

By: Middleton

H.B. No. 2399

A BILL TO BE ENTITLED

AN ACT

relating to a period of prayer in public schools and at school-sponsored athletic events.

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

SECTION 1. The heading to Section 25.082, Education Code, is amended to read as follows:

Sec. 25.082. PLEDGES OF ALLEGIANCE; MINUTE OF SILENCE; PERIOD OF PRAYER; BIBLE READING.

SECTION 2. Section 25.082, Education Code, is amended by amending Subsections (c) and (d) and adding Subsections (e) and (f) to read as follows:

(c) On written request from a student's parent or guardian, a school district or open-enrollment charter school shall excuse the student from reciting a pledge of allegiance under Subsection (b).

(d) The board of trustees of each school district and the governing board of each open-enrollment charter school shall provide for the observance of one minute of silence at each campus following the recitation of the pledges of allegiance to the United States and Texas flags under Subsection (b). During the one-minute period, each student may, as the student chooses, reflect, pray, meditate, or engage in any other silent activity that is not likely to interfere with or distract another student. Each teacher or other school employee in charge of students during that period

1 shall ensure that each of those students remains silent and does not
2 act in a manner that is likely to interfere with or distract another
3 student.

4 (e) The board of trustees of a school district or the
5 governing body of an open-enrollment charter school that is not
6 operated by or affiliated with a religious organization may by
7 record vote adopt a policy requiring every campus of the district or
8 school to provide a period of prayer and readings from the Bible
9 each day. A policy adopted under this Subsection must comply with
10 the requirements of Subsections (f), (g), (h), and (i).

11 (f) No student, teacher, or school employee may participate
12 in the period of prayer and readings from the Bible unless that
13 individual has executed and submitted to school officials a signed
14 consent form that:

15 (1) Acknowledges that the signatory has a free choice
16 in whether to hear or participate in the period of prayer and
17 readings from the Bible;

18 (2) States that the signatory has no objections to
19 hearing or participating in the period of prayer and readings from
20 the Bible; and

21 (3) Expressly waives any constitutional claims that
22 the signatory might assert against the school district or school
23 officials under the United States Supreme Court's interpretations
24 of the Establishment Clause, Article I, section 7 of the Texas
25 Constitution, or article VII, section 5(c) of the Texas
26 Constitution, and forever releases the school district and all
27 school officials from any such claims that the signatory might

1 assert in state or federal court.

2 (g) An individual who submits the consent form described in
3 this subsection may revoke that consent at any time by informing
4 school officials.

5 (h) Under no circumstance may a period of prayer and
6 readings from the Bible authorized by this Section be conducted
7 over a public address system, or in the presence or in the hearing
8 of any student, teacher, or school employee who has not submitted
9 the signed consent form described in Subsection (f), or who has
10 revoked their consent form under subsection (g).

11 (i) A policy adopted under Subsection (e) must ensure that
12 every student, teacher, and school employee who has not submitted
13 the signed consent form described in Subsection (f), or who has
14 revoked their consent form under Subsection (g), is protected from
15 anything that would inflict "injury in fact" under Article III of
16 the Constitution. This can be accomplished by:

17 (1) Holding the period of prayer and readings from the
18 Bible before the official start of each school day;

19 (2) Allowing the period of prayer and readings from
20 the Bible to occur only in classrooms where each student, teacher,
21 and school employee has submitted the signed consent form described
22 in Subsection (f);

23 (3) Obtaining unanimous consent from every student,
24 teacher, and employee at that school under Subsection (f); or

25 (4) Any other method recommended by the Attorney
26 General or by legal counsel.

27 (j) The attorney general, on request from the board of

1 trustees of a school district or the governing body of an
2 open-enrollment charter school, shall provide advice regarding
3 compliance with this section, including drafts of the consent forms
4 described in Subsection (f), and shall defend the district or
5 school in a cause of action arising out of the adoption of a policy
6 providing for a period of prayer and readings from the Bible under
7 Subsection (e). If the attorney general defends a district or
8 school under this subsection, the state is liable for the expenses,
9 costs, judgments, or settlements of the claims arising out of the
10 representation. The attorney general may settle or compromise any
11 and all claims under this subsection. The state may not be liable
12 for any expenses, costs, judgments, or settlements of any claims
13 arising out of the adoption of a policy providing for a period of
14 prayer under Subsection (e) against a district or school not being
15 represented by the attorney general.

16 (k) Any person, entity, lawyer, or law firm bringing a cause
17 of action arising out of the adoption of a policy providing for a
18 period of prayer under Subsection (e) against a district or school,
19 in any state or federal court, or that represents any litigant
20 seeking such relief in any state or federal court, shall be jointly
21 and severally liable to pay the costs and attorneys' fees of the
22 prevailing party or parties, notwithstanding any other provision of
23 law.

24 (l) A litigant shall be deemed a "prevailing party" under
25 this section if a state or federal court dismisses any claim or
26 cause of action brought against it that seeks the relief described
27 in subsection (k), regardless of the reason for such dismissal, or

1 if a state or federal court enters judgment in its favor on any such
2 claim or cause of action.

3 (m) A prevailing party under this section may bring a civil
4 action to recover costs and attorneys' fees against a person,
5 entity, lawyer, or law firm that sought declaratory or injunctive
6 relief described in subsection (a) within three (3) years of the
7 date on which the dismissal or judgment described in subsection (b)
8 becomes final upon the conclusion of appellate review, or within
9 three (3) years of the date on which the time for seeking appellate
10 review expires, regardless of whether the prevailing party sought
11 to recover costs or attorneys' fees in the underlying action. It
12 shall not be a defense that the prevailing party failed to seek
13 recovery of costs or attorneys' fees in the underlying action, and
14 it shall not be a defense that the court in the underlying action
15 declined to recognize or enforce the requirements of this section.

16 (n) An award of costs and attorneys' fees under this section
17 shall include interest.

18 (o) Notwithstanding any other law, a school district and
19 open-enrollment charter school shall have governmental immunity,
20 and every trustee of a school district, every member of a governing
21 body of an open-enrollment charter school, and every school
22 employee shall have official immunity, in any in any action, claim
23 or counterclaim, or any type of legal or equitable action that
24 challenges the validity or enforcement of any policy authorized by
25 Subsection (e), on constitutional grounds or otherwise, and no
26 court of this state shall have jurisdiction to consider any action,
27 claim or counterclaim, or any type of legal or equitable action that

1 challenges the validity or enforcement of any policy authorized by
2 Subsection (e).

3 (p) Notwithstanding any other law, no provision of state law
4 may be construed to waive or abrogate an immunity described by
5 Subsection (o) unless it explicitly repeals Subsection (o) with
6 specific reference to that subsection.

7 SECTION 3. Section 25.901, Education Code, is amended to
8 read as follows:

9 Sec. 25.901. EXERCISE OF CONSTITUTIONAL RIGHT TO PRAY. A
10 public school student has an absolute right to individually,
11 voluntarily, and silently pray or meditate in school in a manner
12 that does not disrupt the instructional or other activities of the
13 school. A person may not require~~[, encourage,]~~ or coerce a student
14 to engage in or refrain from such prayer or meditation during any
15 school activity.

16 SECTION 4. Each board of trustees of a school district and
17 each governing body of an open-enrollment charter school shall take
18 a record vote not later than six months after the effective date of
19 this Act on whether to adopt a policy requiring every campus of the
20 district or school to provide a period of prayer under Section
21 25.082(e), Education Code, as added by this Act.

22 SECTION 5. This Act applies beginning with the 2021-2022
23 school year.

24 SECTION 6. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2021.