

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

A Bill

SENATE BILL 774

5
6 By: Senator Collins-Smith

7 Filed with: Senate Committee on Judiciary
8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT CONCERNING PUBLIC BUILDINGS; TO CREATE THE
11 ARKANSAS PHYSICAL PRIVACY AND SAFETY ACT; TO DECLARE
12 AN EMERGENCY; AND FOR OTHER PURPOSES.

13 14 15 Subtitle

16 TO CREATE THE ARKANSAS PHYSICAL PRIVACY
17 AND SAFETY ACT; AND TO DECLARE AN
18 EMERGENCY.

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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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23 SECTION 1. Legislative intent and purpose.

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

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

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

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

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

1 (3) Maintain order and dignity in restrooms, locker rooms,
2 showers, and other facilities where people may be in various states of
3 undress in the presence of others.

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

7 Subchapter 21 – Arkansas Physical Privacy and Safety Act.

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9 22-3-2101. Title.

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

12
13 22-3-2102. [Reserved.]

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15 22-3-2103. Definitions.

16 As used in this subchapter:

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

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

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

25 (4) “Private entity” means a corporation, business, nonprofit
26 organization, or other private employer;

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

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

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

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34 22-3-2104. Designation and use of restrooms and changing facilities in
35 government buildings.

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

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

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

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

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

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

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

23 (2) To render medical assistance; or

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

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

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

30 (2)(A) Providing certain accommodations, including without
31 limitation a:

32 (i) Family restroom; or

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

35 (B) However, the accommodation under subdivision (d)(2)(A)
36 of this section shall not allow a person access to a restroom or changing

1 facility that is designated for use by members of the opposite sex at a time
2 when members of the opposite sex are present or may be present.

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4 22-3-2105. Private cause of action – Remedies.

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

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

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

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

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

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

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

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

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

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31 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that the state has an interest in
33 protecting all persons in public schools, colleges, and government buildings
34 in this state; that the state should seek to provide for the privacy and
35 safety needs of all persons in public schools, colleges, and government
36 buildings in this state; and that this act is immediately necessary to

1 maintain order and dignity in restrooms, locker rooms, showers, and other
2 facilities where people may be in various states of undress in the presence
3 of others. Therefore, an emergency is declared to exist, and this act being
4 immediately necessary for the preservation of the public peace, health, and
5 safety shall become effective on:

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

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

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

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14 Referred by the Arkansas Senate

15 Prepared by: VJF
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