

By: Hinojosa

H.B. No. 4243

A BILL TO BE ENTITLED

AN ACT

relating to regulations and policies for entering or using a bathroom or changing facility in buildings operated by certain governmental entities and public schools; authorizing a civil penalty.

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

SECTION 1. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 769 to read as follows:

CHAPTER 769. GOVERNMENTAL ENTITY AND PUBLIC SCHOOL BATHROOMS AND
CHANGING FACILITIES

Sec. 769.001. DEFINITIONS. In this chapter:

(1) "Gender expression" means the external appearance of an individual's gender identity that is usually expressed through the individual's behavior, clothing, haircut, or voice, regardless of whether the individual's appearance conforms to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

(2) "Gender identity" means an individual's innermost concept, perception, and identification of self as male, female, a blend of both, or neither. Gender identity may be the same as or different from the sex assigned to an individual at birth.

(3) "Open-enrollment charter school" means a school that has been granted a charter under Subchapter D, Chapter 12, Education Code.

1 (4) "Political subdivision" means a governmental
2 entity of this state that is not a state agency and includes a
3 county, municipality, hospital district, special purpose district
4 or authority, and junior college district. The term does not
5 include a school district.

6 (5) "Public hospital" means a hospital owned,
7 operated, or leased by a governmental entity of this state.

8 (6) "School district" means any public school district
9 in this state.

10 (7) "State agency" means a department, commission,
11 board, office, council, authority, or other agency in the
12 executive, legislative, or judicial branch of state government that
13 is created by the constitution or a statute of this state, including
14 an institution of higher education as defined by Section 61.003,
15 Education Code.

16 Sec. 769.002. APPLICABILITY. This chapter applies to:

17 (1) an open-enrollment charter school;

18 (2) a political subdivision;

19 (3) a public hospital;

20 (4) a school district; and

21 (5) a state agency.

22 Sec. 769.003. USE OF BATHROOM OR CHANGING FACILITY. An
23 entity listed in Section 769.002 that has control over a bathroom or
24 changing facility in a building owned or leased by the entity shall
25 allow a person to use a bathroom or changing facility located in the
26 building consistent with the person's gender identity or gender
27 expression.

1 Sec. 769.004. CIVIL PENALTY. (a) An entity listed in
2 Section 769.002 that violates this chapter is liable for a civil
3 penalty of:

4 (1) not less than \$1,000 and not more than \$1,500 for
5 the first violation; and

6 (2) not less than \$10,000 and not more than \$10,500 for
7 the second or a subsequent violation.

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

10 Sec. 769.005. COMPLAINT; NOTICE. (a) A citizen of this
11 state may file a complaint with the attorney general that an entity
12 is in violation of this chapter only if:

13 (1) the citizen provides the entity a written notice
14 that describes the violation; and

15 (2) the entity does not cure the violation before the
16 end of the third business day after the date of receiving the
17 written notice.

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

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

20 (2) a signed statement by the citizen describing the
21 violation and indicating that the citizen provided the notice
22 required by this section.

23 Sec. 769.006. DUTIES OF ATTORNEY GENERAL: INVESTIGATION
24 AND NOTICE. (a) Before bringing a suit against an entity for a
25 violation of this chapter, the attorney general shall investigate a
26 complaint filed under Section 769.005 to determine whether legal
27 action is warranted.

1 (b) If the attorney general determines that legal action is
2 warranted, the attorney general shall provide the appropriate
3 officer of the entity charged with the violation a written notice
4 that:

5 (1) describes the violation and location of the
6 bathroom or changing facility found to be in violation;

7 (2) states the amount of the proposed penalty for the
8 violation; and

9 (3) requires the entity to cure the violation on or
10 before the 15th day after the date the notice is received to avoid
11 the penalty, unless the entity was found liable by a court for
12 previously violating this chapter.

13 Sec. 769.007. COLLECTION OF CIVIL PENALTY; MANDAMUS. (a)
14 If, after receipt of notice under Section 769.006(b), the entity
15 has not cured the violation on or before the 15th day after the date
16 the notice is provided under Section 769.006(b)(3), the attorney
17 general may sue to collect the civil penalty provided by Section
18 769.004.

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

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

24 (1) Travis County; or

25 (2) the county in which the principal office of the
26 entity is located.

27 (d) The attorney general may recover reasonable expenses

1 incurred in obtaining relief under this section, including court
2 costs, reasonable attorney's fees, investigative costs, witness
3 fees, and deposition costs.

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

8 Sec. 769.008. SOVEREIGN AND GOVERNMENTAL IMMUNITY WAIVED.
9 Sovereign and governmental immunity to suit is waived and abolished
10 to the extent of liability created by this chapter.

11 SECTION 2. This Act takes effect September 1, 2017.