

SENATE BILL 266<sup>1</sup>: SAVE GIRLS SPORTS ACT; ENACT

**First signature:** Representative Marty Harbin (16<sup>th</sup>)

**Co-Sponsors:** Senator Randy Robertson (29<sup>th</sup>), Senator Chuck Payne (29<sup>th</sup>), Senator Lee Anderson (24<sup>th</sup>), Senator Jeff Mullis (53<sup>rd</sup>), Senator Billy Hickman (4<sup>th</sup>), Senator Lindsey Tippins (37<sup>th</sup>), Senator Burt Jones (25<sup>th</sup>), Senator Frank Ginn (47<sup>th</sup>), Senator Matt Brass (28<sup>th</sup>), Senator Clint Dixon (45<sup>th</sup>), Senator Greg Dolezal (27<sup>th</sup>), Senator Bo Hatchett (50<sup>th</sup>), Senator Steve Gooch (51<sup>st</sup>), Senator Max Burns (23<sup>rd</sup>), Senator Summer Carden (13<sup>th</sup>), Senator Bruce Thompson (14<sup>th</sup>), and Senator Larry Walker III (20<sup>th</sup>)

**Summary:** “A BILL to be entitled an Act to amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to provide that it shall be unlawful for a public school or a private school whose students or teams compete against a public school to operate, sponsor, or facilitate athletic programs or activities that permit a person whose gender is male to participate in an athletic program or activity that is designated for females; to provide for definitions; to provide for remedies for violations; to provide for exceptions; to waive certain immunities; to provide for a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** Senate recommitted January 1, 2022. <sup>3</sup>

TEXT OF SENATE BILL 266 (COMMITTEE SUBSTITUTE LC 28 0290S)<sup>4</sup>

To amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to provide that it shall be unlawful for a public school or a private school whose students or teams compete against a public school to operate, sponsor, or facilitate athletic programs or activities that permit a person whose gender is male to participate in an athletic program or 5 activity that is designated for females; to provide for private rights of action and awards of attorney fees; to provide for a definition; to provide for a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

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<sup>1</sup> S.B. 266, 156th Gen. Assemb., 1st Reg. Sess. (Ga. 2021), *available at* <https://www.legis.ga.gov/api/legislation/document/20212022/199426> (last visited Dec. 28, 2021).

<sup>2</sup> 2020-2021 Regular Session - S.B. 266, *Save Girls Sports Act; enact*, GA. GEN. ASSEMB., *available at* <https://www.legis.ga.gov/legislation/60118> (last visited Feb. 26, 2022) [hereinafter S.B. 266 Status Sheet].

<sup>3</sup> *Id.*

<sup>4</sup> S.B. 266.

**SECTION 1.**

This Act shall be known and may be cited as the "Save Girls' Sports Act."

**SECTION 2.**

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended in  
Code Section 20-2-315, relating to gender discrimination prohibited, authorized separate  
gender teams, equal athletic opportunity, physical education classes, employee designated to monitor compliance, grievance procedures, and reporting requirements, by adding a new subsection to read as follows:

“(k)(1) As used in this subsection, the term 'gender' shall mean a person's biological sex and shall be solely recognized based on a person's reproductive biology and genetics at birth.

(2) No local school system or private school in this state whose students or teams compete against a local school system in this state shall operate, sponsor, or facilitate interscholastic or intramural athletics that permit a person whose gender is male to participate in any interscholastic or intramural athletics that are designated for females.

(3) A student who is aggrieved by an alleged violation or anticipated violation of this subsection or his or her parent or guardian shall have a right to file a grievance complaint with the employee designated in subsection (g) of this Code section for an immediate determination of whether a violation of this subsection exists or is about to occur. If a violation or anticipated violation is determined to exist or about to occur, the employee designated in subsection (g) of this Code section shall issue a decision immediately and may direct that such activity be terminated or adjusted to prevent further violations. If

such grievance is rejected, such complaining party shall have the right of an immediate appeal to the local board of education for relief.  
(4) In addition to any other rights or remedies otherwise provided by law, any aggrieved student and any such student's parent or guardian shall have a private right of action to enforce the provisions of this subsection through injunctive or declaratory relief in the superior court of the county in which such local school system or private school is located. If the student or any such student's parent or guardian is the prevailing party in such action, the student or student's parent or guardian shall be entitled to an award of reasonable attorney fees, court costs, and expenses of litigation, but shall not be entitled to any monetary damages.  
(5) Nothing in this Code section shall override any requirements or protections prescribed in the federal Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq."

### SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.

#### SPONSOR'S RATIONALE

Current Georgia law, the Equity in Sports Act<sup>5</sup> Specifically, that no student on the basis of gender, be excluded from participation in, be denied the benefits of, be treated differently from another student, or otherwise be discriminated against in any interscholastic athletics offered by a local school system, and no local school

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<sup>5</sup> O.C.G.A § 20-2-315 (West Supp. 2015).

system shall provide any such athletics separately on such basis.<sup>6</sup>

However, it is ambiguous in that it lacks a definition for ‘gender’ and thus lacks clarity for Georgia students, parents, and schools alike.<sup>7</sup>

Senate Bill 266, also known as the Save Girls Sports Act by Representative Marty Harbin, seeks to give Georgia that clarity by defining a student's gender as that assigned to them at birth.<sup>8</sup> The Bill would require all k-12 public institutions, as well as those private institutions who compete with public schools, to prohibit biological males, from participating on women's sports teams.<sup>9</sup> The rationale is to “allow more young girls to achieve their dreams without worry they may be competing against those who have insurmountable genetic advantages.”<sup>10</sup> The Bill was prompted in part by current happenings, such as the story of a high school female track star from Connecticut in the state one week, to beaten out of placing by two transgender women two weeks later.<sup>11</sup>

As well as basic fairness principles, Representative Harbin noted that sports are an important part of a child’s development and that Georgia should protect girls by creating a level playing field that allows every young person to fairly compete.<sup>12</sup> Harbin emphasized that boys have certain biological advantages when it comes to sports, that would make it impossible for competition to be fair if both genders are competing in the same sport.<sup>13</sup> As evidence of the genetic advantage, Harbin stated that over 1400 men have run a mile in less than 4 minutes while no woman ever has.<sup>14</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *See Id.*

<sup>8</sup> S.B. 266.

<sup>9</sup> *Id.*

<sup>10</sup> *See* Maureen Downey, *Surge of ‘Save Girls Sports’ Legislation Targets Transgender Students*, ATLANTA J. CONST. (Apr. 12, 2021), <https://www.ajc.com/education/get-schooled-blog/surge-of-save-girls-sports-legislation-targets-transgender-students/MHQHDR4WTNGMZOOFFVMTQKYMDJE>.

<sup>11</sup> GA Sen Chambers, *Education and Youth*, VIMEO (Mar. 3, 2021), <https://livestream.com/accounts/26021522/events/8743306/videos/218276529> [hereinafter *Education and Youth*]; *see also* Karma Allen, *Transgender Teens Outrun Track and Field Competitors but Critics Close Behind*, ABC NEWS (June 13, 2018), <https://abcnews.go.com/US/transgender-teens-outrun-track-field-competitors-critics-close/story?id=55856294>, for more information about Selina Soule, who finished 6th in the 100-meter State Open Finals.

<sup>12</sup> *Id.* at 57:34.

<sup>13</sup> *Id.* at 57:56.

<sup>14</sup> *Id.* at 57:40.

Matt Sharp, the senior counsel with Alliance Defending Freedom bolstered with two studies, which both provided that transgender women still retained a 10% athletic advantage to biological females even after a year plus of testosterone suppression.<sup>15</sup> While both Harbin and Sharp acknowledge the lack of hard data reflecting that this is a current issue in the state of Georgia, they noted that legislation is often passed in the state in foresight of a foreseeable problem, and emphasized that Georgia should be proactive rather than reactive to the issue.<sup>16</sup>

Mike Griffin from Georgia Baptist Church agreed, adding an illustration that individuals don't purchase home protection after a fire has already happened, but rather do so before hand to protect themselves in the event of an accident.<sup>17</sup> Concurring, Virginia Gallaway with Faith and Freedom Coalition noted that this is a real issue in other parts of the country and needs to be handled in Georgia in a timely manner.<sup>18</sup> As of the reading, 66 bills targeting transgenders in sports have been proposed around the country, including two similar bills in the Georgia House of Representatives.<sup>19</sup>

#### OPPOSITION'S RATIONALE

Senators Elena Parent, Sonya Halpern and Lester Jackson III questioned whether this is a real issue for the state of Georgia, or any state in the country for that matter, all asking for specific evidence, such as high school girls losing out on college scholarship because of a transgender woman.<sup>20</sup> The Senators also raised concerns about how narrow the Bill is, and how problematic that could be in enforcing.<sup>21</sup> Senator Parents questioned the 'assigned at birth' portion of the Bill because some children are not assigned a gender at birth due to development complications, and asked how the Bill

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<sup>15</sup> *Id.* at 1:09:28.

<sup>16</sup> *Id.* at 1:08:27.

<sup>17</sup> *Id.* at 1:30:07.

<sup>18</sup> *Id.* at 1:26:14.

<sup>19</sup> H.B. 276; H.B. 372; *see also* Nico Lang, *Georgia Just Killed Four "Cruel, Disgraceful" Bills Targeting Trans Youth*, THEM (Mar. 15, 2018), <https://www.them.us/story/georgia-killed-four-bills-targeting-trans-youth>;

Ella Schneiberg, *These are the States Trying to Stop Trans Kids from Playing Sports*, HUM. RTS. CAMPAIGN (Feb. 10, 2021), <https://www.hrc.org/news/these-are-the-states-trying-to-stop-trans-kids-from-playing-sports>.

<sup>20</sup> *See* Education and Youth, *supra* note 11, at 1:08:27.

<sup>21</sup> *Id.*

would address such situations.<sup>22</sup> Additionally, the Senators noted that the Bill is in direct conflict with both the National Collegiate Athletic Association (NCAA) guidelines<sup>23</sup> and Olympics standards.<sup>24</sup>

Another concern is that the Bill is unfair, discriminatory, and will lead to more harm than good.<sup>25</sup> Roland Behm, with the Georgia chapter of The American Foundation for Suicide Prevention, argued that SB 266 would establish bullying against our most venerable, noting that one in every three youth transgender athletes attempt suicide.<sup>26</sup> Two Georgia transgender moms claim the bill is discriminatory, and that their transgender daughters did not belong on the boys' team and according to SB 266 do not belong on the girls' team.<sup>27</sup> One mom noted that the Bill is a solution looking for a problem while the other emphasized that the Bill only accomplished targeting and secluding transgender women.<sup>28</sup>

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<sup>22</sup> See Education and Youth, *supra* note 11, at 1:07:55 (Matt Sharp clarified that these individuals would not be affected by SB 266 as they are protected under the Americans with Disabilities Act, which the Bill acknowledges and complies with.)

<sup>23</sup> See Education and Youth, *supra* note 11, at 1:08:55; see also *NCAA Transgender Policy Background, Resources*, NCAA (Apr. 26, 2021), <https://www.ncaa.org/about/resources/media-center/news/ncaa-transgender-policy-background-resources> (NCAA Guidelines allow biological males who have undergone at least one year of hormone suppression to compete on women's teams.)

<sup>24</sup> See Education and Youth, *supra* note 11 at 1:18 (Finding it unpersuasive that Georgia should be less inclusive than the highest level of athletic competition.) At the time of the committee hearing, Olympics guidelines required a transgender athlete to declare their gender as female, and demonstrate 12 months of below 10 nmol/L testosterone levels prior to and during competition. See Int'l Olympic Comm., *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism* (2015) [https://stillmed.olympic.org/Documents/Commissions\\_PDFfiles/Medical\\_commission/2015-11\\_ioc\\_consensus\\_meeting\\_on\\_sex\\_reassignment\\_and\\_hyperandrogenism-en.pdf](https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf).

However, as of November 2021 the International Olympic Committee (IOC) removed the testing guidelines and instead now ask each sport to devise their own rules for gender eligibility based on: inclusion, prevention of harm, non-discrimination, fairness, no presumption of advantage, evidence-based approach, primacy of health and bodily autonomy, stakeholder-centered approach, right to privacy and periodic reviews. *IOC Framework Fairness Inclusion Non-discrimination on the Basis of Gender Identity and Sex Variations* (2021), <https://stillmed.olympics.com/media/Documents/News/2021/11/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf>. See Int'l Olympic Comm., [https://stillmed.olympic.org/Documents/Commissions\\_PDFfiles/Medical\\_commission/2015-11\\_ioc\\_consensus\\_meeting\\_on\\_sex\\_reassignment\\_and\\_hyperandrogenism-en.pdf](https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf).

<sup>25</sup> See generally Downey, *supra* note 10.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* (The mothers argue their transgender daughters get bullied from students and parents alike.)

<sup>28</sup> *Id.*

Additionally, The Human Rights Campaign called SB 266 and other legislation targeting transgender sports participation “a coordinated attack on trans kids being waged by the legislators across the country right now=” and noted that every kid deserves to play sports consistent with their gender identity.”<sup>29</sup> Similarly, Shannon Clawson, with Georgia Equality, noted that 16 states are fully inclusive of transgender women participating in women's sports.<sup>30</sup>

Yet another concern centers around state funding, Clawson noted that Georgia is slotted to host 15 NCAA championships over the next five years, yet stands to have them withdrawn if this bill passes.<sup>31</sup> She emphasized that such was the case in North Carolina after legislation limiting bathroom access based on a person's assigned gender was considered, which resulted in the NCAA withdrawing 14 championships and 600 million dollars lost in revenue.<sup>32</sup> Clawson added that Atlanta is currently bidding to host the upcoming 2026 Fédération Internationale de Football Association FIFA World Cup Games, and the same implications might arise being that the Bill is in direct conflict with FIFA human rights policies.<sup>33</sup>

Christopher Allen with ACLU of Georgia notes that in addition to lost revenue, the state could face huge fees in litigation if the Bill passes.<sup>34</sup> Allen cited to both North Carolina and Idaho whom ACLU counsel is currently challenging for similar legislation.<sup>35</sup> Allen further challenges that the Bill is a violation of Title IX<sup>36</sup> of the Civil Rights Act and the United States Supreme

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<sup>29</sup> See Schneiberg, *supra* note 19.

<sup>30</sup> See Education and Youth, *supra* note 11, at 1:26:58.

<sup>31</sup> See Education and Youth, *supra* note 11, at 1:26:58.

<sup>32</sup> See Education and Youth, *supra* note 11, at 1:26:58.

<sup>33</sup> See Education and Youth, *supra* note 11; see also FIFA, *FIFA's Human Rights Policy* (2017), <https://digitalhub.fifa.com/m/1a876c66a3f0498d/original/kr05dqyhwr1uhqy2lh6r-pdf.pdf> (FIFA Statute prohibits discrimination of any kind against gender, birth or any other status, sexual orientation or any other reason.)

<sup>34</sup> See Christoopher Bruce, *ACLU of Georgia Opposes SB 266, a Bill Harmful to State's Transgender Youth*, ACLU GA. (Mar. 3, 2021), <https://acluga.org/press-advisory-aclu-of-georgia-opposes-sb-266-a-bill-harmful-to-states-transgender-youth>.

<sup>35</sup> *Id.*

<sup>36</sup> Title IX of The Education Amendments of 1972, 20 U.S.C. §1681 (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”)

Court's recent decision in *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020).<sup>37</sup> While *Bostock* clarified that Title VII's protection against sex discrimination encompasses discrimination based on sexual orientation and gender identity,<sup>38</sup> The U.S. Department of Education's Office for Civil Rights (OCR) has since extended the holding to apply to Title IX.<sup>39</sup> Similarly, several recent federal cases relied on *Bostock* to analyze the validity of a bathroom policy,<sup>40</sup>

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<sup>37</sup> See generally *Bostock*, 140 S. Ct. at 1731. R.G. & G.R. In *Bostock*, Harris Funeral Homes fired Aimee Stephens, who presented as a male when she was hired, days after she informed her employer that she planned to "live and work full-time as a woman." *Id.* at 1738. The funeral home did not contend that Stephens was fired because of being transgender. *Id.* at 1734. The court relied on title VII, which prohibits employment discrimination based on race, color, religion, *sex* and national origin. *Id.* at 1754; 42 U.S.C.A. § 2000. The court held that an employer violates Title VII when it intentionally fires an individual employee based in part on sex, and that it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. *Bostock*, 140 S. Ct. at 1745. Thus, the funeral home violated Title VII by firing Stephens because of being transgender. *Id.* at 1754.

<sup>38</sup> *Id.* "Though Title VII and Title IX are two distinct statutes, their statutory prohibitions against sex discrimination are similar, such that Title VII jurisprudence is frequently used as a guide to inform Title IX" [<https://www.justice.gov/crt/title-ix#Bostock>]. Such is evident from the cases that apply *Bostock*, where both Titles are examined and concluded the same. See *infra* note 40-43.

<sup>39</sup> See Office for Civil Rights, Letter to Educators on Title IX's 49th Anniversary (2021), <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf>. (stating that the same [*Bostock*] reasoning applies regardless of whether the individual is an adult in a workplace [Title VII] or a student in school [Title IX]).

<sup>40</sup> See *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020) (discussing a school policy that required students to use the restroom in line with their biological gender or birth-assigned sex) In *Grimm*, a transgender male was precluded from using the boy's restroom and filed suit. *Id.* at 593. The Fourth Circuit relying on *Bostock*, held that the Board's bathroom policy was discrimination on the basis of sex and thus violated Title IX.. *Id.* at 618-619. See also *Adams v. Sch. Bd. of St. Johns Cty., Fla.*, 3 F.4th 1299 (11th Cir. 2021) (also discussing whether Title IX applies to bathroom access.) *Adams*, a transgender male was precluded from using the boy's restroom at his high school based on an unwritten school district policy which based restroom use on the sex indicated on a student's enrollment documents. *Id.* at 1304-06. While the court never reached the Title IX claim, as it disposed of the case on violation of Equal Protections grounds, the analysis would likely result in a similar fashion since the court held that the policy turned solely on the basis of sex, conduct which is explicitly prohibited by Title IX. *Id.* at 1307, 1320.



locker room policy,<sup>41</sup> and sports participation law<sup>42</sup> involving transgender students.<sup>43</sup>

#### IMPLICATIONS IN GEORGIA

The Save Girls Sports Bill seeks to prohibit transgender women from participating in k-12 girls' sports in Georgia, and in effect, only allows biological females to compete against each other in the state.<sup>44</sup> While the Bill does not codify procedure for qualifying to participate, it would presumably require a birth certificate showing female gender.<sup>45</sup> Conversely, current Georgia law does not directly address transgender athlete participation because it does not define 'gender' and does not provide requirements for athletic participation.<sup>46</sup>

Therefore, SB 266 would certainly add some clarity to the current open-ended code section and lend guidance to Georgia sports facilitators, athletes, and parents. Despite being unenumerated, many Georgia high schools already follow the Bill's premise; The Georgia High School Association (GHSA), which is opt in- sets guidelines and rules for its 468

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<sup>41</sup> See *N.H. v. Anoka-Hennepin Sch. Dist.* No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020). A transgender boy was denied use of the boy's locker room and sought to permanently enjoin the school district from further doing so. *Id.* at 557-558. This appeal did not make any substantive decisions, as it was merely concerned with whether the lower court properly denied dismissal of NH's suit, nonetheless, the court referred to Title IX and *Bostock* for persuasive value to conclude that the schools' actions likely violated a Minnesota discrimination statute. *Id.* at 570.

<sup>42</sup> See *B. P. J. v. W. Virginia State Bd. of Educ.*, No. 2:21-CV-00316, 2021 WL 3081883 (S.D.W. Va. July 21, 2021). A new State law limited sports participation to the athlete's biological sex at birth (Save Women's Sports Bill) B.P.J., a transgender female aspiring to join a few girl's teams was told that the law precluded her from doing so, and filed a preliminary injunction stating that the law violated Title IX. *Id.* The court relying on *Grimm* and *Bostock* concluded that she had a likelihood of success on her Title IX claim. *Id.*

<sup>43</sup> See Bruce, *supra* note 37.

<sup>44</sup> S.B. 266.

<sup>45</sup> See Riley Bunch, *Georgia Senate Passes Bill to Ban Transgender Athletes From School Sports*, NOW HABERSHAM (APR. 20, 2022), <https://nowhabersham.com/georgia-senate-passes-bill-to-ban-transgender-athletes-from-school-sports>.

<sup>46</sup> *Id.*

member high schools.<sup>47</sup> The GHSA constitution states that each member school may make individual determinations on gender; however, GHSA official gender policy states that gender is determined by what is noted on his/her birth certificate.<sup>48</sup> Therefore, more than half of Georgia high schools are already in compliance with the terms in SB 266, and the Bill would serve predominately to be an enumeration of what seems to be an already majority view for Georgia high schools.<sup>49</sup>

With research scarce in the field, it is hard to put a number on the amount of Georgia children that would be affected by SB 266.<sup>50</sup> However, a 2017 study showed that 4,950 transgender athletes between 13 and 17 lived in the state of Georgia, .71% of the age group.<sup>51</sup> Thus, if numbers have remained similar over the last four years, the Bill would impact less than one percent of Georgia athletes between 13 and 17,<sup>52</sup> while the impact on athletes 13 and younger remains unknown.<sup>53</sup>

Georgia would not be alone in its efforts, as 66 bills relating to transgender sports access have been proposed across the country this year.<sup>54</sup>

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<sup>47</sup> See Todd Holcomb, *GHSA Puts Schools in Regions For 2020-21*, ATLANTA J. CONST. (Nov. 12, 2019), <https://www.ajc.com/blog/high-school-sports/ghsa-puts-schools-regions-for-2020/gFpVqpIpC4LHzif4CxxNyN>. To put this into context, Georgia has 808 high schools, making membership and adherence to GHSA rules at nearly 58% of Georgia high schools, more than half. See Violation of GHSA policies could lead to monetary fines, probation, and/or suspension from the association. See GHSA, *Constitution and By-Laws* (2019), [https://13248aea-16f8-fc0a-cf26-a9339dd2a3f0.filesusr.com/ugd/2bc3fc\\_175b1d12c57e4528be5d619447734942.pdf](https://13248aea-16f8-fc0a-cf26-a9339dd2a3f0.filesusr.com/ugd/2bc3fc_175b1d12c57e4528be5d619447734942.pdf).

<sup>48</sup> See GHSA, *Constitution and By-Laws* (2019), [https://13248aea-16f8-fc0a-cf26-a9339dd2a3f0.filesusr.com/ugd/2bc3fc\\_175b1d12c57e4528be5d619447734942.pdf](https://13248aea-16f8-fc0a-cf26-a9339dd2a3f0.filesusr.com/ugd/2bc3fc_175b1d12c57e4528be5d619447734942.pdf) (Violation of GHSA policies could lead to monetary fines, probation, and/or suspension from the association.)

<sup>49</sup> See GHSA *supra*, note 11.

<sup>50</sup> See Education and Youth, *supra* note 11 at 1:10:28.

<sup>51</sup> See UCLA, *Age of Individuals Who Identify as Transgender in the United States* (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Age-Trans-Individuals-Jan-2017.pdf>.

<sup>52</sup> *Id.* The study did not delineate the makeup of transgender women in the .71%. See generally UCLA, *supra* note 51.

<sup>53</sup> *Id.* This lack of evidence seems to be the biggest obstacle the Bill faces, as it has no Georgia victim to illustrate the issue, and little data to reenforce the position that this is a real problem. Further complicating this is that transgender athletic participation is a relatively new concern, and data requires years upon years of research to produce an accurate statistical reflection. Consequently, to pass, the Bill would either need to sit on pause to await hard data, or be able to convince the Georgia Senate that passing legislation in foresight of a problem is truly the best way to govern. See generally Education and Youth, *supra* note 11.

<sup>54</sup> See Schneiberg, *supra* note 19.

Nonetheless, passing legislation of this sort could prove to be problematic, potentially costing Georgia in time and money. As previously stated, Georgia schools could face losing government funding if the Bill is found to be a violation of Title IX,<sup>55</sup> as well as a potential loss of millions in revenue if NCAA or FIFA events were lost due to the Bill passing.<sup>56</sup> Moreover, Georgia would likely face swift litigation from several fronts, as is the case in several other states that have adopted similar legislation, namely Florida, and Idaho.<sup>57</sup>

### LEGISLATIVE GENEALOGY

Senate hopper on February 25, 2021.<sup>58</sup> Senate read and referred on February 26, 2021.<sup>59</sup>

Senate committee favorably reported by substitute on March 3, 2021.<sup>60</sup> Senate read second time on March 5, 2021.<sup>61</sup> Senate recommitted January 1, 2022.<sup>62</sup>

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<sup>55</sup> See Office for Civil Rights, *supra* note 39.

<sup>56</sup> See NCAA, *supra* note 35; see FIFA, *supra* note 33 (North Carolina lost 600M in potential revenue after 14 NCAA & ACC Championship games slotted for the state withdrew after the state passed a law limiting bathroom use to gender assigned at birth.)

<sup>57</sup> Idaho, the first state to pass a transgender sports ban law, nearly identical to this Bill, passed in March 2020 and has yet to take effect, being held up in court since. See Melissa Block, *Idaho's Transgender Sports Ban Faces a Major Legal Hurdle*, NPR (May. 3, 2021), <https://www.npr.org/2021/05/03/991987280/idahos-transgender-sports-ban-faces-a-major-legal-hurdle>. Shortly thereafter the Bill was challenged as unconstitutional by a transgender girl that wanted to join the women's track and field team. *Hecox v. Little*, 479 F. Supp. 3d 930 (D. Idaho 2020). She sought a preliminary injunction, which U.S. District Judge David Nye issued in August, writing that the plaintiff is "likely to succeed in establishing the Act is unconstitutional as currently written." *Id.* at 988. After Florida passed a bill almost exact to that of SB 266 in June 2021, it was hailed to court with a challenge that it was unconstitutional on several grounds. See News Service of Florida, *Transgender Athlete Legal Fight in Florida Put on Hold*, TAMPA BAY TIMES (Mar. 4, 2022), <https://www.tampabay.com/news/florida-politics/2022/02/07/transgender-athlete-legal-fight-in-florida-put-on-hold>. The court proceedings have been stayed while a similar bill regarding transgender bathroom use is being decided. *Id.*

<sup>58</sup> S.B. 266 Status Sheet.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*