

2025 South Dakota Legislature

House Bill 1259**AMENDMENT 1259I
FOR THE SENATE STATE AFFAIRS ENGROSSED BILL**

1 **An Act to prohibit unauthorized access to certain multi-occupancy rooms.**

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

3 **Section 1. That a NEW SECTION be added to chapter 13-32:**

4 Terms used in sections 1 to 5, inclusive of this Act mean:

5 (1) "Changing room," a room or area in which an individual may be in a state of
6 undress in the presence of others, including a multi-occupancy locker room or
7 shower room;

8 (2) "Female," an individual who naturally has, had, will have, or would have, but for a
9 congenital anomaly or intentional or unintentional disruption, the reproductive
10 system that produces, transports, and utilizes eggs for fertilization;

11 (3) "Male," an individual who naturally has, had, will have, or would have, but for a
12 congenital anomaly or intentional or unintentional disruption, the reproductive
13 system that produces, transports, and utilizes sperm for fertilization;

14 (4) "Public school," a school under the authority of the board of a school district;

15 (5) "Reasonable accommodation," access to:

16 (a) A unisex or family room; or

17 (b) A single-occupancy changing room or restroom which has been designated
18 for employees of the district, provided the room is not available to the
19 employees while being used by the student; and

20 (6) "Restroom," a room that includes one or more toilets or urinals;

21 (7) "Sleeping quarters," a room that contains a bed and in which more than one
22 individual is housed overnight;

23 (8) "Sex," an individual's biological sex, either male or female; and

24 (9) "Unisex or family room," a changing room or restroom that:

25 (a) Is intended for use by a single occupant, a single occupant and the
26 occupant's caregiver, or members of the same family;

- 1 (b) Is enclosed by means of floor-to-ceiling walls; and
2 (c) Is accessible by means of a full door, with a secure lock that prevents entry
3 by another individual while the room is in use.

4 **Section 2. That a NEW SECTION be added to chapter 13-32:**

5 A public school must designate any multi-occupancy changing room, restroom, or
6 sleeping quarters rented by the public school for use exclusively by females or for use
7 exclusively by males.

8 If any student is unable or unwilling to use a multi-occupancy changing room,
9 restroom, or sleeping quarters, in accordance with the designation set forth in this section,
10 and the student, or the student's parent in the case of a student under the age of eighteen,
11 files a written notice with the administrator of the school, the administrator may grant a
12 request for a reasonable accommodation.

13 A reasonable accommodation granted under this section must be for a stated
14 period of time and may not:

- 15 (1) Exceed the conclusion of the school year; or
16 (2) Include access to a facility designated for use exclusively by members of the
17 opposite sex.

18 **Section 3. That a NEW SECTION be added to chapter 13-32:**

19 A male may not enter a changing room or restroom designated exclusively for
20 females.

21 A female may not enter a changing room or restroom designated exclusively for
22 males.

23 A public school must take reasonable steps to provide individuals with privacy in
24 changing rooms, restrooms, and sleeping quarters by designating each as available for
25 use exclusively by female students or for use exclusively by male students.

26 The prohibitions set forth in this section do not apply to:

- 27 (1) The accommodation of an individual protected under the Americans with
28 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (January 1, 2025) or the
29 Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq. (January 1, 2025);
30 (2) An individual who accompanies a student requiring assistance because of age;
31 (3) A law enforcement officer, fire official, or employee of the district, acting in an
32 official capacity;
33 (4) An individual providing emergency medical assistance; or

1 (5) An individual providing custodial, maintenance, or inspection services, provided the
2 changing room or restroom is unoccupied.

3 **~~Section 4. That a NEW SECTION be added to chapter 13-32:~~**

4 ~~Any multi-occupancy changing room or restroom that is located in a public school~~
5 ~~and normally reserved for use by employees of the district is governed by the provisions~~
6 ~~of sections 6 to 9, inclusive, of this Act.~~

7 **Section 4. That a NEW SECTION be added to chapter 13-32:**

8 If a public school sponsors or sanctions any event that requires students to be
9 provided with changing rooms or sleeping quarters, the school must designate all multi-
10 occupancy changing rooms and sleeping quarters as being for use exclusively by females
11 or exclusively by males. A student may not be required to share sleeping quarters with a
12 member of the opposite sex, unless the individuals are members of the same family.

13 In any other setting in a public school where an individual may be in a state of
14 undress in the presence of others, the school must provide separate, private areas
15 designated for use by individuals based on the individual's sex. Except as otherwise
16 provided in section 3 of this Act, no individual may enter private areas unless the individual
17 is a member of the designated sex.

18 If a student is unable or unwilling to use a room for overnight sleeping quarters, in
19 accordance with the exclusive designation set forth in this section, that student, or the
20 student's parent in the case of a student under the age of eighteen, may file, with the
21 school administrator, a request to be reassigned to single-occupancy room.

22 An individual who encounters a member of the opposite sex in a restroom or
23 changing room while making use of a restroom or changing room designated by the public
24 school for use by the individual's sex, has a private cause of action for declaratory and
25 injunctive relief against the school district that:

26 (1) Provided the member of the opposite sex permission to use a restroom or changing
27 room of the individual's sex; or

28 (2) Failed to take reasonable steps to prohibit the member of the opposite sex from
29 using the restroom or changing room of the individual's sex.

30 An individual who is assigned by a public school to share sleeping quarters with an
31 individual of the opposite sex has a private cause of action for declaratory and injunctive
32 relief against the school district.

1 Any civil action brought pursuant to this section must be initiated within two years
 2 of the violation. An individual who is aggrieved under this section and prevails in court
 3 may recover reasonable attorney fees and costs from the offending school district.

4 **Section 5. That a NEW SECTION be added to chapter 13-32:**

5 In any lawsuit or complaint filed against a school district, an employee of a school
 6 district, the board of a school district, or a member of the board as a result of a school
 7 district prohibiting unauthorized access to certain multi-occupancy rooms in accordance
 8 with sections 1 to 4, inclusive, of this Act, the attorney general shall provide legal
 9 representation to the district, employee, board, or member of the board.

10 In addition to the expenses of representation, the state shall assume financial
 11 responsibility for any other related expense incurred by the district, employee, board, or
 12 member of the board, including any award for monetary damages, attorney's fees, or
 13 costs for which the district, employee, board, or member of the board would be otherwise
 14 responsible.

15 **Section 6. That a NEW SECTION be added to chapter 20-13:**

16 Terms used in sections 6 to 9, inclusive, of this Act mean:

17 (1) "Changing room," a room or area in which an individual may be in a state of
 18 undress in the presence of others, including a multi-occupancy locker room or
 19 shower room;

20 (2) "Female," an individual who naturally has, had, will have, or would have had, but
 21 for a congenital anomaly or intentional or unintentional disruption, the reproductive
 22 system that produces, transports, and utilizes eggs for fertilization;

23 (3) "Male," an individual who naturally has, had, will have, or would have had, but for
 24 a congenital anomaly or intentional or unintentional disruption, the reproductive
 25 system that produces, transports, and utilizes sperm for fertilization;

26 (4) "Restroom," a room that includes at least one toilet or urinal;

27 (5) "Sleeping quarters," a room that contains a bed and in which more than one
 28 individual is housed overnight;

29 (6) "Sex," an individual's biological sex, either male or female; and

30 (7) "Unisex or family room," a changing room or restroom that:

31 (a) Is intended for use by a single occupant, a single occupant and the
 32 occupant's caregiver, or members of the same family;

33 (b) Is enclosed by means of floor to ceiling walls; and

1 ~~(c) — Is accessible by means of a full door, with a secure lock that prevents entry~~
2 ~~by another individual while the room is in use.~~

3 **Section 7. That a NEW SECTION be added to chapter 20-13:**

4 ~~Except as otherwise provided in sections 2 and 3 of this Act, any multi-occupancy~~
5 ~~changing room, restroom, or sleeping quarters in a building or facility owned or leased by~~
6 ~~the state or by a political subdivision of this state must be designated for the exclusive~~
7 ~~use of females or males.~~

8 **Section 8. That a NEW SECTION be added to chapter 20-13:**

9 ~~Except as otherwise provided in section 9 of this Act, a male may not enter a~~
10 ~~changing room or restroom designated exclusively for females.~~

11 ~~Except as otherwise provided in section 9 of this Act, a female may not enter a~~
12 ~~changing room or restroom designated exclusively for males.~~

13 ~~The state or a political subdivision shall take reasonable steps to provide an~~
14 ~~individual with privacy from a member of the opposite sex, in restrooms, changing rooms,~~
15 ~~and sleeping quarters in any building or facility owned or operated by the state or the~~
16 ~~political subdivision.~~

17 ~~An individual who encounters a member of the opposite sex in a restroom or~~
18 ~~changing room while making use of a restroom or changing room designated for use by~~
19 ~~the individual's sex, has a private cause of action for declaratory and injunctive relief~~
20 ~~against the state or political subdivision that:~~

21 ~~(1) — Provided the member of the opposite sex permission to use the restroom or~~
22 ~~changing room of the individual's sex; or~~

23 ~~(2) — Failed to take reasonable steps to prohibit the member of the opposite sex from~~
24 ~~using the restroom or changing room of the individual's sex.~~

25 ~~An individual who is assigned by the state or a political subdivision to share sleeping~~
26 ~~quarters with an individual of the opposite sex has a private cause of action for declaratory~~
27 ~~and injunctive relief against the state or political subdivision.~~

28 ~~Any civil action brought pursuant to this section must be initiated within two years~~
29 ~~of the violation. An individual who is aggrieved under this section and prevails in court~~
30 ~~may recover reasonable attorney fees and costs from the state or offending political~~
31 ~~subdivision.~~

32 **Section 9. That a NEW SECTION be added to chapter 20-13:**

- 1 ~~The prohibitions set forth in section 8 of this Act do not apply to:~~
- 2 ~~(1) — An individual who accompanies a child under the age of ten, if the individual is the~~
- 3 ~~child's parent or lawful chaperone;~~
- 4 ~~(2) — An individual who accompanies another individual requiring assistance because of~~
- 5 ~~age or a disability;~~
- 6 ~~(3) — A law enforcement officer or fire official acting in an official capacity;~~
- 7 ~~(4) — An individual providing emergency medical assistance; or~~
- 8 ~~(5) — An individual providing custodial, maintenance, or inspection services, provided the~~
- 9 ~~changing room or restroom is unoccupied.~~