

BILL ANALYSIS

Senate Research Center
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S.B. 8
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are concerns men are increasingly entering spaces, such as bathrooms, locker rooms, and women's violence shelters, that have been traditionally set aside to protect the individual privacy rights of women. Currently, political subdivisions and state agencies are not required to develop a policy securing these rights. S.B. 8 requires that private spaces owned or controlled by political subdivisions or state agencies be designated for use by individuals based on their biological sex.

As proposed, S.B. 8 amends current law relating to the designation and use of certain spaces and facilities according to sex and authorizes a civil penalty and a private civil right of action.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Criminal Justice in SECTION 2 (Section 3002.054, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Texas Women's Privacy Act.

SECTION 2. Amends Subtitle Z, Title 10, Government Code, by adding Chapter 3002, as follows:

CHAPTER 3002. REGULATION OF INDIVIDUALS IN CERTAIN SPACES AND FACILITIES ACCORDING TO SEX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3002.001. DEFINITIONS. Defines "correctional facility," "family violence shelter," "female," "institution of higher education," "male," "multiple-occupancy private space," "political subdivision," "sex," "single-occupancy private space," and "state agency."

Sec. 3002.002. CONSTRUCTION OF CHAPTER. Prohibits this chapter from being construed to prevent a litigant from asserting the invalidity or unconstitutionality of a provision or application of this chapter as a defense to liability in an action, claim, or counterclaim brought under this chapter.

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

Sec. 3002.051. DESIGNATION OF MULTIPLE-OCCUPANCY PRIVATE SPACES. (a) Requires 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.

(b) Requires a political subdivision or state agency to take every reasonable step to ensure an individual whose sex is opposite to the sex designated for a multiple-occupancy private space under Subsection (a) does not enter the private space.

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

(1) 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;

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

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

(b) Provides that a political subdivision or state agency is prohibited from providing an accommodation under Subsection (a) 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.

Sec. 3002.053. EXCEPTIONS. Provides that a designation of a multiple-occupancy private space under Section 3002.051 does not apply to persons meeting certain criteria.

Sec. 3002.054. HOUSING OF INMATES ACCORDING TO SEX. (a) 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.

(b) Authorizes the Texas Board of Criminal Justice to adopt rules to implement this section, including rules ensuring this section is implemented in compliance with state and federal law.

Sec. 3002.055. PROHIBITED SERVICES AT CERTAIN FAMILY VIOLENCE SHELTERS. Provides that a family violence shelter designed specifically to provide services to female victims of family violence is authorized to provide services only to:

(1) an individual whose sex is female; and

(2) an individual who is 17 years of age or younger and is the child of an individual described by Subdivision (1) who is receiving services at the shelter.

SUBCHAPTER C. ENFORCEMENT

Sec. 3002.101. CIVIL PENALTY. (a) Provides that a political subdivision or state agency that violates this chapter is liable for a civil penalty of \$5,000 for the first violation and \$25,000 for the second or a subsequent violation.

(b) Provides that each day of a continuing violation of this chapter constitutes a separate violation.

Sec. 3002.102. COMPLAINT; NOTICE. (a) Provides that a resident of this state is authorized to file a complaint with the attorney general against a political subdivision or state agency for a violation of this chapter only if 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.

(b) Requires that a complaint filed under this section include a copy of the written notice and 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) Requires the attorney general, before bringing an action against a political subdivision or state agency for a violation of this chapter, to investigate a complaint filed under Section 3002.102 to determine whether legal action is warranted.

(b) Requires 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 this chapter.

(c) Requires 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 this chapter.

Sec. 3002.104. COLLECTION OF CIVIL PENALTY; MANDAMUS. (a) Authorizes the attorney general, if, after receipt of notice under Section 3002.103(c), 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 this chapter, to bring an action to collect the civil penalty authorized under Section 3002.101.

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

(c) Authorizes an action under this section 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.

(d) Authorizes the attorney general to recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(e) Requires that a civil penalty collected by the attorney general under this section be deposited to the credit of the compensation to victims of crime fund established under Subchapter J (Funds), Chapter 56B (Crime Victims' Compensation), Code of Criminal Procedure.

(f) Provides that, notwithstanding any other law, the Fifteenth Court of Appeals has exclusive jurisdiction over any appeal arising out of a civil action brought under this section.

Sec. 3002.105. PRIVATE CIVIL CAUSE OF ACTION. (a) Provides that a person affected by a political subdivision's or state agency's violation of this chapter is authorized to bring a civil action and is entitled to obtain appropriate declaratory relief, injunctive relief, and court costs, including reasonable attorney's and witness fees.

(b) Provides that, notwithstanding any other law, the Fifteenth Court of Appeals has exclusive jurisdiction over any appeal arising out of a civil action brought under this section.

Sec. 3002.106. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY. (a) Provides that, notwithstanding any other law except as provided by Subsection (b), this state has sovereign immunity, a political subdivision has governmental immunity, and an

officer, employee, or agent of this state or a political subdivision has official immunity in an action, claim, counterclaim, or any type of legal or equitable action that:

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

(2) seeks to prevent or enjoin this state, a political subdivision, or an officer, employee, or agent of this state or a political subdivision from enforcing any provision or application of this chapter or hearing, adjudicating, or docketing an action brought under Section 3002.104 or 3002.105 for a violation of this chapter.

(b) Provides that Subsection (a) does not apply if immunity has been abrogated or preempted by federal law in a manner consistent with the United States Constitution or sovereign immunity of this state and governmental immunity of a political subdivision to suit and from liability have been waived in accordance with this chapter.

Sec. 3002.107. **APPLICABILITY OF IMMUNITY.** Provides that, notwithstanding any other law, the immunities described by Section 3002.106 apply in every state and federal court and in every type of adjudicative proceeding.

Sec. 3002.108. **WAIVER OF IMMUNITY.** (a) Prohibits a provision of state law, notwithstanding any other law, from being construed to waive or abrogate an immunity described by Section 3002.106 unless the provision expressly waives or abrogates the immunity with specific reference to this section.

(b) Prohibits an attorney representing this state, a political subdivision, or an officer, employee, or agent of this state or a political subdivision, notwithstanding any other law, from waiving an immunity described by Section 3002.106 or taking an action that would result in a waiver of that immunity. Provides that a purported waiver or action prohibited under this subsection is considered void and an ultra vires act.

Sec. 3002.109. **JURISDICTION.** (a) Provides that, notwithstanding any other law, including Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, and certain sections of the Government Code, a court of this state does not have jurisdiction to consider and is prohibited from awarding declaratory or injunctive relief, or any type of writ, including a writ of prohibition, that would:

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

(2) restrain this state, a political subdivision, or an officer, employee, or agent of this state or a political subdivision, from enforcing any provision or application of this chapter or hearing, adjudicating, docketing, or filing a civil action brought under this chapter.

(b) Prohibits a court, notwithstanding any other law, including Chapter 26 (Class Actions), Civil Practice and Remedies Code, and Rule 42, Texas Rules of Civil Procedure, from certifying a claimant class or a defendant class in a civil action that seeks relief described by this section.

SECTION 3. Amends Chapter 30, Civil Practice and Remedies Code, by adding Section 30.024, as follows:

Sec. 30.024. **FEE SHIFTING.** (a) Provides that, 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 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) Provides that, for purposes of this section, a party is considered a prevailing party if a state or federal court 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 enters judgment in the party's favor on any such claim or cause of action.

(c) Provides that a prevailing party is authorized to 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.

SECTION 4. Makes application of Chapter 3002, Government Code, as added by this Act, prospective.

SECTION 5. Severability clause.

SECTION 6. Effective date: the 91st day after the last day of the legislative session.