

85R6551 LED-D

By: Kolkhorst

S.B. No. 6

A BILL TO BE ENTITLED  
AN ACT

relating to regulations and policies for entering or using a bathroom or changing facility; authorizing a civil penalty; increasing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 250, Local Government Code, is amended to read as follows:

CHAPTER 250. MISCELLANEOUS REGULATORY AUTHORITY [~~OF MUNICIPALITIES AND COUNTIES~~]

SECTION 2. Chapter 250, Local Government Code, is amended by adding Section 250.008 to read as follows:

Sec. 250.008. REGULATIONS RELATING TO CERTAIN BATHROOM OR CHANGING FACILITIES PROHIBITED. (a) For the purposes of this section, "bathroom or changing facility" means a facility where a person may be in a state of undress, including a restroom, locker room, changing room, or shower room.

(b) A political subdivision may not adopt or enforce an order, ordinance, or other measure that relates to the designation or use of a private entity's bathroom or changing facility or that requires or prohibits the entity from adopting a policy on the designation or use of the entity's bathroom or changing facility.

SECTION 3. Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.909 to read as follows:

Sec. 271.909. CONSIDERATION OF CERTAIN POLICIES PROHIBITED. (a) For the purposes of this section, "bathroom or changing facility" has the meaning assigned by Section 250.008.

(b) In awarding a contract for the purchase of goods or services, a political subdivision may not consider whether a private entity competing for the contract has adopted a policy relating to the designation or use of the entity's bathroom or changing facility.

SECTION 4. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 769 to read as follows:

CHAPTER 769. PUBLIC SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOMS AND CHANGING FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 769.001. DEFINITIONS. In this chapter:

(1) "Biological sex" means the physical condition of being male or female, which is stated on a person's birth certificate.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "Multiple-occupancy bathroom or changing facility" means a facility designed or designated for use by more than one person at a time, where a person may be in a state of undress in the presence of another person, regardless of whether the facility provides curtains or partial walls for privacy. The term includes a restroom, locker room, changing room, or shower room.

(4) "Open-enrollment charter school" means a school

that has been granted a charter under Subchapter D, Chapter 12, Education Code.

(5) "Political subdivision" means a governmental entity of this state that is not a state agency and includes a county, municipality, special purpose district or authority, and junior college district. The term does not include a school district.

(6) "School district" means any public school district in this state.

(7) "Single-occupancy bathroom or changing facility" means a facility designed or designated for use by only one person at a time, where a person may be in a state of undress, including a single toilet restroom with a locking door that is designed or designated as unisex or for use based on biological sex.

(8) "State agency" means a department, commission, board, office, council, authority, or other agency in the executive, legislative, or judicial branch of state government that is created by the constitution or a statute of this state, including an institution of higher education.

#### SUBCHAPTER B. PUBLIC SCHOOLS

Sec. 769.051. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR CHANGING FACILITY. A school district or open-enrollment charter school shall adopt a policy requiring each multiple-occupancy bathroom or changing facility accessible to students that is located in a school or school facility to be designated for and used only by persons based on the person's biological sex.

Sec. 769.052. ACCOMMODATIONS AUTHORIZED. This subchapter does not prohibit a school district or open-enrollment charter school from providing an accommodation, including a single-occupancy bathroom or changing facility or the controlled use of a faculty bathroom or changing facility, on request due to special circumstances. The school district or open-enrollment charter school may not provide an accommodation that allows a person to use a multiple-occupancy bathroom or changing facility accessible to students that is designated for the biological sex opposite to the person's biological sex.

Sec. 769.053. EXCEPTIONS. A policy adopted under Section 769.051 does not apply to a person entering a multiple-occupancy bathroom or changing facility designated for the biological sex opposite to the person's biological sex:

(1) for a custodial purpose;  
(2) for a maintenance or inspection purpose;  
(3) to render medical or other emergency assistance;  
(4) to accompany a student needing assistance in using the facility, if the assisting person is:

(A) an employee or authorized volunteer of the school district or open-enrollment charter school; or

(B) the student's parent, guardian, conservator, or authorized caregiver;

(5) to accompany a person other than a student needing assistance in using the facility; or

(6) to receive assistance in using the facility.

#### SUBCHAPTER C. PUBLIC BUILDINGS

Sec. 769.101. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR CHANGING FACILITY. A political subdivision or state agency with control over multiple-occupancy bathrooms or changing facilities in a building owned or leased by this state or the political

subdivision, as applicable, shall develop a policy requiring each multiple-occupancy bathroom or changing facility located in the building to be designated for and used only by persons of the same biological sex.

Sec. 769.102. ACCOMMODATIONS AUTHORIZED. This subchapter does not prohibit a political subdivision or state agency from providing an accommodation, including a single-occupancy bathroom or changing facility, on request due to special circumstances. The political subdivision or state agency may not provide an accommodation that allows a person to use a multiple-occupancy bathroom or changing facility designated for the biological sex opposite to the person's biological sex.

Sec. 769.103. PRIVATE LEASES AND CONTRACTS. A private entity that leases or contracts to use a building owned or leased by this state or a political subdivision is not subject to a policy developed under Section 769.101. A state agency or political subdivision may not require or prohibit a private entity that leases or contracts to use a building owned or leased by this state or a political subdivision from adopting a policy on the designation or use of bathroom or changing facilities located in the building.

Sec. 769.104. EXCEPTIONS. A policy developed under Section 769.101 does not apply to:

(1) a person entering a multiple-occupancy bathroom or changing facility designated for the biological sex opposite to the person's biological sex:

- (A) for a custodial purpose;
- (B) for a maintenance or inspection purpose;
- (C) to render medical or other emergency

assistance;

(D) to accompany a person needing assistance in using the facility; or

- (E) to receive assistance in using the facility;

or

(2) a child who is:

(A) younger than eight years of age entering a multiple-occupancy bathroom or changing facility designated for the biological sex opposite to the child's biological sex; and

- (B) accompanying a person caring for the child.

#### SUBCHAPTER D. ENFORCEMENT

Sec. 769.151. CIVIL PENALTY. (a) A school district, open-enrollment charter school, state agency, or political subdivision that violates this chapter is liable for a civil penalty of:

(1) not less than \$1,000 and not more than \$1,500 for the first violation; and

(2) not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

(b) Each day of a continuing violation of this chapter constitutes a separate violation.

Sec. 769.152. COMPLAINT; NOTICE. (a) A citizen of this state may file a complaint with the attorney general that a school district, open-enrollment charter school, state agency, or political subdivision is in violation of this chapter only if:

(1) the citizen provides the school district, open-enrollment charter school, state agency, or political subdivision a written notice that describes the violation; and

(2) the school district, open-enrollment charter school, state agency, or political subdivision does not cure the violation before the end of the third business day after the date of receiving the written notice.

(b) A complaint filed under this section must include:

(1) a copy of the written notice; and

(2) a signed statement by the citizen describing the violation and indicating that the citizen provided the notice required by this section.

Sec. 769.153. DUTIES OF ATTORNEY GENERAL: INVESTIGATION AND NOTICE. (a) Before bringing a suit against a school district, open-enrollment charter school, state agency, or political subdivision for a violation of this chapter, the attorney general shall investigate a complaint filed under Section 769.152 to determine whether legal action is warranted.

(b) If the attorney general determines that legal action is warranted, the attorney general shall provide the appropriate officer of the school district, open-enrollment charter school, state agency, or political subdivision charged with the violation a written notice that:

(1) describes the violation and location of the bathroom or changing facility found to be in violation;

(2) states the amount of the proposed penalty for the violation; and

(3) requires the school district, open-enrollment charter school, state agency, or political subdivision to cure the violation on or before the 15th day after the date the notice is received to avoid the penalty, unless the school district, open-enrollment charter school, state agency, or political subdivision was found liable by a court for previously violating this chapter.

Sec. 769.154. COLLECTION OF CIVIL PENALTY; MANDAMUS. (a) If, after receipt of notice under Section 769.153(b), the school district, open-enrollment charter school, state agency, or political subdivision has not cured the violation on or before the 15th day after the date the notice is provided under Section 769.153(b)(3), the attorney general may sue to collect the civil penalty provided by Section 769.151.

(b) In addition to filing suit under Subsection (a), the attorney general may also file a petition for a writ of mandamus or apply for other appropriate equitable relief.

(c) A suit or petition under this section may be filed in a district court in:

(1) Travis County; or

(2) a county in which the principal office of the school district, open-enrollment charter school, state agency, or political subdivision is located.

(d) The attorney general may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(e) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter B, Chapter 56, Code of Criminal Procedure.

Sec. 769.155. SOVEREIGN IMMUNITY WAIVED. Sovereign immunity to suit is waived and abolished to the extent of liability

created by this subchapter.

SECTION 5. Subchapter D, Chapter 12, Penal Code, is amended by adding Section 12.501 to read as follows:

Sec. 12.501. PENALTY IF OFFENSE COMMITTED ON PREMISES OF BATHROOM OR CHANGING FACILITY. (a) If it is shown on the trial of an offense described by Subsection (b) that the offense was committed on the premises of a bathroom or changing facility:

(1) the punishment for an offense, other than a first degree felony, is increased to the punishment prescribed for the next higher category of offense; or

(2) if the offense is a first degree felony, the minimum term of confinement for the offense is increased to 15 years.

(b) The increase in punishment authorized by this section applies only to an offense under:

(1) Section 19.02 (murder);

(2) Section 19.04 (manslaughter);

(3) Section 19.05 (criminally negligent homicide);

(4) Section 20.02 (unlawful restraint);

(5) Section 20.03 (kidnapping);

(6) Section 20.04 (aggravated kidnapping);

(7) Section 21.07 (public lewdness);

(8) Section 21.08 (indecent exposure);

(9) Section 21.11 (indecent with a child);

(10) Section 21.12 (improper relationship between educator and student);

(11) Section 21.15(b)(1) (invasive visual recording);

(12) Section 21.16, as added by Chapter 676 (H.B. 207), Acts of the 84th Legislature, Regular Session, 2015 (voyeurism);

(13) Section 22.01 (assault);

(14) Section 22.011 (sexual assault);

(15) Section 22.02 (aggravated assault);

(16) Section 22.021 (aggravated sexual assault);

(17) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(18) Section 22.041 (abandoning or endangering child);

(19) Section 22.05 (deadly conduct);

(20) Section 22.07 (terroristic threat);

(21) Section 30.05 (criminal trespass);

(22) Section 42.07 (harassment);

(23) Section 43.02 (prostitution);

(24) Section 43.03 (promotion of prostitution);

(25) Section 43.04 (aggravated promotion of prostitution);

(26) Section 43.05 (compelling prostitution);

(27) Section 43.22 (obscene display or distribution);

(28) Section 43.23 (obscenity);

(29) Section 43.24 (sale, distribution, or display of harmful material to minor);

(30) Section 43.25 (sexual performance by a child);

(31) Section 43.26 (possession or promotion of child pornography); or

(32) Section 43.261 (electronic transmission of certain visual material depicting minor).

(c) For the purposes of this section, "bathroom or changing

facility" means a facility where a person may be in a state of undress, including a restroom, locker room, changing room, or shower room.

SECTION 6. It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act to each person or entity, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected.

SECTION 7. Section 250.008, Local Government Code, as added by this Act, applies to an order, ordinance, or other measure adopted before, on, or after the effective date of this Act.

SECTION 8. Section 271.909, Local Government Code, as added by this Act, applies only to a contract awarded on or after the effective date of this Act.

SECTION 9. Section 12.501, Penal Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 10. This Act takes effect September 1, 2017.