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HAND DELIVERED

November 21, 2016

Filed this 21st day of
November 2016

Shantel Krebs
SECRETARY OF STATE

Hon. Shantel Krebs
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: **Attorney General's Statement for initiated measure (same-sex school facilities)**

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of the initiated measure, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this measure.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsor of the initiated measure pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: Jack Heyd
Jason Hancock, Director of LRC

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure requiring students to use rooms designated for the same biological sex, and requiring public schools to provide a reasonable accommodation for students whose gender identity is not the same as their biological sex.

Explanation:

The initiated measure applies to the use of public elementary and secondary school restrooms, locker rooms, and shower rooms that are accessible by multiple students at the same time. These rooms must be designated for and used only by students of the same biological sex. "Biological sex" means the physical condition of being male or female as determined by a person's chromosomes and anatomy as identified at birth.

In addition, when participating in an off-campus school activity, any public school student needing to undress while in the presence of other students must do so in a room designated for that student's biological sex.

If any student claims that the student's gender identity is different from the student's biological sex, and the student's parent consents in writing, then a public school district must provide the student with a reasonable accommodation. That accommodation cannot include a student restroom, locker room, or shower room in which students of the opposite biological sex are present or could be present. A reasonable accommodation cannot be one that imposes an undue hardship on the school district.

If the measure is approved, it may be challenged in court.

FOR AN ACT ENTITLED, An Act to ensure student privacy in public school restrooms, locker rooms, and showers.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. That chapter 13-24 be amended by adding a NEW SECTION to read:

The term, biological sex, as used in this Act, means the physical condition of being male or female as determined by a person's chromosomes and anatomy as identified at birth.

Section 2. That the code be amended by adding a NEW SECTION to read:

Each restroom, locker room, and shower room located in a public elementary or secondary school that is designated for student use and is accessible by multiple students at the same time shall be designated for and used only by students of the same biological sex. In addition, any public school student participating in a school sponsored activity off school premises that includes being in a state of undress in the presence of other students shall use a room designated for and used only by students of the same biological sex.

Section 3. That the code be amended by adding a NEW SECTION to read:

If any student asserts that the student's gender is different from the student's biological sex and the student's parent or guardian consents to that assertion in writing to a public school administrator or if the student is an adult or an emancipated minor and makes the assertion in writing to a public school administrator, the school district shall provide the student with a reasonable accommodation. A reasonable accommodation is one that does not impose an undue hardship on a school district. A reasonable accommodation may not include the use of any student restroom, locker room, or shower room designated for use by students of the opposite biological sex if students of the opposite biological sex are present or could be present. A reasonable accommodation may include a single-occupancy restroom, a unisex restroom, or the controlled use of a restroom, locker room, or shower room that is designated for use by faculty. The requirement to provide a reasonable accommodation pursuant to this section does not apply to any nonpublic school entity.