

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 233**

As Agreed to March 19, 2024

Brief*

House Sub. for SB 233, as amended, would enact the Forbidding Abusive Child Transitions Act (Act).

The bill would be in effect upon publication in the *Kansas Register*.

Definitions

The bill would define various terms as used in the Act, including:

- “Child” would mean an individual less than 18 years of age;
- “Gender dysphoria” would mean the diagnosis of gender dysphoria in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders; and
- “Social transitioning” would mean acts other than medical or surgical interventions that are undertaken for the purpose of presenting as a member of the opposite sex, including the changing of an individual’s preferred pronouns or manner of dress.

Use of State Funds and Resources

The bill would state that a recipient of state funds could not use those funds to provide or subsidize medication or surgery as a treatment for a child’s perception of gender or sex that is inconsistent with the child’s sex.

The bill would state that an individual or entity that receives state funds to pay for or subsidize the treatment of children for psychological conditions, including gender dysphoria, could not promote or advocate for medication or surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child’s sex.

The bill would prohibit the Kansas Program of Medical Assistance and its managed care organizations from reimbursing or providing coverage for medication or surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child’s sex.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Except to the extent required by the first amendment to the *U.S. Constitution*, the bill would prohibit a state property, facility, or building from being used to promote or advocate the use of social transitioning, medication, or surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child's sex.

A state property, facility, or building would also be prohibited from being used to prescribe, administer, or dispense medication or perform surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child's sex.

The bill would also prohibit a state employee whose official duties include the care of children from, while engaged in official duties, providing or promoting the use of social transitioning, medication, or surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child's sex.

For the purposes of this section, the bill would define "medication" to mean:

- Supraphysiologic doses of testosterone or other androgens; or
- Puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of estrogen and progesterone to delay or suppress pubertal development in female children.

Treatment Prohibitions

Except as otherwise provided in the bill, the bill would prohibit a health care provider from knowingly providing the following to a female child whose perceived gender or sex is not female as treatment for distress arising from the female child's perception that the child's gender or sex is not female:

- Surgical procedures, including vaginectomy, hysterectomy, oophorectomy, ovariectomy, reconstruction of the urethra, metoidioplasty phalloplasty, scrotoplasty, implantation of erection or testicular prostheses, subcutaneous mastectomy, voice surgery, liposuction, lipofilling, or pectoral implants;
- Supraphysiologic doses of testosterone or other androgens; or
- Puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of estrogen and progesterone to delay or suppress pubertal development in female children.

Except as otherwise provided in the bill, the bill would prohibit a health care provider from knowingly providing the following to a male child whose perceived gender or sex is not male as treatment for distress arising from the male child's perception that the child's gender or sex is not male:

- Surgical procedures, including a penectomy, orchietomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, or gluteal augmentation;
- Supraphysiologic doses of estrogen; or

- Puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of testosterone or delay or suppress pubertal development in male children.

The treatment prohibited in the bill would not apply to treatment provided for other purposes, including:

- Treatment for individuals born with a medically verifiable disorder of sex development, including:
 - An individual born with external biological sex characteristics that are irresolvably ambiguous, including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with under virilization, or having both ovarian and testicular tissue; or
 - An individual whom a physician has otherwise diagnosed with a disorder of sexual development that the physician has determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female, and
- Treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by the performance of a procedure listed in this section of the bill.

If a healthcare provider has initiated a course of treatment for a child that includes prescribing, administering, or dispensing of a drug prohibited by the bill prior to the effective date of the bill, the bill would provide for a healthcare provider to continue the course of treatment if the healthcare provider:

- Develops a plan to systematically reduce the child's use of the drug;
- Determines and documents in the child's medical record that immediately terminating the child's use of the drug would cause harm; and
- Ensures the course of treatment does not extend beyond December 31, 2024.

Discipline and Private Cause of Action

If a health care professional violates the provisions of the bill, the bill would state the health care professional has engaged in unprofessional conduct and would have their license revoked by the appropriate licensing entity or disciplinary review board with competent jurisdiction in Kansas.

The bill would state that a health care professional who provides treatment to a child in violation of the bill would be held strictly liable to the child if the treatment or effects of such treatment results in any physical, psychological, emotional, or physiological harms to the child in the next 10 years from the date that the individual turns 18 years old.

The bill would provide for the parents of a child who has been provided treatment in violation of the bill to have a private cause of action against the health care provider who provided such treatment for actual damages, punitive damages, injunctive relief, the cost of the lawsuit, and reasonable attorney fees.

The bill would require an action against a health care provider to be filed within 10 years from the date the individual turns 18 years of age.

Liability Insurance

The bill would state that a professional liability insurance policy issued to a health care provider would not include coverage for damages assessed against the health care provider who provides treatments to a child in violation of the Act.

Severability

If any provision or clause of the Act to any person or circumstance is held invalid, the bill would state the invalidity would not affect other provisions or applications of the Act that could be given effect without the invalid provision or application. The provisions of the bill would be severable.

Violations of the Act

The bill would add violations of the Act to the list of offenses constituting “unprofessional conduct,” as the term is defined in the Kansas Healing Arts Act.

Conference Committee Action

The Second Conference Committee agreed to the House version of the bill and added an amendment to provide for healthcare providers who have initiated a course of treatment for a child that includes a drug prohibited by the bill to develop a plan to discontinue use of the drug, document in the child’s medical record that immediately terminating use of the drug would cause harm, and ensure that the course of treatment does not extend beyond December 31, 2024. The amendment also changed the effective date of the bill to upon publication in the *Kansas Register*.

Background

The House Committee on Health and Human Services recommended a substitute bill incorporating provisions of the Act originally contained in HB 2791, as introduced by the House Committee on Health and Human Services at the request of Representative Bryce.

SB 233, as passed by the Senate Committee of the Whole, would have created the Kansas Child Mutilation Prevention Act to allow an individual who had gender reassignment service performed as a child to bring a civil cause of action against a physician who performed the service. The provisions of SB 233 were not retained in the substitute bill.

HB 2791 – Forbidding Abusive Child Transitions Act

HB 2791 was introduced by the House Committee on Health and Human Services at the request of Representative Bryce.

House Committee on Health and Human Services

In the House Committee hearing, **proponent** testimony was provided by Representative Bryce; representatives of Family Policy Alliance, Kansas Catholic Conference, and Kansas Family Voice; a licensed clinical social worker; a retired physician; and four private citizens. The proponents generally stated the bill would protect minors as multiple studies on the appropriate treatment protocol for gender dysphoria in minors are insufficient, but surgical and hormone treatments can result in irreversible harms and lifelong effects.

Written-only proponent testimony was provided by two private citizens.

Neutral testimony was provided by a representative of the Devos Center, who stated the bill would protect youth from gender-affirming medical interventions that are unproven.

Written-only neutral testimony was provided by a representative of the State Board of Healing Arts.

Opponent testimony was provided by a representative of ACLU of Kansas and six private citizens, who generally stated the bill would remove the ability for minors and their families to make private health care decisions and could exacerbate mental health issues for transgender youth.

Written-only opponent testimony was provided by a former state representative; representatives of Kansas Association of Defense Counsel; Kansas Black Leadership Council; Kansas Chapter, American Academy of Pediatrics; Kansas National Education Association; Kansas NOW; Kansas Public Health Association; Loud Light Civic Action; Mainstream; Planned Parenthood Great Plains Votes; True Colors Flint Hills; Unitarian Universalist Fellowship of Manhattan; three representatives of Equality Kansas; five representatives of Kansas Interfaith Action; a practicing advance practice registered nurse; three practicing physicians; and 87 private citizens.

The House Committee amended the bill to:

- Remove Section 3 of the bill pertaining to informed consent;
- Provide for a health care professional who violates the provisions of the Act to have their license revoked;
- Provide for health care professionals who violate the Act to be held liable for 10 years from the date that the individual who received treatment turns 18 years of age; and
- Provide a definition of “medication” in Section 2 of the bill.

[*Note:* These amendments were retained by the Conference Committee.]

The House Committee removed the contents of SB 233, inserted the amended contents of HB 2791, and recommended a substitute bill be passed.

House Committee of the Whole

The House Committee of the Whole amended the bill to remove conflicting provisions related to violations of the Act from laws regarding grounds for disciplinary actions for registered professional nurses, licensed practical nurses, advanced practice registered nurses, or registered nurse anesthetists. [Note: This amendment was retained by the Conference Committee.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2791, as introduced, the Office of Judicial Administration (OJA) states enactment of the bill could increase the number of cases filed in district courts because it allows for a civil suit to be filed. This could result in more time spent by judicial and non-judicial personnel processing, researching, and hearing these cases. The OJA estimates enactment of the bill could result in the collection of docket fees and fines assessed in those cases filed under the bill's provisions, which would be deposited into the State General Fund. The bill would not affect other revenues to the Judicial Branch; however, a fiscal effect cannot be estimated.

The Office of the Attorney General states that enactment of the bill would not result in any fiscal effect for the agency. The agency notes the Act could be challenged in court, but a related fiscal effect cannot be estimated.

The State Board of Healing Arts reports enactment of the bill could increase actionable complaints, but a total fiscal effect cannot be estimated. The agency notes the bill allows for legal actions to be taken for 30 years after the date the child turns 18, which could result in long-term implications.

The Board of Nursing indicates enactment of the bill would require a revision to regulations and communications to licensees, which could be handled with existing resources. The agency was unable to determine whether enactment of the bill would result in an increase in complaints or investigations.

The Kansas Department for Health and Environment states that enactment of the bill would not result in a fiscal effect on agency operations.

Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Children; minors; health care; gender identity; physicians; health care providers

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