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Protection of Private Spaces Act

HB 25 – SB 7

Bill Text

A BILL TO BE ENTITLED
AN ACT

relating to the designation and use of certain spaces and facilities; 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 Protection of Private Spaces 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 SEX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3002.001. DEFINITIONS. In this chapter:

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

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

(3) "Female" means 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,

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transport, and provide eggs for fertilization.

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

(5) "Male" means 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.

(6) "Multiple-occupancy private space" means 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. The term includes a restroom, locker room, changing room, or shower room.

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

(8) "Sex" means an individual's biological sex, either male or female.

(9) "Single-occupancy private space" means 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. The term includes:

(A) a single toilet restroom with a locking door that is designed or designated as unisex or for use based on sex; and

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

(10) "State agency" means a department, commission,

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board, office, council, authority, or other agency in the executive, legislative, or judicial branch of state government that is created by the constitution or a statute of this state, including an institution of higher education.

Sec. 3002.002. CONSTRUCTION OF CHAPTER. This chapter may not be 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) A political subdivision or state agency shall 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) A political subdivision or state agency shall 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) 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

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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) 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. A designation of a multiple-occupancy private space under Section 3002.051 does not apply to:

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

(A) for a custodial purpose;

(B) for a maintenance or inspection purpose;

(C) to render medical or other emergency assistance;

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

(E) for a law enforcement purpose; or

(F) to render assistance necessary in preventing a serious threat to proper order or safety; or

(2) a child who is:

(A) 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

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

Sec. 3002.054. HOUSING OF INMATES ACCORDING TO

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SEX. (a) The Texas Department of Criminal Justice shall ensure inmates are housed in a correctional facility, including a dormitory or cellblock of a correctional facility, according to the inmate's sex.

(b) The Texas Board of Criminal Justice shall 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. A family violence shelter designed specifically to provide services to female victims of family violence may only provide services 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) A political subdivision or state agency that violates this chapter is liable for a civil penalty of:

(1) $25,000 for the first violation; and

(2) $125,000 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

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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, including:

(1) supporting documents related to the complaint; and

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

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

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

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

(3) requiring the political subdivision or state agency to cure the violation on or before the 15th day after the date the notice is

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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) 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, the attorney general may bring an action to collect the civil penalty authorized under Section 3002.101.

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

(c) An action under this section may 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) The attorney general may 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) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter J, Chapter 56B, Code of Criminal Procedure.

(f) 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) A person affected by a political subdivision's or state agency's violation of

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this chapter may bring a civil action and is entitled to obtain:

(1) declaratory relief;

(2) injunctive relief; and

(3) court costs, including reasonable attorney's and witness fees.

(b) 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) 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:

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

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

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

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

(2) sovereign immunity of this state and governmental

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immunity of a political subdivision to suit and from liability have been waived in accordance with this chapter.

Sec. 3002.107. APPLICABILITY OF IMMUNITY. 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) Notwithstanding any other law, a provision of state law may not be 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) Notwithstanding any other law, an attorney representing this state, a political subdivision, or an officer, employee, or agent of this state or a political subdivision may not waive an immunity described by Section 3002.106 or take an action that would result in a waiver of that immunity. A purported waiver or action prohibited under this subsection is considered void and an ultra vires act.

Sec. 3002.109. JURISDICTION. (a) Notwithstanding any other law, including Chapter 37, Civil Practice and Remedies Code, and Sections 22.002, 22.221, 24.007, 24.008, 24.009, 24.010, and 24.011 of this code, a court of this 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:

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

(2) restrain this state, a political subdivision, an officer, employee, or agent of this state or a political subdivision, or any other

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person from:

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

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

(b) Notwithstanding any other law, including Chapter 26, Civil Practice and Remedies Code, and Rule 42, Texas Rules of Civil Procedure, a court may not certify a claimant class or a defendant 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 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

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(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.

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

SECTION 5. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions and applications of this Act are declared to be severable.

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