

By: Middleton

S.B. No. 649

A BILL TO BE ENTITLED

1 AN ACT
2 relating to participation in athletic activities based on
3 biological sex; providing a civil right to action for K-12 athletes
4 and college athletes.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. SHORT TITLE. This Act may be cited as the Save
7 Women's Sports Act.

8 SECTION 2. The heading to Section 33.0834, Education Code,
9 is amended to read as follows:

10 Sec. 33.0834. [~~INTERSCHOLASTIC~~] ATHLETIC PARTICIPATION
11 [~~COMPETITION~~] BASED ON BIOLOGICAL SEX.

12 SECTION 3. Section 33.0834, Education Code, is amended by
13 amending Subsections (a) and (b) and adding Subsections (e), (f),
14 and (g) to read as follows:

15 (a) Except as provided by Subsection (b), an
16 [~~interscholastic~~] athletic team or sport sponsored or authorized by
17 a school district, [or] open-enrollment charter school, or any
18 private school that competes against a public school may not allow a
19 student to participate [~~compete~~] in an [~~interscholastic~~] athletic
20 team or sport [~~competition~~] sponsored or authorized by the district
21 or school that is designated for the biological sex opposite to the
22 student's biological sex as correctly stated on:

23 (1) the student's official birth certificate, as
24 described by Subsection (c); or

1 (2) if the student's official birth certificate
2 described by Subdivision (1) is unobtainable, another government
3 record that accurately states the student's biological sex.

4 (b) An [~~interscholastic~~] athletic team or sport described
5 by Subsection (a) may allow a female student to participate
6 [~~compete~~] in an [~~interscholastic~~] athletic team or sport
7 [~~competition~~] that is designated for male students if a
8 corresponding [~~interscholastic~~] athletic team or sport
9 [~~competition~~] designated for female students is not offered or
10 available.

11 (e) A student shall have a private cause of action for
12 injunctive relief, damages, attorney's fees and costs, and any
13 other relief available under law if the student is:

14 (1) deprived of an athletic opportunity or suffers any
15 direct or indirect harm as a result of a school district, charter
16 school, or private school knowingly violating this Act; or

17 (2) subject to retaliation or other adverse action by
18 a school district, charter school, private school, the University
19 Interscholastic League, or any athletic association or
20 organization as a result of reporting a violation of this Act.

21 (f) Sovereign immunity, governmental immunity, official
22 immunity, and qualified immunity are waived and abrogated and may
23 not be asserted as a defense in any action brought under Subsection
24 (e).

25 (g) Notwithstanding any other law, the requirements and
26 provisions of this section prevail over any conflicting or
27 potentially conflicting statute, and no statute may be construed to

1 repeal the requirements or provisions of this section in whole or in
2 part, either expressly or by implication, unless the repealing
3 statute explicitly states that it is repealing a requirement or
4 provision of this section.

5 SECTION 4. Subchapter 2, Chapter 51, Education Code, is
6 amended by adding Section 51.982 to read as follows:

7 Sec. 51.982. ATHLETIC PARTICIPATION BASED ON BIOLOGICAL
8 SEX. (a) Except as provided by Subsection (b), an athletic team or
9 sport sponsored or authorized by a public institution of higher
10 education, public junior college, or any private institution or
11 private junior college that competes against a public institution
12 or public junior college may not allow a student to participate in
13 an athletic team or sport sponsored or authorized by the
14 institution of higher education or junior college that is
15 designated for the biological sex opposite to the student's
16 biological sex as correctly stated on:

17 (1) the student's official birth certificate, as
18 described by Subsection (c); or

19 (2) if the student's official birth certificate
20 described by Subdivision (1) is unobtainable, another government
21 record that accurately states the student's biological sex.

22 (b) An athletic team or sport described by Subsection (a)
23 may allow a female student to participate in an athletic team or
24 sport that is designated for male students if a corresponding
25 athletic team or sport designated for female students is not
26 offered or available.

27 (c) For purposes of this section, a statement of a student's

1 biological sex on the student's official birth certificate is
2 considered to have correctly stated the student's biological sex
3 only if the statement was:

4 (1) entered at or near the time of the student's birth;

5 or

6 (2) modified to correct any type of scrivener or
7 clerical error in the student's biological sex.

8 (d) A student shall have a private cause of action for
9 injunctive relief, damages, attorney's fees and costs, and any
10 other relief available under law if the student is:

11 (1) deprived of an athletic opportunity or suffers any
12 direct or indirect harm as a result of an institution of higher
13 education or junior college knowingly violating this Act; or

14 (2) subject to retaliation or other adverse action by
15 an institution of higher education, junior college, or any athletic
16 association or organization as a result of reporting a violation of
17 this Act.

18 (e) Sovereign immunity, governmental immunity, official
19 immunity, and qualified immunity are waived and abrogated and may
20 not be asserted as a defense in any action brought under Subsection
21 (d).

22 (f) Notwithstanding any other law, the requirements and
23 provisions of this section prevail over any conflicting or
24 potentially conflicting statute, and no statute may be construed to
25 repeal the requirements or provisions of this section in whole or in
26 part, either expressly or by implication, unless the repealing
27 statute explicitly states that it is repealing a requirement or

1 provision of this section.

2 SECTION 5. Chapter 30, Civil Practice and Remedies Code, is
3 amended by adding Section 30.023 to read as follows:

4 Sec. 30.023. AWARD OF ATTORNEY'S FEES IN ACTIONS
5 CHALLENGING CERTAIN EDUCATION LAWS. (a) Notwithstanding any other
6 law, any person, including an entity, attorney, or law firm, who
7 seeks declaratory or injunctive relief to prevent this state, a
8 political subdivision, any governmental entity or public official
9 in this state, or any person in this state from enforcing any
10 statute, ordinance, rule, regulation, or any other type of law that
11 regulates athletic participation based on biological sex in any
12 state or federal court, or that represents any litigant seeking
13 such relief in any state or federal court, is jointly and severally
14 liable to pay the costs and reasonable attorney's fees of the
15 prevailing party, including the costs and reasonable attorney's
16 fees that the prevailing party incurs in its efforts to recover
17 costs and fees.

18 (b) For purposes of this section, a party is considered a
19 prevailing party if a state or federal court:

20 (1) dismisses any claim or cause of action brought
21 against the party that seeks the declaratory or injunctive relief
22 described by Subsection (a), regardless of the reason for the
23 dismissal; or

24 (2) enters judgment in the party's favor on any such
25 claim or cause of action.

26 (c) A prevailing party may recover costs and attorney's fees
27 under this section only to the extent that those costs and

1 attorney's fees were incurred while defending claims or causes of
2 action on which the party prevailed.

3 (d) Regardless of whether a prevailing party sought to
4 recover costs or attorney's fees in the underlying action, a
5 prevailing party under this section may bring a civil action to
6 recover costs and attorney's fees against a person, including an
7 entity, attorney, or law firm, that sought declaratory or
8 injunctive relief described by Subsection (a) not later than the
9 third anniversary of the date on which, as applicable:

10 (1) the dismissal or judgment described by Subsection
11 (b) becomes final on the conclusion of appellate review; or

12 (2) the time for seeking appellate review expires.

13 (e) It is not a defense to an action brought under
14 Subsection (d) that:

15 (1) a prevailing party under this section failed to
16 seek recovery of costs or attorney's fees in the underlying action;

17 (2) the court in the underlying action declined to
18 recognize or enforce the requirements of this section; or

19 (3) the court in the underlying action held that any
20 provisions of this section are invalid, unconstitutional, or
21 preempted by federal law, notwithstanding the doctrines of issue or
22 claim preclusion.

23 (f) Notwithstanding any other law, including Chapter 15,
24 Civil Practice and Remedies Code, a civil action brought under
25 Subsection (d) may be brought in:

26 (1) the county in which all or a substantial part of
27 the events or omissions giving rise to the claim occurred;

1 (2) the county of residence for any one of the natural
2 person defendants at the time the cause of action accrued;

3 (3) the county of the principal office in this state of
4 any one of the defendants that is not a natural person; or

5 (4) the county of residence for the claimant if the
6 claimant is a natural person residing in this state.

7 (g) If a civil action is brought under Subsection (d) in any
8 one of the venues described by Subsection (f), then the action may
9 not be transferred to a different venue without the written consent
10 of all parties.

11 (h) Any contractual choice-of-forum provision that purports
12 to require a civil action under Subsection (d) to be litigated in
13 another forum shall be void as against public policy and may not be
14 enforced in any state or federal court.

15 SECTION 6. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*
16 *L.*, 518 U.S. 137 (1996), in which in the context of determining the
17 severability of a state statute the United States Supreme Court
18 held that an explicit statement of legislative intent is
19 controlling, it is the intent of the legislature that every
20 provision, section, subsection, sentence, clause, phrase, or word
21 in this Act, and every application of the provisions in this Act to
22 every person, group of persons, or circumstances, are severable
23 from each other.

24 (b) If any application of any provision in this Act to any
25 person, group of persons, or circumstances is found by a court to be
26 invalid, preempted, or unconstitutional, for any reason
27 whatsoever, then the remaining applications of that provision to

1 all other persons and circumstances shall be severed and preserved
2 and shall remain in effect. All constitutionally valid
3 applications of the provisions in this Act shall be severed from any
4 applications that a court finds to be invalid, preempted, or
5 unconstitutional, because it is the legislature's intent and
6 priority that every single valid application of every statutory
7 provision be allowed to stand alone.

8 (c) The legislature further declares that it would have
9 enacted this Act, and each provision, section, subsection,
10 sentence, clause, phrase, or word and all constitutional
11 applications of the provisions of this Act, irrespective of the
12 fact that any provision, section, subsection, sentence, clause,
13 phrase, or word or applications of this Act were to be declared
14 invalid, preempted, or unconstitutional.

15 (d) If any provision of this Act is found by any court to be
16 unconstitutionally vague, then the applications of that provision
17 that do not present constitutional vagueness problems shall be
18 severed and remain in force, consistent with the severability
19 requirements of Subsections (a), (b), and (c) of this section.

20 (e) No court may decline to enforce the severability
21 requirements of Subsections (a), (b), (c), and (d) of this section
22 on the ground that severance would "rewrite" the statute or involve
23 the court in legislative or lawmaking activity. A court that
24 declines to enforce or enjoins a state official from enforcing a
25 statutory provision is never rewriting a statute or engaging in
26 legislative or lawmaking activity, as the statute continues to
27 contain the same words as before the court's decision. A judicial

1 injunction or declaration of unconstitutionality:

2 (1) is nothing more than an edict prohibiting
3 enforcement of the disputed statute against the named parties to
4 that lawsuit, which may subsequently be vacated by a later court if
5 that court has a different understanding of the requirements of the
6 Texas Constitution or United States Constitution;

7 (2) is not a formal amendment of the language in a
8 statute; and

9 (3) no more rewrites a statute than a decision by the
10 executive not to enforce a duly enacted statute in a limited and
11 defined set of circumstances.

12 (f) If any state or federal court disregards any of the
13 severability requirements in Subsection (a), (b), (c), (d), or (e),
14 of this section and declares or finds any provision of this Act
15 facially invalid, preempted, or unconstitutional, when there are
16 discrete applications of that provision that can be enforced
17 against a person, group of persons, or circumstances without
18 violating federal law or the federal or state constitutions, then
19 that provision shall be interpreted, as a matter of state law, as if
20 the legislature had enacted a provision limited to the persons,
21 group of persons, or circumstances for which the provision's
22 application will not violate federal law or the federal or state
23 constitutions, and every court shall adopt this saving construction
24 of that provision until the court ruling that pronounced the
25 provision facially invalid, preempted, or unconstitutional is
26 vacated or overruled.

27 SECTION 7. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2023.