

PUBLICATION

New Tennessee Laws Governing the Use of Restrooms

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The Tennessee legislature passed two bills this session relating to the use of restrooms by transgender individuals. Generally referred to as the "bathroom bills," these laws take effect on July 1, 2021. In this alert, we provide important information of which businesses and schools need to be aware.

House Bill 1182 – Restrooms in Public Buildings

House Bill 1182 was sponsored by Representatives Tim Rudd (R-Murfreesboro), Scott Cepicky (R-Culleoka), Bruce Griffey (R-Paris), Paul Sherrell (R-Sparta), Debra Moody (R-Covington), and Chris Todd (R-Madison Co.). HB 1182 amends the Health, Safety and Environmental Protection laws governing Building Regulations found in Chapter 120 of Title 68 of the Tennessee Code Annotated by adding language that requires businesses open to the public who allow transgender individuals to use public restrooms within the facility to post a notice at the entrance of each public restroom.

The following statement must be contained on the notice required to be posted:

THIS FACILITY MAINTAINS A POLICY OF ALLOWING THE USE OF RESTROOMS BY EITHER BIOLOGICAL SEX REGARDLESS OF THE DESIGNATION OF THE RESTROOM

The new law requires that the signage be posted in a manner that is easily visible to a person entering the public restroom and must meet the following standards:

- (1) be at least eight inches wide and six inches tall;
- (2) the top third should have a background color of red and state "NOTICE" in centered yellow text;
- (3) the bottom two-thirds should have a background color of white with type in black; and
- (4) be located not more than one foot from the outside edge of the frame of the door.

The law specifically excludes from the posting requirement unisex or single occupant restrooms and family restrooms intended for use by either biological sex.

Businesses notified that they are not in compliance with the new law will be given 30 days to comply before an enforcement action is taken. Interestingly, the new law does not appear to contain any mechanism for enforcement or specific penalties. Co-sponsor Representative Rudd has stated under the new law that local district attorneys can seek a court order requiring facilities to post the required signage. Additionally, he noted that failure to comply could result in the imposition of judicial remedies imposed by the courts.

Memphis District Attorney Amy Weirich has stated that the new law fails to provide a sufficient legal pathway to allow her office to enforce violations of the new law.

The Tennessee branch of the American Civil Liberties Union (ACLU) actively opposed the legislation and called upon Governor Bill Lee to veto HB 1182, an invitation which he did not accept. Based on public statements, the ACLU may initiate a legal challenge to HB 1182.

Businesses that provide public restrooms should closely consider the requirements of the law and potential impacts of noncompliance.

House Bill 1233 – School Restrooms

House Bill 1233 was sponsored by Representative Jason Zachary (R-Knoxville) and co-sponsored by more than 20 additional representatives. Based on the language of the legislation, HB 1233 is known as the "Tennessee Accommodation for All Children Act." The new law amends Title 49 of the Tennessee Code Annotated governing Education by adding language that requires public schools to provide reasonable accommodations to students, teachers or employees who "[d]esire[] greater privacy when using a multi-occupancy restroom."

Under the new law, students (or their parents), teachers and employees may make a written request for reasonable accommodation. School principals are required to provide the requested accommodation unless it is impracticable. The principal must issue a decision in writing either approving or denying the request. If the request is denied, grounds for denial must be provided.

The new law provides for an appeals process where the request for reasonable accommodation is denied at the school level. The individual requesting the accommodation may appeal to the director of schools. If still unsatisfied, the individual may request a hearing before an impartial hearing officer selected by the local board of education. Any such hearing would not be open to attendance by the public.

HB 1233 also provides a private right of action to students, teachers, and employees against the local board of education or public school if:

- the student, teacher or employee encounters a member of the opposite sex in a multi-occupancy restroom in a public school;
- the student, teacher or employee is in the restroom designated for their assigned sex at birth when the encounter occurs, and;
- the local board of education or public school intentionally allows a member of the opposite sex to enter the multi-occupancy restroom while other persons are present.

In pursuing a cause of action under the new law, aggrieved individuals may recover monetary damages, including damages for psychological, emotional, and physical harm. An individual who prevails on a claim brought under the new law is entitled to recover reasonable attorney fees and costs.

Local boards of education and public schools should be cognizant of the new law and the potential for legal exposure. If you have any questions on this topic, please contact [Jennifer Cook](#) or any member of Baker Donelson's [Labor & Employment Team](#).