

2022 South Dakota Legislature

House Bill 1005**AMENDMENT 1005A FOR THE INTRODUCED BILL**

1 **An Act to provide for the designated use of public school multi-occupancy rooms**
2 **and sleeping rooms.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That chapter 13-32 be amended with a NEW SECTION:**

5 As used in this Act, the term, sex, means a person's immutable, biological sex, as
6 determined by the person's genetics and anatomy existing at the time of the person's
7 birth.

8 **Section 2. That chapter 13-32 be amended with a NEW SECTION:**

9 The school administrator shall designate any multi-occupancy shower room,
10 changing room, or rest room, located in a public school, for use exclusively by members
11 of the same sex.

12 If any student is unable or unwilling, for any reason, to use a multi-occupancy
13 shower room, changing room, or rest room, in accordance with the designation set forth
14 in this section, the student may file, with the school administrator, a request for a
15 reasonable accommodation.

16 For purposes of this section, a reasonable accommodation includes access to a
17 single-occupancy shower room, changing room, or rest room, but does not include access
18 to a multi-occupancy shower room, changing room, or rest room, which has been
19 designated for the exclusive use of members of the opposite sex.

20 A reasonable accommodation granted under this section must be for a stated
21 period of time and may not exceed the conclusion of the annual school calendar.

22 **Section 3. That chapter 13-32 be amended with a NEW SECTION:**

1 Any student who requested a reasonable accommodation in accordance with
2 section 2, and was denied such by the school administrator, may appeal the decision to
3 the superintendent of the school district and thereafter to the board of the district.

4 Any student aggrieved by a decision of the board may appeal to the circuit court,
5 as provided in chapter 13-46.

6 **Section 4. That chapter 13-32 be amended with a NEW SECTION:**

7 A student has a private cause of action against a school district if:

8 (1) The student encounters a member of the opposite sex in a multi-occupancy shower
9 room, changing room, or rest room, which:

10 (a) Is in a public school building; and

11 (b) Has been designated for exclusive use by members of the student 's sex,
12 as provided in section 2 of this Act; and

13 (2) (a) An employee of the district gave the member of the opposite sex express
14 permission to use the shower room, changing room, or rest room; or

15 (b) The use was permitted in accordance with a school district policy.

16 Any action under this section must be commenced within two years from the date
17 of the encounter.

18 Any student who prevails in an action under this section is entitled to recover
19 economic and noneconomic damages, together with costs and reasonable attorney's fees.

20 **Section 5. That chapter 13-32 be amended with a NEW SECTION:**

21 If a school district sponsors or sanctions any event that requires students to be
22 provided with overnight sleeping accommodations, the school administrator shall
23 designate each multi-occupancy room used for such purpose as being for use exclusively
24 by members of the same sex, and shall assign students accordingly.

25 If any student is unable or unwilling, for any reason, to use a multi-occupancy
26 room for overnight sleeping accommodations, in accordance with the designation set forth
27 in this section, that student may file, with the school administrator, a request for a
28 reasonable accommodation. For purposes of this section, a reasonable accommodation
29 includes assigning the student to a single room for overnight sleeping accommodations.

30 Nothing in this section precludes the use of a room for overnight accommodations
31 by members of the same immediate family.

32 **Section 6. That chapter 13-32 be amended with a NEW SECTION:**

1 Any student who requested a reasonable accommodation in accordance with
2 section 5 of this Act and was denied such by the school administrator may appeal the
3 decision to the superintendent of the school district and thereafter to the board of the
4 district.

5 Any student aggrieved by a decision of the board may appeal to the circuit court,
6 as provided in chapter 13-46.

7 **Section 7. That chapter 13-32 be amended with a NEW SECTION:**

8 A student has a private cause of action against a school district if an employee of
9 the district expressly permits a student of the opposite sex to utilize, for overnight sleeping
10 accommodations, a room that has been designated for use exclusively by members of the
11 same sex.

12 Any action under this section must be commenced within two years from the date
13 of the utilization.

14 Any student who prevails in an action under this section is entitled to recover
15 economic and noneconomic damages, together with costs and reasonable attorney's fees.

16 **Section 8. That chapter 13-32 be amended with a NEW SECTION:**

17 Nothing in this Act prohibits the accommodation of persons protected under the
18 Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq. or the
19 Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, or the rendering of physical
20 assistance to younger children.

21 **Section 9. That chapter 13-32 be amended with a NEW SECTION:**

22 If a lawsuit is brought or a complaint is filed against a school district, an employee
23 of a school district, the board of a school district, or a board member, as a result of the
24 district implementing sections 2, 3, 5, or 6 of this Act, the attorney general shall provide
25 legal representation, at no cost to the school district, employee, board, or board member.

26 In addition to the expenses of representation, the state shall assume financial
27 responsibility for any other related expenses incurred by the school district, an employee,
28 the board, or a board member, including any award for monetary damages, attorney's
29 fees, and costs for which the school district, an employee, the board, or a board member
30 would be otherwise responsible.

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AMENDMENT