

By: Kolkhorst

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 increasing criminal penalties.

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

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

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

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

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

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

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

24 Sec. 271.909. CONSIDERATION OF CERTAIN POLICIES

1 PROHIBITED. (a) For the purposes of this section, "bathroom or
2 changing facility" has the meaning assigned by Section 250.008.

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

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

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

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 769.001. DEFINITIONS. In this chapter:

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

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

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

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

1 Education Code.

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

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

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

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

19 SUBCHAPTER B. PUBLIC SCHOOLS

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

26 Sec. 769.052. ACCOMMODATIONS AUTHORIZED. This subchapter
27 does not prohibit a school district or open-enrollment charter

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

9 Sec. 769.053. EXCEPTIONS. A policy adopted under Section
10 769.051 does not apply to a person entering a multiple-occupancy
11 bathroom or changing facility designated for the biological sex
12 opposite to the person's biological sex:

13 (1) for a custodial purpose;

14 (2) for a maintenance or inspection purpose;

15 (3) to render medical or other emergency assistance;

16 (4) to accompany a student needing assistance in using
17 the facility, if the assisting person is:

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

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

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

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

25 SUBCHAPTER C. PUBLIC BUILDINGS

26 Sec. 769.101. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR
27 CHANGING FACILITY. A political subdivision or state agency with

1 control over multiple-occupancy bathrooms or changing facilities
2 in a building owned or leased by this state or the political
3 subdivision, as applicable, shall develop a policy requiring each
4 multiple-occupancy bathroom or changing facility located in the
5 building to be designated for and used only by persons of the same
6 biological sex.

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

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

24 Sec. 769.104. EXCEPTIONS. A policy developed under Section
25 769.101 does not apply to:

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

1 person's biological sex:

2 (A) for a custodial purpose;

3 (B) for a maintenance or inspection purpose;

4 (C) to render medical or other emergency
5 assistance;

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

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

9 or

10 (2) a child who is:

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

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

15 SUBCHAPTER D. ENFORCEMENT

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

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

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

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

26 Sec. 769.152. COMPLAINT; NOTICE. (a) A citizen of this
27 state may file a complaint with the attorney general that a school

1 district, open-enrollment charter school, state agency, or
2 political subdivision is in violation of this chapter only if:

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

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

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

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

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

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

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

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

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

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

10 Sec. 769.154. COLLECTION OF CIVIL PENALTY; MANDAMUS. (a)
11 If, after receipt of notice under Section 769.153(b), the school
12 district, open-enrollment charter school, state agency, or
13 political subdivision has not cured the violation on or before the
14 15th day after the date the notice is provided under Section
15 769.153(b)(3), the attorney general may sue to collect the civil
16 penalty provided by Section 769.151.

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

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

22 (1) Travis County; or

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

26 (d) The attorney general may recover reasonable expenses
27 incurred in obtaining relief under this section, including court

1 costs, reasonable attorney's fees, investigative costs, witness
2 fees, and deposition costs.

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

7 Sec. 769.155. SOVEREIGN IMMUNITY WAIVED. Sovereign
8 immunity to suit is waived and abolished to the extent of liability
9 created by this subchapter.

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

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

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

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

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

24 (1) Section 19.02 (murder);

25 (2) Section 19.04 (manslaughter);

26 (3) Section 19.05 (criminally negligent homicide);

27 (4) Section 20.02 (unlawful restraint);

- 1 (5) Section 20.03 (kidnapping);
- 2 (6) Section 20.04 (aggravated kidnapping);
- 3 (7) Section 21.07 (public lewdness);
- 4 (8) Section 21.08 (indecent exposure);
- 5 (9) Section 21.11 (indecenty with a child);
- 6 (10) Section 21.12 (improper relationship between
7 educator and student);
- 8 (11) Section 21.15(b)(1) (invasive visual recording);
- 9 (12) Section 21.16, as added by Chapter 676 (H.B.
10 207), Acts of the 84th Legislature, Regular Session, 2015
11 (voyeurism);
- 12 (13) Section 22.01 (assault);
- 13 (14) Section 22.011 (sexual assault);
- 14 (15) Section 22.02 (aggravated assault);
- 15 (16) Section 22.021 (aggravated sexual assault);
- 16 (17) Section 22.04 (injury to a child, elderly
17 individual, or disabled individual);
- 18 (18) Section 22.041 (abandoning or endangering
19 child);
- 20 (19) Section 22.05 (deadly conduct);
- 21 (20) Section 22.07 (terroristic threat);
- 22 (21) Section 30.05 (criminal trespass);
- 23 (22) Section 42.07 (harassment);
- 24 (23) Section 43.02 (prostitution);
- 25 (24) Section 43.03 (promotion of prostitution);
- 26 (25) Section 43.04 (aggravated promotion of
27 prostitution);

1 (26) Section 43.05 (compelling prostitution);

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

3 (28) Section 43.23 (obscenity);

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

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

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

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

11 (c) For the purposes of this section, "bathroom or changing
12 facility" means a facility where a person may be in a state of
13 undress, including a restroom, locker room, changing room, or
14 shower room.

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

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

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

1 effective date of this Act.

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

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