

**SENATE, No. 3540**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED MARCH 11, 2021

**Sponsored by:**

**Senator MICHAEL L. TESTA, JR.**

**District 1 (Atlantic, Cape May and Cumberland)**

**Senator JAMES W. HOLZAPFEL**

**District 10 (Ocean)**

**SYNOPSIS**

“Fairness in Women’s Sports Act.”

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning student participation in school-sanctioned  
2 sporting events and supplementing chapter 11 of Title 18A of the  
3 New Jersey Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. The Legislature finds and declares that:

9 a. In *United States v. Virginia*, 518 U.S.515, 533 (1996), the  
10 Supreme Court noted that there are “inherent differences between  
11 men and women,” and these differences “remain cause for  
12 celebration, but not for denigration of the members of either sex or  
13 for artificial constraints on an individual’s opportunity.”

14 b. These “inherent differences” range from chromosomal and  
15 hormonal differences to physiological differences.

16 c. Men generally have denser and stronger bones, tendons, and  
17 ligaments as well as larger hearts, greater lung volume per body  
18 mass, a higher red blood cell count, and higher hemoglobin.

19 d. Men also have higher natural levels of testosterone, which  
20 affects traits such as hemoglobin levels, body fat content, the  
21 storage and use of carbohydrates, and the development of type 2  
22 muscle fibers, all of which result in men being able to generate  
23 higher speed and power during physical activity.

24 e. While classifications based on sex are generally disfavored,  
25 the court in *United States v. Virginia* also recognized that “sex  
26 classifications may be used to compensate women for particular  
27 economic disabilities [they have] suffered, to promote equal  
28 employment opportunity, [and] to advance full development of the  
29 talent and capacities of our Nation’s people.”

30 f. One place where sex classifications allow for the “full  
31 development of the talent and capacities of our Nation’s people” is  
32 in the context of sports and athletics.

33 g. The biological differences between females and males,  
34 especially as they relate to natural levels of testosterone, help to  
35 explain the male and female secondary sex characteristics which  
36 develop during puberty and have lifelong effects, including those  
37 most important for success in sports such as strength, speed, and  
38 endurance.

39 h. Courts have recognized that the inherent, physiological  
40 differences between males and females result in different athletic  
41 capabilities.

42 i. Specifically, the courts have noted that males and females  
43 are not similarly situated in athletic competition due to innate  
44 physiological differences and that males generally possess  
45 physiological advantages over their female competitors.

46 j. A recent study of female and male Olympic performances  
47 since 1983 found that, although athletes from both sexes improved  
48 over the time span, the “gender gap” between female and male

1 performances remained stable. This suggests that women's  
2 performances at the high level will never match those of men.

3 k. The benefits that natural testosterone provides to male  
4 athletes is not diminished through the use of puberty blockers and  
5 cross-sex hormones. A recent study on the impact of such  
6 treatments found that even after 12 months of hormonal therapy, a  
7 man who identifies as a woman and is taking cross-sex hormones  
8 possesses a significant advantage over female athletes and will still  
9 likely have performance benefits over women.

10 l. Having separate sex-specific teams furthers efforts to  
11 promote sex equality. Sex-specific teams accomplish this by  
12 providing opportunities for female athletes to demonstrate their  
13 skill, strength, and athletic abilities while also providing them with  
14 opportunities to obtain recognition and accolades, college  
15 scholarships, and the numerous other long-term benefits that flow  
16 from success in athletic endeavors.

17

18 2. a. Interscholastic, intercollegiate, intramural, or club  
19 athletic teams or sports that are sponsored by a public or nonpublic  
20 school that is a member of the New Jersey State Interscholastic  
21 Athletic Association (NJSIAA), or a public institution of higher  
22 education or any higher education institution that is a member of  
23 the national collegiate athletic association (NCAA), national  
24 association of intercollegiate athletics (NAIA), or national junior  
25 college athletic association (NJCAA) shall be expressly designated  
26 as one of the following based on biological sex:

- 27 (1) males, men, or boys;  
28 (2) females, women, or girls; or  
29 (3) coed or mixed.

30 b. Athletic teams or sports designated for females, women, or  
31 girls shall not be open to students of the male sex. If a student's sex  
32 is disputed, a student shall establish sex by presenting a signed  
33 physician's statement that shall indicate the student's sex based  
34 solely on:

- 35 (1) the student's internal and external reproductive anatomy;  
36 (2) the student's normal endogenously produced levels of  
37 testosterone; and  
38 (3) an analysis of the student's genetic makeup.

39

40 3. A government entity, any licensing or accrediting  
41 organization, or any athletic association or organization shall not  
42 entertain a complaint, open an investigation, or take any other  
43 adverse action against a school or an institution of higher education  
44 for maintaining separate interscholastic, intercollegiate, intramural,  
45 or club athletic teams or sports for students of the female sex.

46

47 4. a. Any student who is deprived of an athletic opportunity or  
48 suffers any direct or indirect harm as a result of a violation of this

1 chapter shall have a private cause of action for injunctive relief,  
2 damages, and any other relief available under law against the school  
3 or institution of higher education.

4 b. Any student who is subject to retaliation or other adverse  
5 action by a school, institution of higher education, or athletic  
6 association or organization as a result of reporting a violation of this  
7 chapter to an employee or representative of the school, institution,  
8 or athletic association or organization, or to any State or federal  
9 agency with oversight of schools or institutions of higher education  
10 in the State, shall have a private cause of action for injunctive relief,  
11 damages, and any other relief available under law against the  
12 school, institution, or athletic association or organization.

13 c. Any school or institution of higher education that suffers any  
14 direct or indirect harm as a result of a violation of this chapter shall  
15 have a private cause of action for injunctive relief, damages, and  
16 any other relief available under law against the government entity,  
17 licensing or accrediting organization, or athletic association or  
18 organization.

19 d. All civil actions permitted under this section shall be  
20 initiated within two years after the harm occurred. Persons or  
21 organizations who prevail on a claim brought pursuant to this  
22 section shall be entitled to monetary damages, including for any  
23 psychological, emotional, and physical harm suffered, reasonable  
24 attorney's fees and costs, and any other appropriate relief.

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26 5. This act shall take effect immediately.

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#### STATEMENT

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31 This bill requires that participation in school-sanctioned sports  
32 be based on biological sex at birth. It provides that public and  
33 nonpublic schools, as well as institutions of higher education,  
34 designate athletic or sports teams on the basis of biological sex.  
35 The bill also prohibits any athletic teams or sports designated for  
36 females, women, or girls from being open to males. In the event the  
37 sex of a student is disputed, the student will establish sex by  
38 presenting a signed physician's statement that indicates the  
39 student's sex based solely on (1) the student's internal and external  
40 reproductive anatomy; (2) the student's normal endogenously  
41 produced levels of testosterone; and (3) an analysis of the student's  
42 genetic makeup. A school or institution of higher education would  
43 not be subject to investigation or any adverse action for maintaining  
44 separate athletic teams or sports for students of the female sex.

45 Students who are deprived of athletic opportunities or suffer any  
46 harm as a result of a violation of the provisions of this bill would  
47 have a private cause of action for injunctive relief, damages, or  
48 other legal remedy permitted by law against the school or institution

1 of higher education. A student subject to retaliation or any adverse  
2 action by his or her school, institution of higher education, or  
3 athletic association or organization for reporting a violation of the  
4 bill would also have a private right of action against the school,  
5 institution of higher education, or athletic association or  
6 organization. A school or institution of higher education that  
7 suffers any harm as a result of a violation of this bill would likewise  
8 have a private cause of action for injunctive relief, damages, or  
9 other legal remedy permitted by law. Any student, school, or  
10 institution of higher education able to bring suit under this bill  
11 would be required to bring their claims within two years after the  
12 harm occurred. Students or organizations that prevail on any claim  
13 brought pursuant to this bill would be entitled to monetary damages,  
14 including damages for any psychological, emotional, and physical  
15 harm suffered, reasonable attorney's fees and costs, and any other  
16 appropriate relief.