

## REVISED BALLOT LANGUAGE FOR INITIATIVE NO. 183 (I-183)

### INITIATIVE NO. 183

#### A LAW PROPOSED BY INITIATIVE PETITION

I-183 requires all state and local government entities, including schools and universities, to designate “protected facilities” in government buildings – such as locker rooms, changing rooms, restrooms, and shower rooms – for use by members of only one sex. It defines “sex” as “a person’s immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth.” A person may not use protected facilities that are not designated for that person’s sex. The government may provide an accommodation, such as single occupancy facilities, for special circumstances upon request. The measure requires the government to “ensure that each protected facility provides privacy from persons of the opposite sex.” It authorizes people to sue governmental entities and recover monetary damages for violations.

The State of Montana will spend an estimated \$545,699 in general fund money in the first four years to renovate facilities and provide proper signage for protected facilities. Long-term costs and legal fees for state and local governments, K-12 schools, and universities could be substantial, but are uncertain.

YES ON INITIATIVE I-183

NO ON INITIATIVE I-183

## THE COMPLETE TEXT OF INITIATIVE NO. 183 (I-183)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

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

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

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

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

- (1) "Changing facility" means a facility in which a person may be in a state of undress in the presence of others, including but not limited to a locker room, changing room, or shower room.
- (2) "Government building" means a building or structure that is owned, leased, or otherwise under the control of a governmental entity.
- (3) "Governmental entity" means:
  - (a) the state or any political subdivision of the state;
  - (b) a county, city, town, or consolidated government;
  - (c) school district as defined in 20-4-502 or school as defined in 20-6-501; or
  - (d) a public institution of higher education.
- (4) "Locker room" has the same meaning as "changing facility".
- (5) "Protected facility" means a changing facility, locker room, restroom, or shower room that is located in a government building or that is controlled by a governmental entity.
- (6) "Restroom" means a facility that includes one or more toilets or urinals.
- (7) "Sex" means a person's immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth. Evidence of a person's biological sex includes but is not limited to any government-issued identification document that accurately reflects a person's sex listed on the person's original birth certificate.
- (8) "Shower room" means an area with an apparatus that provides a shower of the body for use by more than one person at a time.

NEW SECTION. **Section 4. Protection of physical privacy -- protected facilities.** (1) A protected facility that is accessible by multiple persons at the same time must be designated for use only by members of one sex. A protected facility that is designated for one sex may be used only by members of that sex. The governmental entity that controls the protected facility shall ensure that each protected facility provides privacy from persons of the opposite sex.

(2) Subsection (1) does not apply to a person who enters a protected facility designated for the opposite sex:

- (a) for custodial or maintenance purposes when the restroom or changing facility is not occupied by a person of the opposite sex;

- (b) to render medical assistance;
  - (c) during a natural disaster or emergency or when necessary to prevent a serious threat to good order or safety;
  - (d) during an event when a locker room may temporarily be used by a visiting athletic team that includes persons who are not members of the sex for which the locker room is normally designated; or
  - (e) during the performance of that person's official duties as an employee of any government agency.
- (3) Nothing in this section may be construed to prohibit a governmental entity from:
- (a) adopting a policy necessary to accommodate a disabled person in need of physical assistance or a minor in need of physical assistance when using a protected facility; or
  - (b) providing an accommodation such as a single occupancy restroom or changing facility upon a person's request due to a special circumstance. The accommodation may not provide access to a locker room or other protected facility that is designated for use by a person of the opposite sex while a person of the opposite sex is present or could be present.
- (4) Nothing in this act may be construed to require a governmental entity to:
- (a) employ any technology except for posting signs to ensure that a protected facility provides privacy from persons of the opposite sex;
  - (b) alter any existing signs that meet the requirements in [section 5(1)(c)]; or
  - (c) maintain any staff stationed in or near a protected facility.

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

- (a) the governmental entity gave the person of the opposite sex permission to use the protected facility;
  - (b) the governmental entity failed to take reasonable steps to prohibit a person of the opposite sex from using the protected facility; or
  - (c) the governmental entity failed to post signs indicating which sex may use the protected facility. Signs sufficient to comply with [sections 1 through 5] include the word "men" or "women," graphical representations of the word "men" or "women", or similar text.
- (2) An action under this section may be filed in the district court of the county in which the person initiating the action resides.
- (3) If a person prevails against a governmental entity under this section, the person may recover:
- (a) compensatory damages for all emotional or mental distress;
  - (b) reasonable attorney fees and costs; and
  - (c) any other relief the court considers appropriate.
- (4) An action under this section must be commenced within 1 year of the date on which the violation of this section occurred.
- (5) Nothing in this section limits other remedies at law or equity that may be available to a person who prevails against a governmental entity under this section.

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

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

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

incident to the exercise of an independent self-government power;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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