

FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE SUBSTITUTE NO. 2 FOR

SENATE BILL NO. 39

102ND GENERAL ASSEMBLY

2023

0815S.06T

AN ACT

To amend chapter 163, RSMo, by adding thereto one new section relating to participation in athletic competition, with a severability clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 163, RSMo, is amended by adding thereto
2 one new section, to be known as section 163.048, to read as
3 follows:

**163.048. 1. As used in this section, the following
2 terms mean:**

3 (1) "Athletics", any interscholastic athletic games,
4 contests, programs, activities, exhibitions, or other
5 similar competitions organized and provided for students;

6 (2) "Sex", the two main categories of male and female
7 into which individuals are divided based on an individual's
8 reproductive biology at birth and the individual's genome.

9 2. (1) The general assembly hereby finds the
10 following:

11 (a) A noticeable disparity continues between the
12 athletics participation rates of students who are male and
13 students who are female; and

14 (b) Courts have recognized that classification by sex
15 is the only feasible classification to promote the

16 governmental interest of providing opportunities for
17 athletics for females.

18 (2) The general assembly hereby declares that it is
19 the public policy of this state to further the governmental
20 interest of ensuring that sufficient opportunities for
21 athletics remain available for females to remedy past
22 discrimination on the basis of sex.

23 3. (1) Except as provided under subdivision (2) of
24 this subsection, no private school, public school district,
25 public charter school, or public or private institution of
26 postsecondary education shall allow any student to compete
27 in an athletics competition that is designated for the
28 biological sex opposite to the student's biological sex as
29 correctly stated on the student's official birth certificate
30 as described in subsection 4 of this section or, if the
31 student's official birth certificate is unobtainable,
32 another government record.

33 (2) A private school, public school, public charter
34 school, or public or private institution of postsecondary
35 education may allow a female student to compete in an
36 athletics competition that is designated for male students
37 if no corresponding athletics competition designated for
38 female students is offered or available.

39 4. For purposes of this section, a statement of a
40 student's biological sex on the student's official birth
41 certificate or another government record shall be deemed to
42 have correctly stated the student's biological sex only if
43 the statement was:

44 (1) Entered at or near the time of the student's
45 birth; or

46 (2) Modified to correct any scrivener's error in the
47 student's biological sex.

48 5. A private school, public school district, public
49 charter school, or public or private institution of
50 postsecondary education that violates subdivision (1) of
51 subsection 3 of this section shall not receive any state aid
52 under this chapter or chapter 173 or any other revenues from
53 the state.

54 6. The parent or guardian of any student, or any
55 student who is over eighteen years of age, who is deprived
56 of an athletic opportunity as a result of a violation of
57 this section shall have a cause of action for injunctive or
58 other equitable relief, as well as payment of reasonable
59 attorney's fees, costs, and expenses of the parent,
60 guardian, or student. The relief and remedies set forth
61 shall not be deemed exclusive and shall be in addition to
62 any other relief or remedies permitted by law.

63 7. The department of elementary and secondary
64 education and the department of higher education and
65 workforce development shall each promulgate all necessary
66 rules and regulations for the implementation and
67 administration of this section. Such rules and regulations
68 shall ensure compliance with state and federal law regarding
69 the confidentiality of student medical information. Any
70 rule or portion of a rule, as that term is defined in
71 section 536.010, that is created under the authority
72 delegated in this section shall become effective only if it
73 complies with and is subject to all of the provisions of
74 chapter 536 and, if applicable, section 536.028. This
75 section and chapter 536 are nonseverable and if any of the
76 powers vested with the general assembly pursuant to chapter
77 536 to review, to delay the effective date, or to disapprove
78 and annul a rule are subsequently held unconstitutional,

79 then the grant of rulemaking authority and any rule proposed
80 or adopted after August 28, 2023, shall be invalid and void.

81 8. The provisions of this section shall expire on
82 August 28, 2027.

Section B. If any provision of section A of this act
2 or the application thereof to anyone or to any circumstance
3 is held invalid, the remainder of those sections and the
4 application of such provisions to others or other
5 circumstances shall not be affected thereby.

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