

HOUSE BILL 304

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

INTRODUCED BY

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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.

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1 C. Biological differences between males and females  
2 are genetically determined.

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

5 E. There are "inherent differences between men and  
6 women" and these differences "remain cause for celebration, but  
7 not for denigration of members of either sex or for artificial  
8 constraints on an individual's opportunity". *United States v.*  
9 *Virginia*, 518 U.S. 515, 533 (1966).

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

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

20 H. Courts have recognized that the inherent,  
21 physiological differences between males and females result in  
22 different athletic capabilities. In *Kleczek v. Rhode Island*  
23 *Interscholastic League, Inc.* 612 A.2d 734, 738 (R.I. 1992), it  
24 was recognized that, "because of innate physiological  
25 differences, boys and girls are not similarly situated as they

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1 enter athletic competition". In *Petrie v. Illinois High School*  
2 *Association*, 394 N.E.2d 855, 861 (Ill. App. Ct. 1979), it was  
3 recognized that high school boys generally possess  
4 physiological advantages over their girl counterparts and that  
5 those advantages give them an unfair lead over girls in some  
6 sports, like high school track.

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

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

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

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

23 A. Interscholastic or intramural athletic teams  
24 that are sponsored by a school and in which a public school  
25 competes shall be expressly designated based on biological sex,

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1 as any of the following:

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

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

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

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

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

23 B. A student who is subjected to retaliation or  
24 other adverse action by a school or athletic association or  
25 organization as a result of reporting to another person a

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1 violation of the Women's Sports Protection Act shall have a  
2 private cause of action for injunctive relief, damages or any  
3 other relief available pursuant to law against the school or  
4 athletic association or organization.

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

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