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HOUSE BILL NO. 1229

Offered January 10, 2024

Prefiled January 10, 2024

A *BILL to amend the Code of Virginia by adding sections numbered 22.1-140.2, 22.1-271.9, 23.1-408.2, and 23.1-408.3, relating to elementary and secondary schools and institutions of higher education; student participation in sports; access to restrooms and changing rooms.*

Patron—Higgins

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 22.1-140.2, 22.1-271.9, 23.1-408.2, and 23.1-408.3 as follows:

§ 22.1-140.2. Restrooms and changing rooms; restrictions.

Access to any restroom or changing room that is capable of being accessed by more than one individual at one time in any public school building shall be limited exclusively to individuals of the same 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 or any other school that is a member of the Virginia High School League 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 or any other school that is a member of the Virginia High School League that is expressly designated for "females," "women," or "girls," pursuant to subsection A shall not be open to any student of the male sex.

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 sponsored by a public school or any other school that is a member of the Virginia High School League that is expressly designated for "males," "men," or "boys" or as "coed" or "mixed."

D. The eligibility of a student to participate on any interscholastic, intramural, or club athletic team or sport that is sponsored by a public school or any other school that is a member of the Virginia High School League 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. If the biological sex of any such student seeking to participate on such an expressly designated team is disputed, such student may establish biological sex by presenting to the school administration or such other authority designated by the school for such purpose a signed physician's statement that shall attest to the student's biological sex based solely on:

1. The student's internal and external reproductive anatomy;

2. The student's normal endogenously produced levels of testosterone; and

3. An analysis of the student's genetic makeup.

E. 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 D. Any school that suffers any direct or 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.

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

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59 athletic association, or organization.

60 G. All civil actions brought pursuant to subsection E or F must be initiated within two years after
61 the harm occurred.

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

67 **§ 23.1-408.2. Intercollegiate, intramural, and club athletic teams and sports; designation of teams;**
68 **student participation.**

69 A. Each intercollegiate, intramural, or club athletic team or sport that is sponsored by a public
70 institution of higher education or any institution of higher education that is a member of the National
71 Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), or
72 National Junior College Athletic Association (NJCAA) shall be expressly designated as one of the
73 following based on biological 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 any such
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 of the male sex.

81 C. This section shall not be construed to restrict the eligibility of any student to try out for or
82 compete in any intercollegiate, intramural, or club athletic team or sport sponsored by any such
83 institution of higher education that is expressly designated for "males," "men," or "boys" or as "coed"
84 or "mixed."

85 D. The eligibility of a student to participate on any interscholastic, intramural, or club athletic team
86 or sport sponsored by any such institution of higher education that is expressly designated for (i)
87 "males," "men," or "boys" or (ii) "females," "women," or "girls" shall be based on the student's
88 biological sex. If the biological sex of any such student seeking to participate on such an expressly
89 designated team is disputed, such student may establish biological sex by presenting to the
90 administration of the institution, or such other authority designated by such institution for such purpose,
91 a signed physician's statement that shall attest to the student's biological sex based solely on:

92 1. The student's internal and external reproductive anatomy;

93 2. The student's normal endogenously produced levels of testosterone; and

94 3. An analysis of the student's genetic makeup.

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

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

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

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

118 **§ 23.1-408.3. Restrooms and changing rooms; restrictions.**

119 Access to any restroom or changing room that is capable of being accessed by more than one
120 individual at one time in any building owned or controlled by a public institution of higher education

121 *shall be limited exclusively to individuals of the same biological sex.*