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HOUSE BILL NO. 1399

Offered January 11, 2023

Prefiled November 30, 2022

A *BILL to amend the Code of Virginia by adding sections numbered 22.1-206.3, 22.1-206.4, and 23.1-408.2, relating to elementary and secondary schools and institutions of higher education; interscholastic, intercollegiate, intramural, and club athletic teams and sports; student participation; certain requirements.*

Patron—March

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 22.1-206.3, 22.1-206.4, and 23.1-408.2 as follows:

§ 22.1-206.3. Interscholastic, intramural, and club athletic teams and sports; student participation.

A. For the purposes of this section, a statement of a student's biological sex on the student's official birth certificate shall be considered to correctly state the student's biological sex at birth if the statement was filed at or near the time of the student's birth.

B. Each interscholastic, intramural, or club athletic team or sport that is sponsored by a public elementary or secondary school shall be expressly designated as one of the following based on each team member's biological sex at birth:

1. For "males," "men," or "boys";
2. For "females," "women," or "girls"; or

3. As "coed" or "mixed," including both (i) males, men, or boys and (ii) females, women, or girls.

C. No interscholastic, intramural, or club athletic team or sport that is sponsored by a public elementary or secondary school and that is expressly designated for "males," "men," or "boys" pursuant to subsection B shall be open to any student whose biological sex at birth is female unless such school does not sponsor such a team or sport that is expressly designated for "females," "women," or "girls" or as "coed" or "mixed."

D. No interscholastic, intramural, or club athletic team or sport that is sponsored by a public elementary or secondary school and that is expressly designated for "females," "women," or "girls" pursuant to subsection B shall be open to any student whose biological sex at birth is male.

E. No interscholastic or club athletic team or sport that is sponsored by a public elementary or secondary school shall compete against any interscholastic or club athletic team or sport that is sponsored by a private elementary or secondary school unless such private school complies with the applicable provisions of subsection B, C, or D, *mutatis mutandis*, for the team or sport that it sponsors.

F. Any student who (i) is deprived of an athletic opportunity or suffers any other direct or indirect harm as a result of a violation of subsection B, C, D, or E or (ii) is subject to retaliation or other adverse action by an elementary or secondary school or athletic association or organization as a result of reporting a violation of subsection B, C, D, or E to an employee or representative of the school or athletic association or organization, or to any state or federal agency with oversight over elementary or secondary schools in the Commonwealth, may initiate a cause of action against the relevant school, provided that such cause of action is initiated within two years of such deprivation, harm, retaliation, or other adverse action.

G. Any public elementary or secondary school that suffers any direct or indirect harm as a result of a violation of subsection B, C, D, or E by any governmental entity, licensing or accrediting organization, or athletic association or organization may initiate a cause of action against such entity, organization, or association, provided that such cause of action is initiated within two years of such harm.

§ 22.1-206.4. Interscholastic competition; female wrestling.

No school board shall use any funds or permit any school within the local school division to use any funds to join, affiliate with, pay dues or fees to, or in any way financially support any interscholastic athletic association, body, or entity unless the constitution, rules, or policies of such association, body, or entity recognizes, sanctions, and regulates interscholastic competition between wrestling teams exclusively comprised of students whose biological sex at birth is female.

§ 23.1-408.2. Intercollegiate, intramural, and club athletic teams and sports; student participation.

A. For the purposes of this section, a statement of a student's biological sex on the student's official birth certificate shall be considered to correctly state the student's biological sex at birth if the

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59 *statement was filed at or near the time of the student's birth.*

60 *B. Each intercollegiate, intramural, or club athletic team or sport that is sponsored by a public*
61 *institution of higher education shall be expressly designated as one of the following based on each team*
62 *member's biological sex at birth:*

63 *1. For "males," "men," or "boys";*

64 *2. For "females," "women," or "girls"; or*

65 *3. As "coed" or "mixed," including both (i) males, men, or boys and (ii) females, women, or girls.*

66 *C. No intercollegiate, intramural, or club athletic team or sport that is sponsored by a public*
67 *institution of higher education and that is expressly designated for "males," "men," or "boys" pursuant*
68 *to subsection B shall be open to any student whose biological sex at birth is female unless such*
69 *institution does not sponsor such a team or sport that is expressly designated for "females," "women,"*
70 *or "girls" or as "coed" or "mixed."*

71 *D. No intercollegiate, intramural, or club athletic team or sport that is sponsored by a public*
72 *institution of higher education and that is expressly designated for "females," "women," or "girls"*
73 *pursuant to subsection B shall be open to any student whose biological sex at birth is male.*

74 *E. No intercollegiate or club athletic team or sport that is sponsored by a public institution of higher*
75 *education shall compete against any intercollegiate or club athletic team or sport that is sponsored by a*
76 *private institution of higher education unless such private institution complies with the applicable*
77 *provisions of subsection B, C, or D, mutatis mutandis, for the team or sport that it sponsors.*

78 *F. Any student who (i) is deprived of an athletic opportunity or suffers any other direct or indirect*
79 *harm as a result of a violation of subsection B, C, D, or E or (ii) is subject to retaliation or other*
80 *adverse action by a public institution of higher education or athletic association or organization as a*
81 *result of reporting a violation of subsection B, C, D, or E to an employee or representative of the*
82 *institution or athletic association or organization, or to any state or federal agency with oversight over*
83 *public institutions of higher education in the Commonwealth, may initiate a cause of action against the*
84 *relevant school, provided that such cause of action is initiated within two years of such deprivation,*
85 *harm, retaliation, or other adverse action.*

86 *G. Any public institution of higher education that suffers any direct or indirect harm as a result of a*
87 *violation of subsection B, C, D, or E by any governmental entity, licensing or accrediting organization,*
88 *or athletic association or organization may initiate a cause of action against such entity, organization,*
89 *or association, provided that such cause of action is initiated within two years of such harm.*