By:  Middleton S.B. No. 1396

A BILL TO BE ENTITLED

AN ACT

relating to a period of prayer and Bible reading in public schools.

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

SECTION 1.  Subchapter C, Chapter 25, Education Code, is amended by adding Section 25.0823 to read as follows:

Sec. 25.0823.  PERIOD OF PRAYER AND BIBLE READING. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school that is not operated by or affiliated with a religious organization may by record vote adopt a policy requiring every campus of the district or school to provide students and employees with an opportunity to participate in a period of prayer and Bible reading on each school day in accordance with this section.

(b)  A policy adopted under Subsection (a) must prohibit:

(1) a student or employee of the school district or open-enrollment charter school from being permitted to participate in the period of prayer and Bible reading unless the employee or parent or guardian of the student submits to the district a signed consent form that includes:

(A)  an acknowledgment that the student or employee has a choice as to whether to participate in the period of prayer and Bible reading;

(B)  a statement that the person has no objection to the student's or employee's participation in or hearing of the prayers or Bible readings offered during the period; and

(C)  an express waiver of the person's right to bring a claim under state or federal law arising out of the adoption of a policy under this section, including claims under the United States Supreme Court's interpretations of the Establishment Clause, which forever releases the school district and all school officials from any such claims that the signatory might assert in state or federal court; and

(2)  the provision of a prayer or Bible reading over a public address system.

(c)  An employee or parent or guardian of a student may revoke the person's consent provided under Subsection (b)(1) by informing the appropriate school administrator, as determined by the school district or open-enrollment charter school, and no student or employee whose consent has been withdrawn may continue participating in the period of prayer and readings from the Bible unless and until a new consent form is executed and submitted in accordance with Subsection (b)(1). A person who withdraws consent under this section remains bound by the waiver of claims described in Subsection (b)(1)(C).

(d)  A policy providing for a period of prayer and Bible reading adopted under Subsection (a) must include provisions ensuring a prayer or Bible reading is not provided in the physical presence or within the hearing of a person for whom a signed consent form has not been submitted under Subsection (b)(1) or has been revoked under Subsection (c), or in any manner that would inflict "injury in fact" on such a person under Article III of the Constitution. In order to comply with this subsection, a policy may require that the period of prayer and Bible reading be provided:

(1)  before normal school hours;

(2)  only in classrooms or other areas in which a consent form under Subsection (b)(1) has been submitted for every employee and student, which may include an entire district or school campus if a consent form has been submitted for each employee and student at the campus; or

(3) by any other method recommended by the attorney general or legal counsel for the district or school.

(e)  The attorney general, on request from the board of trustees of a school district or the governing body of an open-enrollment charter school, shall:

(1)  provide advice on best methods for a district or school to comply with the requirements of this section;

(2)  provide a model consent form that may be used for purposes of providing consent under Subsection (b)(1); and

(3)  defend the district or school in a cause of action arising out of the adoption of a policy providing for a period of prayer and Bible reading under Subsection (a).

(f)  If the attorney general defends a district or school under Subsection (e)(3), the state is liable for the expenses, costs, judgments, or settlements of the claims arising out of the representation. The attorney general may settle or compromise any and all claims under this subsection. The state may not be liable for any expenses, costs, judgments, or settlements of any claims arising out of the adoption of a policy providing for a period of prayer and Bible reading under Subsection (a) against a district or school not being represented by the attorney general.

(g)  Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent a school district or open-enrollment charter school from adopting or implementing a policy providing for a period of prayer and Bible reading under Subsection (a) in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and reasonable attorney's fees, including interest, of the prevailing party, including the costs and reasonable attorney's fees that the prevailing party incurs in its efforts to recover costs and fees.

(h)  For purposes of this section, a party is considered a prevailing party if a state or federal court:

(1)  dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (g), regardless of the reason for the dismissal; or

(2)  enters judgment in the party's favor on any such claim or cause of action.

(i)  A prevailing party may recover costs and attorney's fees under Subsection (h) only to the extent that those costs and attorney's fees were incurred while defending claims or causes of action on which the party prevailed.

(j)  Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (g) not later than the third anniversary of the date on which, as applicable:

(1)  the dismissal or judgment described by Subsection

(h)  becomes final on the conclusion of appellate review; or

(2)  the time for seeking appellate review expires.

(k)  It is not a defense to an action brought under Subsection (j) that:

(1)  a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2)  the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3)  the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(l)  Notwithstanding any other law, the state has sovereign immunity, its officers and employees have sovereign and official immunity, a school district or open-enrollment charter school has governmental immunity, and each member of the governing body of a school district or open-enrollment charter school and employee of a school district or open-enrollment charter school has governmental and official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this section, on constitutional grounds or otherwise, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States. The sovereign immunity conferred by this section upon the state and each of its officers and employees includes the constitutional sovereign immunity recognized by the Supreme Court of the United States in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state and federal court and which may not be abrogated by Congress or by any state or federal court except pursuant to legislation authorized by section 5 of the Fourteenth Amendment, by the Bankruptcy Clause of Article I, or by Congress's powers to raise and support Armies and to provide and maintain a Navy.

(m)  Notwithstanding any other law, the immunities conferred by Subsection (l) shall apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever.

(n)  Notwithstanding any other law, a provision of state law may not be construed to waive or abrogate an immunity described by Subsection (l) unless it expressly waives or abrogates immunity with specific reference to this section.

(o)  Notwithstanding any other law, no attorney representing the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (l) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity and an ultra vires act.

(p)  Notwithstanding any other law, including Chapter 37, Civil Practice and Remedies Code, and sections 22.002, 22.221, and 24.007 through 24.011, Government Code, no court of this state may award declaratory or injunctive relief, or any type of writ, that would declare or pronounce any provision or application of this section invalid or unconstitutional, or that would restrain the state, its political subdivisions, including a school district or open-enrollment charter school, any officer, employee, or agent of this state or a political subdivision, including each member of the governing body of a school district or open-enrollment charter school and employee of a school district or open-enrollment charter school, or any person from enforcing any provision or application of this section, and no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks such relief.

(q)  Nothing in this section shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this section as a defense to any action, claim, or counterclaim brought against that litigant.

(r)  Notwithstanding any other law, any judicial relief issued by a court of this state that disregards the immunities conferred by Subsection (l), or the jurisdictional and remedial limitations imposed by Subsection (p), shall be regarded as a legal nullity because it was issued by a court without jurisdiction, and may not be enforced or obeyed by any officer, employee, or agent of this state or a political subdivision, judicial or otherwise.

SECTION 2.  Section 25.901, Education Code, is amended to read as follows:

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

SECTION 3.  Each board of trustees of a school district and each governing body of an open-enrollment charter school shall take a record vote not later than six months after the effective date of this Act on whether to adopt a policy requiring every campus of the district or school to provide a period of prayer and Bible reading under Section 25.0823, Education Code, as added by this Act.

SECTION 4.  This Act applies beginning with the 2023-2024

school year.

SECTION 5.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.