

HOUSE BILL NO. 609

INTRODUCED BY C. GLIMM

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA LOCKER ROOM PRIVACY ACT;
5 REQUIRING A PERSON USING A LOCKER ROOM OR OTHER PROTECTED FACILITY IN A GOVERNMENT
6 BUILDING OR PUBLIC SCHOOL TO USE THE FACILITY DESIGNATED FOR THAT PERSON'S BIOLOGICAL
7 SEX; PROVIDING ACCOMMODATIONS SUCH AS SINGLE-STALL FACILITIES BASED UPON SPECIAL
8 CIRCUMSTANCES; PROHIBITING LOCAL GOVERNMENTS FROM EXERCISING POWERS DELEGATED TO
9 THE STATE IN THIS ACT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED
10 ELECTORS OF MONTANA; AMENDING SECTION 7-1-111, MCA; AND PROVIDING AN EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Locker
15 Room Privacy Act".

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17 NEW SECTION. **Section 2. Statement of purpose.** The purpose of [sections 1 through 5] is to:

- 18 (1) further the state's interest in protecting all persons in public schools, colleges, universities, and
19 government buildings in this state;
- 20 (2) provide for the privacy and safety of all persons in public schools, colleges, universities, and
21 government buildings in this state; and
- 22 (3) maintain order and dignity in a changing facility, locker room, or other protected facility where a
23 person may be in various states of undress in the presence of others.

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25 NEW SECTION. **Section 3. Definitions.** For purposes of [sections 1 through 5], the following definitions
26 apply:

- 27 (1) "Changing facility" means a facility in which a person may be in a state of undress in the presence
28 of others, including but not limited to a locker room, changing room, or shower room.
- 29 (2) "Government building" means a building or structure that is owned, leased, or otherwise under the
30 control of a governmental entity.

- 1 (3) "Governmental entity" means:
- 2 (a) the state and any political subdivision of the state;
- 3 (b) a county, city, town, or consolidated government;
- 4 (c) school district as defined in 20-4-502 or school as defined in 20-6-501; or
- 5 (d) a public institution of higher education.
- 6 (4) "Locker room" has the same meaning as "changing facility".
- 7 (5) "Protected facility" means a changing facility, locker room, restroom, or shower room that is located
- 8 in a government building or that is controlled by a governmental entity.
- 9 (6) "Restroom" means a facility that includes one or more toilets or urinals.
- 10 (7) "Sex" means a person's immutable biological sex as objectively determined by anatomy and genetics
- 11 existing at the time of birth. A person's original birth certificate may be relied upon as definitive evidence of the
- 12 person's sex.
- 13 (8) "Shower room" means an area with an apparatus that provides a shower of the body for use by more
- 14 than one person at a time.
- 15
- 16 **NEW SECTION. Section 4. Protection of physical privacy -- protected facilities.** (1) A protected
- 17 facility that is accessible by multiple persons at the same time must be designated for use only by members of
- 18 one sex. A protected facility that is designated for one sex may be used only by members of that sex. The
- 19 governmental entity that controls the protected facility shall ensure that each protected facility provides privacy
- 20 from persons of the opposite sex.
- 21 (2) Subsection (1) does not apply to a person who enters a protected facility designated for the opposite
- 22 sex:
- 23 (a) for custodial or maintenance purposes when the restroom or changing facility is not occupied by a
- 24 person of the opposite sex;
- 25 (b) to render medical assistance;
- 26 (c) during a natural disaster, emergency, or when necessary to prevent a serious threat to good order
- 27 or safety; or
- 28 (d) during an event when a locker room may temporarily be used by a visiting athletic team that includes
- 29 persons who are not members of the sex for which the locker room is normally designated.
- 30 (3) Nothing in this section may be construed to prohibit a governmental entity from:

1 (a) adopting a policy necessary to accommodate a disabled person in need of physical assistance or
 2 a minor in need of physical assistance when using a protected facility; or

3 (b) providing an accommodation such as a single occupancy restroom or changing facility upon a
 4 person's request due to a special circumstance. The accommodation may not provide access to a locker room
 5 or other protected facility that is designated for use by a person of the opposite sex while a person of the opposite
 6 sex is present or could be present.

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 8 **NEW SECTION. Section 5. Civil action for protected facilities -- penalties.** (1) A person using or
 9 accessing a protected facility that is designated for use by that person's sex who encounters a person of the
 10 opposite sex in the protected facility may bring a civil action against the governmental entity that controls the
 11 protected facility if:

12 (a) the governmental entity gave the person of the opposite sex permission to use the protected facility;
 13 or

14 (b) the governmental entity failed to take reasonable steps to prohibit the member of the opposite sex
 15 from using the protected facility.

16 (2) An action under this section may be filed in the district court of the county in which the person
 17 initiating the action resides.

18 (3) If a person prevails against a governmental entity under this section, the person may recover:

19 (a) compensatory damages for all emotional or mental distress;

20 (b) reasonable attorney fees and costs; and

21 (c) any other relief the court deems appropriate.

22 (4) An action under this section must be commenced within 4 years of the date on which the violation
 23 of this section occurred.

24 (5) Nothing in this section limits other remedies at law or equity that may be available to a person who
 25 prevails against a governmental entity under this section.

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 27 **Section 6.** Section 7-1-111, MCA, is amended to read:

28 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
 29 exercising the following:

30 (1) any power that applies to or affects any private or civil relationship, except as an incident to the

1 exercise of an independent self-government power;

2 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to
3 those provisions, it may exercise any power of a public employer with regard to its employees;

4 (3) any power that applies to or affects the public school system, except that a local unit may impose an
5 assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise
6 any power that it is required by law to exercise regarding the public school system;

7 (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public
8 convenience and necessity pursuant to Title 69, chapter 12;

9 (5) any power that establishes a rate or price otherwise determined by a state agency;

10 (6) any power that applies to or affects any determination of the department of environmental quality with
11 regard to any mining plan, permit, or contract;

12 (7) any power that applies to or affects any determination by the department of environmental quality
13 with regard to a certificate of compliance;

14 (8) any power that defines as an offense conduct made criminal by state statute, that defines an offense
15 as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months'
16 imprisonment, or both, except as specifically authorized by statute;

17 (9) any power that applies to or affects the right to keep or bear arms, except that a local government
18 has the power to regulate the carrying of concealed weapons;

19 (10) any power that applies to or affects a public employee's pension or retirement rights as established
20 by state law, except that a local government may establish additional pension or retirement systems;

21 (11) any power that applies to or affects the standards of professional or occupational competence
22 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

23 (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title
24 75, chapter 7, part 1, or Title 87;

25 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended
26 to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70,
27 chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords
28 to comply with ordinances or provisions that are applicable to all other businesses or residences within the local
29 government's jurisdiction.

30 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

1 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
2 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may
3 enter into a cooperative agreement with the department of agriculture concerning the use and application of
4 commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
5 government from adopting or implementing zoning regulations or fire codes governing the physical location or
6 siting of fertilizer manufacturing, storage, and sales facilities.

7 (16) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,
8 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired
9 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
10 communications commission of the United States;

11 (17) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna
12 at heights and dimensions sufficient to accommodate amateur radio service communications by a person who
13 holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or
14 higher class, issued by the federal communications commission of the United States;

15 (18) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load,
16 object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway
17 that is under the jurisdiction of an entity other than the local government unit;

18 (19) any power that applies to or affects provisions in the Montana Locker Room Privacy Act as provided
19 in [sections 1 through 5]."

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21 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified
22 as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 5].

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24 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable
25 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
26 remains in effect in all valid applications that are severable from the invalid applications.

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28 **NEW SECTION. Section 9. Effective date.** If approved by the electorate, [this act] is effective January
29 1, 2019.

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