

**SEX-BASED DESIGNATIONS FOR PRIVACY,  
ANTI-BULLYING, AND WOMEN'S OPPORTUNITIES**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kera Birkeland**

Senate Sponsor: Daniel McCay

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**LONG TITLE**

**General Description:**

This bill establishes a standard regarding distinctions on the basis of sex and applies the standard in certain facilities and opportunities where designations on the basis of sex address individual privacy, bullying, and women's opportunities.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ defines certain terms for the entire Utah Code;
- ▶ establishes a legal standard for distinctions on the basis of sex in certain publicly owned and publicly funded circumstances;
- ▶ establishes acceptable and prohibited distinctions on the basis of sex;
- ▶ enacts provisions regarding publicly owned or publicly funded sex-designated restroom, shower, or locker room facilities where the general public has an expectation of privacy;
- ▶ requires local education agencies to establish a privacy plan with parents and students in certain cases to address gender identity and fear of bullying;
- ▶ **provides indemnification for government entities for certain claims;**
- ▶ establishes components of the crimes of voyeurism and criminal trespass for certain actions within a covered sex-designated facility;
- ▶ requires government entities to:

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- 28 • provide ~~H~~→ [~~a certain number of single-occupant restroom and locker room~~] single-
- 28a occupant ~~H~~ facilities
- 29 in new construction; and
- 30 • ~~H~~→ [~~study~~] consider ~~H~~ the feasibility of certain retrofit or remodel projects;
- 31 ▶ requires the attorney general to investigate violations of and enforce protections for
- 32 standards regarding distinctions on the basis of sex;
- 33 ▶ establishes elements of the crime of emergency reporting abuse for making repeated
- 34 false reports alleging a violation of a sex-designation in a publicly owned or
- 35 publicly funded restroom, shower, or locker room facility where the general public
- 36 has an expectation of privacy; and
- 37 ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

- 44 53G-6-1101, as enacted by Laws of Utah 2022, Chapter 398
- 45 53G-8-211, as last amended by Laws of Utah 2023, Chapter 161
- 46 67-5-1, as last amended by Laws of Utah 2023, Chapter 330
- 47 68-3-12.5, as last amended by Laws of Utah 2021, Chapter 93
- 48 76-6-206, as last amended by Laws of Utah 2023, Chapter 111
- 49 76-9-202, as last amended by Laws of Utah 2022, Chapter 161

ENACTS:

- 51 63G-31-101, Utah Code Annotated 1953
- 52 63G-31-201, Utah Code Annotated 1953
- 53 63G-31-202, Utah Code Annotated 1953
- 54 63G-31-203, Utah Code Annotated 1953
- 55 63G-31-204, Utah Code Annotated 1953
- 56 63G-31-301, Utah Code Annotated 1953
- 57 63G-31-302, Utah Code Annotated 1953
- 58 63G-31-303, Utah Code Annotated 1953

214 Section 3. Section **63G-31-101** is enacted to read:

215 **CHAPTER 31. DISTINCTIONS ON THE BASIS OF SEX**

216 **Part 1. General Provisions**

217 **63G-31-101. Definitions.**

218 (1) (a) "Facility" means a publicly funded or publicly owned building, structure, or  
219 other improvement.

220 (b) "Facility" includes a subset of a publicly funded or publicly owned building,  
221 structure, or other improvement, including a restroom or locker room.

222 (2) "Government entity" means:

223 (a) the state; or

224 (b) any county, municipality, special district, special service district, or other political  
225 subdivision or administrative unit of the state, including:

226 (i) a state institution of higher education as defined in Section 53B-2-101; or

227 (ii) a local education agency as defined in Section 53G-7-401.

228 (3) "Intersex individual" means the same as that term is defined in Section 26B-8-101.

228a **§→ (4) (a) "Open to the general public" means that a privacy space is:**

228b **(i) freely accessible to a member of the general public;**

228c **(ii) accessible to an individual who has purchased a ticket, paid an entry fee, paid a**

228d **membership fee, or otherwise paid to access the facility containing the relevant privacy space;**

228e **or**

228f **(iii) accessible to a student of an institution of higher education described in Section 52B-2-101,**

228g **either freely or as described in Subsection (4)(a)(ii).**

228h **(b) "Open to the general public" does not include a privacy space that is:**

228i **(i) only accessible to employees of a government entity; or**

228j **(ii) any area that is not normally accessible to the public. ←§**

229 **§→ [(4)] (5) ←§ "Privacy space" means the following spaces in which an individual has an**  
230 **expectation of privacy within a publicly funded or publicly owned facility:**

231 (a) a restroom or any other space that includes a toilet;

232 (b) a locker room, changing facility, or any other space designated for an individual to  
233 dress and undress; and

234 (c) any room or space that includes a shower.

235 **§→ [(5)] (6) ←§ "Publicly funded or publicly owned" means that:**

236 (a) a facility, program, or event operates, at least in part, using funds that a government  
237 entity provides for the facility, program, or event; or

238 (b) a government entity has at least a partial ownership interest in a facility, program,  
239 or event.

240 ~~§~~ → [(6)] (7) ← ~~§~~ "Sex-designated" means that a facility, program, or event is designated  
240a specifically  
241 for males or females and not the opposite sex.

242 ~~§~~ → [(7)] (8) ← ~~§~~ "Single-occupant facility" means a restroom facility or locker room  
242a facility:

243 (a) with floor-to-ceiling walls;

244 (b) with an entirely encased and locking door; and

245 (c) that is designated for single occupancy.

246 ~~§~~ → [(8)] (9) ← ~~§~~ "Unisex facility" means a facility that:

247 (a) is designated for the use of both sexes; or

248 (b) is not sex-designated.

249 Section 4. Section **63G-31-201** is enacted to read:

**Part 2. Distinctions on the Basis of Sex**

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

252 (1) A government entity may not, on the basis of sex, exclude an individual from  
253 participation in, deny an individual from the benefits of, or subject an individual to a sex-based  
254 distinction in or under any government or otherwise publicly funded or publicly owned facility,  
255 program, or event, unless the distinction is substantially related to an important government  
256 objective.

257 (2) Each government entity shall ensure the preservation of distinctions on the basis of  
258 sex that protect individual privacy and competitive opportunity, as described in this chapter.

259 (3) (a) To preserve the individual privacy and competitive opportunity of females, an  
260 individual is not entitled to and may not access, use, or benefit from a government or otherwise  
261 publicly funded facility, program, or event if:

262 (i) the facility, program, or event is designated for females; and

263 (ii) the individual is not female.

264 (b) To preserve the individual privacy and competitive opportunity of males, an  
265 individual is not entitled to and may not access, use, or benefit from a government or otherwise  
266 publicly funded facility, program, or event if:

267 (i) the facility, program, or event is designated for males; and

268 (ii) the individual is not male.

269 Section 5. Section **63G-31-202** is enacted to read:

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

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

274 (1) a privacy space;

275 (2) a temporary shelter for an individual who is a victim of abuse, as defined in Section

276 78B-7-102:

277 (3) a rape crisis and services center as defined in Section 77-38-203;

278 (4) a qualified institutional victim services provider as defined in Section 53B-28-201;

279 and

280 (5) a correctional facility as defined in Section 77-16b-102.

281 Section 6. Section **63G-31-203** is enacted to read:

282 **63G-31-203. Sex-based distinctions to protect athletic health and competitive**  
283 **opportunity.**

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

288 Section 7. Section **63G-31-204** is enacted to read:

289 **63G-31-204. Prohibited sex-based distinctions.**

290 The following actions ~~§~~→ **within the public education system** ←~~§~~ constitute a violation of  
290a Section 63G-31-201:

291 (1) providing a sex-designated facility, program, or event of a higher quality to one sex  
292 and of a lesser quality to the opposite sex rather than ensuring equivalent quality or rotational  
293 sharing, including the use of athletic facilities or venues;

294 (2) providing males or females preferred or more advantageous scheduling of facilities,  
295 programs, or events in comparison to the opposite sex rather than ensuring equivalent  
296 scheduling practices or rotational sharing, including the scheduling of athletic events or  
297 practices;

298 (3) providing males or females with more sex-designated opportunities than the  
299 opposite sex in excess of a 10% disparity;

300 (4) requiring males or females to participate or compete against the opposite sex in any  
301 sex-designated facility, program, or event; or

302 (5) requiring or knowingly allowing males or females to use a sex-designated facility in  
303 the presence of the opposite sex.

304 Section 8. Section **63G-31-301** is enacted to read:

305 **Part 3. Sex-based Distinctions in Privacy Spaces**

306 **63G-31-301. Sex-designated privacy spaces in public schools.**

338 in a facility that is open to the general public if:

339 (i) the individual's sex corresponds with the sex designation of the privacy space; or

340 (ii) the individual has:

341 (A) legally amended the individual's birth certificate to correspond with the sex  
 342 designation of the privacy space, which may be supported with a review of any amendment  
 343 history obtained under Section 26B-8-125; and

344 (B) undergone a primary sex characteristic surgical procedure as defined in Section  
 345 58-67-102 to correspond with the sex designation of the privacy space.

346 (b) Subsection (1)(a) does not apply to:

347 (i) a parent, guardian, or relative of a minor child requiring assistance to access or use  
 348 the privacy space;

349 (ii) a caretaker of a dependent minor, as defined in Section 76-5-110, or a dependent  
 350 adult, as defined in Section 76-5-111;

351 (iii) an individual providing public safety services, including law enforcement,  
 352 emergency medical services as defined in Section 26B-4-101, and fire protection;

353 (iv) an employee of a health care facility, as defined in Section 26B-2-201, to provide  
 354 health care services to a patient of the health care facility; or

355 (v) an individual whose employment duties include the maintenance or cleaning of the  
 356 privacy space.

357 (2) An individual in a privacy space has a reasonable expectation of privacy, satisfying  
 358 the privacy element of the offense of voyeurism in Section 76-9-702.7.

359 (3) An individual who enters a privacy space in violation of Subsection (1) commits  
 360 the offense of criminal trespass under Section 76-6-206 if the individual:

361 (a) under circumstances which ~~H~~→ [the person should know will] a reasonable person  
 361a would expect to ←H likely cause affront or

362 alarm to, on, or in the presence of another individual; or

363 (b) for any purpose other than the intended use of the privacy space.

364 (4) An individual may use the following evidence as a defense against an allegation  
 365 that the individual is not eligible to access and use a sex-designated privacy space under  
 366 Subsection (1):

367 (a) for an individual whose birth sex corresponds with the sex designation of the  
 368 privacy space:

369 (i) an individual's unamended birth certificate that corresponds with the sex  
 370 designation of the privacy space, which may be supported with a review of any amendment  
 371 history obtained under Section 26B-8-125; or

372 (ii) documentation of a medical treatment or procedure that is consistent only with the  
 373 sex designation of the privacy space; or

374 (b) for an individual whose birth sex does not correspond with the sex designation of  
 375 the privacy space:

376 (i) the individual's amended birth certificate, which may be supported with a review of  
 377 any amendment history obtained under Section 26B-8-125; and

378 (ii) documentation that demonstrates that the individual has undergone a primary sex  
 379 characteristic surgical procedure as defined in Section 58-67-102.

380 (5) Subsection (1) does not apply to:

381 (a) a unisex or single-occupant facility;

382 (b) a privacy space that is not open to the general public; or

383 (c) an intersex individual.

384 Section 10. Section **63G-31-303** is enacted to read:

385 **63G-31-303. Unisex or single-occupant facilities.**

386 The availability of a unisex facility or single-occupant facility ~~H→~~ [constitutes a reasonable  
 387 accommodation for] satisfies a government entity's obligations regarding ~~←H~~ an individual who  
 387a is uncomfortable using a privacy space in accordance  
 388 with Section 63G-31-301 or 63G-31-302 because of the individual's gender identity, as defined  
 389 in Section 34A-5-102, or reasonable fear of bullying.

390 Section 11. Section **63G-31-304** is enacted to read:

391 **63G-31-304. Facility compliance.**

392 To preserve the individual privacy of males and females in privacy spaces:

393 (1) for a new construction of a sex-designated privacy space, a government entity shall  
 394 ensure that ~~H→~~ [an adequate percentage of all toilets and showers are single-occupant facilities] the  
 394a new construction includes a single-occupant facility ~~←H~~ :

395 (2) for existing privacy spaces, a government entity:

396 (a) shall ~~H→~~ [study] consider ~~←H~~ the feasibility of retrofitting or remodeling to include:

397 (i) floor-to-ceiling walls and doors or similar privacy protections;

398 (ii) curtains; or

399 (iii) other methods of improving individual privacy within the facility that are



400 comparable to the methods described in Subsections (2)(a)(i) and (ii); and

401 (b) may reduce the number of fixtures that state law requires by up to 20% to provide  
402 adequate space for the retrofitting or remodeling described in Subsection (2)(a); and

403 (3) a government entity shall ensure sufficient sex-designated privacy spaces through  
404 compliance with Sections 15A-3-112 and 15A-3-304 regarding unisex facilities.

405 Section 12. Section **63G-31-401** is enacted to read:

406 **Part 4. Enforcement Against Government Entities**

407 **63G-31-401. Enforcement §→ -- Indemnification ←§ .**

408 (1) The attorney general may enforce this chapter against any government entity in  
409 violation of this chapter by imposing a fine of up to \$10,000 per violation per day.

410 (2) The attorney general shall deposit fines under Subsection (1) into the General Fund.

410a **§→ (3) The state shall defend, indemnify, and hold harmless a government entity acting under**  
410b **color of state law to enforce this chapter for any claims or damages, including court costs and**  
410c **attorney fees, that:**

410d **(a) arise as a result of this chapter; and**

410e **(b) are not covered by the government entity's insurance policies or any coverage agreement**  
410f **that the State Risk Management Fund issues. ←§**

411 Section 13. Section **67-5-1** is amended to read:

412 **67-5-1. General duties.**

413 (1) The attorney general shall:

414 (a) perform all duties in a manner consistent with the attorney-client relationship under  
415 Section 67-5-17;

416 (b) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme Court  
417 and the Court of Appeals of this state, and all courts of the United States, and prosecute or  
418 defend all causes to which the state or any officer, board, or commission of the state in an  
419 official capacity is a party, and take charge, as attorney, of all civil legal matters in which the  
420 state is interested;

421 (c) after judgment on any cause referred to in Subsection (1)(b), direct the issuance of  
422 process as necessary to execute the judgment;

423 (d) account for, and pay over to the proper officer, all money that comes into the  
424 attorney general's possession that belongs to the state;

425 (e) keep a file of all cases in which the attorney general is required to appear, including

- 617 (9) "Depose" means to make a written statement made under oath or affirmation.
- 618 (10) (a) "Equal" means, with respect to biological sex, of the same value.
- 619 (b) "Equal" does not mean, with respect to biological sex:
- 620 (i) a characteristic of being the same or identical; or
- 621 (ii) a requirement that biological sexes be ignored or co-mingled in every circumstance.
- 622 ~~(10)~~ (11) "Executor" includes "administrator" when the subject matter justifies the
- 623 use.
- 624 (12) "Father" means a parent of the male sex.
- 625 (13) "Female" means the characteristic of an individual whose biological reproductive
- 626 system is of the general type that functions ~~H~~→ [to] in a way that could ←~~H~~ produce ova.
- 627 ~~(11)~~ (14) "Guardian" includes a person who:
- 628 (a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary
- 629 or court appointment; or
- 630 (b) is appointed by a court to manage the estate of a minor or incapacitated person.
- 631 ~~(12)~~ (15) "Highway" includes:
- 632 (a) a public bridge;
- 633 (b) a county way;
- 634 (c) a county road;
- 635 (d) a common road; and
- 636 (e) a state road.
- 637 ~~(13)~~ (16) "Intellectual disability" means a significant, subaverage general intellectual
- 638 functioning that:
- 639 (a) exists concurrently with deficits in adaptive behavior; and
- 640 (b) is manifested during the developmental period as defined in the current edition of
- 641 the Diagnostic and Statistical Manual of Mental Disorders, published by the American
- 642 Psychiatric Association.
- 643 ~~(14)~~ (17) "Intermediate care facility for people with an intellectual disability" means
- 644 an intermediate care facility for the mentally retarded, as defined in Title XIX of the Social
- 645 Security Act.
- 646 ~~(15)~~ (18) "Land" includes:
- 647 (a) land;