

1 HOUSE BILL NO. 112  
2 INTRODUCED BY J. FULLER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "SAVE WOMEN'S SPORTS ACT"; REQUIRING  
5 ENTITIES WITH AUTHORITY OVER INTERSCHOLASTIC OR INTERCOLLEGIATE ATHLETICS TO ADOPT  
6 POLICIES REGARDING THE PARTICIPATION OF TRANSGENDER ATHLETES THAT ARE ALIGNED WITH  
7 POLICIES ADOPTED BY THE LARGEST NATIONAL ORGANIZATION WITH AUTHORITY OVER  
8 INTERCOLLEGIATE ATHLETICS; REQUIRING PUBLIC SCHOOL ATHLETIC TEAMS TO BE DESIGNATED  
9 BASED ON BIOLOGICAL SEX; PROVIDING CERTAIN PROTECTIONS FOR EDUCATIONAL  
10 INSTITUTIONS; PROVIDING A CAUSE OF ACTION FOR CERTAIN VIOLATIONS OF THE ACT; AND  
11 PROVIDING AN EFFECTIVE DATE."

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13 ~~WHEREAS, the Legislature finds that there are "inherent differences between men and women", and~~  
14 ~~that these differences "remain cause for celebration but not for denigration of the members of either sex or for~~  
15 ~~artificial contracts on an individual's opportunity", United States v. Virginia, 518 U.S. 515, 533 (1996); and~~

16 ~~WHEREAS, these "inherent differences" range from chromosomal and hormonal differences to~~  
17 ~~physiological differences; and~~

18 ~~WHEREAS, men generally have "denser, stronger bones, tendons, and ligaments" and "larger hearts,~~  
19 ~~greater lung volume per body mass, a higher red blood cell count, and higher haemoglobin", Neel Burton, The~~  
20 ~~Battle of the Sexes, Psychology Today (July 2, 2012); and~~

21 ~~WHEREAS, men have a higher natural level of testosterone, which affects traits such as hemoglobin~~  
22 ~~levels, body fat content, the storage and use of carbohydrates, and the development of type 2 muscle fibers, all~~  
23 ~~of which result in men being able to generate higher speed and power during physical activity, Doriane~~  
24 ~~Lambelet-Coleman, Sex in Sport, 80 Law and Contemporary Problems 63, 74 (2017) (quoting Gina Kolata,~~  
25 ~~Men, Women, and Speed. 2 Words: Got Testosterone?, N.Y. Times (Aug. 21, 2008)); and~~

26 ~~WHEREAS, the biological differences between males and females, especially as they relate to natural~~  
27 ~~levels of testosterone, "explain the male and female secondary sex characteristics which develop during~~  
28 ~~puberty and have life-long effects, including those most important for success in sport: categorically different~~

1 ~~strength, speed, and endurance", Doriane Lambelet-Coleman and Wickliffe Shreve, "Comparing Athletic~~  
2 ~~Performances: The Best Elite Women to Boys and Men," Duke Law Center for Sports Law and Policy; and~~  
3 ~~WHEREAS, while classifications based on sex are generally disfavored, the United States Supreme~~  
4 ~~Court has recognized that "sex classifications may be used to compensate women for particular economic~~  
5 ~~disabilities [they have] suffered, to promote equal employment opportunity, [and] to advance full development of~~  
6 ~~the talent and capacities of our Nation's people", United States v. Virginia, 518 U.S. 515, 533 (1996); and~~

7 ~~WHEREAS, one place in which sex classification allows for the "full development of the talent and~~  
8 ~~capacities of our Nation's people" is in the context of sports and athletics; and~~

9 ~~WHEREAS, courts have recognized that the inherent, physiological differences between males and~~  
10 ~~females result in different athletic capabilities, see, e.g., Kleczek v. Rhode Island Interscholastic League, Inc.,~~  
11 ~~612 A.2d 734, 738 (R.I. 1992) ("Because of innate physiological differences, boys and girls are not similarly~~  
12 ~~situated as they enter athletic competition.") and Petrie v. Ill. High Sch. Ass'n, 394 N.E.2d 855, 861 (Ill. App. Ct.~~  
13 ~~1979) (noting that high school boys generally possess physiological advantages over their girl counterparts and~~  
14 ~~that those advantages give them an unfair lead over girls in some sports like high school track); and~~

15 ~~WHEREAS, a recent study of female and male Olympic performances since 1983 found that, although~~  
16 ~~athletes from both sexes improved over the time span, the gender gap between male and female performances~~  
17 ~~remained stable, which "suggest[s] that women's performances at the high level will never match those of men",~~  
18 ~~Valerie Thibault, et al., Women and men in sport performance: The gender gap has not evolved since 1983, 9~~  
19 ~~Journal of Sports Science and Medicine 214, 219 (2010); and~~

20 ~~WHEREAS, as Duke Law professor and All-American track athlete Doriane Lambelet-Coleman, tennis~~  
21 ~~champion Martina Navratilova, and Olympic track gold medalist Sanya Richards-Ross recently wrote, "The~~  
22 ~~evidence is unequivocal that starting in puberty, in every sport except sailing, shooting, and riding, there will~~  
23 ~~always be significant numbers of boys and men who would beat the best girls and women in head-to-head~~  
24 ~~competition. Claims to the contrary are simply a denial of science", Doriane Lambelet-Coleman, et al., Pass the~~  
25 ~~Equality Act, But Don't Abandon Title IX, Washington Post (Apr. 29, 2019); and~~

26 WHEREAS, having separate sex-specific teams furthers efforts to promote sex equality, and sex-  
27 specific teams accomplish this by providing opportunities for female athletes to demonstrate their skill, strength,  
28 and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college

1 scholarships, and the numerous other long-term benefits that flow from success in athletic endeavors.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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5 (Refer to Introduced Bill)

6 Strike everything after the enacting clause and insert:

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8 **NEW SECTION. Section 1. Policies for transgender athletes.** (1) A school district or an athletic  
9 association, conference, or organization with authority over interscholastic sports shall adopt a policy governing  
10 participation by transgender students in athletics. The policy must align with policies adopted by the largest  
11 national organization with authority over intercollegiate athletics.

12 (2) The board of regents shall adopt a policy governing participation by transgender students in  
13 athletics. The policy must align with policies adopted by the largest national organization with authority over  
14 intercollegiate athletics.

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16 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an  
17 integral part of Title 20, chapter 1, and the provisions of Title 20, chapter 1, apply to [section 1].

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19 **NEW SECTION. Section 3. {standard} Severability.** If a part of [this act] is invalid, all valid parts that  
20 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
21 applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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23 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2021.

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