

Kansas Enacts Law Defining ‘Male’ and ‘Female’ Strictly as Sex Assigned at Birth

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On April 27, 2023, the Kansas Legislature overrode Governor Laura Kelly’s veto of Senate Bill (SB) 180, which defines “male” and “female” only by biological sex.

[SB 180](#), described by the Kansas Senate as a “women’s bill of rights,” defines “sex” as “such individual’s biological sex, either male or female, at birth.” The legislation provides no alternative definition for individuals who identify as transgender, nonbinary, gender fluid, or gender nonconforming.

Quick Hits

- SB 180 does not direct individuals which accommodations to use, or prohibit individuals from using their preferred accommodation based on their gender identity.
- All individuals retain protections granted under the U.S. Constitution, particularly given any applicable federal protections and preemption principles (for example, under Title VII of the Civil Rights Act of 1964 and OFCCP regulations).
- The law’s effective date is July 1, 2023.

The Kansas House of Representatives [overrode](#) the governor’s veto by a vote of 84–40, following the Kansas Senate’s 28–12 override vote. The law will take effect on July 1, 2023, when the current legislative session’s acts are [published](#) in the state statute book.

The measure recognizes separate accommodations based on sex, as defined below:

Notwithstanding any provision of state law to the contrary, distinctions between the sexes with respect to athletics, prisons or other detention facilities, domestic violence shelters, rape crisis centers, locker rooms, restrooms and other areas where biology, safety or privacy are implicated that result in separate accommodations are substantially related to the important governmental objectives

of protecting the health, safety and privacy of individuals in such circumstances.

SB 180 also directs public schools and other state entities to identify individuals based on their sex at birth:

Any school district, or public school thereof, and any state agency, department or office or political subdivision that collects vital statistics for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic or other data shall identify each individual who is part of the collected data set as either male or female at birth.

SB 180 also states that individuals “born with a medically verifiable diagnosis of ‘disorder/differences in sex development’ [will] be provided legal protections and accommodations afforded under the Americans with [D]isabilities [A]ct and applicable Kansas statutes.”

While recognizing separate accommodations based on sex, the measure does not direct individuals which accommodations to use, or prohibit individuals from using their preferred accommodation based on their gender identity. Notably, the measure also does not provide a private right of action, create a crime, or impose penalties for noncompliance. It remains to be seen how this new law will be administered, and what impact it will have on the daily lives of Kansans, who retain any applicable federal protections afforded by the Supremacy Clause of the U.S. Constitution—particularly given any applicable federal protections and preemption principles, for example, under Title VII of the Civil Rights Act of 1964 and Office of Federal Contract Compliance Programs (OFCCP) regulations.

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