

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 697

By Senators Azinger, Maynard, Smith, Taylor, Karnes,
and Stuart

[Introduced February 20, 2023; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-2S-1, §16-2S-2, §16-2S-3, §16-2S-4, §16-2S-5, §16-2S-6, §16-2S-7, and
 3 §16-2S-8, all relating to prohibiting gender transition surgeries, treatments, and therapies
 4 to minors; establishing penalties for practitioners in violation of regulations; safeguarding
 5 the mental and physical health of minors; prohibiting political subdivisions from enacting
 6 conflicting policies; creating whistleblower protection; prohibiting taxpayer subsidization of
 7 gender transition treatments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. THE HEALTH AND NATURAL DEVELOPMENT PROTECTION ACT.

§16-2S-1. Definitions.

1 As used in this article:

2 "Medical professional" means any physician, surgeon, physician assistant, nurse, clinical
 3 nurse specialist, nurse practitioner, anesthetist, psychiatrist, or medical assistant licensed under
 4 chapter 30.

5 "Mental health care professional or counselor" means any licensed medical, mental health,
 6 or human services professional licensed under chapter 30, including any psychologist, social
 7 worker, psychiatric nurse, allied mental health and human services professional, licensed
 8 marriage and family therapist, certified rehabilitation counselor, licensed clinical mental health
 9 counselor, guidance counselor, unlicensed counselor, or any of their respective interns or trainees,
 10 or any other person designated or licensed as a mental health or human service professional.

11 "Interstate teletherapy service" means the provision of teletherapy services to a patient
 12 located in West Virginia by a mental health care professional or counselor located in any state or
 13 commonwealth of the United States.

14 "Minor" means any individual who is below 21 years of age.

15 "Political subdivision" means any division of local government, county, city, assessment
 16 district, municipal corporation, special purpose district, board, department, 17 commission, or any

17 division of local government delegated the right to exercise part of the sovereign power of that
 18 subdivision.

19 "Gender dysphoria" means a state, condition, or disorder resulting in severe distress or
 20 unhappiness in which an individual feels, perceives, or senses their gender does not match their
 21 biological-sex; or the feeling, perception, sense, or desire to be rid of one's external or internal
 22 genitalia due to a disassociation with one's biological-sex.

23 "Sexual deviation" means pedophilia, exhibitionism, masochism, sadomasochism,
 24 fetishism, voyeurism, biastophilia, or any dysphoria, condition, or activity in which a person
 25 exhibits or manifests distress with their external-anatomically assigned sexuality in accordance
 26 with their biological-sex.

27 "Sex" means the biological state of being female or male, based on nonambiguous internal
 28 and external genitalia present at birth, sex chromosomes, and endogenous hormone profiles,
 29 without regard to an individual's psychological, chosen, or subjective experience of gender.

§16-2S-2. Prohibition of certain practices and health care services.

1 (a) Notwithstanding any other provision of law, it shall be unlawful for any medical
 2 professional, mental health care professional, or counselor to engage in any of the following
 3 practices upon a minor, enable, or cause them to be performed, to facilitate the minor's desire to
 4 present or appear in a manner that is inconsistent with the minor's biological sex:

5 (1) Performing surgeries that sterilize, including castration, vasectomy, hysterectomy,
 6 oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, and vaginoplasty.

7 (2) Performing surgeries that artificially construct tissue with the appearance of genitalia
 8 that differs from the individual's sex, including metoidioplasty, phalloplasty, and vaginoplasty.

9 (3) Prescribing or administering testosterone, estrogen, or progesterone to an individual in
 10 an amount greater than would normally be produced endogenously in a healthy individual of that
 11 individual's age and sex.

12 (4) Prescribing or administering a hormone or hormone blocker for the purpose of altering

13 the appearance or engaging in an experiment to convert an individual into their biologically
14 opposite sex.

15 (5) Augmentation mammoplasty for a biologically-male patient and subcutaneous
16 mastectomy for a biologically-female patient to remove nondiseased breast tissue.

17 (6) Administering or supplying the following medications that induce transient or
18 permanent infertility: Puberty-blocking medication to stop or delay normal puberty, or
19 supraphysiologic doses of testosterone or other androgens to members of the female sex, or
20 supraphysiologic doses of estrogen or synthetic compounds with estrogenic activity to members
21 of the male sex.

22 (7) Prescribing or administering gonadotropin releasing hormone analogues or other
23 synthetic drugs used to stop luteinizing hormone and follicle stimulating hormone secretion,
24 synthetic antiandrogen drugs used to block the androgen receptor, or any drug to suppress or
25 delay normal puberty.

26 (8) Removing any otherwise healthy or nondiseased body part or tissue.

27 (b) A medical professional, mental health care professional, or counselor who engages in
28 any of the practices identified in subsection (a) of this section, enables, or causes them to be
29 performed shall be considered to have engaged in unprofessional conduct and shall be subject to
30 revocation of licensure and other appropriate discipline by the medical professional's licensing or
31 certifying board. The medical professional shall also be subject to a civil penalty of up to \$10,000
32 per occurrence.

33 (c) This section does not apply to the services provided to a minor born with a medically
34 verifiable genetic disorder of sexual development, limited to the following:

35 (1) A minor with external biological sex characteristics that are irresolvably ambiguous,
36 such as a minor born having 46 XX chromosomes with virilization, 46 XY chromosomes with
37 under-virilization, or having both ovarian and testicular tissue.

38 (2) When a physician has otherwise diagnosed a disorder of sexual development, in which

39 the physician has determined through genetic testing that the minor, does not have the normal sex
40 chromosome structure for male or female sexes.

41 (3) A treatment consistent with an individual's biological sex concerning any infection,
42 injury, disease, or disorder that has been caused or exacerbated by the performance of a
43 procedure described in subsection (a), whether or not the procedures were performed in
44 accordance with state and federal law.

45 (d) Notwithstanding any other provision of law, it shall be unlawful for any health care
46 provider to furnish, provide, enable, transport, direct for transport, refer, or perform any health care
47 service that constitutes the performance of a procedure described in subsection (a) to a minor.

§16-2S-3. Counseling.

1 (a) A state office, agency, municipality, political subdivision of the state or local
2 government, or any organization with authority to license or discipline the members of a profession
3 may not prohibit, impose any penalty, or take any adverse action against any individual who gives
4 counsel, advice, guidance, or any other speech or communication, whether described as therapy
5 or provided for a fee, consistent with conscience; this is as long as such individual does not
6 attempt to induce or exacerbate gender dysphoria or a sexual deviation by continuing or
7 worsening such condition, delusion, or disorder with no intent of cure or cure-pursuing recovery.

8 (b) Any mental health care professional, counselor, or interstate teletherapy service shall
9 be prohibited from attempting to induce or exacerbate gender dysphoria in a minor by continuing
10 or worsening such condition, delusion, or disorder with no intent of cure or cure-pursuing recovery.

11 (c) Any mental health care professional or counselor who violates any of the provisions of
12 this section shall be considered to have engaged in unprofessional conduct and shall be subject
13 to revocation of licensure and other appropriate discipline by the mental health care professional
14 or counselor's licensing or certifying board. The mental health care professional or counselor shall
15 also be subject to a civil penalty of up to \$5,000 per occurrence. They shall also be prohibited from
16 being employed by any local or state board of education, private school, daycare, charter school,

17 or other academic institution as a counselor or other form of employment. In such cases where the
 18 court rules against the defendant, they shall not be entitled to retirement benefits for proven or
 19 acknowledged wrongdoing.

§16-2S-4. Whistleblower Protection.

1 (a) No person shall be discriminated against in any manner or be subject to any adverse
 2 action because the person does any of the following:

3 (1) Provided, caused to be provided, or takes steps to provide or cause to be provided to
 4 his or her employer, the Attorney General, any State agency, the United States Department of
 5 Health and Human Services, government official, news agency, or any other federal agency, any
 6 information or an act or omission that is a violation of any provision of this article.

7 (2) Testified or prepared to testify in a proceeding concerning a violation of this article.

8 (3) Assisted or participated in a proceeding concerning a violation of this article.

9 (b) Unless a disclosure or report of information is specifically prohibited by law, no person
 10 shall be discriminated against in any manner because the person disclosed any information under
 11 this article that the person believes evinces any of the following:

12 (1) Any violation of law, rule, or regulation.

13 (2) Any violation of any standard of care or other ethical guidelines for the provision of any
 14 health care service.

15 (3) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial
 16 and specific danger to public health or safety.

§16-2S-5. Civil Remedies.

1 (a) A civil action for compensatory or special damages, injunctive relief, or any other relief
 2 available under law may be brought by any person for any violation of any provision of this article
 3 against the clinic, health care system, medical professional, or other person responsible for the
 4 violation.

5 (b) Any party aggrieved or harmed by any violation of this article shall be required to bring

6 suit for violation of this article no later than five years after the day the cause of action occurred.
 7 Minors injured by practices prohibited under this article may bring an action during their minority
 8 through a parent, and may bring an action in their own name upon reaching majority at any time
 9 from that date until 20 years from the date the minor attained the age of majority.

10 (c) Persons who prevail on a claim brought pursuant to this section shall be entitled, upon
 11 the finding of a violation, to recover the following:

- 12 (1) Monetary damages, including all psychological, emotional, and physical harm suffered.
- 13 (2) Total costs of the action and reasonable attorneys' fees.
- 14 (3) Any other appropriate relief.

§16-2S-6. Preemption.

1 (a) A political subdivision of this state is preempted from enacting, adopting, maintaining,
 2 or enforcing any order, ordinance, rule, regulation, policy, or other similar measure that prohibits,
 3 restricts, limits, controls, directs, or otherwise interferes with the professional conduct and
 4 judgment of a mental health care professional or counselor, including speech, undertaken within
 5 the course of treatment and communication with clients, patients, other persons, or the public,
 6 including therapies, counseling, referrals, and education. Any such order, ordinance, rule,
 7 regulation, policy, or other similar measure shall only be permitted if it prohibits the act of
 8 attempting to induce or exacerbate gender dysphoria or a sexual deviation by continuing or
 9 worsening such condition, delusion, or disorder with no intent of cure or cure-pursuing recovery.

10 (b) The Attorney General or a mental health care professional or counselor may bring an
 11 action for an injunction to prevent or restrain violations of this section. A mental health care
 12 professional may recover reasonable costs and attorneys' fees incurred in obtaining an injunction
 13 under this section.

§16-2S-7. Limitation on use of state funds for restricted procedures.

1 No state funds may be used, directly or indirectly, for the performance of 1 or in furtherance
 2 of any procedure described in §16-2S-2 of this code, or to support the administration of any

3 governmental health plan or government-offered insurance policy offering such procedures.

§16-2S-8. Severability clause.

1 If any provision of this article or the application thereof to any person or circumstance is
2 held invalid, such invalidity shall not affect other provisions or applications of the article, and to this
3 end the provisions of this article are severable.

NOTE: The purpose of this bill is to prohibit gender transition surgeries, treatments, and therapies to minors. The bill establishes penalties for practitioners in violation of regulations. The bill safeguards the mental and physical health of minors. The bill prohibits political subdivisions from enacting conflicting policies. The bill creates whistleblower protection. Finally, the bill prohibits taxpayer subsidization of gender transition treatments.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.