

Final Text 2023-2024 #158

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 22-32-116.6 as follows:

22-32-116.6. Extracurricular and interscholastic athletic activities fairness - definition. (1) (a) FOR PURPOSES OF THIS SECTION, "BIOLOGICAL SEX" MEANS EITHER THE FEMALE OR MALE SEX LISTED ON THE STUDENT'S OFFICIAL BIRTH CERTIFICATE IF THE CERTIFICATE WAS ISSUED AT OR NEAR THE TIME OF THE STUDENT'S BIRTH.

(b) FOR PURPOSES OF THIS SECTION, "PUBLIC ATHLETICS PROGRAM FOR MINORS" MEANS A PUBLIC SCHOOL, PUBLIC SCHOOL DISTRICT, ACTIVITIES ASSOCIATION OR ORGANIZATION HOSTING, ORGANIZING, OR FACILITATING PUBLIC SCHOOL ATHLETICS, OR PRIVATE SCHOOL WHEN ITS STUDENTS OR TEAMS COMPETE AGAINST A PUBLIC SCHOOL.

(2) (a) ANY INTERSCHOLASTIC, INTRAMURAL, OR CLUB ATHLETIC TEAM, SPORT, OR ATHLETIC EVENT THAT IS SPONSORED OR SANCTIONED BY A PUBLIC ATHLETICS PROGRAM FOR MINORS MUST BE DESIGNATED AS ONE OF THE FOLLOWING, BASED ON THE BIOLOGICAL SEX AT BIRTH OF THE PARTICIPATING STUDENTS:

- (i) FEMALES, WOMEN, OR GIRLS;
- (ii) MALES, MEN, OR BOYS; OR
- (iii) COEDUCATIONAL OR MIXED.

(b) ONLY FEMALE STUDENTS, BASED ON THEIR BIOLOGICAL SEX AT BIRTH, MAY PARTICIPATE ON ANY TEAM OR IN A SPORT OR ATHLETIC EVENT DESIGNATED AS BEING FOR FEMALES, WOMEN, OR GIRLS. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT THE ELIGIBILITY OF ANY STUDENT TO PARTICIPATE IN ANY INTERSCHOLASTIC, INTRAMURAL, OR CLUB ATHLETIC TEAM, SPORT, OR ATHLETIC EVENT DESIGNATED AS FOR MALES, MEN, OR BOYS OR DESIGNATED AS COEDUCATIONAL OR MIXED.

(c) A GOVERNMENTAL ENTITY SHALL NOT ENTERTAIN A COMPLAINT, OPEN AN INVESTIGATION, INVESTIGATE A COMPLAINT, OR TAKE ANY ADVERSE ACTION AGAINST A PUBLIC ATHLETICS PROGRAM FOR MINORS OR ANY EMPLOYEE OR GOVERNING BOARD MEMBER OF THE SCHOOL, SCHOOL DISTRICT, OR ASSOCIATION OR ORGANIZATION BECAUSE OF ITS OR THEIR COMPLIANCE WITH THIS SUBSECTION (2).

(3) (a) IF A STUDENT IS DEPRIVED OF AN ATHLETIC OPPORTUNITY OR SUFFERS DIRECT OR INDIRECT HARM AS A RESULT OF A VIOLATION OF SUBSECTION (2) OF THIS SECTION, THE FEMALE STUDENT HAS A PRIVATE CAUSE OF ACTION FOR INJUNCTIVE RELIEF, DAMAGES, AND ANY OTHER RELIEF AVAILABLE UNDER LAW AGAINST THE PUBLIC ATHLETICS PROGRAM FOR MINORS THAT CAUSED THE HARM.

(b) IF A STUDENT IS SUBJECTED TO RETALIATION OR OTHER ADVERSE ACTION BY A PUBLIC ATHLETICS PROGRAM FOR MINORS AS A RESULT OF REPORTING A VIOLATION OF SUBSECTION (2) OF THIS SECTION TO AN EMPLOYEE OR REPRESENTATIVE OF THE PUBLIC ATHLETICS PROGRAM FOR MINORS OR TO A STATE OR FEDERAL GOVERNMENTAL ENTITY HAVING OVERSIGHT AUTHORITY,

THAT STUDENT HAS A PRIVATE CAUSE OF ACTION FOR INJUNCTIVE RELIEF, DAMAGES, AND ANY OTHER RELIEF AVAILABLE UNDER LAW AGAINST THE PUBLIC ATHLETICS PROGRAM FOR MINORS THAT CAUSED THE HARM.

(c) IF A PUBLIC ATHLETICS PROGRAM FOR MINORS SUFFERS ANY DIRECT OR INDIRECT HARM AS A RESULT OF A VIOLATION OF SUBSECTION (2) OF THIS SECTION, THAT PUBLIC ATHLETICS PROGRAM FOR MINORS HAS A PRIVATE CAUSE OF ACTION FOR INJUNCTIVE RELIEF, DAMAGES, AND ANY OTHER RELIEF AVAILABLE UNDER LAW AGAINST ANY GOVERNMENTAL ENTITY, LICENSING OR ACCREDITING ORGANIZATION, OR PUBLIC ATHLETICS PROGRAM FOR MINORS THAT CAUSED THE HARM.

(d) A CIVIL ACTION PURSUANT TO SUBSECTION (3)(A), (3)(B), OR (3)(C) OF THIS SECTION MUST BE INITIATED WITHIN TWO YEARS FROM THE DATE THE ALLEGED HARM OCCURRED. A PARTY PREVAILING ON A CLAIM BROUGHT PURSUANT TO SUBSECTION (3)(A), (3)(B), OR (3)(C) OF THIS SECTION IS ENTITLED TO MONETARY DAMAGES, INCLUDING ANY PSYCHOLOGICAL, EMOTIONAL, AND PHYSICAL HARM SUFFERED, REASONABLE ATTORNEY FEES AND COSTS, AND ANY OTHER APPROPRIATE RELIEF.

(e) A GOVERNMENTAL ENTITY OR PUBLIC ATHLETICS PROGRAM FOR MINORS IS NOT LIABLE TO ANY STUDENT BECAUSE OF ITS COMPLIANCE WITH SUBSECTION (2) OF THIS SECTION. THE FAILURE TO COMPLY WITH SUBSECTION (2) OF THIS SECTION IS A WAIVER OF SOVEREIGN IMMUNITY FOR THE CIVIL ACTIONS AUTHORIZED IN SUBSECTION (3)(A), (3)(B), OR (3)(C) OF THIS SECTION.

(4) THE STATE SHALL ASSUME FINANCIAL RESPONSIBILITY FOR ANY EXPENSE RELATED TO THE LAWSUIT OR COMPLAINT INCURRED BY A PUBLIC ATHLETICS PROGRAM FOR MINORS OR AN EMPLOYEE OR MEMBER OF THE PUBLIC ATHLETICS PROGRAM FOR MINORS BECAUSE OF ITS COMPLIANCE WITH SUBSECTION (2) OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 24-10-106, **amend** (1)(i) and (1)(j); and **add** (1)(k) as follows:

24-10-106. Immunity and partial waiver. (1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

- (i) An action brought pursuant to section 13-21-128; or
- (j) An action brought pursuant to part 12 of article 20 of title 13, whether the conduct alleged occurred before, on, or after January 1, 2022; or
- (k) An action brought pursuant to section 22-32-116.6 (3)(a), (3)(b) or (3)(c).

SECTION 3. Severability. If any provision of this initiative or the application thereof to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of this initiative that can be given effect without the invalid provision or application, and to this end the provisions of this initiative are declared to be severable.

SECTION 4. Effective date - applicability. This measure shall be effective on and after the date it is declared by proclamation of the governor to have been adopted by the registered electors of the state and shall apply to instances occurring on or after the effective date.