

1 SB1  
2 178102-1  
3 By Senator Williams  
4 RFD: Judiciary  
5 First Read: 07-FEB-17  
6 PFD: 05/12/2016

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would establish the Alabama  
9 Privacy Act to impose requirements on any person or  
10 entity that maintains public rest rooms, bathrooms,  
11 or changing facilities regarding privacy and the  
12 gender of the persons admitted.

13  
14 A BILL  
15 TO BE ENTITLED  
16 AN ACT

17  
18 To establish the Alabama Privacy Act relating to  
19 public rest rooms, bathrooms, or changing facilities; to  
20 impose requirements relating to privacy; and to specify the  
21 types of public rest rooms that may be provided based on the  
22 gender of the user.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall be known and may be cited  
25 as the Alabama Privacy Act.

26 The Legislature finds and declares the following:

1           (1) The law of Alabama has long held that a resident  
2 of this state has a right to privacy in his or her person and  
3 his or her personal affairs. This right has been determined by  
4 the courts of this state to include a physical intrusion into  
5 that place in which a resident may have rightfully secluded  
6 himself or herself, even to the extent that such an intrusion  
7 may be considered wrongful in an otherwise public place if the  
8 resident were right to consider that privacy of his or her  
9 person and personal affairs should be reasonably expected. The  
10 law of this state has further upheld the premise that one's  
11 emotional sanctum is due the same measure of protection in  
12 this regard as one's physical expectations of privacy.

13           (2) The use of rest room, bathroom, or changing  
14 facilities creates an inherent call for physical and emotional  
15 security and an equally strong right to privacy for the  
16 residents of this state and any visitors to this state. Such  
17 rest rooms, bathrooms, or changing facilities are places of  
18 increased vulnerability and present the potential for crimes  
19 against individuals utilizing those facilities which may  
20 include, but are not limited to, voyeurism, exhibitionism,  
21 molestation, and assault and battery. Further, to the extent  
22 possible, it is incumbent upon this state to ensure the  
23 emotional and physical security of its residents and the  
24 visitors to this state.

25           Section 2. Any person or entity that makes rest  
26 room, bathroom, or changing facilities available to the public  
27 shall do so in a manner that ensures the privacy of each

1 individual making use of the rest room, bathroom, or changing  
2 facilities. The requirement of this section may be satisfied  
3 by providing any of the following:

4 (1) Rest room, bathroom, or changing facilities that  
5 are designed to be used by one person at a time.

6 (2) Rest room, bathroom, or changing facilities that  
7 are designed to be used by multiple persons of the same  
8 gender.

9 (3) Rest room, bathroom, or changing facilities that  
10 are designed to be used by multiple persons at once,  
11 irrespective of their gender, that are staffed by an attendant  
12 stationed at the door of each rest room to monitor the  
13 appropriate use of the rest room and answer any questions or  
14 concerns posed by users.

15 Section 3. (a) Enforcement of this act shall be  
16 authorized by any state or local law enforcement agency having  
17 jurisdiction over the person or entity providing rest rooms,  
18 bathrooms, or changing facilities to the public.

19 (b) Failure by any person or entity that provides  
20 rest room, bathroom, or changing facilities to the public to  
21 provide those facilities in the manner prescribed in this act  
22 shall create civil penalties in the following amount: A fine  
23 of not less than two thousand dollars (\$2,000) for the first  
24 violation imposed upon the person or entity payable to the  
25 local governing body from whom the person or entity received  
26 its license to so provide the facilities. A fine of not less

1 than three thousand five hundred dollars (\$3,500) for each  
2 subsequent violation.

3 (c) An appeal of the imposition of a civil penalty  
4 shall be made to the district court of this state having in  
5 personam jurisdiction over the person or entity providing the  
6 rest room, bathroom, or changing facilities to the public  
7 against whom the penalty has been assessed.

8 (d) Payment of a civil penalty by the person or  
9 entity providing rest room, bathroom, or changing facilities  
10 to the public as described in this section shall create a  
11 rebuttable presumption of liability by the person or entity  
12 for a violation of the right to privacy.

13 Section 4. (a) Any violation of this act shall  
14 create a private cause of action in the person or entity  
15 aggrieved for civil relief in the courts of this state. Any  
16 person or entity who commits one or more of the acts or  
17 practices declared unlawful under this act and thereby causes  
18 physical, emotional, or monetary damage to an individual, and  
19 any person or entity that commits one or more of the acts or  
20 practices declared unlawful in this act and thereby causes  
21 physical, emotional, or monetary damage to an individual,  
22 shall be liable for:

23 (1) Any actual damages sustained by the person or  
24 entity, or the sum of one thousand dollars (\$1,000), whichever  
25 is greater; or

26 (2) Up to three times any actual damages, in the  
27 court's discretion in the form of punitive damages. In making

1 its determination under this subdivision, the court shall  
2 consider, among other relevant factors, the amount of actual  
3 damages awarded, the frequency of the unlawful acts or  
4 practices, the number of individuals adversely affected  
5 thereby, and the extent to which the unlawful acts or  
6 practices were committed intentionally; and

7 (b) In the case of any successful action or  
8 counterclaim to enforce the foregoing liability is obtained,  
9 the costs of the action or counterclaim, together with a  
10 reasonable attorney's fee.

11 (c) On a finding by the court that an action or  
12 counterclaim under this section was frivolous or brought in  
13 bad faith or for the purpose of harassment, the court shall  
14 award to the defendant, or counterclaim-defendant, reasonable  
15 attorney's fees and costs.

16 (d) The liability provided in this section may be  
17 enforced by counterclaim in an action arising from the same  
18 transaction.

19 (e) Any action under this section may be brought in  
20 the circuit court for the county in which the defendant person  
21 or entity physically resides, has his or her principal place  
22 of business, is doing business, or committed the unlawful act  
23 or practice.

24 (f) Upon commencement of any action brought under  
25 this section, the clerk of the court shall mail a copy of the  
26 complaint or other initial pleading to the office of the  
27 Attorney General and to the local district attorney and, upon

1 entry of any judgment or decree in the action, shall mail a  
2 copy of such judgment or decree to the office of the Attorney  
3 General and to the local district attorney.

4 (g) At least 15 days before to the filing of any  
5 action under this section, a written demand for relief,  
6 identifying the claimant and reasonably describing the act or  
7 practice relied upon and the injury suffered, shall be  
8 communicated to any prospective respondent by placing in the  
9 United States mail or otherwise. Any person receiving a demand  
10 for relief who, within 15 days after the delivering of the  
11 demand for relief, makes a written tender of settlement which  
12 is rejected by the claimant, in any subsequent action, may  
13 file the written tender and an affidavit concerning this  
14 rejection. If the court finds that the relief tendered was  
15 sufficient to compensate the petitioner for his or her actual  
16 damages, the court shall not award any punitive damages or  
17 attorney's fees or costs to the petitioner. The demand  
18 requirements of this subdivision shall not apply if the  
19 prospective respondent does not maintain a corporate  
20 headquarters within the state, but such respondent may  
21 otherwise employ the provisions of this section by making a  
22 written offer of relief and paying the rejected tender into  
23 court as soon as practicable after receiving notice of an  
24 action commenced under this section. All written tenders of  
25 settlement such as described in this subdivision shall be  
26 presumed to be offered without prejudice in compromise of a  
27 disputed matter.

1                   (h) A person or entity bringing an action under this  
2 section may not bring an action on behalf of a class;  
3 provided, however, that the office of the Attorney General or  
4 district attorney shall have the authority to bring action in  
5 a representative capacity on behalf of any named person or  
6 persons. In any such action brought by the office of the  
7 Attorney General or a district attorney, the court shall not  
8 award minimum damages or treble damages, but recovery shall be  
9 limited to actual damages suffered by the person or persons,  
10 plus reasonable attorney's fees and costs.

11                   Section 5. This act shall become effective  
12 immediately following its passage and approval by the  
13 Governor, or its otherwise becoming law.