

Effective 1/30/2024

**Chapter 31
Distinctions on the Basis of Sex**

**Part 1
General Provisions**

63G-31-101 Definitions.

As used in this chapter:

- (1)
 - (a) "Changing room" means a space designated for multiple individuals to dress or undress within the same space.
 - (b) "Changing room" includes:
 - (i) a dressing room, fitting room, locker room, or shower room; and
 - (ii) a restroom when a changing room contains or is attached to the restroom.
- (2)
 - (a) "Facility" means a publicly owned or controlled building, structure, or other improvement.
 - (b) "Facility" includes a subset of a publicly owned or controlled building, structure, or other improvement, including a restroom or locker room.
- (3) "Government entity" means:
 - (a) the state; or
 - (b) any county, municipality, special district, special service district, or other political subdivision or administrative unit of the state, including:
 - (i) a state institution of higher education as defined in Section 53B-2-101; or
 - (ii) a local education agency as defined in Section 53G-7-401.
- (4) "Intersex individual" means the same as that term is defined in Section 26B-8-101.
- (5) "Men's restroom" means a restroom that is designated for the exclusive use of males and not females.
- (6)
 - (a) "Open to the general public" means that a privacy space is:
 - (i) freely accessible to a member of the general public;
 - (ii) accessible to an individual who has purchased a ticket, paid an entry fee, paid a membership fee, or otherwise paid to access the facility containing the relevant privacy space; or
 - (iii) accessible to a student of an institution of higher education described in Section 52B-2-101, either freely or as described in Subsection (6)(a)(ii).
 - (b) "Open to the general public" does not include a privacy space that is:
 - (i) only accessible to employees of a government entity; or
 - (ii) any area that is not normally accessible to the public.
- (7) "Privacy space" means a restroom or changing room within a publicly owned or controlled facility, where an individual has a reasonable expectation of privacy.
- (8) "Publicly owned or controlled" means that a government entity has at least a partial ownership interest in or has control of a facility, program, or event.
- (9)
 - (a) "Restroom" means any space that includes a toilet.
 - (b) "Restroom" includes:
 - (i) sex-designated men's restrooms;

- (ii) sex-designated women's restrooms;
 - (iii) unisex restrooms; and
 - (iv) single-occupant restrooms.
- (10) "Sex-designated" means that a facility, program, or event is designated specifically for males or females and not the opposite sex.
- (11) "Single-occupant" means, in relation to a single-occupant facility or privacy space, that the facility or privacy space:
- (a) has floor-to-ceiling walls;
 - (b) has an entirely encased and locking door; and
 - (c) is designated for single occupancy.
- (12) "Unisex" means, in relation to a unisex facility or privacy space, that the facility or privacy space:
- (a) is designated for the use of both sexes; or
 - (b) is not sex-designated.
- (13) "Women's restroom" means a restroom that is designated for the exclusive use of females and not males.

63G-31-102 Severability.

- (1) If any provision of this chapter or the application of any provision of this part to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this chapter shall be given effect without the invalidated provision or application.
- (2) The provisions of this chapter are severable.

Part 2
Distinctions on the Basis of Sex

63G-31-201 Distinctions on the basis of sex.

- (1) A government entity may not, on the basis of sex, exclude an individual from participation in, deny an individual from the benefits of, or subject an individual to a sex-based distinction in or under any government or otherwise publicly owned or controlled facility, program, or event, unless the distinction is substantially related to an important government objective.
- (2) Each government entity shall ensure the preservation of distinctions on the basis of sex that protect individual privacy and competitive opportunity, as described in this chapter.
- (3)
 - (a) As used in this Subsection (3), "athletic facility" does not include a privacy space.
 - (b) To preserve the individual privacy and competitive opportunity of females, an individual is not entitled to and may not access, use, or benefit from a government entity's athletic facility, program, or event if:
 - (i) the facility, program, or event is designated for females; and
 - (ii) the individual is not female.
 - (c) To preserve the individual privacy and competitive opportunity of males, an individual is not entitled to and may not access, use, or benefit from a government entity's athletic facility, program, or event if:
 - (i) the facility, program, or event is designated for males; and

- (ii) the individual is not male.
- (4) Notwithstanding Subsections (1) through (3), this chapter does not apply to:
 - (a) the School Activity Eligibility Commission created in Section 53G-6-1003; or
 - (b) in the context of a student who has obtained the eligibility approval of the commission under Subsection 53G-6-1004(2) to participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's birth certificate, as those terms are defined in Section 53G-6-1001.

63G-31-202 Sex-based distinctions to protect individual privacy.

A distinction on the basis of sex that provides separate accommodations for the sexes is substantially related to the important government objective of protecting individual privacy, including in the following contexts:

- (1) a privacy space; and
- (2) a correctional facility as defined in Section 77-16b-102.

63G-31-203 Sex-based distinctions to protect athletic health and competitive opportunity.

A distinction on the basis of sex to provide separate accommodations for the sexes is substantially related to the important government objective of protecting health and competitive opportunity in the availability or quality of an athletic venue, event, or program within the public education system.

63G-31-204 Prohibited sex-based distinctions.

The following actions within the public education system constitute a violation of Section 63G-31-201:

- (1) providing a sex-designated facility, program, or event of a higher quality to one sex and of a lesser quality to the opposite sex rather than ensuring equivalent quality or rotational sharing, including the use of athletic facilities or venues;
- (2) providing males or females preferred or more advantageous scheduling of facilities, programs, or events in comparison to the opposite sex rather than ensuring equivalent scheduling practices or rotational sharing, including the scheduling of athletic events or practices;
- (3) providing males or females with more sex-designated opportunities than the opposite sex in excess of a 10% disparity;
- (4) requiring males or females to participate or compete against the opposite sex in any sex-designated facility, program, or event; or
- (5) requiring, giving official authorization for, or knowingly allowing males or females to use a sex-designated facility in the presence of the opposite sex.

Part 3
Sex-based Distinctions in Privacy Spaces

63G-31-301 Sex-designated privacy spaces in public schools.

- (1) To preserve the individual privacy of male and female students in the public education system, a student may only access an operational sex-designated privacy space within a public school that is designated for student use if the student's sex corresponds with the sex designation of the privacy space.
- (2) For a student who makes a request to use a privacy space other than the sex-designated privacy space that corresponds with the student's sex because of the student's gender identity, as defined in Section 34A-5-102, or reasonable fear of bullying, the local education agency, as defined in Section 53E-1-102, shall coordinate with the student's parent or legal guardian to develop a privacy plan that provides the student with:
 - (a)
 - (i) reasonable access to a unisex or single-occupant facility; or
 - (ii) reasonable access to a faculty or staff restroom; or
 - (b) if the access described in Subsection (2)(a) is unavailable, reasonable access to private use of an otherwise sex-designated privacy space through staggered scheduling or another policy provision that provides for temporary private access.
- (3) An LEA satisfies the LEA's duties regarding student use of a privacy space under this chapter if the LEA:
 - (a) gives notice to students of the provisions of this section;
 - (b) takes administrative action to address violations of and promote compliance with this section; and
 - (c) develops a privacy plan in accordance with Subsection (2).
- (4) An individual may use the following evidence as a defense to an allegation that the student is not eligible to access and use a sex-designated privacy space under Subsection (1):
 - (a) the student's unamended birth certificate that corresponds with the sex designation of privacy space, which may be supported with a review of any amendment history obtained under Section 26B-8-125; or
 - (b) documentation of a medical treatment or procedure that is consistent only with the sex designation of the privacy space.
- (5) Subsection (1) does not apply to:
 - (a) a unisex or single-occupant facility; or
 - (b) an intersex individual.

63G-31-302 Sex-designated changing rooms in publicly owned facilities open to the general public.

- (1)
 - (a) Except as provided in Subsection (1)(b), to preserve the individual privacy of males and females, an individual may only access an operational sex-designated changing room in a government entity's facility that is open to the general public if:
 - (i) the individual's sex corresponds with the sex designation of the changing room; or
 - (ii) the individual has:
 - (A) legally amended the individual's birth certificate to correspond with the sex designation of the changing room, which may be supported with a review of any amendment history obtained under Section 26B-8-125; and
 - (B) undergone a primary sex characteristic surgical procedure as defined in Section 58-67-102 to correspond with the sex designation of the changing room.
 - (b) Subsection (1)(a) does not apply to:

- (i) a minor child who requires assistance to access or use the changing room that corresponds with the sex of the minor's parent, guardian, or relative;
 - (ii) a dependent minor, as defined in Section 76-5-110, or a dependent adult, as defined in Section 76-5-111 who requires assistance to access or use the changing room that corresponds with the sex of a caretaker;
 - (iii) an individual providing public safety services, including law enforcement, emergency medical services as defined in Section 26B-4-101, and fire protection;
 - (iv) an employee of a health care facility, as defined in Section 26B-2-201, to provide health care services to a patient of the health care facility; or
 - (v) an individual whose employment duties include the maintenance or cleaning of the changing room.
- (2) An individual in a changing room has a reasonable expectation of privacy, satisfying the privacy element of the offense of voyeurism in Section 76-9-702.7.
- (3) An individual who knowingly enters a changing room in violation of Subsection (1) commits the offense of criminal trespass under Section 76-6-206 if the individual enters or remains in the changing room under circumstances which a reasonable person would expect to likely cause affront or alarm to, on, or in the presence of another individual.
- (4) The surgical provision described in Subsection (1)(a)(ii) does not shield an individual from the offense of lewdness related to genitalia under Subsection 76-9-702(3) or 76-9-702.5(4).
- (5) An individual may use the following evidence as a defense against an allegation that the individual is not eligible to access and use a sex-designated changing room under Subsection (1):
- (a) for an individual whose birth sex corresponds with the sex designation of the changing room:
 - (i) an individual's unamended birth certificate that corresponds with the sex designation of the changing room, which may be supported with a review of any amendment history obtained under Section 26B-8-125; or
 - (ii) documentation of a medical treatment or procedure that is consistent only with the sex designation of the changing room; or
 - (b) for an individual whose birth sex does not correspond with the sex designation of the changing room:
 - (i) the individual's amended birth certificate, which may be supported with a review of any amendment history obtained under Section 26B-8-125; and
 - (ii) documentation that demonstrates that the individual has undergone a primary sex characteristic surgical procedure as defined in Section 58-67-102.
- (6) Subsection (1) does not apply to:
- (a) a unisex or single-occupant facility;
 - (b) a changing room that is not open to the general public; or
 - (c) an intersex individual.

63G-31-303 Unisex or single-occupant facilities.

The availability of a unisex facility or single-occupant facility satisfies a government entity's obligations regarding an individual who, because of the individual's gender identity, as defined in Section 34A-5-102, or reasonable fear of bullying, is uncomfortable using:

- (1) for a student, a privacy space in accordance with Section 63G-31-301; or
- (2) a changing room in accordance with Section 63G-31-302.

63G-31-304 Government entity facility compliance.

- (1) Except as provided under Section 53G-8-211, a government entity shall contact law enforcement if the entity receives a complaint or allegation regarding the following within a privacy space in a facility that is open to the general public:
 - (a) an offense of lewdness under Section 76-9-702;
 - (b) an offense of lewdness involving a child under Section 76-9-702.5;
 - (c) voyeurism under Section 76-9-702.7;
 - (d) loitering in a privacy space under Section 76-9-702.8; or
 - (e) for a changing room described in Section 63G-31-302, an offense of criminal trespass under Subsection 63G-31-302(2).
- (2) To preserve the individual privacy of males and females in privacy spaces:
 - (a) a government entity shall adopt a privacy compliance plan to address compliance with the government entity's duties under this chapter;
 - (b) for construction of a new facility, a government entity shall ensure that the new construction includes a single-occupant facility; and
 - (c) for existing privacy spaces, a government entity:
 - (i) shall consider the feasibility of retrofitting or remodeling to include:
 - (A) floor-to-ceiling walls and doors or similar privacy protections;
 - (B) curtains; or
 - (C) other methods of improving individual privacy within the facility that are comparable to the methods described in Subsections (2)(a)(i) and (ii); and
 - (ii) may reduce the number of fixtures that state law requires by up to 20% to provide adequate space for the retrofitting or remodeling described in Subsection (2)(a).
- (3) A government entity shall ensure sufficient sex-designated privacy spaces through compliance with Sections 15A-3-112 and 15A-3-304 regarding unisex facilities.

**Part 4
Enforcement and Indemnification**

63G-31-401.1 Government entity noncompliance.

- (1) The state auditor shall:
 - (a) establish a process to receive and investigate alleged violations of this chapter by a government entity;
 - (b) provide notice to the relevant government entity of:
 - (i) each alleged violation of this chapter by the government entity; and
 - (ii) each violation that the state auditor determines to be substantiated, including an opportunity to cure the violation not to exceed 30 calendar days; and
 - (c) if a government entity fails to cure a violation in accordance with Subsection (1)(b)(ii), report the government entity's failure to:
 - (i) for a political subdivision as defined in Section 63G-7-102 or a charter school, the attorney general for enforcement under Subsection (2); or
 - (ii) for a state entity as defined in Section 67-4-2, the Legislative Management Committee.
- (2)
 - (a) The attorney general shall:

- (i) enforce this chapter against a political subdivision or charter school upon referral by the state auditor under Subsection (1)(c) by imposing a fine of up to \$10,000 per violation per day; and
- (ii) deposit fines under Subsection (2)(a) into the General Fund.
- (b) A political subdivision or charter school may seek judicial review of a fine that the attorney general imposes under this section to determine whether the fine is clearly erroneous.
- (3) A local education agency is not in violation of this chapter for a lawful application of Section 53G-8-211.

Enacted by Chapter 509, 2024 General Session

63G-31-402 Indemnification.

The attorney general shall defend and the state shall indemnify and hold harmless a government entity acting under color of state law to enforce this chapter for any claims or damages, including court costs and attorney fees that:

- (1) arise as a result of this chapter; and
- (2) are not covered by the government entity's insurance policies or any coverage agreement that the State Risk Management Fund issues.