

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4564

FISCAL  
NOTE

BY DELEGATES D. JEFFRIES, FOSTER, MANDT, STEELE,  
HANNA, WAXMAN, SYPOLT, BARTLETT, PHILLIPS AND  
MCGEEHAN

[Introduced January 28, 2020; Referred to the  
Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §18-9-9, relating to participation in school sports.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 9. SCHOOL FINANCES.**

**§18-9-9. School sports; requirements for participation in male and female sports;  
elimination of funding; sanctions for violations.**

1 (a) Each elementary and secondary school in this state that receives any type of public  
2 funding from this state or a local government, or both, shall require, for an official or unofficial  
3 school-sanctioned athletic or sporting event, that each athlete participating in the athletic or  
4 sporting event participates with and competes against other athletes based on the athlete's  
5 biological sex as indicated on the athlete's original birth certificate issued at the time of birth. A  
6 school shall not accept any birth certificate for purposes of participation in an athletic or sporting  
7 event that has been revised or amended with respect to the sex of an athlete: *Provided, That*  
8 persons of either biological sex may participate in official or unofficial school-sanctioned athletic  
9 or sporting events and programs designated for biological males, so long as the school has  
10 authorized biological females to participate in such male sports, and that reasonable  
11 accommodations for both biological sexes have been made for the purposes of locker room,  
12 shower and restroom privacy and usage.

13 (b) If an athlete's original birth certificate issued at the time of birth does not designate  
14 a biological sex of male or female, then that athlete's participation and/or competition in athletic  
15 or sporting events with and/or against other athletes must be established by a valid genetic  
16 test sampled from the applying athlete's own bodily tissue, to establish whether the applying  
17 athlete's chromosomal makeup is XX (female) or XY (male). The valid genetic testing required  
18 by this section must be conducted by a certified genetic testing provider. The valid genetic test  
19 of the applying athlete shall be paid for by the athlete or the athlete's parent or guardian and  
20 provided by same to the school sponsoring the athletic program in which the applicant desires

21 to participate. Any falsification or manipulation of the results of any athlete's genetic testing  
22 shall result in revocation of the athlete's participation and/or competition in any sport that is not  
23 consistent with the athlete's genetic chromosomal makeup XX (female) or XY (male) and any  
24 party who intentionally furthers any such falsification may, in the discretion of the Attorney  
25 General, be subject to the same sanctions set forth in subsection (d) of this section.

26 (c) An elementary school or secondary school that violates subsection (a) is immediately  
27 ineligible to continue to receive public funds of any type from this state or a local government. If  
28 the department of education and a court of competent jurisdiction, through the issuance of a  
29 declaratory order, find that the school is in compliance with this section, public funding shall be  
30 restored.

31 (d) Sanctions for violation:

32 (1) The Attorney General shall bring a civil action in circuit court against a state or local  
33 official who willfully and intentionally commits an act that violates, or that is designed or intended  
34 to violate or frustrate, this section, and may bring a civil action in circuit court against any person  
35 who intentionally falsifies any genetic testing required by subsection (c) of this section. In  
36 conducting a trial under this subsection (d)(1), the court shall conduct the trial in the same  
37 manner as the court would conduct a criminal trial, and the official or person against whom the  
38 civil action is brought has the same rights as a person charged with a criminal offense for purposes  
39 of conducting the trial.

40 (2) The civil penalty for a violation of this section may not exceed \$10,000.

41 (3) Upon a finding that a state or local official has willfully and intentionally committed  
42 an act that violates, or that is designed or intended to violate or frustrate this section, the office  
43 of the official is immediately vacated, and the former official is not eligible to hold public office  
44 or a position as a school administrator or principal for a period of five years. Any person found

45 to have intentionally falsified any genetic testing required by subsection (c) of this section shall  
46 likewise be ineligible to hold public office or a position as a school administrator or principal  
47 for a period of five years.

48 (e) As used in this section, "local official" includes a school administrator and principal.

49 (f) This section shall take effect upon becoming a law, the public welfare requiring it.

NOTE: The purpose of this bill is to protect the integrity and competitive fairness of publicly funded school sports activities.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.