

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

### Originating

## House Bill 3293

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[Originating in the Committee on Education; Reported  
on March 16, 2021]

1 A BILL to amend and reenact §18-2-5c and §18-2-25 of the Code of West Virginia, 1931, as  
2 amended, all relating to single-sex participation in interscholastic athletic events; providing  
3 that the birth certificate required for admission to public school confirm the pupil's sex at  
4 time of birth, or in the alternative, that the pupil's sex be identified by a signed physician's  
5 statement; providing that the sex identified at the time of admission must be the pupil's  
6 sex for the purposes of single-sex participation in interscholastic athletic events under the  
7 control, supervision, and regulation of the West Virginia Secondary Schools Activities  
8 Commission; providing that the commission must verify with each county board that each  
9 student participating in single-sex interscholastic events is participating according to the  
10 student's sex at the time of the student's birth; and clarifying that these requirements do  
11 not apply to co-educational secondary school interscholastic athletic events.

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

**§18-2-5c. Birth certificate required upon admission to public school; required notice to  
local law-enforcement agency of missing children; identifying pupil's sex for the  
purpose of participating in single-sex interscholastic athletic events.**

1 (a) No pupil shall be admitted for the first time to any public school in this state unless the  
2 person enrolling the pupil presents a copy of the pupil's original birth record certified by the state  
3 registrar of vital statistics confirming the pupil's identity, age, sex at time of birth, and state file  
4 number of the original birth record. If a certified copy of the pupil's birth record cannot be obtained,  
5 the person so enrolling the pupil shall submit;

6 ~~(1) an~~ An affidavit explaining the inability to produce a certified copy of the birth record:  
7 *Provided*, That if any person submitting such affidavit is in U.S. military service and is in transit  
8 due to military orders, a three-week extension shall be granted to such person for providing the  
9 birth records; and

10 (2) A signed physician's statement indicating the pupil's sex based solely on the pupil's  
11 unaltered internal and external reproductive anatomy.

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12 (b) Upon the failure of any person enrolling a pupil to furnish a certified copy of the pupil's  
13 birth record in conformance with subsection (a) above, the principal of the school in which the  
14 pupil is being enrolled or his or her designee shall immediately notify the local law-enforcement  
15 agency. The notice to the local law-enforcement agency shall include copies of the submitted  
16 proof of the pupil's identity, ~~and age,~~ and sex at time of birth and the affidavit explaining the  
17 inability to produce a certified copy of the birth record.

18 (c) Within fourteen days after enrolling a transferred pupil, the principal of the school in  
19 which the pupil has been enrolled or his or her designee shall request that the principal or his or  
20 her designee of the school in which the pupil was previously enrolled transfer a certified copy of  
21 the pupil's birth record.

22 (d) Principals and their designees shall be immune from any civil or criminal liability in  
23 connection with any notice to a local law-enforcement agency of a pupil lacking a birth certificate  
24 or failure to give such notice as required by this section.

25 (e) The sex identified in subsection (a) above shall be the pupil's sex for the purposes of  
26 participating in single-sex secondary school interscholastic athletic events under the control,  
27 supervision, and regulation of the West Virginia Secondary Schools Activities Commission  
28 pursuant to §18-2-25 of this code.

**§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities  
of secondary schools; delegation of authority to West Virginia Secondary School  
Activities Commission; authority of commission; approval of rules by state board;  
incorporation; funds; participation by private and parochial schools, ~~and by home-~~  
schooled students and by preparatory athletic programs; student participation in  
single-sex secondary school interscholastic athletic events.**

29 (a) The county boards of education shall exercise the control, supervision, and regulation  
30 of all interscholastic athletic events, and other extracurricular activities of the students in public

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31 secondary schools, and of those schools of their respective counties. The county board of  
32 education may delegate control, supervision, and regulation of interscholastic athletic events and  
33 band activities to the West Virginia Secondary School Activities Commission.

34 (b) The West Virginia Secondary School Activities Commission is composed of the  
35 principals, or their representatives, of those secondary schools whose county boards of education  
36 have certified in writing to the State Superintendent of Schools that they have elected to delegate  
37 the control, supervision, and regulation of their interscholastic athletic events and band activities  
38 of the students in the public secondary schools in their respective counties to the commission.  
39 The West Virginia Secondary School Activities Commission may exercise the control, supervision,  
40 and regulation of interscholastic athletic events and band activities of secondary schools,  
41 delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities  
42 Commission shall contain a provision for a proper review procedure and review board and be  
43 promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all  
44 instances, be subject to the prior approval of the state board. The West Virginia Secondary School  
45 Activities Commission, may, with the consent of the State Board of Education, incorporate under  
46 the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock  
47 corporation under the provisions of chapter 31 of this code. County boards of education may  
48 expend moneys for and pay dues to the West Virginia Secondary School Activities Commission,  
49 and all moneys paid to the commission, as well as moneys derived from any contest or other  
50 event sponsored by the commission, are quasi-public funds as defined in §18-5-1 *et seq.* of this  
51 code, and the funds of the commission are subject to an annual audit by the State Tax  
52 Commissioner.

53 (c) The West Virginia Secondary School Activities Commission shall promulgate  
54 reasonable rules providing for the control, supervision, and regulation of the interscholastic  
55 athletic events and other extracurricular activities of private and parochial secondary schools as

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56 elect to delegate to the commission control, supervision, and regulation, upon the same terms  
57 and conditions, subject to the same rules and requirements and upon the payment of the same  
58 fees and charges as those provided for public secondary schools. Any such private or parochial  
59 secondary school shall receive any monetary or other benefits in the same manner and in the  
60 same proportion as any public secondary school.

61 (d) Notwithstanding any other provision of this section, or the commission's rules, the  
62 commission shall consider eligible for participation in interscholastic athletic events and other  
63 extracurricular activities of secondary schools a student who is receiving home instruction  
64 pursuant to §18-8-1(c) of this code and who:

65 (1) Has demonstrated satisfactory evidence of academic progress for one year in  
66 compliance with the provisions of that subsection: *Provided*, That the student's average test  
67 results are within or above the fourth stanine in all subject areas;

68 (2) Is enrolled in at least one virtual instructional course per semester, consistent with the  
69 applicable virtual instruction policy of the county board in which the home-schooled student lives  
70 and the State Board;

71 (3) Has not reached the age of 19 by August 1 of the current school year;

72 (4) Is an amateur who receives no compensation but participates solely for the  
73 educational, physical, mental and social benefits of the activity;

74 (5) Agrees to comply with all disciplinary rules of the West Virginia Secondary School  
75 Activities Commission and the county board in which the home-schooled student lives; and

76 (6) Agrees to obey all rules of the West Virginia Secondary School Activities Commission  
77 governing awards, all-star games, parental consents, physical examinations, and vaccinations  
78 applicable to all high school athletes.

79 Eligibility is limited to participation in interscholastic athletic events and other  
80 extracurricular activities at the public secondary school serving the attendance zone in which the  
81 student lives: *Provided*, That home-schooled students who leave a member school during the

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82 school year are subject to the same transfer protocols that apply to member-to-member transfers.  
83 Reasonable fees may be charged to the student to cover the costs of participation in  
84 interscholastic athletic events and other extracurricular activities.

85 (e) The West Virginia Secondary School Activities Commission shall recognize  
86 preparatory athletic programs, whose participants attend a secondary school in West Virginia for  
87 academic instruction, as nonparticipating members of the commission solely for the purpose of  
88 competing on the national level: *Provided*, That the preparatory athletic program shall pay the  
89 same fees as member schools. Such recognition does not entitle the preparatory athletic program  
90 to compete against a member school during the regular season or in any commission state  
91 championship events. The commission may promulgate an emergency rule pursuant to  
92 subsection (b) of this section, if necessary, to carry out the intent of this subsection.

93 (f) Prior to a student's participation in single-sex secondary school interscholastic athletic  
94 events, the West Virginia Secondary School Activities Commission must verify with each county  
95 board that each student participating in single-sex interscholastic events is participating according  
96 to the student's sex at the time of the student's birth pursuant to §18-2-5c.

97 This subsection does not prohibit students from participating in a co-educational  
98 secondary school interscholastic athletic events. Students may participate in a co-educational  
99 secondary school interscholastic athletic events without having to comply with the requirements  
100 of this subsection.

NOTE: The purpose of this bill is to require that a secondary student athlete's participation in single-sex athletics be based upon the athlete's biological sex, as indicated on the athlete's original birth certificate issued at the time of birth.

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