

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

SENATE BILL 774

5 By: Senator Collins-Smith  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING PUBLIC BUILDINGS; TO CREATE THE  
9 ARKANSAS PHYSICAL PRIVACY AND SAFETY ACT; TO DECLARE  
10 AN EMERGENCY; AND FOR OTHER PURPOSES.  
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## Subtitle

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14 TO CREATE THE ARKANSAS PHYSICAL PRIVACY  
15 AND SAFETY ACT; AND TO DECLARE AN  
16 EMERGENCY.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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### SECTION 1. Legislative intent and purpose.

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22 (a) This act does not prohibit, limit, or restrict the ability of a  
23 private entity to adopt and implement an internal policy concerning the  
24 designation or use of the private entity's restroom, shower, or changing  
25 facility.

26 (b) When awarding a contract for the purchase of goods or services, a  
27 political subdivision shall not consider whether a private entity has adopted  
28 a policy concerning the designation or use of the private entity's restroom,  
29 shower, or changing facility.

### (c) The purpose of this subchapter is to:

30  
31 (1) Further the state's interest in protecting all persons in  
32 public schools, colleges, and government buildings in this state;

33 (2) Provide for the privacy and safety needs of all persons in  
34 public schools, colleges, and government buildings in this state; and

35 (3) Maintain order and dignity in restrooms, locker rooms,  
36 showers, and other facilities where people may be in various states of



1 undress in the presence of others.

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3 SECTION 2. Arkansas Code Title 22, Chapter 3, is amended to add an  
4 additional subchapter to read as follows:

5 Subchapter 21 – Arkansas Physical Privacy and Safety Act.

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7 22-3-2101. Title.

8 This subchapter shall be known and may be cited as the “Arkansas  
9 Physical Privacy and Safety Act”.

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11 22-3-2102. [Reserved.]

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13 22-3-2103. Definitions.

14 As used in this subchapter:

15 (1) “Changing facility” means a place where a person may be in a  
16 state of undress in the presence of others, including a locker room, dressing  
17 room, or shower room;

18 (2) “Government building” means a building or structure that is  
19 owned, leased, or otherwise under the control of a government entity;

20 (3) “Government entity” means a state agency, a political  
21 subdivision of the state, a public primary or secondary school, or a public  
22 institution of higher education;

23 (4) "Private entity" means a corporation, business, nonprofit  
24 organization, or other private employer;

25 (5) “Restroom” means a facility that includes one (1) or more  
26 toilets or urinals; and

27 (6)(A) “Sex” means a person’s immutable biological sex as  
28 objectively determined by anatomy and genetics existing at the time of birth.

29 (B) A person’s original birth certificate may be relied  
30 upon to establish his or her sex.

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32 22-3-2104. Designation and use of restrooms and changing facilities in  
33 government buildings.

34 (a) Every restroom and changing facility located in a government  
35 building that is accessible by multiple persons at the same time shall be  
36 designated for use only by members of one (1) sex.

1       (b)(1) A restroom or changing facility that is located in a government  
2 building and that is designated for one (1) sex under subsection (a) of this  
3 section shall be used only by members of the designated sex.

4       (2) Except as provided under subsection (c) of this section, a  
5 person shall not enter a restroom or changing facility that is designated for  
6 one (1) sex unless he or she is a member of the designated sex.

7       (3)(A) The government entity with authority over the government  
8 building shall ensure that all restrooms and changing facilities located in  
9 the government building provide privacy from members of the opposite sex.

10       (B) In other settings in a government building where a  
11 person may be in a state of undress in the presence of others, the government  
12 entity with authority over the government building shall provide separate,  
13 private areas designated for use by persons based on their sex, and a person  
14 shall not enter these private areas unless he or she is a member of the  
15 designated sex.

16       (c) This section does not apply to a person who enters a restroom or  
17 changing facility designated for the opposite sex:

18       (1) For custodial or maintenance purposes, when the restroom or  
19 changing facility is not occupied by a member of the opposite sex;

20       (2) To render medical assistance; or

21       (3) During a natural disaster, emergency, or when necessary to  
22 prevent a serious threat to order or safety.

23       (d) This section does not prohibit a government entity from:

24       (1) Adopting policies necessary to accommodate individuals with  
25 disabilities or young children in need of physical assistance when using  
26 restrooms or changing facilities located in government buildings; or

27       (2)(A) Providing certain accommodations, including without  
28 limitation a:

29               (i) Family restroom; or

30               (ii) Single occupancy restroom or changing facility  
31 that a person may request due to a special circumstance.

32       (B) However, the accommodation under subdivision (d)(2)(A)  
33 of this section shall not allow a person access to a restroom or changing  
34 facility that is designated for use by members of the opposite sex at a time  
35 when members of the opposite sex are present or may be present.

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1           22-3-2105. Private cause of action – Remedies.

2           (a) A person has a private cause of action against the government  
3 entity that controls a government building if:

4                   (1) He or she is in a restroom or changing facility located in a  
5 government building that is designated for used only by members of one (1)  
6 sex and, being of that designated sex, encounters a member of the opposite  
7 sex; and

8                   (2) Except as otherwise provided under § 22-3-2104, the  
9 government entity:

10                           (A) Gave the member of the opposite sex permission to use  
11 the restroom or changing facility in subdivision (a)(1) of this section; or

12                           (B) Failed to take reasonable steps to prohibit the member  
13 of the opposite sex from using the restroom or changing facility in  
14 subdivision (a)(1) of this section.

15           (b) A claim arising under this section shall be brought in the state  
16 circuit court or federal district court where the claimant resides or where  
17 the government entity is located at the time of filing.

18           (c) A civil action brought under this section shall be initiated  
19 within four (4) years after the violation occurred.

20           (d) Claimants under this section who prevail in court shall be  
21 entitled to recover reasonable attorney's fees and costs, and may recover  
22 monetary damages for all psychological, emotional, and physical harm  
23 suffered.

24           (e) This section does not limit other remedies at law or equity  
25 available to the claimant against the government entity who controls the  
26 government building.

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28           SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
29 General Assembly of the State of Arkansas that the state has an interest in  
30 protecting all persons in public schools, colleges, and government buildings  
31 in this state; that the state should seek to provide for the privacy and  
32 safety needs of all persons in public schools, colleges, and government  
33 buildings in this state; and that this act is immediately necessary to  
34 maintain order and dignity in restrooms, locker rooms, showers, and other  
35 facilities where people may be in various states of undress in the presence  
36 of others. Therefore, an emergency is declared to exist, and this act being

1 immediately necessary for the preservation of the public peace, health, and  
2 safety shall become effective on:

3 (1) The date of its approval by the Governor;

4 (2) If the bill is neither approved nor vetoed by the Governor,  
5 the expiration of the period of time during which the Governor may veto the  
6 bill; or

7 (3) If the bill is vetoed by the Governor and the veto is  
8 overridden, the date the last house overrides the veto.

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