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SENATE BILL 937

By Rose

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8; Title 9, Chapter 8; Title 29, Chapter 20 and Title 49, relative to freedom of speech.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-6-5102, is amended by deleting the section and substituting instead the following:

(a) The general assembly finds that:

(1) Students, teachers, employees, and contractors of public schools and LEAs do not shed their constitutional rights to freedom of speech and expression while at school or work;

(2) Protecting the right to free speech for students, teachers, employees, and contractors of public schools and LEAs promotes important state interests;

(3) The use of names and pronouns by students, teachers, employees, and contractors of public schools and LEAs in an educational setting is a matter of free speech or expression; and

(4) A student, teacher, employee, or contractor of a public school or LEA should never be compelled to affirm a belief with which the student, teacher, employee, or contractor disagrees.

(b) A student, teacher, employee, or contractor of a public school or LEA is not:

(1) Required to use the:

(A) Preferred name of a student, teacher, employee, or contractor of a public school or LEA, if the individual's preferred name is not the individual's legal name or a derivative thereof; or

(B) Preferred pronoun of a student, teacher, employee, or contractor of a public school or LEA, if the individual's preferred pronoun is not consistent with the individual's sex;

(2) Civilly liable for using:

(A) The legal name or a derivative thereof of a student, teacher, employee, or contractor of a public school or LEA when addressing or referring to the student, teacher, employee, or contractor, even if the individual's legal name is not the individual's preferred name; or

(B) A pronoun that is consistent with the sex of the student, teacher, employee, or contractor to whom the student, teacher, employee, or contractor is referring, even if the pronoun is not the individual's preferred pronoun; or

(3) Subject to an adverse action or disciplinary action for not using:

(A) The preferred name of a student, teacher, employee, or contractor of a public school or LEA, if the individual's preferred name is not the individual's legal name or a derivative thereof; or

(B) The preferred pronoun of a student, teacher, employee, or contractor of a public school or LEA, if the individual's preferred pronoun is inconsistent with the individual's sex.

(c) A public school or LEA is not civilly liable if a teacher, employee, or contractor of the public school or LEA refers to a student, teacher, employee, or contractor of the public school or LEA using:

(1) The individual's legal name or a derivative thereof, even if the individual's legal name is not the individual's preferred name; or

(2) A pronoun that is consistent with the sex of the individual to whom the student, teacher, employee, or contractor is referring, even if the pronoun is not the individual's preferred pronoun.

(d)

(1) A public school, LEA, or teacher, employee, or contractor of a public school or LEA shall not ask a student, teacher, employee, or contractor of the public school or LEA to provide the individual's preferred pronouns and shall not subject a student, teacher, employee, or contractor of the public school or LEA to an adverse action or disciplinary action for refusing to provide the individual's preferred pronouns.

(2) A teacher, employee, or contractor of a public school or LEA shall not knowingly address or refer to an unemancipated minor student who is enrolled in the public school or LEA by a name other than the student's legal name, or a derivative thereof, or by a pronoun or title that is inconsistent with the student's sex without first obtaining written consent to do so from the unemancipated minor student's parent or legal guardian.

(3) A teacher, employee, or contractor of a public school or LEA shall not ask a student to refer to the teacher, employee, or contractor using a pronoun or honorific that is inconsistent with the sex of the teacher, employee, or contractor.

(e)

(1) If a public school, LEA, or a teacher, employee, or contractor of a public school or LEA requires a student, teacher, employee, or contractor of the public school or LEA to use a preferred name or preferred pronoun in violation of subdivision (b)(1) or subjects a student, teacher, employee, or contractor of the public school or LEA to an adverse action or disciplinary action for refusing to

use a preferred name or preferred pronoun in violation of subdivision (b)(3), then the student or the student's parent or legal guardian if the student is an unemancipated minor, teacher, employee, or contractor who was required to use a preferred name or preferred pronoun in violation of subdivision (b)(1) or who was subjected to an adverse action or disciplinary action for refusing to use a preferred name or preferred pronoun in violation of subdivision (b)(3) has a private cause of action against the public school or LEA for injunctive relief, monetary damages, and any other relief available under law. The student or the student's parent or legal guardian if the student is an unemancipated minor, teacher, employee, or contractor is also entitled to recover reasonable costs and attorney fees. A student or the student's parent or legal guardian if the student is an unemancipated minor, teacher, employee, or contractor has two (2) years from the date of a violation of subdivision (b)(1) or (b)(3) to file an action.

(2) If a public school, LEA, or a teacher, employee, or contractor of a public school or LEA violates subdivision (d)(1), then the student or the student's parent or legal guardian if the student is an unemancipated minor, teacher, employee, or contractor of the public school or LEA who was required to provide their preferred pronouns or who was subject to an adverse action or disciplinary action for refusing to provide their preferred pronouns in violation of subdivision (d)(1) has a private cause of action against the public school or LEA for injunctive relief, monetary damages, and any other relief available under law. The student or the student's parent or legal guardian if the student is an unemancipated minor, teacher, employee, or contractor is also entitled to recover reasonable costs and attorney fees. A student or the student's parent or legal guardian if the

student is an unemancipated minor, teacher, employee, or contractor has two (2) years from the date of the violation of subdivision (d)(1) to file an action.

(3) If a teacher, employee, or contractor of a public school or LEA violates subdivision (d)(2) or (d)(3), then the student, or the student's parent or legal guardian if the student is an unemancipated minor, who was addressed or referred to in violation of subdivision (d)(2) or who was asked to refer to a teacher, employee, or contractor of the public school or LEA has a private cause of action against the public school or LEA for injunctive relief, monetary damages, and any other relief available under law. The student, parent, or legal guardian is also entitled to recover reasonable costs and attorney fees. A student, parent, or legal guardian has two (2) years from the date of the violation to file an action.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 7, Part 24, is amended by adding the following as a new section:

(a) The general assembly finds that:

(1) Students, faculty, employees, and contractors of public institutions of higher education do not shed their constitutional rights to freedom of speech and expression while at work or while receiving an education on a campus of the institution;

(2) Protecting the right to free speech for students, faculty, employees, and contractors of public institutions of higher education promotes important state interests;

(3) The use of names or pronouns by students, faculty, employees, and contractors of public institutions of higher education is a matter of free speech or expression; and

(4) A student, faculty member, employee, or contractor of a public institution of higher education should never be compelled to affirm a belief with which the student, faculty member, employee, or contractor disagrees.

(b) A student, faculty member, employee, or contractor of an institution is not:

(1) Required to use the:

(A) Preferred name of a student, faculty member, employee, or contractor, if the individual's preferred name is not the individual's legal name or a derivative thereof; or

(B) Preferred pronoun of a student, faculty member, employee, or contractor, if the individual's preferred pronoun is not consistent with the individual's sex;

(2) Civilly liable for using:

(A) The legal name or a derivative thereof of a student, faculty member, employee, or contractor when addressing or referring to the student, faculty member, employee, or contractor, even if the individual's legal name is not the individual's preferred name; or

(B) A pronoun that is consistent with the sex of the student, faculty member, employee, or contractor to whom the student, faculty member, employee, or contractor is referring, even if the pronoun is not the individual's preferred pronoun; or

(3) Subject to an adverse action or disciplinary action for not using the:

(A) Preferred name of a student, faculty member, employee, or contractor, if the individual's preferred name is not the individual's legal name or a derivative thereof; or

(B) Preferred pronoun of a student, faculty member, employee, or contractor, if the individual's preferred pronoun is inconsistent with the individual's sex.

(c) A public institution of higher education is not civilly liable if a student, faculty member, employee, or contractor of the institution refers to another student, faculty member, employee, or contractor of the institution using:

(1) The individual's legal name or a derivative thereof, even if the individual's legal name is not the individual's preferred name; or

(2) A pronoun that is consistent with the sex of the individual to whom the student, faculty member, employee, or contractor is referring, even if the pronoun is not the individual's preferred pronoun.

(d) A public institution of higher education or a faculty member, employee, or contractor of the institution shall not ask a student, faculty member, employee, or contractor of the institution to provide the individual's preferred pronouns and shall not subject a student, faculty member, employee, or contractor of the institution to an adverse action or disciplinary action for refusing to provide the individual's preferred pronouns.

(e)

(1) If a public institution of higher education or a faculty member, employee, or contractor of the institution requires a student, faculty member, employee, or contractor of the institution to use a preferred name or preferred pronoun in violation of subdivision (b)(1) or subjects a student, faculty member, employee, or contractor of the institution to an adverse action or disciplinary action for refusing to use a preferred name or preferred pronoun in violation of subdivision (b)(3), then the student, faculty member, employee, or contractor who

was required to use a preferred name or preferred pronoun or who was subject to an adverse action or disciplinary action for refusing to use a preferred name or preferred pronoun has a private cause of action against the institution for injunctive relief, monetary damages, and any other relief available under law. The student, faculty member, employee, or contractor is also entitled to recover reasonable costs and attorney fees. A student, faculty member, employee, or contractor has two (2) years from the date of a violation of subdivision (b)(1) or (b)(3) to file an action.

(2) If an institution or a faculty member, employee, or contractor of the institution violates subsection (d), then the student, faculty member, employee, or contractor who was required to provide their preferred pronouns or who was subject to an adverse action or disciplinary action for refusing to provide their preferred pronouns has a private cause of action against the institution for injunctive relief, monetary damages, and any other relief available under law. The student, faculty member, employee, or contractor is also entitled to recover reasonable costs and attorney fees. A student, faculty member, employee, or contractor has two (2) years from the date of the violation to file an action.

SECTION 3. Tennessee Code Annotated, Title 8, Chapter 50, Part 1, is amended by adding the following as a new section:

(a) The general assembly finds that:

(1) State employees and contractors of the state do not shed their constitutional rights to freedom of speech and expression while at work;

(2) Protecting the rights to free speech and expression for state employees and contractors of the state promotes important state interests;

(3) The use of names and pronouns by state employees and contractors of the state is a matter of free speech and expression; and

(4) A state employee or contractor of the state should never be compelled to affirm a belief with which the employee or contractor of the state disagrees.

(b) A state employee or contractor of the state is not:

(1) Required to use the:

(A) Preferred name of a state employee, contractor of the state, or a person with whom the state employee or contractor of the state is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state, if the individual's preferred name is not the individual's legal name or a derivative thereof; or

(B) Preferred pronoun of a state employee, contractor of the state, or a person with whom the state employee or contractor of the state is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state, if the individual's preferred pronoun is not consistent with the individual's sex;

(2) Civilly liable for using:

(A) The legal name or a derivative thereof of a state employee, contractor of the state, or a person with whom the state employee or contractor of the state is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state when addressing or referring to the individual, even if the individual's legal name is not the individual's preferred name; or

(B) A pronoun to refer to a state employee, contractor of the state, or a person with whom the state employee or contractor of the state is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state that is consistent with the sex of the individual to whom the state employee or contractor of the state is referring, even if the pronoun is not the individual's preferred pronoun; or

(3) Subject to an adverse action for not using the:

(A) Preferred name of a state employee, contractor of the state, or a person with whom the state employee or contractor of the state is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state, if the individual's preferred name is not the individual's legal name or a derivative thereof; or

(B) Preferred pronoun of a state employee, contractor of the state, or a person with whom the state employee or contractor of the state is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state, if the individual's preferred pronoun is inconsistent with the individual's sex.

(c) The state is not civilly liable if a state employee or contractor of the state refers to a state employee, contractor of the state, or a person with whom the state employee or contractor of the state is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state using:

(1) The individual's legal name or a derivative thereof, even if the individual's legal name is not the individual's preferred name; or

(2) A pronoun that is consistent with the sex of the individual to whom the state employee is referring, even if the pronoun is not the individual's preferred pronoun.

(d) The state or a state employee or contractor of the state shall not ask a state employee, contractor, or a person with whom the state employee or contractor is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state to provide the individual's preferred pronouns, and shall not subject a state employee, contractor, or a person with whom the state employee or contractor is communicating for purposes of, and within the scope of, the employee's state employment or the contractor's contract with the state to an adverse action for refusing to provide the individual's preferred pronouns.

(e)

(1) If the state or a state employee or contractor of the state requires a state employee or contractor of the state to use a preferred name or preferred pronoun in violation of subdivision (b)(1) or subjects a state employee or contractor of the state to an adverse action for refusing to use a preferred name or preferred pronoun in violation of subdivision (b)(3), then the state employee or contractor of the state who was required to use a preferred name or preferred pronoun or who was subjected to an adverse action for refusing to use a preferred name or preferred pronoun has a private cause of action against the state for injunctive relief, monetary damages, and any other relief available under law. The state employee or contractor of the state is also entitled to recover reasonable costs and attorney fees. A state employee or contractor of the state

has two (2) years from the date of a violation of subdivision (b)(1) or (b)(3) to file an action.

(2) If the state or a state employee or contractor of the state violates subsection (d), then the state employee, contractor of the state, or person with whom the state employee or contractor was communicating who was subject to an adverse action for refusing to provide their preferred pronouns has a private cause of action against the state for injunctive relief, monetary damages, and any other relief available under law. The state employee, contractor of the state, or person with whom the state employee or contractor was communicating is also entitled to recover reasonable costs and attorney fees. A state employee, contractor of the state, or person with whom the state employee or contractor was communicating has two (2) years from the date of the violation to file an action.

SECTION 4. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 5. This act takes effect upon becoming a law, the public welfare requiring it.