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| BILL ANALYSIS |

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| S.B. 8 |
| By: Middleton |
| State Affairs |
| Committee Report (Unamended) |

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| **BACKGROUND AND PURPOSE** The bill sponsor has informed the committee that existing law does not require political subdivisions or state agencies to implement regulations ensuring that private spaces traditionally separated by sex, such as restrooms and locker rooms, are used by individuals based on the individual's biological sex and has also informed the committee that more and more Texans have expressed concerns regarding safety and privacy in such spaces given the lack of such laws and regulations. The bill sponsor has also informed the committee of additional concerns, as relayed by these Texans, that their expectations of privacy in such private spaces have been compromised, that legislation and regulations are needed to ensure that men cannot enter bathrooms, locker rooms, changing areas, family violence shelters, sleeping quarters, and other private spaces dedicated to women, and that no woman should be made to feel unsafe or uncomfortable in spaces dedicated to their sex. S.B. 8 addresses these concerns by, among other provisions, requiring a political subdivision or state agency to designate each multiple‑occupancy private space in a building the political subdivision or state agency owns, operates, or controls for use only by individuals of one sex while still allowing certain accommodations for single-occupancy restrooms, family rooms, and exceptions for emergencies, children, or persons with disabilities. |
| **CRIMINAL JUSTICE IMPACT**It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision. |
| **RULEMAKING AUTHORITY** It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Criminal Justice in SECTION 2 of this bill. |
| **ANALYSIS** S.B. 8 amends the Government Code to require a political subdivision or state agency to designate each multiple-occupancy private space in a building the political subdivision or state agency owns, operates, or controls for use only by individuals of one sex and to take every reasonable step to ensure an individual whose sex is opposite to the sex designated for such a multiple-occupancy private space does not enter the private space. These provisions expressly do not prohibit a political subdivision or state agency from doing the following:* adopting a policy necessary to accommodate an individual with a disability, a young child, or an elderly individual who requires assistance when using a multiple-occupancy private space;
* establishing a single-occupancy private space, family restroom, or changing room; or
* changing the designation of a multiple-occupancy private space from the exclusive use by individuals of one sex to exclusive use by individuals of the sex opposite to the previously designated sex.

However, a political subdivision or state agency is prohibited from providing such an accommodation that allows an individual to use a multiple-occupancy private space designated for the exclusive use of individuals of the sex opposite to the individual's sex.S.B. 8 establishes that a designation of a multiple-occupancy private space under the bill's provisions does not apply to the following:* an individual entering a multiple-occupancy private space designated for the exclusive use of individuals of the sex opposite to the individual's sex:
	+ for a custodial purpose;
	+ for a maintenance or inspection purpose;
	+ to render medical or other emergency assistance;
	+ to accompany and provide assistance to an individual who needs assistance in using the facility;
	+ for a law enforcement purpose; or
	+ to render assistance necessary in preventing a serious threat to proper order or safety; or
* a child who is nine years of age or younger entering a multiple-occupancy private space designated for the exclusive use of individuals of the sex opposite to the child's sex and who is accompanied by an individual caring for the child.

S.B. 8 requires the Texas Department of Criminal Justice to ensure inmates are housed in a correctional facility, including a dormitory or cellblock of a correctional facility, according to the inmate's sex. The bill requires the Texas Board of Criminal Justice to adopt rules to implement that requirement, including rules ensuring that requirement is implemented in compliance with state and federal law. S.B. 8 restricts a family violence shelter designed specifically to provide services to female victims of family violence to only providing services to the following individuals:* an individual whose sex is female; and
* an individual who is 17 years of age or younger and is the child of an individual receiving services at the shelter whose sex is female.

S.B. 8 establishes that its provisions may not be construed to prevent a litigant from asserting the invalidity or unconstitutionality of a provision or application of the bill as a defense to liability in an action, claim, or counterclaim brought under the bill. The bill defines the following terms for purposes of the bill's provisions:* "correctional facility" by reference to the Penal Code;
* "family violence shelter" as a family violence nonresidential center or a family violence shelter center, as those terms are defined by applicable Human Resources Code provisions, that has contracted with the Health and Human Services Commission;
* "female" as an individual who naturally has or will have, or had or would have but for a congenital anomaly or an intentional or unintentional disruption, a reproductive system designed to produce, transport, and provide eggs for fertilization;
* "institution of higher education" by reference to the Higher Education Coordinating Act of 1965;
* "male" as an individual who naturally has or will have, or had or would have but for a congenital anomaly or an intentional or unintentional disruption, a reproductive system designed to produce, transport, and utilize sperm for fertilization;
* "multiple-occupancy private space" as a facility designed or designated for simultaneous use by more than one individual and in which an individual may be in a state of undress in the presence of another individual, regardless of whether the facility provides curtains or partial walls for privacy, including a restroom, locker room, changing room, or shower room;
* "political subdivision" as a governmental entity of the state, including a county, municipality, special purpose district or authority, public school district, open-enrollment charter school, or junior college district but not including a state agency;
* "sex" as an individual's biological sex, either male or female;
* "single-occupancy private space" as a facility designed or designated for use by only one individual at a time and in which the individual may be in a state of undress, which includes the following:
	+ a single toilet restroom with a locking door that is designed or designated as unisex or for use based on sex; and
	+ sleeping quarters designed or designated for use by one individual; and
* "state agency" as a department, commission, board, office, council, authority, or other agency in the executive, legislative, or judicial branch of state government that is created by the Texas Constitution or a state statute, including an institution of higher education.

S.B. 8 makes a political subdivision or state agency that violates the bill's provisions liable for a civil penalty of $5,000 for the first violation and $25,000 for the second or a subsequent violation. Each day of a continuing violation constitutes a separate violation. The bill authorizes a Texas resident to file a complaint with the attorney general against a political subdivision or state agency for such a violation only if the following conditions are satisfied:* the resident provides the political subdivision or state agency a written notice describing the violation; and
* 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.

The bill requires the complaint to include a copy of the written notice and the resident's sworn statement or affidavit describing the violation and indicating the resident provided the required notice. S.B. 8 requires the attorney general, before bringing an action against a political subdivision or state agency for a violation of the bill's provisions, to investigate a filed complaint to determine whether legal action is warranted. The bill requires the following:* the political subdivision or state agency subject to the complaint to provide to the attorney general any information the attorney general requests in connection with the complaint, including:
	+ supporting documents related to the complaint; and
	+ a statement on whether the political subdivision or state agency has complied or intends to comply with the bill; and
* the attorney general, if the attorney general determines legal action is warranted, to provide to the appropriate officer of the political subdivision or state agency charged with the violation a written notice:
	+ describing the violation and location of the multiple-occupancy private space found to be in violation;
	+ stating the amount of the proposed penalty for the violation; and
	+ requiring the political subdivision or state agency to cure the violation on or before the 15th day after the date the notice is received to avoid the penalty, unless a court previously found the political subdivision or state agency liable for a violation of the bill's provisions.

S.B. 8 authorizes the attorney general to bring an action to collect the authorized civil penalty from a political subdivision or state agency that violates the bill's provisions if, after receipt of the previously described written notice, the political subdivision or state agency has not cured the violation on or before the 15th day after the date the notice is received or was previously found liable by a court for a violation of the bill's provisions. The bill does the following regarding such an action:* authorizes the attorney general, in addition to bringing the action, to file a petition for a writ of mandamus or apply for other appropriate equitable relief;
* authorizes the action to be brought or filed in a district court in the county in which the principal office of the political subdivision or state agency is located;
* authorizes the attorney general to recover reasonable expenses incurred in obtaining relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs;
* requires a civil penalty collected by the attorney general in the action to be deposited to the credit of the compensation to victims of crime fund; and
* establishes that the Fifteenth Court of Appeals has exclusive jurisdiction over any appeal arising out of a civil action brought to collect the civil penalty, notwithstanding any other law.

S.B. 8 authorizes a person affected by a political subdivision's or state agency's violation of the bill's provisions to bring a civil action and entitles that person to obtain declaratory relief, injunctive relief, and court costs, including reasonable attorney's and witness fees. The bill establishes that the Fifteenth Court of Appeals has exclusive jurisdiction over any appeal arising out of such a civil action, notwithstanding any other law.S.B. 8 establishes that, notwithstanding any other law except as otherwise provided by the bill, the state has sovereign immunity, a political subdivision has governmental immunity, and an officer, employee, or agent of the state or a political subdivision has official immunity in an action, claim, counterclaim, or any type of legal or equitable action that does the following:* challenges the validity of any provision or application of the bill, on constitutional grounds or otherwise; or
* seeks to prevent or enjoin the state, a political subdivision, or an officer, employee, or agent of the state or a political subdivision from enforcing any provision or application of the bill or hearing, adjudicating, or docketing an action brought for a violation of the bill's provisions.

The bill establishes that such immunities do not apply if immunity has been abrogated or preempted by federal law in a manner consistent with the U.S. Constitution or if sovereign immunity of the state and governmental immunity of a political subdivision to suit and from liability have been waived in accordance with the bill's provisions. The bill further establishes that the immunities apply in every state and federal court and in every type of adjudicative proceeding, notwithstanding any other law, and provides the following regarding the waiver of immunity: * notwithstanding any other law, a provision of state law may not be construed to waive or abrogate an immunity granted by the bill unless the provision expressly waives or abrogates the immunity with specific reference to these waiver provisions;
* notwithstanding any other law, an attorney representing the state, a political subdivision, or an officer, employee, or agent of the state or a political subdivision may not waive an immunity granted by the bill or take an action that would result in a waiver of that immunity; and
* a purported waiver or action prohibited under these provisions is considered void and an ultra vires act.

S.B. 8 establishes that, notwithstanding any other law, including certain statutes specified by the bill, a court of the state does not have jurisdiction to consider and may not award declaratory or injunctive relief, or any type of writ, including a writ of prohibition, that would do the following:* pronounce any provision or application of the bill invalid or unconstitutional; or
* restrain the state, a political subdivision, an officer, employee, or agent of the state or a political subdivision, or any other person from enforcing any provision or application of the bill or hearing, adjudicating, docketing, or filing a civil action brought under the bill's provisions.

The bill prohibits a court from certifying a claimant class or a defendant class in a civil action that seeks such relief, notwithstanding any other law, including certain statutes and provisions of the Texas Rules of Civil Procedure specified by the bill.S.B. 8 amends the Civil Practice and Remedies Code to establish that, notwithstanding any other law, a person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent the state, a political subdivision of the state, a governmental entity, a public official, or any other person in Texas 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 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. The bill establishes that a party is considered a prevailing party for those purposes if a state or federal court takes either of the following actions:* dismisses any claim or cause of action brought against the party that seeks the described declaratory or injunctive relief, regardless of the reason for the dismissal; or
* enters judgment in the party's favor on any such claim or cause of action.

A prevailing party may recover costs and reasonable attorney's fees under these provisions only to the extent those costs and attorney's fees were incurred while defending claims or causes of action on which the party prevailed.S.B. 8 establishes that its Government Code provisions apply only to a cause of action that accrues on or after the bill's effective date. If any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and to this end the provisions and applications of the bill are declared to be severable. |
| **EFFECTIVE DATE** 91st day after the last day of the legislative session. |