

SENATE BILL NO. 1186

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health
on February 2, 2023)

(Patrons Prior to Substitute--Senators Reeves and Cosgrove [SB 911])

A BILL to amend and reenact § 22.1-271.7 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 22.1-271.9 and 23.1-408.2, relating to K-12 schools and institutions of higher education; designation of interscholastic, intercollegiate, intramural, and club athletic teams and sports based on biological sex; identification of student's biological sex on athletic eligibility form; student participation in female teams or sports; civil cause of action.

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-271.7 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 22.1-271.9 and 23.1-408.2 as follows:

§ 22.1-271.7. Public middle school student-athletes; pre-participation physical examination.

No public ~~middle elementary or secondary~~ school student shall be a participant on or try out for any school interscholastic, intramural, or club athletic team or ~~squad with a predetermined roster, regular practices, and scheduled competitions with other middle schools~~ sport sponsored by a public school unless such student has submitted to the school principal ~~a signed report from an athletics eligibility form signed by a licensed physician, a licensed nurse practitioner practicing in accordance with the provisions of § 54.1-2957, or a licensed physician assistant acting under the supervision of a licensed physician attesting~~ (i) that such student has been examined; within the preceding 12 months, and (ii) that such student was found to be physically fit for athletic competition, and (iii) to such student's biological sex.

§ 22.1-271.9. Interscholastic, intramural, and club athletic teams and sports; designation of teams; student participation; civil cause of action.

A. Each interscholastic, intramural, or club athletic team or sport sponsored by a public school shall be expressly designated as one of the following based on biological sex:

27 1. For "males," "men," or "boys";

28 2. For "females," "women," or "girls"; or

29 3. For "coed" or "mixed" if participation on such team or in such sport is open to both (i) males,
30 men, or boys and (ii) females, women, or girls.

31 B. Each interscholastic, intramural, or club athletic team or sport sponsored by a public school that
32 is expressly designated for "females," "women," or "girls," pursuant to subsection A shall not be open to
33 any student whose biological sex is male.

34 C. Nothing in this section shall be construed to restrict the eligibility of any student to participate
35 in any interscholastic, intramural, or club athletic team or sport that is expressly designated for "males,"
36 "men," or "boys" or as "coed" or "mixed."

37 D. The eligibility of a public school student to participate on any interscholastic, intramural, or
38 club athletic team or sport that is expressly designated for (i) "males," "men," or "boys," or (ii) "females,"
39 "women," or "girls" shall be based on the student's biological sex as identified on such student's signed
40 athletics eligibility form, required pursuant to § 22.1-271.7.

41 E. No government entity, licensing or accrediting organization, or athletic association or
42 organization shall entertain a complaint, open an investigation, or take any other adverse action against a
43 school for explicitly designating or maintaining separate interscholastic, intramural, or club athletic teams
44 or sports for "females," "women," or "girls," pursuant to subsections A, B, and E. Any school that suffers
45 any direct or indirect harm as a result of a violation of this section shall have a private cause of action for
46 injunctive relief, damages, and any other relief available under law against such government entity,
47 licensing or accrediting organization, or athletic association or organization.

48 F. Any student who is (i) deprived of an athletic opportunity or suffers any direct or indirect harm
49 as a result of a school knowingly violating this section or (ii) subject to retaliation or other adverse action
50 by a school, athletic association, or organization as a result of reporting a violation of this section to an
51 employee or representative of such school, athletic association, or organization, or to any state or federal
52 agency with oversight of school in the Commonwealth, shall have a private cause of action for injunctive

relief, damages, and any other relief available under law against such school, athletic association, or organization.

G. All civil actions brought pursuant to subsection E or F shall be initiated within two years after the harm occurred.

H. The provisions of this section shall be construed liberally so as to effectuate its purposes to the fullest extent permitted by law. If any one or more provisions, subsections, sentences, clauses, phrases, or words of this section or their application to any individual, entity, or circumstance is found to be unconstitutional, it shall be deemed severable, and the remainder of this section and its applicability to other individuals, entities, or circumstances not similarly situated shall remain effective.

§ 23.1-408.2. Intercollegiate, intramural, and club athletic teams and sports; designation of teams; student participation; civil cause of action.

A. Each intercollegiate, intramural, and club athletic team or sport that is sponsored by a public institution of higher education shall be expressly designated as one of the following based on biological sex:

1. For "males," "men," or "boys";
2. For "females," "women," or "girls"; or
3. For "coed" or "mixed," if participation on such team or sport is open to both (i) males, men, or boys and (ii) females, women, or girls.

B. Each intercollegiate, intramural, or club athletic team or sport that is sponsored by a public institution of higher education and that is expressly designated for "females," "women," or "girls" pursuant to subsection A shall not be open to any student whose biological sex is male. This section shall not be construed to restrict the eligibility of any student to try out for or compete in any intercollegiate, intramural, or club athletic team or sport sponsored by such institution of higher education that is expressly designated for "males," "men," or "boys" or as "coed" or "mixed."

C. No student enrolled at a public institution of higher education shall be a participant on or try out for any intercollegiate, intramural, or club athletic team or sport sponsored by a public institution of higher education unless such student has submitted to the appropriate department or individual of the

institution an athletics eligibility form signed by a licensed physician, a licensed nurse practitioner practicing in accordance with the provisions of § 54.1-2957, or a licensed physician assistant acting under the supervision of a licensed physician verifying (i) that such student has received a physical examination within the preceding 12 months, (ii) that such student was found physically fit for athletic competition, and (iii) such student's biological sex.

D. No government entity, licensing or accrediting organization, or athletic association or organization shall entertain a complaint, open an investigation, or take any other adverse action against a school for explicitly designating or maintaining separate intercollegiate, intramural, or club athletic teams or sports for "females," "women," or "girls" pursuant to subsections A, B, and C. Any institution of higher education that suffers any direct or indirect harm as a result of a violation of this section shall have a private cause of action for injunctive relief, damages, and any other relief available under law against such government entity, licensing or accrediting organization, or athletic association or organization.

E. Any student who is (i) deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a knowing violation of this section by a public institution of higher education or (ii) subject to retaliation or other adverse action by an institution of higher education, athletic association, or organization as a result of reporting a violation of this section to an employee or representative of such institution, athletic association, or organization, or to any state or federal agency with oversight of such institution in the Commonwealth, shall have a private cause of action for injunctive relief, damages, and any other relief available under law against such institution, athletic association, or organization.

F. All civil actions brought pursuant to subsection D or E shall be initiated within two years after the harm occurred.

G. The provisions of this section shall be construed liberally so as to effectuate its purposes to the fullest extent permitted by law. If any one or more provisions, subsections, sentences, clauses, phrases, or words of this section or their application to any individual, entity, or circumstance is found to be unconstitutional, it shall be deemed severable, and the remainder of this section and its applicability to other individuals, entities, or circumstances not similarly situated shall remain effective.

2. That the provisions of this act shall be effective beginning with the 2023–2024 school year.

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