

IN THE SENATE

SENATE BILL NO. 1100

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO PROTECTING THE PRIVACY AND SAFETY OF STUDENTS IN PUBLIC SCHOOLS;
2 AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 66, TITLE
3 33, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS, TO DEFINE TERMS, TO ES-
4 TABLISH PROVISIONS REGARDING SCHOOL RESTROOMS, TO PROVIDE EXEMPTIONS,
5 TO PROVIDE FOR REASONABLE ACCOMMODATION IN CERTAIN INSTANCES, TO PRO-
6 VIDE FOR A CIVIL CAUSE OF ACTION, AND TO PROVIDE FOR PREEMPTION; PROVID-
7 ING SEVERABILITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE
8 DATE.
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10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
12 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
13 ter 66, Title 33, Idaho Code, and to read as follows:

14 CHAPTER 66

15 PROTECTING THE PRIVACY AND SAFETY OF STUDENTS IN PUBLIC SCHOOLS

- 16 33-6601. LEGISLATIVE FINDINGS. The legislature finds that:
17 (1) There are real and inherent physical differences between men and
18 women;
19 (2) Every person has a natural right to privacy and safety in restrooms
20 and changing facilities where such person might be in a partial or full state
21 of undress in the presence of others;
22 (3) This natural right especially applies to students using public
23 school restrooms and changing facilities where student privacy and safety is
24 essential to providing a safe learning environment for all students;
25 (4) Requiring students to share restrooms and changing facilities with
26 members of the opposite biological sex generates potential embarrassment,
27 shame, and psychological injury to students, as well as increasing the like-
28 lihood of sexual assault, molestation, rape, voyeurism, and exhibitionism;
29 (5) Providing separate public school restrooms and changing facilities
30 for the different biological sexes is a long-standing and widespread prac-
31 tice protected by federal law, state law, and case law;
32 (6) Federal legislative action, federal executive action, and fed-
33 eral court judgments that prevent public schools from maintaining separate
34 restrooms and changing facilities for different biological sexes are in-
35 consistent with the United States constitution and violate the privacy and
36 safety rights of students; and
37 (7) A statewide policy ensuring separate school restrooms and chang-
38 ing facilities on the basis of biological sex is substantially related to the
39 important governmental interest in protecting the privacy and safety of all
40 students.

1 33-6602. DEFINITIONS. For the purposes of this chapter:

- 2 (1) "Changing facility" means a facility in which a person may be in a
3 state of undress in the presence of others, including a locker room, changing
4 room, or shower room.
5 (2) "Public school" means any public school teaching K-12 students
6 within an Idaho school district or charter school.
7 (3) "Sex" means the immutable biological and physiological character-
8 istics, specifically the chromosomes and internal and external reproductive
9 anatomy, genetically determined at conception and generally recognizable at
10 birth, that define an individual as male or female.

11 33-6603. SCHOOL RESTROOMS. (1) Every public school restroom or chang-
12 ing facility accessible by multiple persons at the same time must be:

- 13 (a) Designated for use by male persons only or female persons only; and
14 (b) Used only by members of that sex.

15 (2) No person shall enter a multi-occupancy restroom or changing facil-
16 ity that is designated for one sex unless such person is a member of that sex.
17 The public school with authority over the building shall ensure that all re-
18 strooms and changing facilities provide its users with privacy from members
19 of the opposite sex.

20 (3) In any other public school setting where a person may be in a state
21 of undress in the presence of others, school personnel must provide separate
22 and private areas designated for use by persons based on their sex, and no
23 person may enter these private areas unless such person is a member of the
24 designated sex.

25 (4) During any school authorized activity or event where persons share
26 overnight lodging, school personnel must provide separate sleeping quar-
27 ters for members of each sex. No person shall share sleeping quarters, a
28 restroom, or a changing facility with a person of the opposite sex, unless
29 the persons are members of the same family.

30 33-6604. EXEMPTIONS. This chapter shall not apply:

31 (1) To single-occupancy restrooms and changing facilities or restrooms
32 and changing facilities that are conspicuously designated for unisex or fam-
33 ily use;

34 (2) To restrooms and changing facilities that have been temporarily
35 designated for use by that person's biological sex;

36 (3) To a person of one sex who uses a single-sex facility designated for
37 the opposite sex, if such single-sex facility is the only facility reason-
38 ably available at the time of the person's use of the facility;

39 (4) To a person employed to clean, maintain, or inspect a restroom or
40 single-sex facility;

41 (5) To a person who enters a restroom or facility to render medical as-
42 sistance;

43 (6) To a person who is in need of assistance and, for the purposes
44 of receiving that assistance, is accompanied by a family member, a legal
45 guardian, or the person's designee who is a member of the designated sex for
46 the single-sex restroom or changing facility; or

47 (7) During an ongoing natural disaster or emergency, or when necessary
48 to prevent a serious threat to good order or student safety.

1 33-6605. REASONABLE ACCOMMODATION. (1) A public school shall provide
2 a reasonable accommodation to a student who:

3 (a) For any reason, is unwilling or unable to use a multi-occupancy re-
4 stroom or changing facility designated for the person's sex and located
5 within a public school building, or multi-occupancy sleeping quarters
6 while attending a public school-sponsored activity; and

7 (b) Provides a written request for reasonable accommodation to the pub-
8 lic school.

9 (2) A reasonable accommodation does not include access to a restroom,
10 changing facility, or sleeping quarter that is designated for use by members
11 of the opposite sex while persons of the opposite sex are present or could be
12 present.

13 33-6606. CIVIL CAUSE OF ACTION. (1) Any student who, while accessing a
14 public school restroom, changing facility, or sleeping quarters designated
15 for use by the student's sex, encounters a person of the opposite sex has a
16 private cause of action against the school if:

17 (a) The school gave that person permission to use facilities of the op-
18 posite sex; or

19 (b) The school failed to take reasonable steps to prohibit that person
20 from using facilities of the opposite sex.

21 (2) Any civil action arising under this chapter must be commenced
22 within four (4) years after the cause of action has occurred.

23 (3) Any student who prevails in an action brought under this chapter may
24 recover from the defendant public school five thousand dollars (\$5,000) for
25 each instance that the student encountered a person of the opposite sex while
26 accessing a public school restroom, changing facility, or sleeping quarters
27 designated for use by aggrieved student's sex. The student may also recover
28 monetary damages from the defendant public school for all psychological,
29 emotional, and physical harm suffered.

30 (4) Any student who prevails in action brought under this chapter is en-
31 titled to recover reasonable attorney's fees and costs from the defendant
32 public school.

33 (5) Nothing in this chapter limits other remedies at law or equity
34 available to the aggrieved student against the school.

35 33-6607. PREEMPTION. This chapter preempts any law, regulation, pol-
36 icy, or decree enacted or adopted by any city, county, municipality, or other
37 political subdivision within the state that purports to permit or require
38 public schools to allow persons to use facilities designated for the other
39 sex.

40 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
41 to be severable and if any provision of this act or the application of such
42 provision to any person or circumstance is declared invalid for any reason,
43 such declaration shall not affect the validity of the remaining portions of
44 this act.

45 SECTION 3. An emergency existing therefor, which emergency is hereby
46 declared to exist, this act shall be in full force and effect on and after
47 July 1, 2023.