FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE NO. 2 FOR

SENATE BILL NO. 39

102ND GENERAL ASSEMBLY
2023

AN ACT

To amend chapter 163, RSMo, by adding thereto one new section relating to participation in athletic competition, with a severability clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 163, RSMo, is amended by adding thereto one new section, to be known as section 163.048, to read as follows:

163.048. 1. As used in this section, the following terms mean:

(1) "Athletics", any interscholastic athletic games, contests, programs, activities, exhibitions, or other similar competitions organized and provided for students;

(2) "Sex", the two main categories of male and female into which individuals are divided based on an individual's reproductive biology at birth and the individual's genome.

2. (1) The general assembly hereby finds the following:

(a) A noticeable disparity continues between the athletics participation rates of students who are male and students who are female; and

(b) Courts have recognized that classification by sex is the only feasible classification to promote the
governmental interest of providing opportunities for athletics for females.

(2) The general assembly hereby declares that it is the public policy of this state to further the governmental interest of ensuring that sufficient opportunities for athletics remain available for females to remedy past discrimination on the basis of sex.

3. (1) Except as provided under subdivision (2) of this subsection, no private school, public school district, public charter school, or public or private institution of postsecondary education shall allow any student to compete in an athletics competition that is designated for the biological sex opposite to the student's biological sex as correctly stated on the student's official birth certificate as described in subsection 4 of this section or, if the student's official birth certificate is unobtainable, another government record.

(2) A private school, public school, public charter school, or public or private institution of postsecondary education may allow a female student to compete in an athletics competition that is designated for male students if no corresponding athletics competition designated for female students is offered or available.

4. For purposes of this section, a statement of a student's biological sex on the student's official birth certificate or another government record shall be deemed to have correctly stated the student's biological sex only if the statement was:

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

(2) Modified to correct any scrivener's error in the student's biological sex.
5. A private school, public school district, public charter school, or public or private institution of postsecondary education that violates subdivision (1) of subsection 3 of this section shall not receive any state aid under this chapter or chapter 173 or any other revenues from the state.

6. The parent or guardian of any student, or any student who is over eighteen years of age, who is deprived of an athletic opportunity as a result of a violation of this section shall have a cause of action for injunctive or other equitable relief, as well as payment of reasonable attorney's fees, costs, and expenses of the parent, guardian, or student. The relief and remedies set forth shall not be deemed exclusive and shall be in addition to any other relief or remedies permitted by law.

7. The department of elementary and secondary education and the department of higher education and workforce development shall each promulgate all necessary rules and regulations for the implementation and administration of this section. Such rules and regulations shall ensure compliance with state and federal law regarding the confidentiality of student medical information. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
then the grant of rulemaking authority and any rule proposed
or adopted after August 28, 2023, shall be invalid and void.

8. The provisions of this section shall expire on

August 28, 2027.

Section B. If any provision of section A of this act
or the application thereof to anyone or to any circumstance
is held invalid, the remainder of those sections and the
application of such provisions to others or other
circumstances shall not be affected thereby.