

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

SENATE BILL 774

By: Senator Collins-Smith

## For An Act To Be Entitled

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

### Subtitle

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

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

SECTION 1. Legislative intent and purpose.

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

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

(c) The purpose of this subchapter is to:

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

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

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



undress in the presence of others.

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

Subchapter 21 – Arkansas Physical Privacy and Safety Act.

22-3-2101. Title.

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

22-3-2102. [Reserved.]

22-3-2103. Definitions.

As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) To render medical assistance; or

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

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

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

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

(i) Family restroom; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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