

1 AN ACT relating to athletics.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 156.070 (Effective June 29, 2021) is amended to read as
4 follows:

5 (1) The Kentucky Board of Education shall have the management and control of the
6 common schools and all programs operated in these schools, including
7 interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for
8 the Blind, and community education programs and services.

9 (2) The Kentucky Board of Education may designate an organization or agency to
10 manage interscholastic athletics in the common schools, provided that the rules,
11 regulations, and bylaws of any organization or agency so designated shall be
12 approved by the board, and provided further that any administrative hearing
13 conducted by the designated managing organization or agency shall be conducted in
14 accordance with KRS Chapter 13B.

15 (a) The state board or its designated agency shall assure through promulgation of
16 administrative regulations that if a secondary school sponsors or intends to
17 sponsor an athletic activity or sport that is similar to a sport for which
18 National Collegiate Athletic Association members offer an athletic
19 scholarship, the school shall sponsor the athletic activity or sport for which a
20 scholarship is offered. The administrative regulations shall specify which
21 athletic activities are similar to sports for which National Collegiate Athletic
22 Association members offer scholarships.

23 (b) Beginning with the 2003-2004 school year, the state board shall require any
24 agency or organization designated by the state board to manage interscholastic
25 athletics to adopt bylaws that establish as members of the agency's or
26 organization's board of control one (1) representative of nonpublic member
27 schools who is elected by the nonpublic school members of the agency or

1 organization from regions one (1) through eight (8) and one (1) representative
2 of nonpublic member schools who is elected by the nonpublic member
3 schools of the agency or organization from regions nine (9) through sixteen
4 (16). The nonpublic school representatives on the board of control shall not be
5 from classification A1 or D1 schools. Following initial election of these
6 nonpublic school representatives to the agency's or organization's board of
7 control, terms of the nonpublic school representatives shall be staggered so
8 that only one (1) nonpublic school member is elected in each even-numbered
9 year.

10 (c) The state board or any agency designated by the state board to manage
11 interscholastic athletics shall not promulgate rules, administrative regulations,
12 or bylaws that prohibit pupils in grades seven (7) to eight (8) from
13 participating in any high school sports except for high school varsity soccer
14 and football, or from participating on more than one (1) school-sponsored
15 team at the same time in the same sport. The Kentucky Board of Education, or
16 an agency designated by the board to manage interscholastic athletics, may
17 promulgate administrative regulations restricting, limiting, or prohibiting
18 participation in high school varsity soccer and football for students who have
19 not successfully completed the eighth grade.

20 (d) 1. The state board or any agency designated by the state board to manage
21 interscholastic athletics shall allow a member school's team or students
22 to play against students of a non-member at-home private school, or a
23 team of students from non-member at-home private schools, if the non-
24 member at-home private schools and students comply with this
25 subsection.

26 2. A non-member at-home private school's team and students shall comply
27 with the rules for student athletes, including rules concerning:

- 1 a. Age;
- 2 b. School semesters;
- 3 c. Scholarships;
- 4 d. Physical exams;
- 5 e. Foreign student eligibility; and
- 6 f. Amateurs.
- 7 3. A coach of a non-member at-home private school's team shall comply
- 8 with the rules concerning certification of member school coaches as
- 9 required by the state board or any agency designated by the state board
- 10 to manage interscholastic athletics.
- 11 4. This subsection shall not allow a non-member at-home private school's
- 12 team to participate in a sanctioned:
- 13 a. Conference;
- 14 b. Conference tournament;
- 15 c. District tournament;
- 16 d. Regional tournament; or
- 17 e. State tournament or event.
- 18 5. This subsection does not allow eligibility for a recognition, award, or
- 19 championship sponsored by the state board or any agency designated by
- 20 the state board to manage interscholastic athletics.
- 21 6. A non-member at-home private school's team or students may
- 22 participate in interscholastic athletics permitted, offered, or sponsored by
- 23 the state board or any agency designated by the state board to manage
- 24 interscholastic athletics.
- 25 (e) Every local board of education shall require an annual medical examination
- 26 performed and signed by a physician, physician assistant, advanced practice
- 27 registered nurse, or chiropractor, if performed within the professional's scope

of practice, for each student seeking eligibility to participate in any school athletic activity or sport. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall not promulgate administrative regulations or adopt any policies or bylaws that are contrary to the provisions of this paragraph.

(f) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only. An exception to the provisions of this paragraph shall be made, and the student shall be eligible for high school athletics in Kentucky if the student:

1. Qualified for exceptional children services and had an individual education program developed by an admissions and release committee (ARC) while the student was enrolled in the primary school program;
2. Was retained in the primary school program because of an ARC committee recommendation; and
3. Has not completed four (4) consecutive years or eight (8) consecutive semesters of eligibility following initial promotion from grade eight (8) to grade nine (9).

(g) *The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations or bylaws that provide that:*

1. A member school shall designate all athletic teams, activities, and sports as one (1) of the following categories as:

a. "Boys";

b. "Coed"; or

b. "Girls";

1 2. The sex of a student for the purpose of determining eligibility to
2 participate in an athletic activity or sport or to use an athletic facility
3 designated for the exclusive use of a single sex shall be determined by:

4 a. A student's biological sex as indicated on the student's original,
5 unedited birth certificate issued at the time of birth; or

6 b. An affidavit signed and sworn to by the physician, physician
7 assistant, advanced practice registered nurse, or chiropractor
8 that conducted the annual medical examination required by
9 paragraph (e) of this subsection under penalty of perjury
10 establishing the student's biological sex at the time of birth;

11 3. a. An athletic activity or sport designated as "girls" shall not be
12 open to members of the male sex.

13 b. Nothing in this section shall be construed to restrict the
14 eligibility of any student to participate in an athletic activity or
15 sport designated as "boys" or "coed"; and

16 4. Neither the state board, nor any agency designated by the state board
17 to manage interscholastic athletics, nor any school district, nor any
18 member school shall entertain a complaint, open an investigation, or
19 take any other adverse action against a school for maintaining
20 separate interscholastic or intramural athletic teams, activities, or
21 sports for students of the female sex.

22 (h) 1. The state board or any agency designated by the state board to manage
23 interscholastic athletics shall promulgate administrative regulations that
24 permit a school district to employ or assign nonteaching or noncertified
25 personnel or personnel without postsecondary education credit hours to
26 serve in a coaching position. The administrative regulations shall give
27 preference to the hiring or assignment of certified personnel in coaching

1 positions.

2 2. A person employed in a coaching position shall be a high school
3 graduate and at least twenty-one (21) years of age and shall submit to a
4 criminal background check in accordance with KRS 160.380.

5 3. The administrative regulations shall specify post-hire requirements for
6 persons employed in coaching positions.

7 4. The regulations shall permit a predetermined number of hours of
8 professional development training approved by the state board or its
9 designated agency to be used in lieu of postsecondary education credit
10 hour requirements.

11 5. A local school board may specify post-hire requirements for personnel
12 employed in coaching positions in addition to those specified in
13 subparagraph 3. of this paragraph.

14 (h) Any student who transfers enrollment from a district of residence to a
15 nonresident district under KRS 157.350(4)(b) shall be ineligible to participate
16 in interscholastic athletics for one (1) calendar year from the date of the
17 transfer.

18 (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State
19 Property and Buildings Commission, or others, whether public or private, any
20 lands, buildings, structures, installations, and facilities suitable for use in
21 establishing and furthering television and related facilities as an aid or
22 supplement to classroom instruction, throughout the Commonwealth, and for
23 incidental use in any other proper public functions. The lease may be for any
24 initial term commencing with the date of the lease and ending with the next
25 ensuing June 30, which is the close of the then-current fiscal biennium of the
26 Commonwealth, with exclusive options in favor of the board to renew the
27 same for successive ensuing bienniums, July 1 in each even year to June 30 in

1 the next ensuing even year; and the rentals may be fixed at the sums in each
2 biennium, if renewed, sufficient to enable the State Property and Buildings
3 Commission to pay therefrom the maturing principal of and interest on, and
4 provide reserves for, any revenue bonds which the State Property and
5 Buildings Commission may determine to be necessary and sufficient, in
6 agreement with the board, to provide the cost of acquiring the television and
7 related facilities, with appurtenances, and costs as may be incident to the
8 issuance of the bonds.

9 (b) Each option of the Kentucky Board of Education to renew the lease for a
10 succeeding biennial term may be exercised at any time after the adjournment
11 of the session of the General Assembly at which appropriations shall have
12 been made for the operation of the state government for such succeeding
13 biennial term, by notifying the State Property and Buildings Commission in
14 writing, signed by the chief state school officer, and delivered to the secretary
15 of the Finance and Administration Cabinet as a member of the commission.
16 The option shall be deemed automatically exercised, and the lease
17 automatically renewed for the succeeding biennium, effective on the first day
18 thereof, unless a written notice of the board's election not to renew shall have
19 been delivered in the office of the secretary of the Finance and Administration
20 Cabinet before the close of business on the last working day in April
21 immediately preceding the beginning of the succeeding biennium.

22 (c) The Kentucky Board of Education shall not itself operate leased television
23 facilities, or undertake the preparation of the educational presentations or
24 films to be transmitted thereby, but may enter into one (1) or more contracts to
25 provide therefor, with any public agency and instrumentality of the
26 Commonwealth having, or able to provide, a staff with proper technical
27 qualifications, upon which agency and instrumentality the board, through the

1 chief state school officer and the Department of Education, is represented in
2 such manner as to coordinate matters of curriculum with the curricula
3 prescribed for the public schools of the Commonwealth. Any contract for the
4 operation of the leased television or related facilities may permit limited and
5 special uses of the television or related facilities for other programs in the
6 public interest, subject to the reasonable terms and conditions as the board and
7 the operating agency and instrumentality may agree upon; but any contract
8 shall affirmatively forbid the use of the television or related facilities, at any
9 time or in any manner, in the dissemination of political propaganda or in
10 furtherance of the interest of any political party or candidate for public office,
11 or for commercial advertising. No lease between the board and the State
12 Property and Buildings Commission shall bind the board to pay rentals for
13 more than one (1) fiscal biennium at a time, subject to the aforesaid renewal
14 options. The board may receive and may apply to rental payments under any
15 lease and to the cost of providing for the operation of the television or related
16 facilities not only appropriations which may be made to it from state funds,
17 from time to time, but also contributions, gifts, matching funds, devises, and
18 bequests from any source, whether federal or state, and whether public or
19 private, so long as the same are not conditioned upon any improper use of the
20 television or related facilities in a manner inconsistent with the provisions of
21 this subsection.

22 (4) The state board may, on the recommendation and with the advice of the chief state
23 school officer, prescribe, print, publish, and distribute at public expense such
24 administrative regulations, courses of study, curriculums, bulletins, programs,
25 outlines, reports, and placards as each deems necessary for the efficient
26 management, control, and operation of the schools and programs under its
27 jurisdiction. All administrative regulations published or distributed by the board

1 shall be enclosed in a booklet or binder on which the words "informational copy"
2 shall be clearly stamped or printed.

3 (5) Upon the recommendation of the chief state school officer or his or her designee,
4 the state board shall establish policy or act on all matters relating to programs,
5 services, publications, capital construction and facility renovation, equipment,
6 litigation, contracts, budgets, and all other matters which are the administrative
7 responsibility of the Department of Education.

8 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO
9 READ AS FOLLOWS:

10 **(1) Any student:**

11 **(a) Who is deprived of an athletic opportunity or suffers any direct or indirect**
12 **harm; or**

13 **(b) Who is subject to retaliation or other adverse action by a school, the state**
14 **board, or agency designated by the state board to manage interscholastic**
15 **athletics;**

16 **as a result of a violation of an administrative regulation or bylaw promulgated in**
17 **accordance with subsection (2)(q) of Section 1 of this Act shall have a private**
18 **cause of action for injunctive relief, monetary damages in an amount no less**
19 **than five thousand dollars (\$5,000) per violation, and any other relief available**
20 **under law against the school in violation.**

21 **(2) A civil action under this section must be initiated within two (2) years after the**
22 **date the harm occurred.**

23 **(3) For the purposes of this section, monetary damages shall include any**
24 **psychological, emotional, and physical harm suffered, reasonable attorney's fees**
25 **and costs, and any other appropriate relief.**

26 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
27 READ AS FOLLOWS:

1 (1) (a) A public postsecondary education institution or private postsecondary
2 education institution that is a member of a national intercollegiate athletic
3 association shall designate all intercollegiate and intramural athletic teams,
4 activities, sports, and events that are sponsored or authorized by the
5 institution as one (1) of the following categories:

6 1. "Mens";

7 2. "Coed"; or

8 2. "Womens."

9 (b) 1. A public postsecondary education institution or private postsecondary
10 education institution that is a member of a national intercollegiate
11 athletic association shall prohibit a member of the male sex from
12 competing in any intercollegiate or intramural athletic team, activity,
13 sport, or event designated as "womens."

14 2. Nothing in this section shall be construed to restrict the eligibility of
15 any student to participate in an athletic activity or sport designated as
16 "mens" or "coed."

17 (2) The sex of a student for the purpose of determining eligibility to participate in an
18 athletic activity or sport or to use an athletic facility designated for the exclusive
19 use of a single sex shall be determined by:

20 (a) A student's biological sex as indicated on the student's original, unedited
21 birth certificate issued at the time of birth; or

22 (b) An affidavit signed and sworn to by a physician, physician assistant,
23 advanced practice registered nurse, or chiropractor under penalty of perjury
24 establishing the student's biological sex at the time of birth.

25 (3) A government entity, licensing or accrediting organization, or athletic association
26 or organization shall not entertain a complaint, open an investigation, or take
27 any other adverse action against a postsecondary education institution for

1 *maintaining a separate interscholastic or intramural athletic team, activity, sport,*
2 *or event for members of the female sex.*

3 *(4) Any student who:*

4 *(a) Is deprived of an athletic opportunity or suffers any direct or indirect harm*
5 *as a result of a violation of subsection (1) of this section; or*

6 *(b) Is subject to retaliation or other adverse action by a postsecondary*
7 *institution as a result of reporting a violation of subsection (1) of this*
8 *section;*

9 *shall have a private cause of action for injunctive relief, damages in an amount*
10 *no less than five thousand dollars (\$5,000) per violation, and any other relief*
11 *available under law against the postsecondary institution in violation.*

12 *(5) A civil action under this section must be initiated within two (2) years after the*
13 *harm occurred.*

14 *(6) For the purposes of this section, monetary damages shall include any*
15 *psychological, emotional, and physical harm suffered, reasonable attorney's fees*
16 *and costs, and any other appropriate relief.*

17 ➔ Section 4. This Act may be cited as the "Fairness in Womens' Sports Act."