

## MODEL LEGISLATION

### An Act to Define Sex-Based Terms

#### ***Section 1: Purpose and General Application.***

- A. The purpose of this Act is to bring clarity, certainty, and uniformity to the laws of the State regarding sex discrimination, privacy, equality of the sexes, and benefits or services specifically provided to males/men and to females/women.
- B. This Act shall apply wherever the State or an instrumentality of the State classifies people on the basis of sex or otherwise defines people as being female or male, women or men, girls or boys.

#### ***Section 2: Findings.***

- A. Males and females are legally equal, but they are not the same;
- B. Males and females possess unique and immutable biological differences that manifest prior to birth and increase as they age and experience puberty;
- C. These unique and immutable biological differences mean that females and males are not similarly-situated in all circumstances and are not interchangeable;
- D. Inconsistencies in court rulings and policy initiatives regarding sex discrimination and common sex-based words have endangered women's rights and resources and have put the existence of private, single-sex spaces in jeopardy, thereby necessitating clarification of certain terms used in state code.

#### ***Section 3: Definitions of Terms Used in State Statutes and Administrative Rules.***

- A. As used in this code and/or any administrative rules, regulations, or public policies adopted by the State or its instrumentalities:
  - a. A **“woman”** is an adult human of the female sex, and a **“man”** is an adult human of the male sex;
  - b. A **“girl”** is a human female who is a legal minor under the laws of {STATE}, and a **“boy”** is a human male who is a legal minor under the laws of {STATE} –provided that the use of the term “girl” or “boy” in reference to the participation of a high-school-aged individual in a school or extracurricular program shall not be understood to exclude the participation of a student who is legally an adult;

- c. A “**mother**” is a female parent of a child or children as defined in {STATE} law; a “**father**” is a male parent of a child or children as defined in {STATE} law;
- d. A “**female**,” when this term is used in reference to a natural person, is an individual who naturally has, had, will have through the course of normal development, or would have but for a developmental anomaly, genetic anomaly, or accident the reproductive system that at some point produces ova;
- e. A “**male**,” when this term is used in reference to a natural person, is an individual who naturally has, had, will have through the course of normal development, or would have but for a developmental anomaly, genetic anomaly, or accident the reproductive system that at some point produces sperm;
- f. “**Sex**,” when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female.
  - i. Individuals with congenital and medically verifiable “DSD conditions” (sometimes referred to as “differences in sex development,” “disorders in sex development,” or “intersex conditions”) are not members of a third sex and must be accommodated consistent with state and federal law.
  - ii. “Sex” does not include “gender identity” or any other term intended to convey a person’s subjective sense of self; “gender identity” and other subjective terms are not synonyms or substitutes for “sex.”

#### **Section 4: Replacing Gender with Sex.**

\*This section requires an individualized replacement of “gender” where it is intended to convey sex. Why? Gender is a term that gained currency among feminist theorists in the 1970s as a way to *distinguish* biology from cultural expectations about sex roles. When statutes use “gender” as a synonym for “sex,” it opens the door to bureaucrats and judges treating the two terms alike, both as culturally (rather than biologically) determined.

**For example:** Title XX of the Code of State, relating to motor vehicles and traffic, is amended by revising paragraph (X) of subsection (Y) of Code Section Z, relating to applications, fees, and provisions for voluntary participation in various programs, as follows:

"(2) The department shall make available to procurement organizations information provided for in the Revised Uniform Anatomical Gift Act, including the name, license number, date of birth, ~~gender~~ **sex**, and most recent address of any person who obtains an organ donor driver's license; provided, however, that the ~~gender information~~ **licensee's sex of either male or female** shall be

made available only to a procurement organization if such organization or center has sufficient funds to cover the associated costs of providing such information.”

**Section 5: Severability.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

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