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Bill Analysis

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Primary Sponsor: Rep. Powell

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SUMMARY

- Requires each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events to designate separate single-sex athletic teams based on the sex of the participants.
- Requires each state institution of higher education or private, nonprofit college or university that is a member of the NCAA, NAIA, or NJCAA to designate separate single-sex athletic teams and sports based on the sex of the participants.
- Authorizes an athletic participant to file a civil action if the participant is deprived of an athletic opportunity or suffers harm as a result of a violation of the bill's single-sex participation requirements or if the participant is subject to retaliation for reporting such a violation.
- Prohibits a state agency or political subdivision, accrediting organization, or athletic association that operates or has business activities in Ohio from taking adverse actions against a school, school district, or college or university that complies with the bill's single-sex participation requirements.
- Entitles the bill the "Save Women's Sports Act."

DETAILED ANALYSIS

Interscholastic and intercollegiate single-sex athletic teams

The bill requires each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events to designate athletic teams based on the sex of participants. Each school must have separate teams for participants of the female sex within female sports divisions, separate teams for

participants of the male sex within male sports divisions, and if applicable, co-ed teams for participants of both sexes within co-ed sports divisions.¹

The bill also requires each state institution of higher education or private, nonprofit college or university that is a member of the National Collegiate Athletics Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), or the National Junior College Athletic Association (NJCAA) to designate intercollegiate athletic teams and sports based on the sex of the participants. Like schools, each state institution and private college must have separate teams for participants of the female sex within female sports divisions, separate teams for participants of the male sex within male sports divisions, and if applicable, co-ed teams for participants of both sexes.²

The bill further prohibits a school, interscholastic conference, organization that regulates interscholastic athletics, state institutions of higher education, and private colleges from *knowingly* permitting males from participating on athletic teams or in athletic competitions designated only for female participants.³ However, the bill clarifies that it does not restrict the eligibility of any student to participate on any athletic team or in competitions designated as male or co-ed.⁴

Civil action authorized

An athletic participant may file a civil action for injunctive relief, damages, and any other relief available, if the participant is deprived of an athletic opportunity or suffers a direct or indirect harm as a result of a violation of the bill's single-sex participation requirements. Similarly, a participant may file a civil action for retaliatory or other adverse action for reporting such a violation. A suit may be filed against a school, school district, interscholastic conference, organization that regulates interscholastic athletics, or college or university.⁵

Furthermore, state agencies and political subdivisions, accrediting organizations, and athletic associations that operate or have business activities in Ohio are prohibited from processing a complaint, beginning an investigation, or taking any other adverse action against a school, school district, or college or university for complying with the bill's single-sex participation requirements.⁶ Therefore, a school, school district, or college or university that suffers any direct or indirect harm as a result of a violation of this prohibition also may file a civil action against the entity that takes the retaliatory or other adverse action.⁷

¹ R.C. 3313.5319(A).

² R.C. 3345.562(B).

³ R.C. 3313.5319(B) and 3345.562(C).

⁴ R.C. 3313.5319(C) and 3345.562(D).

⁵ R.C. 3313.5319(E) and 3345.562(F).

⁶ R.C. 3313.5319(D) and 3345.562(E).

⁷ R.C. 3313.5319(E) and 3345.562(F).

The bill specifies that plaintiffs who prevail on such claims are entitled to monetary damages, including for any psychological, emotional, or physical harm suffered, reasonable attorney's fees and costs, and any other appropriate relief.⁸

Statute of limitations

The bill requires that any civil action brought as a result of a violation of the bill's single-sex participation requirements must be initiated within two years after the date on which the violation occurs.⁹

Background

OHSAA – generally

Ohio law authorizes school districts to implement athletic programs and addresses some aspects of interscholastic athletics, such as the participation of nonenrolled students in district athletic programs and protocols and safeguards for sports-related head injuries. Nevertheless, interscholastic athletics are regulated largely by schools and school districts and the private Ohio High School Athletics Association (OHSAA). The OHSAA regulates and administers interscholastic athletics through its constitution and bylaws, which by their own terms must be in compliance with Ohio law.

For more on the regulation of interscholastic athletics in Ohio, see the LSC Members Brief on Interscholastic Athletics under “General Reference” and then “Publications” at <https://www.lsc.ohio.gov/>.¹⁰

OHSAA transgender athlete policy

In December 2018, the OHSAA released a policy statement regarding transgender student-athlete participation in interscholastic athletics, establishing the process by which transgender students may participate in events or competition regulated by OHSAA.

First, a transgender student or the parent of a transgender student must contact the student's school administrator or athletic director indicating that the student has a consistent gender identity different than the gender assigned at birth, listed on the student's school registration records or as listed on the state birth record, and that the student desires to participate in activities in a manner consistent with the student's gender identity.

Upon receipt of the notice from the student or the parent, the administrator or director must notify the OHSAA Executive Director's Office in writing of the student's interest in participating in interscholastic athletics. The Executive Director's Office then must take one of the following actions:

⁸ R.C. 3313.5319(F) and 3345.562(G).

⁹ R.C. 3313.5319(F) and 3345.562(G).

¹⁰ LSC Interscholastic Athletics Members Brief available at: www.lsc.state.oh.us.

1. A transgender female, whose sex at birth was male but who self-identifies and lives as a female, who is taking medically prescribed hormone treatment related to gender transition may participate on a boys' team at any time. Before a transgender female can participate in a girls' sport or on a girls' team, however, the student must either (a) have completed at least one year of hormone treatment related to gender transition or (b) demonstrate to the Executive Director's Office with sound medical evidence that the student does not possess physical or physiological advantages over genetic females of the same age group.
2. A transgender male, whose sex at birth was female but who self-identifies and lives as a male, who has not yet begun medically prescribed testosterone treatment for purposes of gender transition may participate on a boys' team. Before a transgender male can participate in a boys' sport or on a boys' team, however, the student must submit medical evidence to the Executive Director's Office that (a) the muscle mass developed as a result of testosterone treatment does not exceed the muscle mass that is typical of an adolescent genetic male, (b) the student has not started any hormone treatment (or that the treatment does not cause hormone levels to exceed normal levels), and (c) the student's hormone levels are monitored by a licensed physician every three-to-six months.

If a transgender student-athlete is undergoing hormone treatment for gender transition, the treatment must be monitored by a physician, and the Executive Director's Office must receive regular reports about the student-athlete's eligibility according to OHSAA guidelines.

Should any questions arise about whether a transgender student-athlete's request to participate in a sports activity consistent with the student-athlete's gender identity is "bona fide," the student-athlete may seek review of eligibility for participation through an appeals procedure. The first level of review is before the Gender Identity Eligibility Committee. The student-athlete must provide the Committee with current transcripts and school registration information, documentation of the student's consistent gender identification, and any other pertinent documentation or information. The Committee must apply the same standard of review as utilized in all other eligibility appeals and must notify the parties in writing within 48 hours after reaching a decision.¹¹

Intercollegiate athletics transgender policies

On January 19, 2023, the NCAA updated their policy for athletic participation by transgender student-athletes. Per the NCAA Transgender Student-Athlete Participation Policy, the policy aligns with policies for the Olympics and

calls for transgender student-athlete participation for each sport to be determined by the policy for the national governing body of that sport. If there is no NGB policy for a sport, it would then be

¹¹ OHSAA Transgender Student Policy available at: www.ohsaa.org.

determined by the policy for that sport’s international federation. If there is no international federation policy, it would be determined by policy criteria previously established by the International Olympic Committee. Sport-specific polices are subject to ongoing review and recommendation by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports to the Board of Governors.¹²

The policy began its three-year phase-in on August 1, 2022, and will be fully implemented on August 1, 2024.

HISTORY

Action	Date
Introduced	02-15-23

ANHB0006IN-135/ar

¹² [NCAA Transgender Student-Athlete Participation Policy](http://www.ncaa.org), available at: www.ncaa.org.