

HOUSE BILL NO. 112

INTRODUCED BY J. FULLER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "SAVE WOMEN'S SPORTS ACT"; REQUIRING PUBLIC SCHOOL ATHLETIC TEAMS TO BE DESIGNATED BASED ON BIOLOGICAL SEX; PROVIDING CERTAIN PROTECTIONS FOR EDUCATIONAL INSTITUTIONS; PROVIDING A CAUSE OF ACTION FOR CERTAIN VIOLATIONS OF THE ACT; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the Legislature finds that there are "inherent differences between men and women", and that these differences "remain cause for celebration but not for denigration of the members of either sex or for artificial contracts on an individual's opportunity", United States v. Virginia, 518 U.S. 515, 533 (1996); and

WHEREAS, these "inherent differences" range from chromosomal and hormonal differences to physiological differences; and

WHEREAS, men generally have "denser, stronger bones, tendons, and ligaments" and "larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher haemoglobin", Neel Burton, The Battle of the Sexes, Psychology Today (July 2, 2012); and

WHEREAS, men have a higher natural level of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity, Doriane Lambelet Coleman, Sex in Sport, 80 Law and Contemporary Problems 63, 74 (2017) (quoting Gina Kolata, Men, Women, and Speed. 2 Words: Got Testosterone?, N.Y. Times (Aug. 21, 2008)); and

WHEREAS, the biological differences between males and females, especially as they relate to natural levels of testosterone, "explain the male and female secondary sex characteristics which develop during puberty and have life-long effects, including those most important for success in sport: categorically different strength, speed, and endurance", Doriane Lambelet Coleman and Wickliffe Shreve, "Comparing Athletic Performances: The Best Elite Women to Boys and Men," Duke Law Center for Sports Law and Policy; and

WHEREAS, while classifications based on sex are generally disfavored, the United States Supreme Court has recognized that "sex classifications may be used to compensate women for particular economic

1 disabilities [they have] suffered, to promote equal employment opportunity, [and] to advance full development of
2 the talent and capacities of our Nation's people", United States v. Virginia, 518 U.S. 515, 533 (1996); and

3 WHEREAS, one place in which sex classification allows for the "full development of the talent and
4 capacities of our Nation's people" is in the context of sports and athletics; and

5 WHEREAS, courts have recognized that the inherent, physiological differences between males and
6 females result in different athletic capabilities, see, e.g., Kleczek v. Rhode Island Interscholastic League, Inc.,
7 612 A.2d 734, 738 (R.I. 1992) ("Because of innate physiological differences, boys and girls are not similarly
8 situated as they enter athletic competition.") and Petrie v. Ill. High Sch. Ass'n, 394 N.E.2d 855, 861 (Ill. App. Ct.
9 1979) (noting that high school boys generally possess physiological advantages over their girl counterparts and
10 that those advantages give them an unfair lead over girls in some sports like high school track); and

11 WHEREAS, a recent study of female and male Olympic performances since 1983 found that, although
12 athletes from both sexes improved over the time span, the gender gap between male and female performances
13 remained stable, which "suggest[s] that women's performances at the high level will never match those of men",
14 Valerie Thibault, et al., Women and men in sport performance: The gender gap has not evolved since 1983, 9
15 Journal of Sports Science and Medicine 214, 219 (2010); and

16 WHEREAS, as Duke Law professor and All-American track athlete Doriane Lambelet Coleman, tennis
17 champion Martina Navratilova, and Olympic track gold medalist Sanya Richards-Ross recently wrote, "The
18 evidence is unequivocal that starting in puberty, in every sport except sailing, shooting, and riding, there will
19 always be significant numbers of boys and men who would beat the best girls and women in head-to-head
20 competition. Claims to the contrary are simply a denial of science", Doriane Lambelet Coleman, et al., Pass the
21 Equality Act, But Don't Abandon Title IX, Washington Post (Apr. 29, 2019); and

22 WHEREAS, having separate sex-specific teams furthers efforts to promote sex equality, and sex-
23 specific teams accomplish this by providing opportunities for female athletes to demonstrate their skill, strength,
24 and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college
25 scholarships, and the numerous other long-term benefits that flow from success in athletic endeavors.

26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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1 **NEW SECTION. Section 1. Short title.** [Sections 1 through 4] may be cited as the "Save Women's
2 Sports Act".

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4 **NEW SECTION. Section 2. Designation of athletic teams.** (1) Interscholastic, intercollegiate,
5 intramural, or club athletic teams or sports that are sponsored by a public elementary or high school, a public
6 institution of higher education, or any school or institution whose students or teams compete against a public
7 school or institution of higher education must be expressly designated as one of the following based on
8 biological sex:

9 (a) males, men, or boys;

10 (b) females, women, or girls; or

11 (c) coed or mixed.

12 (2) Athletic teams or sports designated for females, women, or girls may not be open to students of
13 the male sex.

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15 **NEW SECTION. Section 3. Protection for educational institutions.** A government entity, a
16 licensing or accrediting organization, or an athletic association or organization may not entertain a complaint,
17 open an investigation, or take any other adverse action against a school or institution of higher education for
18 maintaining separate interscholastic, intercollegiate, intramural, or club athletic teams or sports for students of
19 the female sex.

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21 **NEW SECTION. Section 4. Cause of action.** (1) A student who is deprived of an athletic opportunity
22 or who suffers any direct or indirect harm as a result of a violation of [sections 1 through 4] may bring a cause
23 of action for injunctive relief, damages, and any other relief available under law against the school or institution
24 of higher education.

25 (2) A student who is subject to retaliation or other adverse action by a school, institution of higher
26 education, or athletic association or organization as a result of reporting a violation of [sections 1 through 4] to
27 an employee or representative of the school, institution, or athletic association or organization, or to any state or
28 federal agency with oversight of schools or institutions of higher education in Montana may bring a cause of

1 action for injunctive relief, damages, and any other relief available under law against the school, institution, or
2 athletic association or organization.

3 (3) A school or institution of higher education that suffers any direct or indirect harm as a result of a
4 violation of [sections 1 through 4] may bring a cause of action for injunctive relief, damages, and any other relief
5 available under law against the government entity, licensing or accrediting organization, or athletic association
6 or organization.

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8 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be
9 codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1
10 through 4].

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12 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
14 the part remains in effect in all valid applications that are severable from the invalid applications.

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16 **NEW SECTION. Section 7. Effective date.** [This act] is effective July 1, 2021.

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