

1 HOUSE BILL 304

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Zachary J. Cook and Rod Montoya and James G. Townsend and
5 Rachel A. Black and Stefani Lord

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10 AN ACT

11 RELATING TO SPORTS; ENACTING THE WOMEN'S SPORTS PROTECTION ACT;
12 PROVIDING FOR DESIGNATIONS OF ATHLETIC TEAMS BASED ON
13 BIOLOGICAL SEX; REQUIRING SCHOOLS TO PROHIBIT MALE
14 PARTICIPATION ON FEMALE ATHLETIC TEAMS; PROHIBITING ADVERSE
15 ACTION AGAINST SCHOOLS COMPLYING WITH THE WOMEN'S SPORTS
16 PROTECTION ACT; PROVIDING FOR CIVIL CAUSES OF ACTION.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
20 cited as the "Women's Sports Protection Act".

21 SECTION 2. [NEW MATERIAL] LEGISLATIVE FINDINGS.--

22 A. There are only two biological sexes: male and
23 female.

24 B. A person's sex is determined at fertilization
25 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 in

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1 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
5 that those advantages give them an unfair lead over girls in
6 some 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.