

Senate Bill 438

By: Senators Summers of the 13th, Kennedy of the 18th, Gooch of the 51st, Anavitarte of the 31st, Watson of the 1st and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 14 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia
2 Annotated, relating to other educational programs under the "Quality Basic Education Act,"
3 so as to authorize Georgia public schools to operate or facilitate separate teams for members
4 of each gender where selection for such teams is based upon competitive fairness or student
5 safety; to provide that it shall be unlawful for Georgia public schools or participating private
6 schools whose students or teams compete against a Georgia public school to operate,
7 sponsor, or facilitate athletic programs or activities that permit any person whose gender is
8 male but whose gender identity is female to participate in any interscholastic athletics that
9 are designated for females or permit persons of one gender to use certain facilities designated
10 for persons of the opposite gender in conjunction with interscholastic athletics; to provide
11 for a grievance procedure; to provide for private rights of action and awards of attorney fees;
12 to repeal a grant of discretionary authority to athletic association executive oversight
13 committees; to provide for legislative findings and intent; to provide for definitions; to
14 provide for related matters; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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16

SECTION 1.

17 The General Assembly recognizes there are inherent physical differences between males and
18 females. The General Assembly further recognizes that decisions regarding the regulation
19 of sports should be based on promoting integrity and safety. The General Assembly finds
20 that protecting students from harm and preserving the competitive fairness of sports are
21 important state interests. It is the intent of the General Assembly to ensure that students have
22 equal and safe opportunities to succeed in sports.

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SECTION 2.

24 Part 14 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,
25 relating to other educational programs under the "Quality Basic Education Act," is amended
26 in Code Section 20-2-315, relating to gender discrimination prohibited, authorized separate
27 gender teams, equal athletic opportunity, physical education classes, employee designated
28 to monitor compliance, grievance procedures, and reporting requirements, by revising
29 subsections (a) and (b) and by adding a new subsection to read as follows:

30 "(a) No student shall, on the basis of gender, be excluded from participation in, be denied
31 the benefits of, be treated differently from another student, or otherwise be discriminated
32 against in any interscholastic or intramural athletics offered by a local school system, ~~and~~
33 ~~no local school system shall provide any such athletics separately on such basis.~~

34 (b) ~~Notwithstanding the requirements of subsection (a) of this Code section, a~~ A local
35 school system may operate or sponsor separate teams for members of each gender where
36 selection for such teams is based upon competitive skill, competitive fairness, student
37 safety, or the activity involved is a contact sport. However, where a local school system
38 operates or sponsors a team in a particular sport for members of one gender but operates
39 or sponsors no such team for members of the other gender, and athletic opportunities for
40 members of that gender in that particular sport have previously been limited, members of
41 the excluded gender must be allowed to try out for the team offered unless the sport

42 involved is a contact sport. Nothing in this subsection shall be construed to limit the
43 authority of a local school system to operate or sponsor a single team for a contact sport
44 that includes members of both genders. As used in this subsection, the term 'contact sport'
45 includes boxing, wrestling, rugby, ice hockey, football, basketball, and any other sport the
46 purpose or major activity of which involves bodily contact."

47 "(k)(1) As used in this Code section, the term:

48 (A) 'Gender' means a person's biological sex which shall be recognized solely based
49 on a person's reproductive biology and genetics at birth. For purposes of this
50 subsection, a statement of a student's biological sex on the student's official birth
51 certificate shall be deemed to have correctly stated the student's biological sex at birth
52 if the statement was included on such birth certificate at or near the time of the student's
53 birth.

54 (B) 'Gender identity' means a person's self-perceived, asserted, or claimed gender
55 regardless of the person's gender.

56 (C) 'Multiple occupancy restroom or changing area' means an area in a local school
57 system, public school, or participating private school building that is designed or
58 designated to be used by one or more individuals at the same time and in which one or
59 more individuals may be in various stages of undress in the presence of other
60 individuals. Such term includes, but shall not be limited to, the following:

61 (i) Restrooms;

62 (ii) Locker rooms;

63 (iii) Changing rooms; and

64 (iv) Shower rooms.

65 (D) 'Participating private school' means a private school in this state whose students
66 or teams compete against students or teams from a public school or local school system
67 in this state.

68 (2) No local school system, public school, or participating private school in this state
69 shall operate interscholastic athletics that permit a person whose gender is male but
70 whose gender identity is female to participate in any interscholastic athletics that are
71 designated for females.

72 (3)(A) No local school system, public school, or participating private school in this
73 state shall operate interscholastic athletics that permit a person whose gender is male
74 to use any multiple occupancy restroom or changing area designated for females in
75 conjunction with any interscholastic athletics.

76 (B) No local public school system, local public school, or participating private school
77 in this state shall operate interscholastic athletics that permit a person whose gender is
78 female to use any multiple occupancy restroom or changing area designated for males
79 in conjunction with any interscholastic athletics.

80 (4) A student who is aggrieved by an alleged violation or anticipated violation of this
81 subsection or his or her parent or guardian shall have a right to file a grievance complaint
82 with the employee designated in subsection (g) of this Code section for an immediate
83 preliminary determination of whether a violation of this subsection exists or is about to
84 occur. If an alleged violation or anticipated violation is preliminarily determined to have
85 occurred or is reasonably likely to occur, the employee designated in subsection (g) of
86 this Code section shall issue a decision immediately and may direct that the alleged
87 violation or anticipated violation cease and desist pending a final resolution of such
88 grievance complaint. If a grievance complaint is rejected, the complaining party shall
89 have the right of an immediate appeal to the local board of education for relief.

90 (5) In addition to any other rights or remedies otherwise provided by law, any aggrieved
91 student and any such student's parent or guardian shall have a private right of action to
92 enforce the provisions of this subsection through injunctive or declaratory relief in the
93 superior court of the county in which the relevant public school, local school system, or
94 participating private school is located. If an aggrieved student or such student's parent

95 or guardian is the prevailing party in such action, the student or student's parent or
 96 guardian shall be entitled to an award of reasonable attorney fees, court costs, and
 97 expenses of litigation, but shall not be entitled to any monetary damages.
 98 (6) Nothing in this Code section shall override any requirements or protections
 99 prescribed in the federal Americans with Disabilities Act, 42 U.S.C. Section 12101, et
 100 seq."

101 **SECTION 3.**

102 Said part is further amended in Code Section 20-2-316, relating to involvement of athletic
 103 association in high school athletics, by revising subparagraph (c)(1)(E) as follows:

104 "(E) The authority and duties of the executive oversight committee shall include:

- 105 (i) To meet in person or remotely not less than twice each school year;
- 106 (ii) To meet in person or remotely upon the call of the chairperson or a majority of
 107 the executive oversight committee;
- 108 (iii) To establish policies and procedures for the executive oversight committee;
- 109 (iv) To conduct any independent audit, review, or investigation the executive
 110 oversight committee deems necessary, including, but not limited to, the audit, review,
 111 or investigation of the classifications of participating schools and ~~travel-related~~ travel
 112 related issues of participating schools; and
- 113 ~~(v) If the athletic association determines that it is necessary and appropriate to~~
 114 ~~prohibit students whose gender is male from participating in athletic events that are~~
 115 ~~designated for students whose gender is female, then the athletic association may~~
 116 ~~adopt a policy to that effect; provided, however, that such policy shall be applied to~~
 117 ~~all of the athletic association's participating public high schools; and~~
- 118 ~~(vi) To conduct an annual evaluation of the athletic association as a whole and~~
 119 ~~present a report of its findings, recommendations, and conclusions to the General~~
 120 ~~Assembly's High School Athletics Overview Committee; and"~~

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SECTION 4.

122 All laws and parts of laws in conflict with this Act are repealed.