**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4538**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Cromer, Trantham, Oremus, Magnuson, Pope, Guffey, Vaughan, Kilmartin, Beach, O'Neal, Nutt, Haddon, Burns, Chumley, McCravy, J.E. Johnson, Brittain, Guest, Gagnon, McGinnis, Hardee, Schuessler, Atkinson, Hayes, Crawford, Pace, T. Moore, Chapman, Mitchell, Yow, McCabe and Herbkersman

Companion/Similar bill(s): 1213, 5407

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Introduced in the House on January 9, 2024

Currently residing in the House

Summary: South Carolina Student Physical Privacy Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 11/16/2023 House Prefiled

 11/16/2023 House Referred to Committee on **Judiciary**

 1/9/2024 House Introduced and read first time (House Journal‑page 75)

 1/9/2024 House Referred to Committee on **Judiciary** (House Journal‑page 75)

 1/9/2024 House Member(s) request name added as sponsor: Vaughan,
 Kilmartin, Beach, O'Neal, Nutt, Haddon,
 Burns, Chumley

 1/18/2024 House Member(s) request name added as sponsor: McCravy

 2/6/2024 House Member(s) request name added as sponsor: J.E.
 Johnson, Brittain, Guest, Gagnon, McGinnis,
 Hardee, Schuessler, Atkinson, Hayes,
 Crawford, Pace, T. Moore, Chapman

 2/13/2024 House Member(s) request name added as sponsor:
 Mitchell, Yow, McCabe, Herbkersman

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**VERSIONS OF THIS BILL**

[11/16/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4538_20231116.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTING THE “SOUTH CAROLINA STUDENT PHYSICAL PRIVACY ACT” BY ADDING ARTICLE 4 TO CHAPTER 23, TITLE 59 SO AS TO STATE PURPOSES, PROVIDE DEFINITIONS, PROVIDE THAT EVERY PUBLIC SCHOOL RESTROOM AND CHANGING FACILITY THAT IS ACCESSIBLE BY MULTIPLE PERSONS MUST BE DESIGNATED FOR USE ONLY BY MEMBERS OF ONE SEX, AND TO PROVIDE CIVIL PENALTIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Student Physical Privacy Act”.

SECTION 2. Chapter 23, Title 59 of the S.C. Code is amended by adding:

 Article 4

 Student Physical Privacy

 Section 59‑23‑410. The purposes of this article are:

 (1) to further the state’s interest in protecting all students in public schools in this State;

 (2) to provide for the privacy needs of all students in public schools in this State; and

 (3) to maintain order and dignity in restrooms, locker rooms, showers, and other facilities where students may be in various states of undress in the presence of others.

 Section 59‑23‑420. As used in this article:

 (1) “Changing Facility” means a 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.

 (2) “Public school” has the same meaning as set forth in Section 59‑1‑120.

 (3) “Restroom” means a facility that includes one or more toilets or urinals.

 (4) “Sex” means a person’s biological sex as objectively determined by anatomy and genetics existing at the time of birth. Evidence of a person’s biological sex includes, but is not limited to, any government‑issued identification document that accurately reflects a person’s sex as listed on the person’s original birth certificate issued at or near the time of birth.

 Section 59‑23‑430. (A)(1) Every public school restroom and changing facility that is accessible by multiple persons at the same time must be designated for use only by members of one sex.

 (2) Any public school restrooms and changing facilities that are designated for one sex must be used only by members of that sex. A person may not enter a restroom or changing facility that is designated for one sex unless he is a member of that sex. The public school with authority over that building must ensure that all restrooms and changing facilities provide its users with privacy from members of the opposite sex.

 (3) During any public school authorized‑activity or event where students share overnight lodging, a student may not share a bedroom or multioccupancy restroom with a member of the opposite sex, unless such persons are members of the same family, such as a parent, guardian, sibling, or grandparent.

 (4) In any other public school facility or setting where a person may be in a state of undress in the presence of others, school personnel shall provide separate, private areas designated for use by persons based on their sex, and a person may not enter these private areas unless he is a member of the designated sex.

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

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

 (b) to render medical assistance; or

 (c) during a natural disaster, emergency, or when necessary to prevent a serious threat to good order or student safety.

 (6) Nothing in this article may be construed to prohibit schools from adopting policies necessary to accommodate disabled persons or young children in need of physical assistance when using restrooms or changing facilities.

 (B) Students who, for any reason, are unwilling or unable to use a facility described in subsection (A) may submit a request to the principal or other designee of the public school for access to alternative facilities. The principal or designee shall evaluate these requests on a case‑by‑case basis and shall offer, to the extent reasonable, options for alternate facilities, which may include, but are not limited to, access to a single‑user restroom or controlled use of an employee restroom, locker room, or shower. The accommodation may not be access to a facility described in subsection (A) that is designated for use by members of the opposite sex while persons of the opposite sex are present or could be present.

 Section 59‑23‑440. (A) Students who, while accessing a public school restroom, changing facility, or overnight lodging designated for use by their sex, encounter a person of the opposite sex in that facility, have a private cause of action against the public school if:

 (1) the public school gave that person permission to use facilities of the opposite sex; or

 (2) the public school failed to take reasonable steps to prohibit that person from using facilities of the opposite sex.

 (B) All civil actions brought pursuant to this article must be initiated within two years after the violation occurred.

 (C) A student who prevails on a claim brought pursuant to this article must be entitled to recover monetary damages for any psychological, emotional, and physical harm suffered along with reasonable attorney’s fees and costs from the offending public school.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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