act".

SECTION 2. [NEW MATERIAL] LEGISLATIVE FINDINGS.--

A. There are only two biological sexes: male and
female.

B. A person's sex is determined at fertilization
and revealed in utero or at birth.

.219546.2
C. Biological differences between males and females are genetically determined.

D. Males and females have characteristic anatomical differences and distinct body types.

E. There are "inherent differences between men and women" and these differences "remain cause for celebration, but not for denigration of members of either sex or for artificial constraints on an individual's opportunity". United States v. Virginia, 518 U.S. 515, 533 (1996).

F. Studies have found that boys have typically scored higher on tests of endurance, speed and strength than females. In addition, studies have found that relative to females, males have larger body sizes, more skeletal muscle mass, lower body fat percentages and higher delivery of anaerobic and aerobic energy.

G. Sources reveal that men have higher natural levels of testosterone, which result in higher speed and power during physical activity. This leads to a sports performance gap between males and females.

H. Courts have recognized that the inherent, physiological differences between males and females result in different athletic capabilities. In Kleczek v. Rhode Island Interscholastic League, Inc. 612 A.2d 734, 738 (R.I. 1992), it was recognized that, "because of innate physiological differences, boys and girls are not similarly situated as in
athletic competition". In Petrie v. Illinois High School Association, 394 N.E.2d 855, 861 (Ill. App. Ct. 1979), it was recognized that high school boys [generally possess physiological advantages] over their girl counterparts" and that those advantages give them an unfair lead over girls in some sports, like high school 'track'".

I. Studies have shown that the benefits of natural testosterone provided to male athletes are not diminished through the use of testosterone suppression.

J. Maintaining separate sex-specific teams supports 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, accolades, college scholarships and numerous other long-term benefits that flow from success in athletic endeavors.

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the Women's Sports Protection Act, "school" means a public or private primary school, a secondary school, an institution of higher education or a post-secondary educational institution.

SECTION 4. [NEW MATERIAL] DESIGNATION OF ATHLETIC TEAMS.--

A. Interscholastic or intramural athletic teams that are sponsored by a school and in which a public school competes shall be expressly designated based on biological sex,
as any of the following:

(1) a males', men's or boys' team;
(2) a females', women's or girls' team; or
(3) a coed team.

B. A school that sponsors an athletic team designated for females, women or girls shall not allow participation by students of the biological male sex.

SECTION 5. [NEW MATERIAL] PROTECTION FOR COMPLIANT SCHOOLS.--A state agency, political subdivision of the state, a licensing or accrediting organization or an athletic association or organization shall not entertain a complaint, open an investigation or take any other adverse action against a school for maintaining separate interscholastic or intramural athletic teams or for prohibiting students of the biological male sex from participating on female athletic teams.

SECTION 6. [NEW MATERIAL] CIVIL CAUSES OF ACTION.--

A. A student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a school's violation of the Women's Sports Protection Act shall have a private cause of action against the school for injunctive relief, damages or any other relief available pursuant to law.

B. A student who is subjected to retaliation or other adverse action by a school or athletic association or organization as a result of reporting to another person a
violation of the Women's Sports Protection Act shall have a
private cause of action for injunctive relief, damages or any
other relief available pursuant to law against the school or
athletic association or organization.

C. A school that suffers any direct or indirect
harm as a result of a violation of Section 5 of the Women's
Sports Protection Act shall have a private cause of action
against the state agency, political subdivision of the state,
licensing or accrediting organization or athletic association
or organization that committed the violation for injunctive
relief, damages or any other relief available pursuant to law.

D. A civil action initiated pursuant to this
section shall be initiated within two years after the harm,
retaliation or adverse action occurred. A person who prevails
on a claim brought pursuant to this section shall be entitled
to monetary damages, including damages for any psychological,
emotional or physical harm suffered, reasonable attorney fees
and costs and any other relief deemed appropriate by the court.

- 5 -