

SESSION OF 2023

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2238**

As Recommended by House Committee on  
Education

**Brief\***

HB 2238 would create the Fairness in Women's Sports Act (Act) and require interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by public educational entities or any school or private postsecondary educational institution whose students or teams compete against a public educational entity to be expressly designated based on biological sex.

**Definitions**

The bill would establish definitions for six terms, including:

- "Biological sex" to mean the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological or chosen, or subjective experience of gender;
- "Public educational entity" to mean any public school or postsecondary educational institution;
  - The bill would define a "public school" as any elementary or secondary school maintained and operated by a school district; and

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “School” to mean any nonpublic school offering any of the grades kindergarten through 12.

### ***Athletic Team Criteria***

The bill would require all interscholastic, intercollegiate, intramural, and club athletic teams that are sponsored by public educational entities or any school or private postsecondary institutions whose students compete against teams from other public educational institutions to be expressly designated as one of the following, based on the biological sex of the team members:

- Males, men, or boys;
- Females, women, or girls; or
- Coed or mixed.

The bill would further specify that athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.

[*Note:* The bill would not exclude students of the female sex from participating on athletic teams designated for males, men, or boys.]

### ***Rules and Regulations***

The bill would require the Kansas State High School Activities Association (KSHSAA), the Kansas Board of Regents, and the governing bodies for municipal universities, community colleges, and technical colleges to adopt rules and regulations for the implementation of the designations of their athletic teams.

### ***Prohibition of Complaints***

The bill would prohibit governmental entities, licensing organizations, accrediting organizations, or athletic associations or organizations from taking the following actions against public educational entities that maintain separate teams for students of the female sex:

- Entertaining a complaint;
- Opening an investigation; or
- Taking other adverse actions.

### ***Resolving Violations***

In the event of a violation of the Act, the bill would allow the following individuals and organizations to file civil suit and seek relief in the form of monetary damages, reasonable attorney fees, and other appropriate relief:

- Any student deprived of an athletic opportunity or who suffers direct or indirect harm by a violation of the Act;
- Any student subjected to retaliation or other adverse action by a public educational entity or athletic association or organization for reporting a violation of the Act; or
- Any public educational entity that suffers direct or indirect harm as a result of a violation of the Act.

The bill would require all civil actions to be initiated no later than two years after the harm occurred.

### ***Severability***

The bill would declare all sections of the Act to be severable in the event one or more sections are determined to be invalid.

### ***Background***

The bill was introduced by the House Committee on Education at the request of Representative Wasinger.

[*Note:* The bill contains provisions nearly identical to those included in the conference committee report for 2022 SB 160, which was vetoed by the Governor. The bill adds a definition section.]

### ***House Committee on Education***

In the House Committee hearing, **proponent** testimony was provided by representatives of the Alliance Defending Freedom, Kansas Catholic Conference, and Kansas Family Voice and by private citizens. The proponents generally indicated the bill is necessary to ensure biological females can fairly participate in athletics due to the distinct physiological advantages held by biological males over biological females.

Written-only proponent testimony was provided by a representative of the Independent Women's Forum. One proponent, a parent, suggested an amendment regarding public school travel protections based upon a student's biological sex.

**Opponent** testimony was provided by Representatives Meyer and Woodard. Opponent testimony was also provided by representatives of the American Civil Liberties Union-Kansas, Equality Kansas, Kansas Interfaith Action, and MainStream Coalition, and by private citizens. Opponents

generally indicated the bill would harm transgender children by excluding them from participating in athletic activities under the gender they identify as. The conferees also noted there are no examples of transgender athletes in Kansas excelling in athletic competition due to the physiological advantages related to sex.

Written-only opponent testimony was provided by Representative Susan Ruiz and representatives of the Greater Kansas City Chamber of Commerce, Kansas Action for Children, Kansas Association of School Boards, Kansas Chapter of American Academy of Pediatrics, Kansas National Education Association, Kansas PTA, Kansas Suicide Prevention HQ, and State Board of Education, and by private citizens.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget, the Kansas State Department of Education indicates the bill would have no fiscal financial effect on the Department or local school districts.

The Office of the Attorney General (OAG) indicates the bill would likely be challenged on constitutional grounds and would need to go through the appellate process to get a definitive ruling on the validity of the law. The OAG indicates costs to defend such lawsuits could be absorbed within existing resources, but further notes local school boards and community colleges could be affected by enactment of the bill, as those entities would be subject to increased legal liability.

The Kansas Board of Regents (Board) indicates enactment of the bill would require the Board and the governing boards of Washburn University, community colleges, and technical colleges to adopt rules and regulations related to implementation of the Act. The Board indicates the duties associated with adopting rules and

regulations and the administration of the Act could be absorbed within existing resources. The Board also indicated a concern regarding any conflict that may occur with policies of the National Collegiate Athletic Association (NCAA) and a potential impact on the state's ability to host NCAA events.

The Office of Judicial Administration also indicates the bill could result in additional civil cases being filed, which could increase revenues and expenditures from additional time spent by judges and court staff in hearing and processing these cases. However, a fiscal effect on the Judicial Branch cannot be estimated.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Education; Fairness in Women's Sports Act; defined terms; nonpublic schools; postsecondary educational institutions; public educational entities; transgender; sex