

1 AN ACT relating to athletics.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 156.070 is amended to read as follows:

4 (1) The Kentucky Board of Education shall have the management and control of the
5 common schools and all programs operated in these schools, including
6 interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for
7 the Blind, and community education programs and services.

8 (2) The Kentucky Board of Education may designate an organization or agency to
9 manage interscholastic athletics in the common schools, provided that the rules,
10 regulations, and bylaws of any organization or agency so designated shall be
11 approved by the board, and provided further that any administrative hearing
12 conducted by the designated managing organization or agency shall be conducted in
13 accordance with KRS Chapter 13B.

14 (a) The state board or its designated agency shall assure through promulgation of
15 administrative regulations that if a secondary school sponsors or intends to
16 sponsor an athletic activity or sport that is similar to a sport for which
17 National Collegiate Athletic Association members offer an athletic
18 scholarship, the school shall sponsor the athletic activity or sport for which a
19 scholarship is offered. The administrative regulations shall specify which
20 athletic activities are similar to sports for which National Collegiate Athletic
21 Association members offer scholarships.

22 (b) Beginning with the 2003-2004 school year, the state board shall require any
23 agency or organization designated by the state board to manage interscholastic
24 athletics to adopt bylaws that establish as members of the agency's or
25 organization's board of control one (1) representative of nonpublic member
26 schools who is elected by the nonpublic school members of the agency or
27 organization from regions one (1) through eight (8) and one (1) representative

1 of nonpublic member schools who is elected by the nonpublic member
2 schools of the agency or organization from regions nine (9) through sixteen
3 (16). The nonpublic school representatives on the board of control shall not be
4 from classification A1 or D1 schools. Following initial election of these
5 nonpublic school representatives to the agency's or organization's board of
6 control, terms of the nonpublic school representatives shall be staggered so
7 that only one (1) nonpublic school member is elected in each even-numbered
8 year.

9 (c) The state board or any agency designated by the state board to manage
10 interscholastic athletics shall not promulgate rules, administrative regulations,
11 or bylaws that prohibit pupils in grades seven (7) to eight (8) from
12 participating in any high school sports except for high school varsity soccer
13 and football, or from participating on more than one (1) school-sponsored
14 team at the same time in the same sport. The Kentucky Board of Education, or
15 an agency designated by the board to manage interscholastic athletics, may
16 promulgate administrative regulations restricting, limiting, or prohibiting
17 participation in high school varsity soccer and football for students who have
18 not successfully completed the eighth grade.

19 (d) 1. The state board or any agency designated by the state board to manage
20 interscholastic athletics shall allow a member school's team or students
21 to play against students of a non-member at-home private school, or a
22 team of students from non-member at-home private schools, if the non-
23 member at-home private schools and students comply with this
24 subsection.

25 2. A non-member at-home private school's team and students shall comply
26 with the rules for student athletes, including rules concerning:

27 a. Age;

- 1 b. School semesters;
- 2 c. Scholarships;
- 3 d. Physical exams;
- 4 e. Foreign student eligibility; and
- 5 f. Amateurs.
- 6 3. A coach of a non-member at-home private school's team shall comply
- 7 with the rules concerning certification of member school coaches as
- 8 required by the state board or any agency designated by the state board
- 9 to manage interscholastic athletics.
- 10 4. This subsection shall not allow a non-member at-home private school's
- 11 team to participate in a sanctioned:
- 12 a. Conference;
- 13 b. Conference tournament;
- 14 c. District tournament;
- 15 d. Regional tournament; or
- 16 e. State tournament or event.
- 17 5. This subsection does not allow eligibility for a recognition, award, or
- 18 championship sponsored by the state board or any agency designated by
- 19 the state board to manage interscholastic athletics.
- 20 6. A non-member at-home private school's team or students may
- 21 participate in interscholastic athletics permitted, offered, or sponsored by
- 22 the state board or any agency designated by the state board to manage
- 23 interscholastic athletics.
- 24 (e) Every local board of education shall require an annual medical examination
- 25 performed and signed by a physician, physician assistant, advanced practice
- 26 registered nurse, or chiropractor, if performed within the professional's scope
- 27 of practice, for each student seeking eligibility to participate in any school

1 athletic activity or sport. The Kentucky Board of Education or any
 2 organization or agency designated by the state board to manage interscholastic
 3 athletics shall not promulgate administrative regulations or adopt any policies
 4 or bylaws that are contrary to the provisions of this paragraph.

5 (f) Any student who turns nineteen (19) years of age prior to August 1 shall not
 6 be eligible for high school athletics in Kentucky. Any student who turns
 7 nineteen (19) years of age on or after August 1 shall remain eligible for that
 8 school year only. An exception to the provisions of this paragraph shall be
 9 made, and the student shall be eligible for high school athletics in Kentucky if
 10 the student:

- 11 1. Qualified for exceptional children services and had an individual
 12 education program developed by an admissions and release committee
 13 (ARC) while the student was enrolled in the primary school program;
- 14 2. Was retained in the primary school program because of an ARC
 15 committee recommendation; and
- 16 3. Has not completed four (4) consecutive years or eight (8) consecutive
 17 semesters of eligibility following initial promotion from grade eight (8)
 18 to grade nine (9).

19 (g) The state board or any agency designated by the state board to manage
 20 interscholastic athletics shall promulgate administrative regulations or
 21 bylaws that provide that:

22 1. A member school shall designate all athletic teams, activities, and
 23 sports as one (1) of the following categories on the basis of the
 24 biological sex of students eligible to participate:

25 a. "Boys" and "coed"; or

26 b. "Girls";

27 2. An athletic activity or sport designated as "girls" shall not be open to

1 male students;

2 3. During an athletic activity or sporting event, including practices,
3 access to athletic facilities designated for the exclusive use of a single
4 sex, such as a locker room, shall be restricted to:

5 a. Members of the designated sex;

6 b. Coaches and school personnel as permitted by school policy; and

7 c. Emergency responders and health professionals acting within
8 the course and scope of their duties or practice;

9 4. The sex of a student for the purpose of determining eligibility to
10 participate in an athletic activity or sport or to use an athletic facility
11 designated for the exclusive use of a single sex shall be determined by:

12 a. A student's biological sex as indicated on the student's original,
13 unedited birth certificate issued at the time of birth; or

14 b. If the biological sex on a student's official birth certificate has
15 been edited since originally issued or the biological sex of the
16 student is subject to an official challenge, a medical examination
17 performed and signed by a physician, physician assistant, or
18 advanced practice registered nurse, if performed within the
19 professional's scope of practice, establishing a student's sex
20 based solely upon:

21 i. The student's internal and external reproductive anatomy;

22 ii. The student's normal endogenously produced levels of
23 testosterone; and

24 iii. An analysis of the student's genetic makeup; and

25 5. Neither the state board, nor any agency designated by the state board
26 to manage interscholastic athletics, nor school district, nor any
27 member school shall entertain a complaint, open an investigation, or

1 take any other adverse action against a school for maintaining
 2 separate interscholastic or intramural athletic teams, activities, or
 3 sports for students of the female sex.

- 4 **(h)** 1. The state board or any agency designated by the state board to manage
 5 interscholastic athletics shall promulgate administrative regulations that
 6 permit a school district to employ or assign nonteaching or noncertified
 7 personnel or personnel without postsecondary education credit hours to
 8 serve in a coaching position. The administrative regulations shall give
 9 preference to the hiring or assignment of certified personnel in coaching
 10 positions.
- 11 2. A person employed in a coaching position shall be a high school
 12 graduate and at least twenty-one (21) years of age and shall submit to a
 13 criminal background check in accordance with KRS 160.380.
- 14 3. The administrative regulations shall specify post-hire requirements for
 15 persons employed in coaching positions.
- 16 4. The regulations shall permit a predetermined number of hours of
 17 professional development training approved by the state board or its
 18 designated agency to be used in lieu of postsecondary education credit
 19 hour requirements.
- 20 5. A local school board may specify post-hire requirements for personnel
 21 employed in coaching positions in addition to those specified in
 22 subparagraph 3. of this paragraph.

23 (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State
 24 Property and Buildings Commission, or others, whether public or private, any
 25 lands, buildings, structures, installations, and facilities suitable for use in
 26 establishing and furthering television and related facilities as an aid or
 27 supplement to classroom instruction, throughout the Commonwealth, and for

1 incidental use in any other proper public functions. The lease may be for any
2 initial term commencing with the date of the lease and ending with the next
3 ensuing June 30, which is the close of the then-current fiscal biennium of the
4 Commonwealth, with exclusive options in favor of the board to renew the
5 same for successive ensuing bienniums, July 1 in each even year to June 30 in
6 the next ensuing even year; and the rentals may be fixed at the sums in each
7 biennium, if renewed, sufficient to enable the State Property and Buildings
8 Commission to pay therefrom the maturing principal of and interest on, and
9 provide reserves for, any revenue bonds which the State Property and
10 Buildings Commission may determine to be necessary and sufficient, in
11 agreement with the board, to provide the cost of acquiring the television and
12 related facilities, with appurtenances, and costs as may be incident to the
13 issuance of the bonds.

14 (b) Each option of the Kentucky Board of Education to renew the lease for a
15 succeeding biennial term may be exercised at any time after the adjournment
16 of the session of the General Assembly at which appropriations shall have
17 been made for the operation of the state government for such succeeding
18 biennial term, by notifying the State Property and Buildings Commission in
19 writing, signed by the chief state school officer, and delivered to the secretary
20 of the Finance and Administration Cabinet as a member of the commission.
21 The option shall be deemed automatically exercised, and the lease
22 automatically renewed for the succeeding biennium, effective on the first day
23 thereof, unless a written notice of the board's election not to renew shall have
24 been delivered in the office of the secretary of the Finance and Administration
25 Cabinet before the close of business on the last working day in April
26 immediately preceding the beginning of the succeeding biennium.

27 (c) The Kentucky Board of Education shall not itself operate leased television

1 facilities, or undertake the preparation of the educational presentations or
2 films to be transmitted thereby, but may enter into one (1) or more contracts to
3 provide therefor, with any public agency and instrumentality of the
4 Commonwealth having, or able to provide, a staff with proper technical
5 qualifications, upon which agency and instrumentality the board, through the
6 chief state school officer and the Department of Education, is represented in
7 such manner as to coordinate matters of curriculum with the curricula
8 prescribed for the public schools of the Commonwealth. Any contract for the
9 operation of the leased television or related facilities may permit limited and
10 special uses of the television or related facilities for other programs in the
11 public interest, subject to the reasonable terms and conditions as the board and
12 the operating agency and instrumentality may agree upon; but any contract
13 shall affirmatively forbid the use of the television or related facilities, at any
14 time or in any manner, in the dissemination of political propaganda or in
15 furtherance of the interest of any political party or candidate for public office,
16 or for commercial advertising. No lease between the board and the State
17 Property and Buildings Commission shall bind the board to pay rentals for
18 more than one (1) fiscal biennium at a time, subject to the aforesaid renewal
19 options. The board may receive and may apply to rental payments under any
20 lease and to the cost of providing for the operation of the television or related
21 facilities not only appropriations which may be made to it from state funds,
22 from time to time, but also contributions, gifts, matching funds, devises, and
23 bequests from any source, whether federal or state, and whether public or
24 private, so long as the same are not conditioned upon any improper use of the
25 television or related facilities in a manner inconsistent with the provisions of
26 this subsection.

27 (4) The state board may, on the recommendation and with the advice of the chief state

1 school officer, prescribe, print, publish, and distribute at public expense such
 2 administrative regulations, courses of study, curriculums, bulletins, programs,
 3 outlines, reports, and placards as each deems necessary for the efficient
 4 management, control, and operation of the schools and programs under its
 5 jurisdiction. All administrative regulations published or distributed by the board
 6 shall be enclosed in a booklet or binder on which the words "informational copy"
 7 shall be clearly stamped or printed.

8 (5) Upon the recommendation of the chief state school officer or his designee, the state
 9 board shall establish policy or act on all matters relating to programs, services,
 10 publications, capital construction and facility renovation, equipment, litigation,
 11 contracts, budgets, and all other matters which are the administrative responsibility
 12 of the Department of Education.

13 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO
 14 READ AS FOLLOWS:

15 (1) (a) Any student:

16 1. Who is deprived of an athletic opportunity or suffers any direct or
 17 indirect harm; or

18 2. Who is subject to retaliation or other adverse action by a school, the
 19 state board, or agency designated by the state board to manage
 20 interscholastic athletics;

21 as a result of a violation of an administrative regulation or bylaw
 22 promulgated in accordance with subsection (2)(g) of Section 1 of this Act
 23 shall have a private cause of action for injunctive relief, monetary damages,
 24 and any other relief available under law against the school in violation;
 25 and

26 (b) Any student whose privacy is violated as a direct result of an action, policy,
 27 or standard practice of a school that violates an administrative regulation or

1 bylaw promulgated in accordance with subsection (2)(g)3. of Section 1 of
 2 this Act shall have a private cause of action for injunctive relief, monetary
 3 damages, and any other relief available under law against the school in
 4 violation.

5 (2) A civil action under this section must be initiated within two (2) years after the
 6 date the harm occurred.

7 (3) For the purposes of this section, monetary damages shall include any
 8 psychological, emotional, and physical harm suffered, reasonable attorney's fees
 9 and costs, and any other appropriate relief.

10 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
 11 READ AS FOLLOWS:

12 (1) (a) A public postsecondary education institution or private postsecondary
 13 education institution that is a member of a national intercollegiate athletic
 14 association shall designate all intercollegiate and intramural athletic teams,
 15 activities, sports, and events that are sponsored or authorized by the
 16 institution as one (1) of the following categories based on biological sex of
 17 students eligible to participate:

18 1. "Mens" and "coed"; or

19 2. "Womens."

20 (b) A public postsecondary education institution or private postsecondary
 21 education institution that is a member of a national intercollegiate athletic
 22 association shall prohibit a male student from competing in any
 23 intercollegiate or intramural athletic team, activity, sport, or event
 24 designated as "womens."

25 (c) Access to athletic facilities designated for the exclusive use of a single sex,
 26 such as a locker room, at a public postsecondary education institution or
 27 private postsecondary education institution that is a member of a national

1 intercollegiate athletic association shall be restricted to:

2 1. Members of the designated sex;

3 2. Coaches, athletic trainers, and other team personnel as permitted by
4 school policy; and

5 3. Emergency responders and health professionals acting within the
6 course and scope of their duties or practice.

7 (2) The sex of a student for the purpose of determining eligibility to participate in an
8 athletic activity, sport, or event at a public postsecondary education institution or
9 to use an athletic facility designated for the exclusive use of a single sex at a
10 public postsecondary education institution or private postsecondary education
11 institution that is a member of a national intercollegiate athletic association shall
12 be determined by:

13 (a) A student's biological sex as indicated on the student's original, unedited
14 birth certificate issued at the time of birth; or

15 (b) If the biological sex listed on the student's birth certificate has been edited,
16 or if the biological sex of a student is subject to an official challenge, a
17 medical examination performed and signed by a physician, physician
18 assistant, or advanced practice registered nurse, if performed within the
19 professional's scope of practice, establishing a student's sex based solely
20 upon:

21 1. The student's internal and external reproductive anatomy;

22 2. The student's normal endogenously produced levels of testosterone;
23 and

24 3. An analysis of the student's genetic makeup.

25 (3) A government entity, licensing or accrediting organization, or athletic association
26 or organization shall not entertain a complaint, open an investigation, or take
27 any other adverse action against a postsecondary education institution for

1 *maintaining a separate interscholastic or intramural athletic team, activity, sport,*
2 *or event for members of the female sex.*

3 *(4) Any student who is deprived of an athletic opportunity or suffers any direct or*
4 *indirect harm as a result of a violation of subsection (1) of this section shall have*
5 *a private cause of action for injunctive relief, damages, and any other relief*
6 *available under law against the postsecondary institution in violation.*

7 *(5) Any student who is subject to retaliation or other adverse action by a*
8 *postsecondary institution as a result of reporting a violation of subsection (1) of*
9 *this section shall have a private cause of action for injunctive relief, damages,*
10 *and any other relief available under law against the postsecondary education*
11 *institution in violation.*

12 *(6) Any student whose bodily privacy is violated as a direct result of an action, policy,*
13 *or standard practice of a postsecondary education institution that violates*
14 *subsection (1)(c) of this section shall have a private cause of action for injunctive*
15 *relief, damages, and any other relief available under law against the*
16 *postsecondary education institution in violation.*

17 *(7) A civil action under this section must be initiated within two (2) years after the*
18 *harm occurred.*

19 *(8) For the purposes of this section, monetary damages shall include any*
20 *psychological, emotional, and physical harm suffered, reasonable attorney's fees*
21 *and costs, and any other appropriate relief.*

22 ➔Section 4. This Act may be cited as the "Save Women's Sports Act."