

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 for students in grades six (6) through twelve (12) as one (1) of*  
24 *the following categories:*

25 *a. "Boys";*

26 *b. "Coed"; or*

27 *c. "Girls";*

- 1            2. The sex of a student for the purpose of determining eligibility to  
 2            participate in an athletic activity or sport or to use an athletic facility  
 3            designated for the exclusive use of a single sex shall be determined by:  
 4            a. A student's biological sex as indicated on the student's original,  
 5            unedited birth certificate issued at the time of birth; or  
 6            b. An affidavit signed and sworn to by the physician, physician  
 7            assistant, advanced practice registered nurse, or chiropractor  
 8            that conducted the annual medical examination required by  
 9            paragraph (e) of this subsection under penalty of perjury  
 10           establishing the student's biological sex at the time of birth;  
 11           3. a. An athletic activity or sport designated as "girls" shall not be  
 12           open to members of the male sex.  
 13           b. Nothing in this section shall be construed to restrict the  
 14           eligibility of any student to participate in an athletic activity or  
 15           sport designated as "boys" or "coed"; and  
 16           4. Neither the state board, nor any agency designated by the state board  
 17           to manage interscholastic athletics, nor any school district, nor any  
 18           member school shall entertain a complaint, open an investigation, or  
 19           take any other adverse action against a school for maintaining  
 20           separate interscholastic or intramural athletic teams, activities, or  
 21           sports for students of the female sex.  
 22           (h) 1. The state board or any agency designated by the state board to manage  
 23           interscholastic athletics shall promulgate administrative regulations that  
 24           permit a school district to employ or assign nonteaching or noncertified  
 25           personnel or personnel without postsecondary education credit hours to  
 26           serve in a coaching position. The administrative regulations shall give  
 27           preference to the hiring or assignment of certified personnel in coaching

- 1 positions.
- 2 2. A person employed in a coaching position shall be a high school  
3 graduate and at least twenty-one (21) years of age and shall submit to a  
4 criminal background check in accordance with KRS 160.380.
- 5 3. The administrative regulations shall specify post-hire requirements for  
6 persons employed in coaching positions.
- 7 4. The regulations shall permit a predetermined number of hours of  
8 professional development training approved by the state board or its  
9 designated agency to be used in lieu of postsecondary education credit  
10 hour requirements.
- 11 5. A local school board may specify post-hire requirements for personnel  
12 employed in coaching positions in addition to those specified in  
13 subparagraph 3. of this paragraph.
- 14 (h) Any student who transfers enrollment from a district of residence to a  
15 nonresident district under KRS 157.350(4)(b) shall be ineligible to participate  
16 in interscholastic athletics for one (1) calendar year from the date of the  
17 transfer.
- 18 (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State  
19 Property and Buildings Commission, or others, whether public or private, any  
20 lands, buildings, structures, installations, and facilities suitable for use in  
21 establishing and furthering television and related facilities as an aid or  
22 supplement to classroom instruction, throughout the Commonwealth, and for  
23 incidental use in any other proper public functions. The lease may be for any  
24 initial term commencing with the date of the lease and ending with the next  
25 ensuing June 30, which is the close of the then-current fiscal biennium of the  
26 Commonwealth, with exclusive options in favor of the board to renew the  
27 same for successive ensuing bienniums, July 1 in each even year to June 30 in

1 the next ensuing even year; and the rentals may be fixed at the sums in each  
2 biennium, if renewed, sufficient to enable the State Property and Buildings  
3 Commission to pay therefrom the maturing principal of and interest on, and  
4 provide reserves for, any revenue bonds which the State Property and  
5 Buildings Commission may determine to be necessary and sufficient, in  
6 agreement with the board, to provide the cost of acquiring the television and  
7 related facilities, with appurtenances, and costs as may be incident to the  
8 issuance of the bonds.

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

22 (c) The Kentucky Board of Education shall not itself operate leased television  
23 facilities, or undertake the preparation of the educational presentations or  
24 films to be transmitted thereby, but may enter into one (1) or more contracts to  
25 provide therefor, with any public agency and instrumentality of the  
26 Commonwealth having, or able to provide, a staff with proper technical  
27 qualifications, upon which agency and instrumentality the board, through the

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

22 (4) The state board may, on the recommendation and with the advice of the chief state  
23 school officer, prescribe, print, publish, and distribute at public expense such  
24 administrative regulations, courses of study, curriculums, bulletins, programs,  
25 outlines, reports, and placards as each deems necessary for the efficient  
26 management, control, and operation of the schools and programs under its  
27 jurisdiction. All administrative regulations published or distributed by the board

1 shall be enclosed in a booklet or binder on which the words "informational copy"  
2 shall be clearly stamped or printed.

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

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

10 **(1) Any student who is:**

11 **(a) Deprived of an athletic opportunity or suffers any direct or indirect harm;**

12 **or**

13 **(b) Subject to retaliation or other adverse action by a school, the state board, or**

14 **agency designated by the state board to manage interscholastic athletics;**

15 **as a result of a violation of an administrative regulation or bylaw promulgated in**

16 **accordance with subsection (2)(g) of Section 1 of this Act shall have a private**

17 **cause of action for injunctive relief, monetary damages in an amount no less**

18 **than five thousand dollars (\$5,000) per violation, and any other relief available**

19 **under law against the school in violation.**

20 **(2) A civil action under this section must be initiated within two (2) years after the**

21 **date the harm occurred.**

22 **(3) For the purposes of this section, monetary damages shall include any**

23 **psychological, emotional, and physical harm suffered, reasonable attorney's fees**

24 **and costs, and any other appropriate relief.**

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

27 **(1) (a) A public postsecondary education institution or private postsecondary**

1 education institution that is a member of a national intercollegiate athletic  
2 association shall designate all intercollegiate and intramural athletic teams,  
3 activities, sports, and events that are sponsored or authorized by the  
4 institution as one (1) of the following categories:

- 5 1. "Mens";  
6 2. "Coed"; or  
7 2. "Womens."

8 (b) 1. A public postsecondary education institution or private postsecondary  
9 education institution that is a member of a national intercollegiate  
10 athletic association shall prohibit a member of the male sex from  
11 competing in any intercollegiate or intramural athletic team, activity,  
12 sport, or event designated as "womens."

13 2. Nothing in this section shall be construed to restrict the eligibility of  
14 any student to participate in an athletic activity or sport designated as  
15 "mens" or "coed."

16 (2) The sex of a student for the purpose of determining eligibility to participate in an  
17 athletic activity or sport or to use an athletic facility designated for the exclusive  
18 use of a single sex shall be determined by:

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

21 (b) An affidavit signed and sworn to by a physician, physician assistant,  
22 advanced practice registered nurse, or chiropractor under penalty of perjury  
23 establishing the student's biological sex at the time of birth.

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

1 or event for members of the female sex.

2 (4) Any student who:

3 (a) Is deprived of an athletic opportunity or suffers any direct or indirect harm  
4 as a result of a violation of subsection (1) of this section; or

5 (b) Is subject to retaliation or other adverse action by a postsecondary  
6 institution as a result of reporting a violation of subsection (1) of this  
7 section;

8 shall have a private cause of action for injunctive relief, damages in an amount  
9 no less than five thousand dollars (\$5,000) per violation, and any other relief  
10 available under law against the postsecondary institution in violation.

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

13 (6) For the purposes of this section, monetary damages shall include any  
14 psychological, emotional, and physical harm suffered, reasonable attorney's fees  
15 and costs, and any other appropriate relief.

16 ➔Section 4. This Act may be cited as the "Fairness in Womens' Sports Act."