

HOUSE BILL No. 2737

By Committee on Federal and State Affairs

3-16

1 AN ACT concerning school districts; creating the student physical privacy
2 act.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. The provisions of sections 1 through 7, and amendments
6 thereto, shall be known and may be cited as the student physical privacy
7 act.

8 Sec. 2. The legislature hereby finds and declares:

9 (a) Children and young adults have natural and normal concerns
10 about physical privacy when they are in various states of undress, and
11 most wish for members of the opposite sex not to be present in those
12 circumstances.

13 (b) Parents have a reasonable expectation that public schools in this
14 state will not allow their minor children to be viewed in various states of
15 undress by members of the opposite sex, nor allow their minor children to
16 view members of the opposite sex in various states of undress.

17 (c) Young adults have a reasonable expectation that postsecondary
18 educational institutions in this state will not allow their students to be
19 viewed in various states of undress by members of the opposite sex while
20 using student restrooms, locker rooms and showers.

21 (d) Public schools and postsecondary educational institutions in this
22 state have a duty to protect the dignity, health and welfare of the students
23 in their care.

24 (e) Allowing students to use restrooms, locker rooms and showers
25 that are reserved for students of a different sex will create a significant
26 potential for disruption of educational activities and unsafe situations.

27 (f) Allowing students to use restrooms, locker rooms and showers
28 that are reserved for students of a different sex will create potential
29 embarrassment, shame and psychological injury to students.

30 (g) Public schools and postsecondary educational institutions have a
31 duty to respect and protect the privacy rights of their students. Courts have
32 recognized a constitutional right to privacy that includes a right not to be
33 compelled by the government to undress or be unclothed in the presence of
34 members of the opposite sex. See, e.g., *Cumbey v. Meachum*, 684 F.2d
35 712 (10th Cir. 1982); *Lee v. Downs*, 641 F.2d 1117 (4th Cir. 1981); *York v.*
36 *Story*, 324 F.2d 450 (9th Cir. 1963).

1 Sec. 3. The purposes of this act are:

2 (a) To further the state's interest in protecting all students in public
3 schools and postsecondary educational institutions in this state;

4 (b) to provide for the privacy needs of all students in public schools
5 and postsecondary educational institutions in this state; and

6 (c) to maintain order and dignity in restrooms, locker rooms, showers
7 and other facilities where students may be in various states of undress in
8 the presence of other students.

9 Sec. 4. As used in sections 1 through 7, and amendments thereto:

10 (a) "Sex" means the physical condition of being male or female,
11 which is determined by a person's chromosomes, and is identified at birth
12 by a person's anatomy.

13 (b) "Postsecondary educational institution" shall have the same
14 meaning as that term is defined in K.S.A. 74-3201b, and amendments
15 thereto.

16 (c) "Public school" means a school operated by a unified school
17 district organized under the laws of this state.

18 Sec. 5. (a) (1) Every public school and postsecondary educational
19 institution student restroom, locker room and shower room accessible by
20 multiple students at the same time shall be designated for use by male
21 students only or female students only.

22 (2) In all public schools and postsecondary educational institutions in
23 this state, student restrooms, locker rooms and showers that are designated
24 for one sex shall be used only by members of that sex.

25 (3) In any other public school facility, postsecondary educational
26 institution facility or setting not specified in subsection (a)(2) where a
27 student may be in a state of undress in the presence of other students,
28 school or institution personnel shall provide separate, private areas
29 designated for use by students based on their sex.

30 (b) (1) Students who, for any reason, desire greater privacy when
31 using a public school or postsecondary educational institution restroom,
32 locker room or shower room, and whose parents or legal guardians provide
33 written consent to school or institution officials, may submit a request to
34 such officials for access to alternative facilities. The school or institution
35 official to whom a request is submitted shall evaluate such request and
36 shall, to the extent reasonable, offer options for alternative facilities. In no
37 event shall any accommodation be an access to student restrooms, locker
38 rooms or shower rooms designated for use by students of the opposite sex
39 while students of the opposite sex are present or could be present.

40 (2) Acceptable accommodations may include, but are not limited to:
41 Access to single-stall bathrooms; access to unisex bathrooms; or controlled
42 use of faculty bathrooms, locker rooms or shower rooms.

43 Sec. 6. (a) Students who access a public school or postsecondary

1 educational institution restroom, locker room or shower room designated
2 for use by such student's sex have a right not to encounter a person of the
3 opposite sex.

4 (b) Students who, while accessing a public school or postsecondary
5 educational institution student restroom, locker room or shower room
6 designated for use by such student's sex, encounter a person of the
7 opposite sex, have a private cause of action against the school district or
8 postsecondary educational institution, if:

9 (1) The public school or postsecondary educational institution gave
10 such person of the opposite sex permission to use facilities designated for
11 use by such student's sex; or

12 (2) the public school or postsecondary educational institution failed to
13 take reasonable steps to prohibit such person of the opposite sex from
14 using facilities designated for use by such student's sex.

15 (c) A cause of action brought pursuant to this section shall be brought
16 in either the state district court or the federal district court for the
17 jurisdiction where either the student resides at the time such action is filed,
18 or where the public school or postsecondary educational institution is
19 located.

20 (d) No cause of action may be brought pursuant to this section more
21 than four years after a violation of subsection (b) occurred.

22 (e) Students aggrieved under this section may obtain appropriate
23 relief, which shall include:

24 (1) Statutory damages in an amount of \$2,500 for each instance in
25 which the aggrieved student encountered a person of the opposite sex
26 while accessing a public school or postsecondary educational institution
27 student restroom, locker room or shower room designated for use by the
28 aggrieved student's sex;

29 (2) monetary damages for all psychological, emotional and physical
30 harm suffered as a result of a violation of this section;

31 (3) reasonable attorney fees and costs; and

32 (4) such other relief as the court deems appropriate.

33 Sec. 7. If any provision of sections 1 through 6, and amendments
34 thereto, or its application to any person or circumstance is held invalid, the
35 invalidity shall not affect any other provision or application of sections 1
36 through 6, and amendments thereto, which can be given effect without the
37 invalid provision or application. To this end the provisions of sections 1
38 through 6, and amendments thereto, are severable.

39 Sec. 8. This act shall take effect and be in force from and after its
40 publication in the statute book.