

Initiative Measure No. 1552, filed January 17, 2017

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-3351.1/17

ATTY/TYPIST: KS:akl

BRIEF DESCRIPTION:

Initiative Measure No. 1552, filed January 17, 2017

AN ACT Relating to enhancing peoples' expectations of privacy and safety in public restrooms and school facilities; amending RCW 28A.640.020 and 49.60.030; adding new sections to chapter 49.60 RCW; adding new sections to chapter 28A.640 RCW; creating a new section; and providing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** A new section is added to chapter 49.60 RCW to read as follows:

The people of Washington state find they have a reasonable expectation of privacy and safety for themselves, their children, their families, and others in places separated for female use only or male use only such as restrooms, bathrooms, locker rooms, showers, and changing areas, and that promoting and protecting their privacy and safety is a serious matter of legitimate public concern. The people further find that schools, in particular, are places where a child's privacy and safety should be promoted and protected and that students should never be forced into environments where

they may be viewed in various stages of undress by members of the opposite sex or gender, or where they may view members of the opposite sex or gender in various stages of undress. The people also find that forcing female and male students to share private facilities such as restrooms, bathrooms, locker rooms, showers, and changing areas with each other will create significant risks of embarrassment, shame, emotional harm, or psychological injury to students. The people also find that any statewide mandate prohibiting schools and other places of public accommodation from providing separate private facilities such as bathrooms for female use only or male use only would wrongfully interfere with a student's fundamental right to privacy and safety and a parent's fundamental right to promote and protect the privacy and safety of their children and to determine when their children are exposed to sensitive issues and subjects. The people also find that creating civil liability for places of public accommodation based on their restroom policies creates an uncertain, unhealthy, and unacceptable environment for businesses and others that discourages entrepreneurship, alienates customers, and hinders economic development. The people intend by this act to clarify existing law that other than for primary and secondary schools there is no statewide restroom mandate prohibiting a public or private entity from providing sex or gender specific private facilities such as restrooms for female use only or male use only. The people further intend by this act to clarify existing law that there is no civil liability for any public or private entity that provides sex or gender specific private facilities such as restrooms for female use only or male use only.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.640 RCW to read as follows:

(1)(a) All public school facilities such as restrooms, bathrooms, locker rooms, showers, or changing areas that are for use

by more than one person at a time must be designated for use by females only or for use by males only.

(b) All public school facilities such as restrooms, bathrooms, locker rooms, showers, and changing areas that are designated for use by one sex or gender must be used only by members of that sex or gender. No person may enter a school facility, such as a restroom, bathroom, locker room, shower, or changing area that is designated for use by one sex or gender unless he or she is a member of that sex or gender.

(c) In any other public school facility or setting where a person of one sex or gender may be in a state of undress in the presence of another person of a different sex or gender, school personnel must provide separate, private areas designated for use by persons based on their sex or gender, and no person may enter these separate, private areas unless he or she is a member of the designated sex or gender.

(d) This subsection (1) does not apply to a person of one sex or gender who enters a private facility designated for use by the opposite sex or gender if:

(i) The person enters the private facility for custodial or maintenance purposes, when the facility is not occupied by a member of the opposite sex or gender;

(ii) The person enters the private facility to render necessary medical aid or assistance;

(iii) The person enters the private facility during a natural disaster, emergency, or when necessary to prevent a serious threat of bodily harm or death, good order, or student safety; or

(iv) The person who enters the private facility is an authorized school personnel, parent, guardian, supervisor, or caretaker of a student or person with a disability and:

(A) Is escorting the student or person with a disability to or from the facility;

(B) The student or person with a disability remains under the custody, control, supervision, or care of the authorized school

personnel, parent, guardian, supervisor, or caretaker while in the facility; and

(C) The sex or gender of the authorized school personnel, parent, guardian, supervisor, or caretaker escorting the student or person with a disability is the same as the sex or gender for which the facility is designated.

(2)(a) Students who consistently assert to school officials that their gender identity is different from their birth sex or gender, and whose parent or legal guardian provides written, signed consent to school officials, must be provided with an alternative accommodation if one is available, but in no event may that accommodation be access to a private facility such as a student restroom, student bathroom, student locker room, student shower room, or student changing area designated for use by students of the opposite sex or gender while students of the opposite sex or gender are or could be present at the same time.

(b) Acceptable alternative accommodations include access to single-use private facilities such as single-use restrooms, bathrooms, locker rooms, showers, and changing areas, and controlled use of private faculty facilities, such as faculty restrooms, bathrooms, locker rooms, shower rooms, or changing areas.

(3)(a) Students who access or use a public school facility such as a restroom, bathroom, locker room, shower, or changing area, designated for use by their sex or gender have a right not to encounter a person of the opposite sex or gender while in the facility and to be safe in such facility.

(b) A student who accesses or uses a public school facility that is designated for use by the student's sex or gender such as a restroom, bathroom, locker room, shower, or changing area, and who encounters a person of a different sex or gender while accessing or using the facility, has a private cause of action against the school if:

(i) The school gave the person permission to access or use a private facility designated for use by persons of the opposite sex or gender;

(ii) The school failed to take reasonable steps to prohibit and prevent the person from accessing or using a private facility designated for use by persons of the opposite sex or gender; and

(iii) The school had no policies in place that imposed sanctions on persons of one sex or gender who accessed or used a private facility designated for use by persons of the opposite sex or gender, or had such policies but imposed no sanctions for the violation.

(c) Any civil action based on a claim arising pursuant to this section must be brought in the state or federal trial court in whose jurisdiction either the student or the school resides at the time of filing the claim.

(d) Any civil actions brought pursuant to this section must be initiated within four years from the time the claim first arose.

(e) A student who brings a civil action under this section and who prevails in a court of law must be awarded the following, to be paid by the defendant school:

(i) A minimum amount of two thousand five hundred dollars, but no more than five thousand dollars, for each separate instance in which the aggrieved student encountered a person of the opposite sex or gender while the aggrieved student was accessing or using a public school facility such as a restroom, bathroom, locker room, shower, or changing area, that was designated for use by the aggrieved student's sex or gender;

(ii) Monetary damages for all psychological, emotional, and physical harm or injuries suffered by the aggrieved student; and

(iii) Reasonable attorneys' fees and costs.

(f) Nothing in this subsection (3) limits other remedies at law or equity available to the aggrieved student against the school.

NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.640 RCW to read as follows:

(1) By June 30, 2017, every school district must adopt and implement a written policy, consistent with the provisions of this act, concerning the designation and use of private facilities in school district buildings and properties, such as restrooms, bathrooms, locker rooms, showers, and changing areas. The policies adopted must:

(a) Apply to all school district employees, students, parents, volunteers, and guests;

(b) Be reviewed by the state superintendent of public instruction to ensure they are consistent with the provisions of this act;

(c) Be conspicuously posted throughout each school building, and provided to each employee; and

(d) Appear in any publication of the school or school district setting forth the rules, regulations, procedures, and standards of conduct for the school or school district.

(2) Each school must develop a process for discussing the district's policy regarding the designation and use of private facilities, such as restrooms, bathrooms, locker rooms, showers, and changing areas.

Sec. 4. RCW 28A.640.020 and 1994 c 213 s 1 are each amended to read as follows:

(1) The superintendent of public instruction shall develop regulations and guidelines to eliminate sex discrimination as it applies to public school employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students.

(a) Specifically with respect to public school employment, all schools shall be required to:

(i) Maintain credential requirements for all personnel without regard to sex;

(ii) Make no differentiation in pay scale on the basis of sex;

(iii) Assign school duties without regard to sex except where such assignment would involve duty in areas or situations, such as but not limited to (~~a shower room,~~) private facilities such as restrooms, bathrooms, locker rooms, showers, and changing areas where persons might be disrobed or viewed in various stages of undress by members of the opposite sex or gender, or where they may view members of the opposite sex or gender in various stages of undress;

(iv) Provide the same opportunities for advancement to males and females; and

(v) Make no difference in conditions of employment including, but not limited to, hiring practices, leaves of absence, hours of employment, and assignment of, or pay for, instructional and noninstructional duties, on the basis of sex.

(b) Specifically with respect to counseling and guidance services for students, they shall be made available to all students equally. All certificated personnel shall be required to stress access to all career and vocational opportunities to students without regard to sex.

(c) Specifically with respect to recreational and athletic activities, they shall be offered to all students without regard to sex. Schools may provide separate teams for each sex. Schools which provide the following shall do so with no disparities based on sex: Equipment and supplies; medical care; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; laundry services; assignment of game officials; opportunities for competition, publicity and awards; scheduling of games and practice times including use of courts, gyms, and pools: PROVIDED, That such scheduling of games and practice times shall be determined by local administrative authorities after consideration of the public and student interest

in attending and participating in various recreational and athletic activities. Each school which provides private facilities such as restrooms, bathrooms, locker rooms, showers, (~~toilets~~) changing areas, or training room facilities for athletic purposes shall provide comparable facilities for both sexes or genders. Such facilities may be provided either as separate facilities or shall be scheduled and used separately by each sex or gender.

The superintendent of public instruction shall also be required to develop a student survey to distribute every three years to each local school district in the state to determine student interest for male/female participation in specific sports.

(d) Specifically with respect to course offerings, all classes shall be required to be available to all students without regard to sex or gender: PROVIDED, That separation is permitted within any class during sessions on sex education or gym classes.

(e) Specifically with respect to textbooks and instructional materials, which shall also include, but not be limited to, reference books and audiovisual materials, they shall be required to adhere to the guidelines developed by the superintendent of public instruction to implement the intent of this chapter: PROVIDED, That this subsection shall not be construed to prohibit the introduction of material deemed appropriate by the instructor for educational purposes.

(2)(a) By December 31, 1994, the superintendent of public instruction shall develop criteria for use by school districts in developing sexual harassment policies as required under (b) of this subsection. The criteria shall address the subjects of grievance procedures, remedies to victims of sexual harassment, disciplinary actions against violators of the policy, and other subjects at the discretion of the superintendent of public instruction. Disciplinary actions must conform with collective bargaining agreements and state and federal laws. The superintendent of public instruction also shall supply sample policies to school districts upon request.

(b) By June 30, 1995, every school district shall adopt and implement a written policy concerning sexual harassment. The policy shall apply to all school district employees, volunteers, parents, and students, including, but not limited to, conduct between students.

(c) School district policies on sexual harassment shall be reviewed by the superintendent of public instruction considering the criteria established under (a) of this subsection as part of the monitoring process established in RCW 28A.640.030.

(d) The school district's sexual harassment policy shall be conspicuously posted throughout each school building, and provided to each employee. A copy of the policy shall appear in any publication of the school or school district setting forth the rules, regulations, procedures, and standards of conduct for the school or school district.

(e) Each school shall develop a process for discussing the district's sexual harassment policy. The process shall ensure the discussion addresses the definition of sexual harassment and issues covered in the sexual harassment policy.

(f) "Sexual harassment" as used in this section means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature if:

(i) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;

(ii) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or

(iii) That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

Sec. 5. RCW 49.60.030 and 2009 c 164 s 1 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business

relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

(4)(a) Nothing in this chapter prohibits a public or private entity from designating private facilities under its control, such as a restroom, bathroom, locker room, shower, or changing area for the exclusive use by females only or by males only. Nothing in this chapter creates or grants any right to a person of one sex or gender, to access a private facility, such as a restroom, bathroom,

locker room, shower, or changing area, that is under the control of and designated by a public or private entity to be for the exclusive use by persons of the opposite sex or gender.

(b) Nothing in this chapter or any other provision of law authorizes or may be construed as authorizing any state or local governmental entity to adopt an ordinance, rule, or other policy, formal or informal, requiring or allowing a person of one sex or gender, to use a private facility that is for use by more than one person at a time, such as a restroom, bathroom, locker room, shower, or changing area, and that is separated for use by persons of the opposite sex or gender.

(c) Nothing in this chapter or any other provision of law authorizes or may be construed to authorize any cause of action or civil liability against or on the part of any public or private entity based on the entity providing a private facility, such as a restroom, bathroom, locker room, shower, or changing area, that is for use by more than one person at a time, and that is separated for use by females only or by males only.

(d) Nothing in this subsection (4) prevents a child under the age of eight or a person with a disability from entering a private facility such as a restroom, bathroom, locker room, or changing area designated by a public or private entity for the exclusive use by members of the opposite sex or gender if: (i) A parent, guardian, supervisor, or caretaker of the child or person with the disability is escorting the child or person to or from the facility; (ii) the child or person remains under the custody, control, supervision, or care of the parent, guardian, supervisor, or caretaker while in the facility; and (iii) the sex or gender of the parent, guardian, supervisor, or caretaker is the same as the sex or gender for which the facility is designated.

NEW SECTION. Sec. 6. A new section is added to chapter 49.60 RCW to read as follows:

For purposes of this act, if and whenever used, the terms "female," "male," "woman," "women," "man," "men," "he," "she," "sex," and "gender" means and are based upon the person's sex or gender as determined or that existed biologically or genetically at the time of a person's birth.

NEW SECTION. **Sec. 7.** This act may be known and cited as the promoting and protecting privacy and safety in women, men, and student restroom facilities act.

NEW SECTION. **Sec. 8.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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