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HOUSE BILL NO. 1612

Offered January 11, 2017

Prefiled January 3, 2017

A *BILL to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 39.1, consisting of sections numbered 2.2-3904 through 2.2-3908, relating to the Physical Privacy Act.*

Patrons—Marshall, R.G., Cole, Fariss, Freitas, LaRock, Lingamfelter, Morris and Pogge; Senator: Black

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 39.1, consisting of sections numbered 2.2-3904 through 2.2-3908, as follows:

CHAPTER 39.1.

PHYSICAL PRIVACY ACT.

§ 2.2-3904. Declaration of policy and findings. Purpose.

It is the public policy of the Commonwealth to (i) protect individuals in public schools, public institutions of higher education, and government buildings; (ii) provide for the physical privacy and safety needs of all individuals in such schools, institutions, and buildings; (iii) maintain order and dignity in restrooms, locker rooms, changing rooms, shower rooms, and similar facilities where individuals may be in a state of undress in the presence of others; and (iv) protect a parent's fundamental right to make decisions concerning the upbringing, education, and care of the parent's child as set forth in § 1-240.1 and recognized by the U.S. Supreme Court.

§ 2.2-3905. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Changing facility" means any facility in which a person may be in a state of undress in the presence of others, including a locker room, changing room, or shower room.

"Government building" means any building or structure that is owned, leased, or otherwise under the control of a government entity.

"Government entity" has the same meaning as provided in § 57-2.02.

"Restroom" means a facility that includes one or more toilets or urinals.

"Sex" means the physical condition of being male or female as shown on an individual's original birth certificate.

§ 2.2-3906. Facilities at government buildings; physical privacy.

A. The government entity that owns, leases, or otherwise controls a government building shall ensure that all restrooms and changing facilities located in such building provide physical privacy from members of the opposite sex. Any restroom or changing facility located in such building designed to be used concurrently by more than one individual shall be designated for use only by members of one sex by the government entity. In any other setting in such building where an individual may be in a state of undress in the presence of others, the government entity shall provide a separate, private area designated for use only by members of one sex.

B. Except as provided in subsection C, an individual shall not enter a restroom, changing facility, or private area located in a government building unless such individual is a member of the sex designated to use such restroom, changing facility, or private area.

C. An individual may enter a restroom, changing facility, or private area designated for members of the opposite sex (i) for the purpose of performing maintenance or custodial services if the restroom, changing facility, or private area is not occupied by a member of the opposite sex; (ii) to render medical assistance to an individual located in the restroom, changing facility, or private area; (iii) during a natural disaster or emergency or when necessary to prevent a serious threat to safety; or (iv) to provide assistance to a minor or person with a disability in accordance with a policy adopted by the government entity.

D. Nothing in this section shall prohibit a government entity from providing an accommodation, including the use of a single-occupancy restroom, changing facility, or private area, upon an individual's request, provided that such accommodation shall not include access to a restroom, changing facility, or private area that is designated for use by members of the opposite sex while members of the opposite sex are present.

§ 2.2-3907. Parental notification.

The principal of a public school attended by a child shall notify the child's parent, guardian, legal custodian, or other person having control or charge of a child within 24 hours of any request by a child

59 *to be recognized or treated as the opposite sex, to use a name or pronouns inconsistent with the child's*
60 *sex, or to use a restroom or changing facility designated for the opposite sex.*

61 **§ 2.2-3908. Invasion of physical privacy; civil action.**

62 *A. An individual who accesses a restroom, changing facility, or private area located in a government*
63 *building that is designated for use by such individual's sex may bring an action against the government*
64 *entity that owns, leases, or controls such building if (i) such individual encounters a member of the*
65 *opposite sex in such restroom, changing facility, or private area and (ii) the government entity allowed*
66 *the member of the opposite sex to use or failed to take reasonable steps to prohibit the member of the*
67 *opposite sex from using such restroom, changing facility, or private area. An individual may be awarded*
68 *actual damages for physical and emotional pain and suffering, in addition to reasonable attorney fees*
69 *and costs.*

70 *B. This section shall constitute a waiver of sovereign immunity. The provisions of this section shall*
71 *be in addition to any other remedy provided by law.*