



## 2022 South Dakota Legislature

# Senate Bill 46

SENATE ENGROSSED

*Introduced by: The Committee on State Affairs at the request of the Office of the Governor*

1 **An Act to protect fairness in women's sports.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to title 13:**

4 Any interscholastic, intercollegiate, intramural, or club athletic team, sport, or  
 5 athletic event that is sponsored or sanctioned by an accredited school, school district, an  
 6 activities association or organization, or an institution of higher education under the  
 7 control of either the Board of Regents or the Board of Technical Education must be  
 8 designated as one of the following, based on the biological sex at birth of the participating  
 9 students:

10 (1) Females, women, or girls;

11 (2) Males, men, or boys; or

12 (3) Coeducational or mixed.

13 Only female students, based on their biological sex, may participate in any team,  
 14 sport, or athletic event designated as being for females, women, or girls.

15 For purposes of this section, biological sex is either female or male and the sex  
 16 listed on the student's official birth certificate may be relied upon if the certificate was  
 17 issued at or near the time of the student's birth. The failure to comply with this section is  
 18 a limited waiver of sovereign immunity for relief authorized under this Act.

19 **Section 2. That a NEW SECTION be added to title 13:**

20 If a student suffers direct or indirect harm as a result of a violation of section 1 of  
 21 this Act, that student has a private cause of action for injunctive, mandamus, and  
 22 declaratory relief, against the accredited school, school district, activities association or  
 23 organization, or institution of higher education under the control of either the Board of  
 24 Regents or the Board of Technical Education that caused the harm.

1           If a student is subjected to retaliation or other adverse action by an accredited  
2 school, school district, activities association or organization, or institution of higher  
3 education as a result of reporting a violation of section 1 of this Act to an employee or  
4 representative of the school, school district, activities association or organization,  
5 institution of higher education, or to a state or federal governmental entity having  
6 oversight authority, that student has a private cause of action for injunctive, mandamus,  
7 and declaratory relief, against the school, school district, activities association or  
8 organization, or institution of higher education. In addition, no governmental entity may  
9 investigate a complaint or take any adverse action against an accredited school, school  
10 district, activities association or organization, or institution of higher education, or any  
11 employee or governing board member of the foregoing for compliance with section 1 of  
12 this Act.

13 **Section 3. That a NEW SECTION be added to title 13:**

14           If an accredited school, school district, or institution of higher education under the  
15 control of either the Board of Regents or the Board of Technical Education suffers any  
16 direct or indirect harm as a result of a violation of section 1 of this Act, that school, school  
17 district, or institution of higher education has a private cause of action for injunctive,  
18 mandamus, and declaratory relief, against the governmental entity, licensing or  
19 accrediting organization, or activities association or organization.

20 **Section 4. That a NEW SECTION be added to title 13:**

21           No governmental entity, accredited school, school district, or institution of higher  
22 education may be liable to any student for its compliance with section 1 of this Act.

23           A civil action under sections 2 or 3 of this Act must be initiated within two years  
24 from the date the alleged harm occurred.

25           Any party prevailing on a claim brought under sections 2 or 3 of this Act is entitled  
26 to reasonable attorney's fees and costs.

27 **Section 5. That a NEW SECTION be added to title 13:**

28           For any lawsuit brought or any complaint filed against an accredited school, a  
29 school district, or an institution of higher education under the control of either the Board  
30 of Regents or the Board of Technical Education, or an employee, board, or a member

1 thereof, as a result of compliance with section 1 of this Act, the attorney general shall  
2 provide legal representation at no cost to that entity or individual.

3 In addition to the expenses of representation, the state shall assume financial  
4 responsibility for any other expense related to the lawsuit or complaint and incurred by  
5 an accredited school, a school district, or an institution of higher education, or an  
6 employee, board, or a member, including any award for attorney's fees and costs for which  
7 that entity or individual would be otherwise responsible.