

February 22, 2021

The Honorable Molly Baumgardner, Chairperson
Senate Committee on Education
Statehouse, Room 445B-S
Topeka, Kansas 66612

Dear Senator Baumgardner:

SUBJECT: Fiscal Note for SB 208 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 208 is respectfully submitted to your committee.

SB 208 would create the Fairness in Women's Sports Act to require student athletes to compete in gender-specific sports based upon the student's biological gender. The bill would require athletic sports in any school or postsecondary educational institution to expressly designate sports as men only, women only, or coed. Male gender student athletes would be prohibited from participating in sports designated for women or girls. The Act specifies how a student's biological gender may be determined. Under the bill, any governmental entity, licensing or accrediting organization, or athletic association or organization would be prohibited from entertaining any complaint, opening an investigation, or taking any other adverse action against a school for maintaining separate sports.

Any student aggrieved by a school, postsecondary educational institution or athletic association or organization in violation of the bill, or any student who is subject to retaliation or other adverse actions as a result of reporting a violation of the Act would have private causes of action for injunctive relief, damages, or other relief allowed by law against the school, organization, or other relevant person. Likewise, any school that suffers from any direct or indirect harm as a result of violations of the Act would also have a private right of action. The bill would require all civil actions to be initiated within two years after the harm occurred and the prevailing parties are entitled to monetary damages, reasonable attorney fees, and other relief allowed by law. Finally, the bill would contain a severability clause should any section or provision be struck down.

The Office of the Attorney General (OAG) indicates SB 208 would likely be challenged on constitutional grounds and would need to go through the appellate process to get a definitive ruling on the validity of the law. The OAG indicates, depending on which court system, federal or state, the case was filed in, getting to an appellate decision could take two to four years. Due to

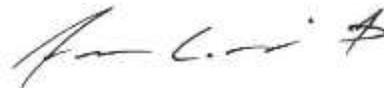
the specialized civil liberty components of the litigation, the OAG indicates it is highly probable that specialized outside counsel would need to be hired by the state to defend any lawsuits which could increase its expenditures by several hundred thousand dollars over the life of the lawsuit.

If a case ended up at the United States Supreme Court, the OAG estimates litigation costs would further increase as the case would take another one to two years to resolve. If the challenge is successful, the state could be ordered to pay the plaintiff's attorney fees and costs as well, which would more than double the total cost to the state. The OAG indicates local school boards and community colleges would likely be affected by passage of SB 208 and subject to the increased legal liability described above. The Kansas Department of Education indicates the enactment of the bill would have no direct financial impact on the agency or local school districts.

The Kansas Board of Regents indicates the passage SB 208 would require the Board and the governing boards of Washburn University, community colleges and technical colleges to adopt rules and regulations related to implementation of the Act. The Board indicates the duties associated with adopting rules and regulations and the administration of the act could be absorbed within existing resources. The Board indicates that if the National Collegiate Athletic Association's (NCAA) policies are in conflict with SB 208, enactment of the bill could affect the state's ability to host NCAA events. Further, the Board indicates this could have a fiscal effect on the institutions, communities and region of the state where those events would have been held; however, the fiscal effect cannot be estimated.

The Office of Judicial Administration indicates SB 208 could result in additional civil cases being filed, which could increase revenues and expenditures from additional time spent by judges and court staff in hearing and processing these cases. However, a fiscal effect cannot be estimated. Any fiscal effect associated with SB 208 is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Kelly Oliver, Board of Regents
Debbie Thomas, Judiciary
Craig Neuenswander, Education
Willie Prescott, Office of the Attorney General