

By: Toth

H.B. No. 5235

A BILL TO BE ENTITLED

AN ACT

relating to regulations and policies for entering or using a bathroom or changing facility in a public school; authorizing a civil penalty, authorizing a private civil right of action.

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

SECTION 1. Chapter 38, Education Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOMS AND CHANGING FACILITIES

Sec. 38.451. DEFINITIONS. In this subchapter:

(1) "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.

(2) "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.

Sec. 38.452. DETERMINATION OF BIOLOGICAL SEX. (a) For purposes of this subchapter, a person's biological sex is the

1 biological sex correctly stated on the person's official birth
2 certificate as described by Subsection (b).

3 (b) A statement of a person's biological sex on the person's
4 official birth certificate is considered to have correctly stated
5 the person's biological sex only if the statement was:

6 (1) entered at or near the time of the person's birth;
7 or

8 (2) modified to correct a scrivener or clerical error
9 in the person's biological sex.

10 Sec. 38.453. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR
11 CHANGING FACILITY. A school district or open-enrollment charter
12 school shall require that each multiple-occupancy bathroom or
13 changing facility accessible to students and located in a school or
14 school facility be designated for and used only by persons based on
15 the person's biological sex.

16 Sec. 38.454. ACCOMMODATIONS AUTHORIZED. (a) This
17 subchapter does not prohibit a school district or open-enrollment
18 charter school from providing an accommodation, including a
19 single-occupancy bathroom or changing facility or the controlled
20 use of a faculty bathroom or changing facility, on request due to
21 special circumstances.

22 (b) A school district or open-enrollment charter school may
23 not provide an accommodation that allows a person to use a
24 multiple-occupancy bathroom or changing facility accessible to
25 students that is designated for the biological sex opposite to the
26 person's biological sex.

27 Sec. 38.455. PRIVATE LEASES AND CONTRACTS. (a) A private

1 entity that leases or contracts to use a building owned or leased by
2 a school district or open-enrollment charter school is not subject
3 to Section 38.453.

4 (b) A school district or open-enrollment charter school may
5 not require a private entity described by Subsection (a) to adopt,
6 or prohibit the private entity from adopting, a policy on the
7 designation or use of bathrooms or changing facilities located in
8 the building.

9 Sec. 38.456. EXCEPTIONS. A designation of a
10 multiple-occupancy bathroom or changing facility under Section
11 38.453 does not apply to a person entering a multiple-occupancy
12 bathroom or changing facility designated for the biological sex
13 opposite to the person's biological sex:

- 14 (1) for a custodial purpose;
- 15 (2) for a maintenance or inspection purpose;
- 16 (3) to render medical or other emergency assistance;
- 17 (4) to accompany a student needing assistance in using

18 the facility, if the assisting person is:

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

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

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

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

26 Sec. 38.457. CONSIDERATION OF CERTAIN POLICIES PROHIBITED.
27 In awarding a contract for the purchase of goods or services, a

1 school district or open-enrollment charter school may not consider
2 whether a private entity competing for the contract has adopted a
3 policy relating to the designation or use of the entity's bathrooms
4 or changing facilities.

5 Sec. 38.457. CIVIL LIABILITY. (a) Notwithstanding any
6 other law and except as provided by this section, a district who
7 violates this chapter is strictly and jointly and severally liable
8 for the personal injury of a student or faculty member as a result
9 of a school district or open-enrollment charter school's policy to
10 allow persons from either biological sex to access the same
11 multiple-occupancy bathroom or changing facility.

12 (b) A claimant may not bring an action under this section if
13 the action is preempted by 47 U.S.C. Section 230(c).

14 (c) A district who violates a student's right to privacy
15 prescribed by this chapter is liable for a civil penalty in the
16 amount of \$100,000 for each violation. Civil penalties assessed
17 under this chapter shall be deposited in the general revenue fund.

18 (d) The attorney general may bring an action to collect the
19 civil penalty imposed under Subsection (a).

20 SECTION 2. This Act takes effect September 1, 2023.