

HOUSE BILL No. 2791

By Committee on Health and Human Services

Requested by Representative Bryce

2-9

Proposed Amendment to HB 2791
House Committee on Health and Human Services
March 7, 2024
Prepared by the Office of the Revisor of Statutes

1 AN ACT concerning children and minors; relating to healthcare of minors;
2 enacting the forbidding abusive child transitions act; prohibiting
3 healthcare professionals from treating a child whose gender identity is
4 inconsistent with the child's sex; authorizing a civil cause of action
5 against healthcare professionals for providing such treatments;
6 restricting use of state funds to promote gender transitioning;
7 prohibiting professional liability insurance from covering damages for
8 healthcare providers that provide gender transition treatment to
9 children; authorizing professional discipline against a physician who
10 performs such treatments; amending K.S.A. 65-2837 and K.S.A. 2023
11 Supp. 65-1120 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) The provisions of sections 1 through 7, and
15 amendments thereto, shall be known and may be cited as the forbidding
16 abusive child transitions act.

17 (b) As used in this act:

18 (1) "Child" means an individual less than 18 years of age.

19 (2) "Female" means an individual who is a member of the female sex.

20 (3) "Gender" means the psychological, behavioral, social and cultural
21 aspects of being male or female.

22 (4) "Gender dysphoria" is the diagnosis of gender dysphoria in the
23 fifth edition of the diagnostic and statistical manual of mental disorders.

24 (5) "Healthcare provider" means an individual who is licensed,
25 certified or otherwise authorized by the laws of this state to administer
26 healthcare services in the ordinary course of the practice of such
27 individual's profession.

28 (6) "Male" means an individual who is a member of the male sex.

29 (7) "Perceived sex" is an individual's internal sense of such
30 individual's sex.

31 (8) "Perceived gender" is an individual's internal sense of such
32 individual's gender.

33 (9) "Sex" means the biological indication of male and female in the
34 context of reproductive potential or capacity, including sex chromosomes,
35 naturally occurring sex hormones, gonads and nonambiguous internal and

1 or 4, and amendments thereto, shall have a private cause of action against
2 a healthcare provider for damages and equitable relief as the court may
3 determine is justified. A prevailing party may recover the costs of the suit
4 and reasonable attorney fees.

5 (d) (1) An individual who was provided treatment as a child in
6 violation of section 4(a) or (b), and amendments thereto, shall have a
7 private cause of action against the healthcare provider who provided such
8 treatment for actual damages, punitive damages, injunctive relief, the cost
9 of the suit and reasonable attorney fees.

10 (2) An action against a healthcare provider pursuant to this subsection
11 shall be filed within 30 years from the date the individual turns 18 years of
12 age.

13 New Sec. 6. A professional liability insurance policy issued to a
14 healthcare provider shall not include coverage for damages assessed
15 against the healthcare provider who provides treatment to a child in
16 violation of section 3 or 4(a) or (b), and amendments thereto.

17 ~~New Sec. 7. If any provision or clause of this act or application~~
18 ~~thereof to any person or circumstance is held invalid, such invalidity shall~~
19 ~~not affect other provisions or applications of this act that can be given~~
20 ~~effect without the invalid provision or application, and to this end the~~
21 ~~provisions of this act are declared to be severable.~~

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22 Sec. 8. K.S.A. 2023 Supp. 65-1120 is hereby amended to read as
23 follows: 65-1120. (a) *Grounds for disciplinary actions.* The board may
24 deny, revoke, limit or suspend any license or authorization to practice
25 nursing as a registered professional nurse, as a licensed practical nurse, as
26 an advanced practice registered nurse or as a registered nurse anesthetist
27 that is issued by the board or applied for under this act, or may require the
28 licensee to attend a specific number of hours of continuing education in
29 addition to any hours the licensee may already be required to attend or
30 may publicly or privately censure a licensee or holder of a temporary
31 permit or authorization, if the applicant, licensee or holder of a temporary
32 permit or authorization is found after hearing:

33 (1) To be guilty of fraud or deceit in practicing nursing or in
34 procuring or attempting to procure a license to practice nursing;

35 (2) to have been guilty of a felony or to have been guilty of a
36 misdemeanor involving an illegal drug offense unless the applicant or
37 licensee establishes sufficient rehabilitation to warrant the public trust,
38 except that notwithstanding K.S.A. 74-120, and amendments thereto, no
39 license or authorization to practice nursing as a licensed professional
40 nurse, as a licensed practical nurse, as an advanced practice registered
41 nurse or registered nurse anesthetist shall be granted to a person with a
42 felony conviction for a crime against persons as specified in article 34 of
43 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article

Renumber the sections accordingly

1 specified in subsection (a), two or more members of the board shall
2 investigate the charges, or the board may designate and authorize an
3 employee or employees of the board to conduct an investigation. After
4 investigation, the board may institute charges. If an investigation, in the
5 opinion of the board, reveals reasonable grounds for believing the
6 applicant or licensee is guilty of the charges, the board shall fix a time and
7 place for proceedings, which shall be conducted in accordance with the
8 provisions of the Kansas administrative procedure act.

9 (c) *Witnesses.* No person shall be excused from testifying in any
10 proceedings before the board under this act or in any civil proceedings
11 under this act before a court of competent jurisdiction on the ground that
12 such testimony may incriminate the person testifying, but such testimony
13 shall not be used against the person for the prosecution of any crime under
14 the laws of this state except the crime of perjury as defined in K.S.A. 21-
15 5903, and amendments thereto.

16 (d) *Costs.* If final agency action of the board in a proceeding under
17 this section is adverse to the applicant or licensee, the costs of the board's
18 proceedings shall be charged to the applicant or licensee as in ordinary
19 civil actions in the district court, but if the board is the unsuccessful party,
20 the costs shall be paid by the board. Witness fees and costs may be taxed
21 by the board according to the statutes relating to procedure in the district
22 court. All costs accrued by the board; when it is the successful party; and
23 ~~which~~ if the attorney general certifies cannot be collected from the
24 applicant or licensee, shall be paid from the board of nursing fee fund. All
25 moneys collected following board proceedings shall be credited in full to
26 the board of nursing fee fund.

27 (e) *Professional incompetency defined.* As used in this section,
28 "professional incompetency" means:

29 (1) One or more instances involving failure to adhere to the
30 applicable standard of care to a degree which constitutes gross negligence,
31 as determined by the board;

32 (2) repeated instances involving failure to adhere to the applicable
33 standard of care to a degree which constitutes ordinary negligence, as
34 determined by the board; or

35 (3) a pattern of practice or other behavior ~~which~~ that demonstrates a
36 manifest incapacity or incompetence to practice nursing.

37 (f) *Criminal justice information.* The board upon request shall receive
38 from the Kansas bureau of investigation such criminal history record
39 information relating to arrests and criminal convictions as necessary for
40 the purpose of determining initial and continuing qualifications of
41 licensees of and applicants for licensure by the board.

42 Sec. 9. K.S.A. 65-2837 is hereby amended to read as follows: 65-
43 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this

- 1 (A) Falsifying or concealing a material fact;
- 2 (B) knowingly making or causing to be made any false or misleading
- 3 statement or writing; or
- 4 (C) other acts or conduct likely to deceive or defraud the board.
- 5 (c) "False advertisement" means any advertisement that is false,
- 6 misleading or deceptive in a material respect. In determining whether any
- 7 advertisement is misleading, there shall be taken into account not only
- 8 representations made or suggested by statement, word, design, device,
- 9 sound or any combination thereof, but also the extent to which the
- 10 advertisement fails to reveal facts material in the light of such
- 11 representations made.
- 12 (d) "Advertisement" means all representations disseminated in any
- 13 manner or by any means for the purpose of inducing, or that are likely to
- 14 induce, directly or indirectly, the purchase of professional services.
- 15 (e) "Licensee" for purposes of this section and K.S.A. 65-2836, and
- 16 amendments thereto, means all persons issued a license, permit or special
- 17 permit pursuant to article 28 of chapter 65 of the Kansas Statutes
- 18 Annotated, and amendments thereto.
- 19 (f) "License" for purposes of this section and K.S.A. 65-2836, and
- 20 amendments thereto, means any license, permit or special permit granted
- 21 under article 28 of chapter 65 of the Kansas Statutes Annotated, and
- 22 amendments thereto.
- 23 (g) "~~Health care~~Healthcare entity" means any corporation, firm,
- 24 partnership or other business entity that provides services for diagnosis or
- 25 treatment of human health conditions and that is owned separately from a
- 26 referring licensee's principle practice.
- 27 (h) "Significant investment interest" means ownership of at least 10%
- 28 of the value of the firm, partnership or other business entity that owns or
- 29 leases the ~~health care~~ healthcare entity, or ownership of at least 10% of the
- 30 shares of stock of the corporation that owns or leases the ~~health care~~
- 31 healthcare entity.

32 Sec. 10. K.S.A. 65-2837 and K.S.A. 2023 Supp. 65-1120 are hereby
 33 repealed.

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34 Sec. 11. This act shall take effect and be in force from and after its
 35 publication in the statute book.

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