SB1
178102-1
By Senator Williams
RFD: Judiciary
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SYNOPSIS: This bill would establish the Alabama Privacy Act to impose requirements on any person or entity that maintains public rest rooms, bathrooms, or changing facilities regarding privacy and the gender of the persons admitted.

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

Section 2. Any person or entity that makes rest room, bathroom, or changing facilities available to the public shall do so in a manner that ensures the privacy of each
individual making use of the rest room, bathroom, or changing facilities. The requirement of this section may be satisfied by providing any of the following:

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

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

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

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

(b) Failure by any person or entity that provides rest room, bathroom, or changing facilities to the public to provide those facilities in the manner prescribed in this act shall create civil penalties in the following amount: A fine of not less than two thousand dollars ($2,000) for the first violation imposed upon the person or entity payable to the local governing body from whom the person or entity received its license to so provide the facilities. A fine of not less
than three thousand five hundred dollars ($3,500) for each subsequent violation.

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

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

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

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

   (2) Up to three times any actual damages, in the court's discretion in the form of punitive damages. In making
its determination under this subdivision, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency of the unlawful acts or practices, the number of individuals adversely affected thereby, and the extent to which the unlawful acts or practices were committed intentionally; and

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

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

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

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

(f) Upon commencement of any action brought under this section, the clerk of the court shall mail a copy of the complaint or other initial pleading to the office of the Attorney General and to the local district attorney and, upon
entry of any judgment or decree in the action, shall mail a
copy of such judgment or decree to the office of the Attorney
General and to the local district attorney.

(g) At least 15 days before to the filing of any
action under this section, a written demand for relief,
identifying the claimant and reasonably describing the act or
practice relied upon and the injury suffered, shall be
communicated to any prospective respondent by placing in the
United States mail or otherwise. Any person receiving a demand
for relief who, within 15 days after the delivering of the
demand for relief, makes a written tender of settlement which
is rejected by the claimant, in any subsequent action, may
file the written tender and an affidavit concerning this
rejection. If the court finds that the relief tendered was
sufficient to compensate the petitioner for his or her actual
damages, the court shall not award any punitive damages or
attorney's fees or costs to the petitioner. The demand
requirements of this subdivision shall not apply if the
prospective respondent does not maintain a corporate
headquarters within the state, but such respondent may
otherwise employ the provisions of this section by making a
written offer of relief and paying the rejected tender into
court as soon as practicable after receiving notice of an
action commenced under this section. All written tenders of
settlement such as described in this subdivision shall be
presumed to be offered without prejudice in compromise of a
disputed matter.
(h) A person or entity bringing an action under this section may not bring an action on behalf of a class; provided, however, that the office of the Attorney General or district attorney shall have the authority to bring action in a representative capacity on behalf of any named person or persons. In any such action brought by the office of the Attorney General or a district attorney, the court shall not award minimum damages or treble damages, but recovery shall be limited to actual damages suffered by the person or persons, plus reasonable attorney's fees and costs.

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