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HOUSE BILL NO. 1387

House Amendments in [] - February 6, 2023

A BILL to amend and reenact § 22.1-271.7 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 22.1-271.9 and 23.1-408.2, relating to K-12 schools and institutions of higher education; designation of interscholastic, intercollegiate, intramural, and club athletic teams and sports based on biological sex; identification of student's biological sex on athletic eligibility form; student participation in female teams or sports; civil cause of action.

Patron Prior to Engrossment—Delegate Greenhalgh

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-271.7 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 22.1-271.9 and 23.1-408.2 as follows:

§ 22.1-271.7. Public school student-athletes; pre-participation physical examination; athletics eligibility form.

No public ~~middle~~ elementary or secondary school student shall be a participant on or try out for any school interscholastic, intramural, or club athletic team or squad sport with a predetermined roster, regular practices, and scheduled competitions with other middle schools sponsored by a public school unless such student has submitted to the school principal a signed report an athletics eligibility form signed from by a licensed physician, a licensed nurse practitioner practicing in accordance with the provisions of § 54.1-2957, or a licensed physician assistant acting under the supervision of a licensed physician attesting: (i) that such student has been examined, within the preceding 12 months, and (ii) that such student was found to be physically fit for athletic competition, and (iii) to such student's biological sex.

§ 22.1-271.9. Interscholastic, intramural, and club athletic teams and sports; designation of teams; student participation.

A. Each interscholastic, intramural, or club athletic team or sport sponsored by a public school shall be expressly designated as one of the following based on biological sex:

1. For "males," "men," or "boys";
2. For "females," "women," or "girls"; or
3. For "coed" or "mixed" if participation on such team or in such sport is open to both (i) males, men, or boys and (ii) females, women, or girls.

B. Each interscholastic, intramural, or club athletic team or sport sponsored by a public school that is expressly designated for "females," "women," or "girls," pursuant to subsection A shall not be open to any student whose biological sex is male.

C. Nothing in this section shall be construed to restrict the eligibility of any student to participate in any interscholastic, intramural, or club athletic team or sport that is expressly designated for "males," "men," or "boys" or as "coed" or "mixed."

D. The eligibility of a public school student to participate on any interscholastic, intramural, or club athletic team or sport that is expressly designated for (i) "males," "men," or "boys," or (ii) "females," "women," or "girls" shall be based on the student's biological sex as identified on such student's signed athletics eligibility form, required pursuant to § 22.1-271.7.

E. No interscholastic, intramural, or club athletic team or sport that is sponsored by a public school shall compete against any interscholastic, intramural, or club athletic team or sport that is sponsored by a private school [in the Commonwealth] unless such private school complies with the applicable provisions of this section, mutatis mutandis.

F. No government entity, licensing or accrediting organization, or athletic association or organization shall entertain a complaint, open an investigation, or take any other adverse action against a school for explicitly designating or maintaining separate interscholastic, intramural, or club athletic teams or sports for "females," "women," or "girls," pursuant to subsections A, B, and E. Any school that suffers any direct or [direct indirect] harm as a result of a violation of this section shall have a private cause of action for injunctive relief, damages, and any other relief available under law against such government entity, licensing or accrediting organization, or athletic association or organization.

G. Any student who is (i) deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a school knowingly violating this section or (ii) subject to retaliation or other adverse action by a school, athletic association, or organization as a result of reporting a violation of this section to an employee or representative of such school, athletic association, or organization, or to any

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59 state or federal agency with oversight of school in the Commonwealth, shall have a private cause of
60 action for injunctive relief, damages, and any other relief available under law against such school,
61 athletic association, or organization.

62 H. All civil actions brought pursuant to subsection F or G must be initiated within two years after
63 the harm occurred.

64 I. The provisions of this section shall be construed liberally so as to effectuate its purposes to the
65 fullest extent permitted by law. If any one or more provisions, subsections, sentences, clauses, phrases,
66 or words of this section or their application to any individual, entity, or circumstance is found to be
67 unconstitutional, it shall be deemed severable, and the remainder of this section and its applicability to
68 other individuals, entities, or circumstances not similarly situated shall remain effective.

69 **§ 23.1-408.2. Intercollegiate, intramural, and club athletic teams and sports; designation of teams;**
70 **student participation.**

71 A. Each intercollegiate, intramural, and club athletic team or sport that is sponsored by a public
72 institution of higher education shall be expressly designated as one of the following based on biological
73 sex:

74 1. For "males," "men," or "boys";

75 2. For "females," "women," or "girls"; or

76 3. For "coed" or "mixed," if participation on such team or sport is open to both (i) males, men, or
77 boys and (ii) females, women, or girls.

78 B. Each intercollegiate, intramural, or club athletic team or sport that is sponsored by a public
79 institution of higher education and that is expressly designated for "females," "women," or "girls"
80 pursuant to subsection A shall not be open to any student whose biological sex is male. This section
81 shall not be construed to restrict the eligibility of any student to try out for or compete in any
82 intercollegiate, intramural, or club athletic team or sport sponsored by such institution of higher
83 education that is expressly designated for "males," "men," or "boys" or as "coed" or "mixed."

84 C. No student enrolled at a public institution of higher education shall be a participant on or try out
85 for any intercollegiate, intramural, or club athletic team or sport sponsored by a public institution of
86 higher education unless such student has submitted to the appropriate department or individual of the
87 institution an athletics eligibility form signed by a licensed physician, a licensed nurse practitioner
88 practicing in accordance with the provisions of § 54.1-2957, or a licensed physician assistant acting
89 under the supervision of a licensed physician verifying: (i) that such student has received a physical
90 examination within the preceding 12 months, (ii) such student was found physically fit for athletic
91 competition, and (iii) such student's biological sex.

92 D. No intercollegiate, intramural, or club athletic team or sport that is sponsored by a public
93 institution of higher education shall compete against any private institution of higher education [in the
94 Commonwealth] unless such private institution of higher education complies with the applicable
95 provisions of this section.

96 E. No government entity, licensing or accrediting organization, or athletic association or
97 organization shall entertain a complaint, open an investigation, or take any other adverse action against
98 a school for explicitly designating or maintaining separate intercollegiate, intramural, or club athletic
99 teams or sports for "females," "women," or "girls" pursuant to subsections A, B, and C. Any institution of
100 higher education that suffers any direct or indirect harm as a result of a violation of this section shall
101 have a private cause of action for injunctive relief, damages, and any other relief available under law
102 against such government entity, licensing or accrediting organization, or athletic association or
103 organization.

104 F. Any student who is (i) deprived of an athletic opportunity or suffers any direct or indirect harm
105 as a result of a knowing violation of this section by a public institution of higher education or (ii)
106 subject to retaliation or other adverse action by an institution of higher education, athletic association,
107 or organization as a result of reporting a violation of this section to an employee or representative of
108 such institution, athletic association, or organization, or to any state or federal agency with oversight of
109 such institution in the Commonwealth, shall have a private cause of action for injunctive relief,
110 damages, and any other relief available under law against such institution, athletic association, or
111 organization.

112 G. All civil actions brought pursuant to subsections E or F must be initiated within two years after
113 the harm occurred.

114 H. The provisions of this section shall be construed liberally so as to effectuate its purposes to the
115 fullest extent permitted by law. If any one or more provisions, subsections, sentences, clauses, phrases,
116 or words of this section or their application to any individual, entity, or circumstance is found to be
117 unconstitutional, it shall be deemed severable, and the remainder of this section and its applicability to
118 other individuals, entities, or circumstances not similarly situated shall remain effective.

119 2. That the provisions of this act shall be effective beginning with the 2023-2024 school year.