

By: Swanson

H.B. No. 32

A BILL TO BE ENTITLED

AN ACT

relating to the designation and use of certain spaces and facilities according to biological sex; authorizing a civil penalty and a private civil right of action.

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

SECTION 1. This Act may be cited as the Texas Women's Privacy Act.

SECTION 2. Subtitle Z, Title 10, Government Code, is amended by adding Chapter 3002 to read as follows:

CHAPTER 3002. REGULATION OF INDIVIDUALS IN CERTAIN SPACES AND

FACILITIES ACCORDING TO BIOLOGICAL SEX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3002.001. DEFINITIONS. In this chapter:

(1) "Biological sex" means the physical condition of being male or female, as determined by an individual's:

(A) sex organs, chromosomes, and endogenous profiles; and

(B) original birth certificate, if the individual's biological sex is recorded on the birth certificate and the record:

(i) was entered at or near the time of birth; and

(ii) has not been modified other than a modification to correct a scrivener or clerical error in the

1 recorded biological sex.

2 (2) "Correctional facility" has the meaning assigned  
3 by Section 1.07, Penal Code.

4 (3) "Family violence shelter" means a family violence  
5 nonresidential center or a family violence shelter center, as those  
6 terms are defined by Section 51.002, Human Resources Code, that has  
7 contracted with the Health and Human Services Commission under  
8 Section 51.003, Human Resources Code.

9 (4) "Institution of higher education" has the meaning  
10 assigned by Section 61.003, Education Code.

11 (5) "Multiple-occupancy private space" means a  
12 facility designed or designated for simultaneous use by more than  
13 one individual and in which an individual may be in a state of  
14 undress in the presence of another individual, regardless of  
15 whether the facility provides curtains or partial walls for  
16 privacy. The term includes a restroom, locker room, changing room,  
17 or shower room.

18 (6) "Political subdivision" means a governmental  
19 entity of this state, including a county, municipality, special  
20 purpose district or authority, school district, open-enrollment  
21 charter school, or junior college district. The term does not  
22 include a state agency.

23 (7) "Single-occupancy private space" means a facility  
24 designed or designated for use by only one individual at a time and  
25 in which the individual may be in a state of undress. The term  
26 includes:

27 (A) a single toilet restroom with a locking door

1 that is designed or designated as unisex or for use based on  
2 biological sex; and

3 (B) sleeping quarters designed or designated for  
4 use by one individual.

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

10 Sec. 3002.002. CONSTRUCTION OF CHAPTER. This chapter may  
11 not be construed to prevent a litigant from asserting the  
12 invalidity or unconstitutionality of a provision or application of  
13 this chapter as a defense to liability in an action, claim, or  
14 counterclaim brought under this chapter.

15 SUBCHAPTER B. DESIGNATION AND USE OF CERTAIN SPACES AND FACILITIES  
16 ACCORDING TO BIOLOGICAL SEX

17 Sec. 3002.051. DESIGNATION OF MULTIPLE-OCCUPANCY PRIVATE  
18 SPACES. (a) A political subdivision or state agency shall ensure  
19 each multiple-occupancy private space in a building the political  
20 subdivision or state agency owns, operates, or controls is  
21 designated for and used only by individuals of the same biological  
22 sex.

23 (b) A political subdivision or state agency shall take every  
24 reasonable step to ensure an individual whose biological sex is  
25 opposite to the biological sex designated for a multiple-occupancy  
26 private space under Subsection (a) does not enter the private  
27 space.

1       Sec. 3002.052. ACCOMMODATIONS. (a) Section 3002.051 does  
2 not prohibit a political subdivision or state agency from:

3           (1) adopting a policy necessary to accommodate an  
4 individual with a disability, a young child, or an elderly  
5 individual who requires assistance when using a multiple-occupancy  
6 private space;

7           (2) establishing a single-occupancy private space,  
8 family restroom, or changing room; or

9           (3) changing the designation of a multiple-occupancy  
10 private space from the use designated under Section 3002.051 to  
11 exclusive use by individuals of the biological sex opposite to the  
12 previously designated biological sex.

13       (b) A political subdivision or state agency may not provide  
14 an accommodation under Subsection (a) that allows an individual to  
15 use a multiple-occupancy private space designated for the exclusive  
16 use of individuals of the biological sex opposite to the  
17 individual's biological sex.

18       Sec. 3002.053. EXCEPTIONS. A designation of a  
19 multiple-occupancy private space under Section 3002.051 does not  
20 apply to:

21           (1) an individual entering a multiple-occupancy  
22 private space designated for the exclusive use of individuals of  
23 the biological sex opposite to the individual's biological sex:

24                   (A) for a custodial purpose;

25                   (B) for a maintenance or inspection purpose;

26                   (C) to render medical or other emergency  
27 assistance; or

1                    (D) to accompany an individual who needs  
2 assistance in using the facility and provide assistance; or

3                    (2) a child who is:

4                    (A) nine years of age or younger entering a  
5 multiple-occupancy private space designated for the exclusive use  
6 of individuals of the biological sex opposite to the child's  
7 biological sex; and

8                    (B) accompanied by an individual caring for the  
9 child.

10                  Sec. 3002.054. HOUSING OF INMATES ACCORDING TO BIOLOGICAL  
11 SEX. (a) The Texas Department of Criminal Justice shall ensure  
12 inmates are housed in a correctional facility, including a  
13 dormitory or cellblock of a correctional facility, according to the  
14 inmate's biological sex.

15                  (b) The Texas Board of Criminal Justice may adopt rules to  
16 implement this section, including rules ensuring this section is  
17 implemented in compliance with state and federal law.

18                  Sec. 3002.055. PROHIBITED SERVICES AT CERTAIN FAMILY  
19 VIOLENCE SHELTERS. A family violence shelter designed specifically  
20 to provide services to female victims of family violence may only  
21 provide services to:

22                    (1) an individual whose biological sex is female; and

23                    (2) an individual who is 17 years of age or younger and  
24 is the child of an individual described by Subdivision (1).

25                    SUBCHAPTER C. ENFORCEMENT

26                  Sec. 3002.101. CIVIL PENALTY. (a) A political subdivision  
27 or state agency that violates this chapter is liable for a civil

penalty of:

(1) \$5,000 for the first violation; and

(2) \$25,000 for the second or a subsequent violation.

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

Sec. 3002.102. COMPLAINT; NOTICE. (a) A resident of this state may file a complaint with the attorney general against a political subdivision or state agency for a violation of this chapter only if:

(1) the resident provides the political subdivision or state agency a written notice describing the violation; and

(2) the political subdivision or state agency does not cure the violation before the end of the third business day after the date the written notice is received.

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

(1) a copy of the written notice; and

(2) the resident's sworn statement or affidavit describing the violation and indicating the resident provided the notice required by this section.

Sec. 3002.103. DUTIES OF ATTORNEY GENERAL: INVESTIGATION AND NOTICE. (a) Before bringing an action against a political subdivision or state agency for a violation of this chapter, the attorney general shall investigate a complaint filed under Section 3002.102 to determine whether legal action is warranted.

(b) The political subdivision or state agency subject to the complaint shall provide to the attorney general any information the attorney general requests in connection with the complaint,

1 including:

2 (1) supporting documents related to the complaint; and

3 (2) a statement on whether the political subdivision  
4 or state agency has complied or intends to comply with this chapter.

5 (c) If the attorney general determines legal action is  
6 warranted, the attorney general shall provide to the appropriate  
7 officer of the political subdivision or state agency charged with  
8 the violation a written notice:

9 (1) describing the violation and location of the  
10 multiple-occupancy private space found to be in violation;

11 (2) stating the amount of the proposed penalty for the  
12 violation; and

13 (3) requiring the political subdivision or state  
14 agency to cure the violation on or before the 15th day after the  
15 date the notice is received to avoid the penalty, unless a court  
16 previously found the political subdivision or state agency liable  
17 for a violation of this chapter.

18 Sec. 3002.104. COLLECTION OF CIVIL PENALTY; MANDAMUS. (a)  
19 If, after receipt of notice under Section 3002.103(c), the  
20 political subdivision or state agency has not cured the violation  
21 on or before the 15th day after the date the notice is received or  
22 was previously found liable by a court for a violation of this  
23 chapter, the attorney general may bring an action to collect the  
24 civil penalty authorized under Section 3002.101.

25 (b) In addition to bringing an action under Subsection (a),  
26 the attorney general may also file a petition for a writ of mandamus  
27 or apply for other appropriate equitable relief.

1        (c) An action under this section may be brought or filed in a  
2 district court in:

- 3            (1) Travis County; or  
4            (2) a county in which the principal office of the  
5 political subdivision or state agency is located.

6        (d) The attorney general may recover reasonable expenses  
7 incurred in obtaining relief under this section, including court  
8 costs, reasonable attorney's fees, investigative costs, witness  
9 fees, and deposition costs.

10       (e) A civil penalty collected by the attorney general under  
11 this section shall be deposited to the credit of the compensation to  
12 victims of crime fund established under Subchapter J, Chapter 56B,  
13 Code of Criminal Procedure.

14       Sec. 3002.105. PRIVATE CIVIL CAUSE OF ACTION. A person  
15 affected by a political subdivision's or state agency's alleged  
16 violation of this chapter may bring a civil action to obtain  
17 appropriate:

- 18            (1) declaratory relief;  
19            (2) injunctive relief; and  
20            (3) court costs, including reasonable attorney's and  
21 witness fees.

22       Sec. 3002.106. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL  
23 IMMUNITY. (a) Notwithstanding any other law except as provided by  
24 Subsection (b), this state has sovereign immunity, a political  
25 subdivision has governmental immunity, and an officer, employee, or  
26 agent of this state or a political subdivision has official  
27 immunity in an action, claim, counterclaim, or any type of legal or



1 equitable action that:

2 (1) challenges the validity of any provision or  
3 application of this chapter, on constitutional grounds or  
4 otherwise; or

5 (2) seeks to prevent or enjoin this state, a political  
6 subdivision, or an officer, employee, or agent of this state or a  
7 political subdivision from:

8 (A) enforcing any provision or application of  
9 this chapter; or

10 (B) hearing, adjudicating, or docketing an  
11 action brought under Section 3002.104 or 3002.105 for a violation  
12 of this chapter.

13 (b) Subsection (a) does not apply if:

14 (1) immunity has been abrogated or preempted by  
15 federal law in a manner consistent with the United States  
16 Constitution; or

17 (2) sovereign immunity of this state and governmental  
18 immunity of a political subdivision to suit and from liability have  
19 been waived to the extent of liability created by this chapter.

20 Sec. 3002.107. APPLICABILITY OF IMMUNITY. Notwithstanding  
21 any other law, the immunity conferred by Section 3002.106 applies  
22 in every state and federal court and in every type of adjudicative  
23 proceeding.

24 Sec. 3002.108. WAIVER OF IMMUNITY. (a) Notwithstanding  
25 any other law, a provision of state law may not be construed to  
26 waive or abrogate an immunity conferred by Section 3002.106 unless  
27 the provision expressly waives or abrogates the immunity with

1 specific reference to this section.

2 (b) Notwithstanding any other law, an attorney representing  
3 this state, a political subdivision, or an officer, employee, or  
4 agent of this state or a political subdivision may not waive an  
5 immunity conferred by Section 3002.106 or take an action that would  
6 result in a waiver of that immunity. A purported waiver or action  
7 described by this subsection is considered void and an ultra vires  
8 act.

9 Sec. 3002.109. JURISDICTION. (a) Notwithstanding any  
10 other law, including Chapter 37, Civil Practice and Remedies Code,  
11 and Sections 22.002, 22.221, 24.007, 24.008, 24.009, 24.010, and  
12 24.011 of this code, a court of this state does not have  
13 jurisdiction to consider and may not award declaratory or  
14 injunctive relief, or any type of writ, that would:

15 (1) pronounce any provision or application of this  
16 chapter invalid or unconstitutional; or

17 (2) restrain a person, including this state, a  
18 political subdivision, and an officer, employee, or agent of this  
19 state or a political subdivision, from:

20 (A) enforcing any provision or application of  
21 this chapter; or

22 (B) hearing, adjudicating, docketing, or filing  
23 a civil action brought under this chapter.

24 (b) Notwithstanding any other law, including Chapter 26,  
25 Civil Practice and Remedies Code, and Rule 42, Texas Rules of Civil  
26 Procedure, a court may not certify a claimant class or a defendant  
27 class in a civil action that seeks relief described by this section.

SECTION 3. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.024 to read as follows:

Sec. 30.024. FEE SHIFTING. (a) Notwithstanding any other law, a person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision of this state, a governmental entity, a public official, or any other person in this state from bringing an action to enforce a statute, ordinance, rule, regulation, or other law that regulates access to certain spaces based on an individual's biological sex in any state or federal court, or who represents a litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and reasonable attorney's fees of the prevailing party, including the costs and reasonable attorney's fees the prevailing party incurs in the party's efforts to recover costs and fees.

(b) 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 (a), regardless of the reason for the dismissal; or

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

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

1           SECTION 4. Chapter 3002, Government Code, as added by this  
2 Act, applies only to a cause of action that accrues on or after the  
3 effective date of this Act.

4           SECTION 5. If any part of this Act is declared invalid, that  
5 declaration does not affect the validity of the remaining parts of  
6 this Act.

7           SECTION 6. This Act takes effect on the 91st day after the  
8 last day of the legislative session.