



**OFFICE OF ATTORNEY GENERAL**

1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501-8501  
Phone (605) 773-3215  
Fax (605) 773-4106  
TTY (605) 773-6585  
<http://atg.sd.gov/>

**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**CHARLES D. McGUIGAN**  
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED

APR 21 2017

S.D. SEC. OF STATE

HAND DELIVERED

April 21, 2017

Hon. Shantel Krebs  
Secretary of State  
500 E. Capitol  
Pierre, SD 57501

RE: **Attorney General's Statement for initiated measure (same-sex school facilities)**

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of the initiated measure, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this measure.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsor of the initiated measure pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley  
ATTORNEY GENERAL

MJJ/PA/lde  
Enc.

cc/enc.: Jack Heyd  
Jason Hancock, Director of LRC

Filed this 21st day of

April 2017

SECRETARY OF STATE

RECEIVED

APR 21 2017

S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure requiring people to use certain rooms designated for the same biological sex.

Explanation:

The initiated measure applies to the use of public elementary and secondary school locker rooms, shower rooms, restrooms, and changing facilities that are accessible by multiple people at the same time. These rooms must be designated for and used only by people of the same biological sex. "Biological sex" means a person's sex as objectively determined by anatomy and genetics existing at the time of birth.

The measure contains exceptions allowing people of the opposite sex to enter these rooms for custodial, maintenance, medical, and emergency purposes under certain circumstances.

The measure permits a public school district to adopt a policy to accommodate a person with a disability or a young child needing physical assistance when using these rooms. In addition, a public school district may provide alternative room accommodations for a person under special circumstances, if requested.

The measure also requires that, when participating in an off-campus school activity, any public school student needing to undress while in the presence of other people must do so in a room designated only for that student's biological sex.

Filed this 018 day of

April 2017

*Shantal Krebs*

SECRETARY OF STATE

FOR AN ACT ENTITLED, An Act to ensure student privacy in public school locker rooms, showers, restrooms, and changing facilities by restricting certain access.

**RECEIVED**  
**APR 21 2017**  
**S.D. SEC. OF STATE**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 13-24 be amended by adding a NEW SECTION to read:

The term, biological sex, as used in this Act, means a person's immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth. A person's original birth certificate may be relied upon as definitive evidence of the person's biological sex.

Section 2. That chapter 13-24 be amended by adding a NEW SECTION to read:

Each locker room, shower room, restroom and changing facility located in a public elementary or secondary school that is accessible by multiple persons at the same time shall be designated for and used only by persons of the same biological sex. In addition, any public school student participating in a school-sponsored activity off school premises that includes being in a state of undress in the presence of other persons shall use a room designated for and used only by persons of the same biological sex.

Section 3. That chapter 13-24 be amended by adding a NEW SECTION to read:

Nothing in this Act prohibits a public school from providing accommodations such as a family restroom, or single occupancy restroom or changing facility upon a person's request due to special circumstances. In no event may the accommodation be access to a locker room, shower room, restroom, or changing facility that is designated for use by members of the opposite sex while persons of the opposite sex are present or could be present.

Section 4. That chapter 13-24 be amended by adding a NEW SECTION to read:

The provisions of section 2 of this Act do not apply to any person who enters a locker room, shower room, restroom, or changing facility designated for members of the opposite biological sex if the person is entering as follows:

- (1) For custodial or maintenance purposes when the locker room, shower room, restroom, or changing facility is not occupied by any member of the opposite biological sex;
- (2) To render medical assistance; or
- (3) To prevent a serious threat to good order or safety during a natural disaster or emergency.

Section 5. That chapter 13-24 be amended by adding a NEW SECTION to read:

Nothing in this Act may be construed to prohibit a public school from adopting any policy necessary to accommodate any person with a disability or young child in need of physical assistance when using a locker room, shower room, restroom, or changing facility located in a public school.