

By: Kolkhorst, et al.

S.B. No. 6

A BILL TO BE ENTITLED

1 AN ACT
2 relating to regulations and policies for entering or using a
3 bathroom or changing facility; authorizing a civil penalty.

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

5 SECTION 1. LEGISLATIVE FINDINGS; PURPOSE. The legislature
6 finds that:

7 (1) in an effort to comply with the legislature's duty
8 under Section 1, Article VII, Texas Constitution, to provide for
9 the general diffusion of knowledge and an efficient system of
10 public schools, potentially harmful and distracting environments
11 should be barred;

12 (2) the federal government's mandate requiring Texas
13 public schools to provide students access to restrooms, showers,
14 and dressing rooms based on an individual student's internal sense
15 of gender is alarming and could potentially lead to boys and girls
16 showering together and using the same restroom should such guidance
17 be followed;

18 (3) children receiving an education in Texas public
19 schools and open-enrollment charter schools are entitled to a safe
20 and secure learning environment, including when using intimate
21 facilities controlled by a school; and

22 (4) it is the public policy of this state that
23 residents have a reasonable expectation of privacy when using
24 intimate facilities controlled by a school district,

1 open-enrollment charter school, state agency, or political
2 subdivision and that protecting the safety, welfare, and well-being
3 of children in public schools, children in open-enrollment charter
4 schools, and all Texas residents in intimate facilities controlled
5 by state agencies or political subdivisions is of the utmost
6 priority and moral obligation of this state.

7 SECTION 2. The heading to Chapter 250, Local Government
8 Code, is amended to read as follows:

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

11 SECTION 3. Chapter 250, Local Government Code, is amended
12 by adding Section 250.008 to read as follows:

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

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

24 SECTION 4. Subchapter Z, Chapter 271, Local Government
25 Code, is amended by adding Section 271.909 to read as follows:

26 Sec. 271.909. CONSIDERATION OF CERTAIN POLICIES
27 PROHIBITED. (a) For the purposes of this section, "bathroom or

1 changing facility" has the meaning assigned by Section 250.008.

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

7 SECTION 5. Subtitle A, Title 9, Health and Safety Code, is
8 amended by adding Chapter 769 to read as follows:

9 CHAPTER 769. PUBLIC SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOMS AND

10 CHANGING FACILITIES

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 769.001. DEFINITIONS. In this chapter:

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

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

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

25 (4) "Open-enrollment charter school" means a school
26 that has been granted a charter under Subchapter D, Chapter 12,
27 Education Code.

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

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

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

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

18 SUBCHAPTER B. PUBLIC SCHOOLS

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

25 Sec. 769.052. ACCOMMODATIONS AUTHORIZED. This subchapter
26 does not prohibit a school district or open-enrollment charter
27 school from providing an accommodation, including a

1 single-occupancy bathroom or changing facility or the controlled
2 use of a faculty bathroom or changing facility, on request due to
3 special circumstances. The school district or open-enrollment
4 charter school may not provide an accommodation that allows a
5 person to use a multiple-occupancy bathroom or changing facility
6 accessible to students that is designated for the biological sex
7 opposite to the person's biological sex.

8 Sec. 769.0525. PRIVATE LEASES AND CONTRACTS. A private
9 entity that leases or contracts to use a building owned or leased by
10 a school district or open-enrollment charter school is not subject
11 to Section 769.051. A school district or open-enrollment charter
12 school may not require the private entity to adopt, or prohibit the
13 private entity from adopting, a policy on the designation or use of
14 bathrooms or changing facilities located in the building.

15 Sec. 769.053. EXCEPTIONS. A designation of a
16 multiple-occupancy bathroom or changing facility under Section
17 769.051 does not apply to a person entering a multiple-occupancy
18 bathroom or changing facility designated for the biological sex
19 opposite to the person's biological sex:

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

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

27 (B) the student's parent, guardian, conservator,

1 or authorized caregiver;

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

4 (6) to receive assistance in using the facility.

5 Sec. 769.054. CONSIDERATION OF CERTAIN POLICIES
6 PROHIBITED. In awarding a contract for the purchase of goods or
7 services, a school district or open-enrollment charter school may
8 not consider whether a private entity competing for the contract
9 has adopted a policy relating to the designation or use of the
10 entity's bathrooms or changing facilities.

11 SUBCHAPTER C. PUBLIC BUILDINGS

12 Sec. 769.101. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR
13 CHANGING FACILITY. A political subdivision or state agency with
14 control over multiple-occupancy bathrooms or changing facilities
15 in a building owned or leased by this state or the political
16 subdivision, as applicable, shall require that each
17 multiple-occupancy bathroom or changing facility located in the
18 building be designated for and used only by persons of the same
19 biological sex.

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

1 Sec. 769.103. PRIVATE LEASES AND CONTRACTS. A private
2 entity that leases or contracts to use a building owned or leased by
3 this state or a political subdivision is not subject to Section
4 769.101. A state agency or political subdivision may not require
5 the private entity to adopt, or prohibit the private entity from
6 adopting, a policy on the designation or use of bathrooms or
7 changing facilities located in the building.

8 Sec. 769.104. EXCEPTIONS. A designation of a
9 multiple-occupancy bathroom or changing facility under Section
10 769.101 does not apply to:

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

14 (A) for a custodial purpose;

15 (B) for a maintenance or inspection purpose;

16 (C) to render medical or other emergency
17 assistance;

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

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

21 or

22 (2) a child who is:

23 (A) younger than 10 years of age entering a
24 multiple-occupancy bathroom or changing facility designated for
25 the biological sex opposite to the child's biological sex; and

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

27 Sec. 769.105. CONSIDERATION OF CERTAIN POLICIES

1 PROHIBITED. In awarding a contract for the purchase of goods or
2 services, a political subdivision or state agency may not consider
3 whether a private entity competing for the contract has adopted a
4 policy relating to the designation or use of the entity's bathrooms
5 or changing facilities.

6 SUBCHAPTER D. ENFORCEMENT

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

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

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

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

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

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

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

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

2 (1) a copy of the written notice; and

3 (2) the citizen's sworn statement or affidavit
4 describing the violation and indicating that the citizen provided
5 the notice required by this section.

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

12 (b) The school district, open-enrollment charter school,
13 state agency, or political subdivision that is the subject of the
14 complaint shall provide to the attorney general any information the
15 attorney general requests in connection with the complaint,
16 including:

17 (1) supporting documents related to the complaint; and

18 (2) a statement regarding whether the entity has
19 complied or intends to comply with this chapter.

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

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

27 (2) states the amount of the proposed penalty for the

1 violation; and

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

9 Sec. 769.154. COLLECTION OF CIVIL PENALTY; MANDAMUS.

10 (a) If, after receipt of notice under Section 769.153(c), the
11 school district, open-enrollment charter school, state agency, or
12 political subdivision has not cured the violation on or before the
13 15th day after the date the notice is provided under Section
14 769.153(c)(3), the attorney general may sue to collect the civil
15 penalty provided by Section 769.151.

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

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

21 (1) Travis County; or

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

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

1 fees, and deposition costs.

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

6 Sec. 769.155. NO CAUSE OF ACTION. (a) A school district,
7 open-enrollment charter school, state agency, or political
8 subdivision does not have any cause of action related to compliance
9 with this chapter.

10 (b) A court of this state does not have jurisdiction over a
11 cause of action related to compliance with this chapter brought by a
12 school district, open-enrollment charter school, state agency, or
13 political subdivision.

14 (c) On the motion of any party or the court's own motion, a
15 court shall dismiss a cause of action related to compliance with
16 this chapter brought by a school district, open-enrollment charter
17 school, state agency, or political subdivision.

18 (d) This section does not prohibit a suit or petition by the
19 attorney general under Section 769.154.

20 Sec. 769.156. SOVEREIGN IMMUNITY WAIVED. Sovereign
21 immunity to suit is waived and abolished to the extent of liability
22 created by this subchapter.

23 SECTION 6. It is the intent of the legislature that every
24 provision, section, subsection, sentence, clause, phrase, or word
25 in this Act, and every application of the provisions in this Act to
26 each person or entity, are severable from each other. If any
27 application of any provision in this Act to any person, group of

1 persons, or circumstances is found by a court to be invalid for any
2 reason, the remaining applications of that provision to all other
3 persons and circumstances shall be severed and may not be affected.

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

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

10 SECTION 9. This Act takes effect September 1, 2017.