

By: Garcia

S.B. No. 65

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to regulations and policies for entering or using a  
3 bathroom or changing facility in buildings operated by certain  
4 governmental entities and public schools; authorizing a civil  
5 penalty.

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

7 SECTION 1. Subtitle A, Title 9, Health and Safety Code, is  
8 amended by adding Chapter 769 to read as follows:

9 CHAPTER 769. GOVERNMENTAL ENTITY AND PUBLIC SCHOOL BATHROOMS AND  
10 CHANGING FACILITIES

11 Sec. 769.001. DEFINITIONS. In this chapter:

12 (1) "Gender expression" means the external appearance  
13 of an individual's gender identity that is usually expressed  
14 through the individual's behavior, clothing, haircut, or voice,  
15 regardless of whether the individual's appearance conforms to  
16 socially defined behaviors and characteristics typically  
17 associated with being either masculine or feminine.

18 (2) "Gender identity" means an individual's innermost  
19 concept, perception, and identification of self as male, female, a  
20 blend of both, or neither. Gender identity may be the same as or  
21 different from the sex assigned to an individual at birth.

22 (3) "Open-enrollment charter school" means a school to  
23 which a charter is granted under Subchapter D, Chapter 12,  
24 Education Code.

1           (4) "Political subdivision" means a governmental  
2 entity of this state other than a state agency or a school district.  
3 The term includes a county, municipality, hospital district,  
4 special purpose district or authority, and junior college district.

5           (5) "Public hospital" means a hospital owned,  
6 operated, or leased by a governmental entity of this state.

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

9           (7) "State agency" means a department, commission,  
10 board, office, council, authority, or other agency in the  
11 executive, legislative, or judicial branch of state government  
12 created by the constitution or a statute of this state, including an  
13 institution of higher education as defined by Section 61.003,  
14 Education Code.

15           Sec. 769.002. APPLICABILITY. This chapter applies to:

- 16           (1) an open-enrollment charter school;
- 17           (2) a political subdivision;
- 18           (3) a public hospital;
- 19           (4) a school district; and
- 20           (5) a state agency.

21           Sec. 769.003. USE OF BATHROOM OR CHANGING FACILITY. An  
22 entity listed in Section 769.002 with control over a bathroom or  
23 changing facility in a building owned or leased by the entity shall  
24 allow a person to use a bathroom or changing facility located in the  
25 building consistent with the person's gender identity or gender  
26 expression.

27           Sec. 769.004. CIVIL PENALTY. (a) An entity listed in

1 Section 769.002 that violates this chapter is liable for a civil  
2 penalty of:

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

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

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

9 Sec. 769.005. COMPLAINT; NOTICE. (a) A citizen of this  
10 state may file with the attorney general a complaint alleging an  
11 entity is in violation of this chapter only if:

12 (1) the citizen provides the entity a written notice  
13 describing the violation; and

14 (2) the entity does not cure the violation before the  
15 end of the third business day after the date of receipt of the  
16 written notice.

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

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

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

22 Sec. 769.006. DUTIES OF ATTORNEY GENERAL: INVESTIGATION  
23 AND NOTICE. (a) Before bringing a suit against an entity for a  
24 violation of this chapter, the attorney general shall investigate a  
25 complaint filed under Section 769.005 to determine whether legal  
26 action is warranted.

27 (b) If the attorney general determines legal action is

1 warranted, the attorney general shall provide the appropriate  
2 officer of the entity charged with the violation a written notice  
3 that:

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

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

8 (3) requires the entity to cure the violation on or  
9 before the 15th day after the date of receipt of notice to avoid the  
10 penalty, unless the entity was found liable by a court for  
11 previously violating this chapter.

12 Sec. 769.007. COLLECTION OF CIVIL PENALTY; MANDAMUS. (a)  
13 If, after receipt of notice under Section 769.006(b), the entity  
14 has not cured the violation on or before the 15th day after the date  
15 the notice is provided as required under Section 769.006(b)(3), the  
16 attorney general may sue to collect the civil penalty provided by  
17 Section 769.004.

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

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

23 (1) Travis County; or

24 (2) a county in which the principal office of the  
25 entity 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. 769.008. SOVEREIGN AND GOVERNMENTAL IMMUNITY WAIVED.  
8 Sovereign and governmental immunity to suit are waived and  
9 abolished to the extent of liability created by this chapter.

10 SECTION 2. This Act takes effect December 1, 2017.