

By: Swanson

H.B. No. 239

A BILL TO BE ENTITLED

AN ACT

relating to regulations and policies for entering or using certain private spaces; authorizing a civil penalty.

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, Government Code, is amended by adding Chapter 3001 to read as follows:

CHAPTER 3001. GOVERNMENTAL ACTION AFFECTING CERTAIN PRIVATE SPACES.

Sec. 3001.001. DEFINITIONS. In this chapter:

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

(A) the sex organs, chromosomes, and endogenous profiles of a person; and

(B) a person's original birth certificate, if the biological sex is correctly stated on the birth certificate, as indicated by the biological sex being:

(1) entered at or near the time of birth; or

(2) modified only to correct a scrivener or clerical error in the biological sex.

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

(3) "Family violence shelter" means a family violence

1 shelter center or a family violence nonresidential center, as
2 defined by Section 51.002, Human Resources Code, partaking in a
3 contract as established by Section 51.003, Human Resources Code.

4 (4) "Political subdivision" means a governmental
5 entity of this state that is not a state agency and includes a
6 county, municipality, special purpose district or authority,
7 school district, open-enrollment charter school, and junior
8 college district.

9 (5) "Private space" means a facility designed or
10 designated for use by more than one person at a time, where a person
11 may be in a state of undress in the presence of another person,
12 regardless of whether the facility provides curtains or partial
13 walls for privacy. The term includes a restroom, locker room,
14 changing room, shower room, family violence shelter, correctional
15 facility, and sleeping quarter.

16 (6) "Single-occupancy private space" means a facility
17 designed or designated for use by only one person at a time, where a
18 person may be in a state of undress, including a single toilet
19 restroom with a locking door that is designed or designated as
20 unisex or for use based on biological sex or a sleeping quarter that
21 accommodates a single occupant.

22 (7) "State agency" means a department, commission,
23 board, office, council, authority, or other agency in the
24 executive, legislative, or judicial branch of state government that
25 is created by the constitution or a statute of this state, including
26 an institution of higher education as defined by Section 61.003,
27 Education Code.

1 Sec. 3001.002. SAFETY AND PRIVACY IN PRIVATE SPACES. (a) A
2 political subdivision or state agency shall require each private
3 space located within a facility owned, operated, or controlled by
4 the political subdivision or state agency be designated for and
5 used only by persons based on the person's biological sex.

6 (b) Nothing in this section shall be construed to prohibit a
7 political subdivision or state agency from:

8 (1) adopting policies necessary to accommodate
9 persons protected under the Americans with Disabilities Act, young
10 children in need of assistance, or elderly persons requiring aid;

11 (2) establishing single-occupancy private spaces or
12 family restrooms, changing rooms, or sleeping quarters; or

13 (3) redesignating a private space designated for
14 exclusive use by one sex to a designation for exclusive use by the
15 opposite sex.

16 Sec. 3001.003. ACCOMMODATIONS AUTHORIZED. This chapter
17 does not prohibit a political subdivision or state agency from
18 providing an accommodation, including a single-occupancy private
19 space, on request due to special circumstances. The political
20 subdivision or state agency may not provide an accommodation that
21 allows a person to use a private space designated for the biological
22 sex opposite to the person's biological sex.

23 Sec. 3001.004. EXCEPTIONS. A designation of a private
24 space under Section 3001.002 does not apply to:

25 (1) a person entering a private space designated for
26 the biological sex opposite to the person's biological sex:

27 (A) for a custodial purpose;

- 1 (B) for a maintenance or inspection purpose;
- 2 (C) to render medical or other emergency
- 3 assistance;
- 4 (D) to accompany a person needing assistance in
- 5 using the facility;
- 6 (E) to receive assistance in using the facility;
- 7 or

8 (2) a child who is:

- 9 (A) younger than 10 years of age entering a
- 10 private space designated for the biological sex opposite to the
- 11 child's biological sex; and
- 12 (B) accompanying a person caring for the child.

13 Sec. 3001.005. CIVIL PENALTY. (a) A political subdivision

14 or state agency that violates this chapter is liable for a civil

15 penalty of:

- 16 (1) \$5,000 for the first violation; and
- 17 (2) \$25,000 for the second or a subsequent violation.
- 18 (b) Each day of a continuing violation of this chapter
- 19 constitutes a separate violation.

20 Sec. 3001.006. COMPLAINT; NOTICE. (a) A citizen of this

21 state may file a complaint with the attorney general that a

22 political subdivision or state agency is in violation of this

23 chapter only if:

- 24 (1) the citizen provides the political subdivision or
- 25 state agency a written notice that describes the violation; and
- 26 (2) the political subdivision or state agency does not
- 27 cure the violation before the end of the third business day after

1 the date of receiving the written notice.

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

3 (1) a copy of the written notice; and

4 (2) the citizen's sworn statement or affidavit
5 describing the violation and indicating that the citizen provided
6 the notice required by this section.

7 Sec. 3001.007. DUTIES OF ATTORNEY GENERAL: INVESTIGATION
8 AND NOTICE. (a) Before bringing a suit against a political
9 subdivision or state agency for a violation of this chapter, the
10 attorney general shall investigate a complaint filed under Section
11 3001.006 to determine whether legal action is warranted.

12 (b) The political subdivision or state agency that is the
13 subject of the complaint shall provide to the attorney general any
14 information the attorney general requests in connection with the
15 complaint, including:

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

17 (2) a statement regarding whether the entity has
18 complied or intends to comply with this chapter.

19 (c) If the attorney general determines that legal action is
20 warranted, the attorney general shall provide the appropriate
21 officer of the political subdivision or state agency charged with
22 the violation a written notice that:

23 (1) describes the violation and location of the
24 private space found to be in violation;

25 (2) states the amount of the proposed penalty for the
26 violation; and

27 (3) requires the political subdivision or state agency

1 to cure the violation on or before the 15th day after the date the
2 notice is received to avoid the penalty, unless the political
3 subdivision or state agency was found liable by a court for
4 previously violating this chapter.

5 Sec. 3001.008. COLLECTION OF CIVIL PENALTY; MANDAMUS. (a)
6 If, after receipt of notice under Section 3001.007(c), the
7 political subdivision or state agency has not cured the violation
8 on or before the 15th day after the date the notice is provided
9 under Section 3001.007(c)(3), the attorney general may sue to
10 collect the civil penalty provided by Section 3001.005.

11 (b) In addition to filing suit under Subsection (a), the
12 attorney general may also file a petition for a writ of mandamus or
13 apply for other appropriate equitable relief.

14 (c) A suit or petition under this section may be filed in a
15 district court in:

16 (1) Travis County; or

17 (2) a county in which the principal office of the
18 political subdivision or state agency is located.

19 (d) The attorney general shall recover reasonable expenses
20 incurred in obtaining relief under this section, including court
21 costs, reasonable attorney's fees, investigative costs, witness
22 fees, and deposition costs.

23 (e) A civil penalty collected by the attorney general under
24 this section shall be deposited to the credit of the compensation to
25 victims of crime fund established under Subchapter B, Chapter 56,
26 Code of Criminal Procedure.

27 (f) A person may bring a civil action for declaratory

1 relief, injunctive relief, and reasonable attorney's fees and costs
2 against a political subdivision or state agency that violates this
3 chapter.

4 Sec. 3001.009. IMMUNITY FROM SUIT AND LIMITS ON
5 JURISDICTION. (a) Notwithstanding any other law, the state and
6 each of its officers and employees shall have sovereign immunity,
7 its political subdivisions and each of their officers and employees
8 shall have governmental immunity, and each officer and employee of
9 this state and its political subdivisions shall have official
10 immunity in any action, claim, counterclaim, or any type of legal or
11 equitable action that challenges the validity of any provision or
12 application of this chapter, on constitutional grounds or
13 otherwise, or that seeks to prevent or enjoin the state or its
14 political subdivisions or any officer, employee, or agent of this
15 state or a political subdivision from enforcing any provision or
16 application of this chapter, or from hearing, adjudicating, or
17 docketing a suit or petition brought under Section 3001.008, unless
18 that immunity has been abrogated or preempted by federal law in a
19 manner consistent with the Constitution of the United States.

20 (b) Notwithstanding any other law, the immunities conferred
21 by Subsection (a) shall apply in every court, both state and
22 federal, and in every adjudicative proceeding of any type
23 whatsoever.

24 (c) Notwithstanding any other law, no provision of state law
25 may be construed to waive or abrogate an immunity described in
26 Subsection (a) unless it expressly waives or abrogates immunity
27 with specific reference to this section.

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

8 (e) Notwithstanding any other law, including Chapter 37,
9 Civil Practice and Remedies Code, and sections 22.002, 22.221, and
10 24.007 through 24.011, Government Code, no court of this state may
11 award declaratory or injunctive relief, or any type of stay or writ,
12 including a writ of prohibition, that would pronounce any provision
13 or application of this subchapter invalid or unconstitutional, or
14 that would restrain the state or its political subdivisions, or any
15 officer, employee, or agent of this state or a political
16 subdivision, or any person from enforcing any provision or
17 application of this chapter, or from hearing, adjudicating,
18 docketing, or filing a suit or petition brought under Section
19 3001.008, and no court of this state shall have jurisdiction to
20 consider any action, claim, or counterclaim that seeks such relief.

21 (f) Notwithstanding any other law, including Chapter 26,
22 Civil Practice and Remedies Code, and Rule 42, Texas Rules of Civil
23 Procedure, no court of this state may certify a plaintiff or
24 defendant class in any action seeking the relief described in
25 Subsection (e).

26 (g) Nothing in this section or chapter shall be construed to
27 prevent a litigant from asserting the invalidity or

1 unconstitutionality of any provision or application of this chapter
2 as a defense to any action, claim, or counterclaim brought against
3 that litigant.

4 Sec. 3001.0010. SOVEREIGN IMMUNITY WAIVED.
5 Notwithstanding Section 3001.009, sovereign immunity to suit and
6 governmental immunity are waived and abolished to the extent of
7 liability created by this chapter.

8 SECTION 3. Chapter 30, Civil Practice and Remedies Code, is
9 amended by adding Section 30.023 to read as follows:

10 Sec. 30.023. AWARD OF ATTORNEY'S FEES IN ACTIONS
11 CHALLENGING CERTAIN PRIVACY LAWS. (a) Notwithstanding any other
12 law, any person, including an entity, attorney, or law firm, who
13 seeks declaratory or injunctive relief to prevent this state, a
14 political subdivision, any governmental entity or public official
15 in this state, or any person in this state from enforcing any
16 statute, ordinance, rule, regulation, or any other type of law that
17 regulates access to a private space based on biological sex in any
18 state or federal court, or that represents any litigant seeking
19 such relief in any state or federal court, is jointly and severally
20 liable to pay the costs and reasonable attorney's fees of the
21 prevailing party, including the costs and reasonable attorney's
22 fees that the prevailing party incurs in its efforts to recover
23 costs and fees.

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

26 (1) dismisses any claim or cause of action brought
27 against the party that seeks the declaratory or injunctive relief

1 described by Subsection (a), regardless of the reason for the
2 dismissal; or

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

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

9 SECTION 4. If any subsection or portion of this act is
10 declared invalid, that declaration shall not affect the validity of
11 the remaining portions of the act.

12 SECTION 5. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2025.