

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 574

Introduced by Kauth, 31; Aguilar, 35; Albrecht, 17; Bostelman, 23; Brewer, 43; Clements, 2; DeKay, 40; Dorn, 30; Dover, 19; Erdman, 47; Halloran, 33; Hardin, 48; Holdcroft, 36; Hughes, 24; Ibach, 44; Jacobson, 42; Linehan, 39; Lippincott, 34; Lowe, 37; McDonnell, 5; Murman, 38; Sanders, 45; von Gillern, 4.

Read first time January 17, 2023

Committee:

- 1 A BILL FOR AN ACT relating to public health and welfare; to amend section
- 2 38-179, Revised Statutes Cumulative Supplement, 2022; to adopt the
- 3 Let Them Grow Act; to harmonize provisions; to provide an operative
- 4 date; to provide severability; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-179, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 38-179 For purposes of section 38-178, unprofessional conduct means
4 any departure from or failure to conform to the standards of acceptable
5 and prevailing practice of a profession or the ethics of the profession,
6 regardless of whether a person, consumer, or entity is injured, or
7 conduct that is likely to deceive or defraud the public or is detrimental
8 to the public interest, including, but not limited to:

9 (1) Receipt of fees on the assurance that an incurable disease can
10 be permanently cured;

11 (2) Division of fees, or agreeing to split or divide the fees,
12 received for professional services with any person for bringing or
13 referring a consumer other than (a) with a partner or employee of the
14 applicant or credential holder or his or her office or clinic, (b) with a
15 landlord of the applicant or credential holder pursuant to a written
16 agreement that provides for payment of rent based on gross receipts, or
17 (c) with a former partner or employee of the applicant or credential
18 holder based on a retirement plan or separation agreement;

19 (3) Obtaining any fee for professional services by fraud, deceit, or
20 misrepresentation, including, but not limited to, falsification of third-
21 party claim documents;

22 (4) Cheating on or attempting to subvert the credentialing
23 examination;

24 (5) Assisting in the care or treatment of a consumer without the
25 consent of such consumer or his or her legal representative;

26 (6) Use of any letters, words, or terms, either as a prefix, affix,
27 or suffix, on stationery, in advertisements, or otherwise, indicating
28 that such person is entitled to practice a profession for which he or she
29 is not credentialed;

30 (7) Performing, procuring, or aiding and abetting in the performance
31 or procurement of a criminal abortion;

1 (8) Knowingly disclosing confidential information except as
2 otherwise permitted by law;

3 (9) Commission of any act of sexual abuse, misconduct, or
4 exploitation related to the practice of the profession of the applicant
5 or credential holder;

6 (10) Failure to keep and maintain adequate records of treatment or
7 service;

8 (11) Prescribing, administering, distributing, dispensing, giving,
9 or selling any controlled substance or other drug recognized as addictive
10 or dangerous for other than a medically accepted therapeutic purpose;

11 (12) Prescribing any controlled substance to (a) oneself or (b)
12 except in the case of a medical emergency (i) one's spouse, (ii) one's
13 child, (iii) one's parent, (iv) one's sibling, or (v) any other person
14 living in the same household as the prescriber;

15 (13) Failure to comply with any federal, state, or municipal law,
16 ordinance, rule, or regulation that pertains to the applicable
17 profession;

18 (14) Disruptive behavior, whether verbal or physical, which
19 interferes with consumer care or could reasonably be expected to
20 interfere with such care; ~~and~~

21 (15) Performing gender altering procedures for an individual younger
22 than nineteen years of age in violation of section 5 of this act; and

23 (16) ~~(15)~~ Such other acts as may be defined in rules and
24 regulations.

25 Nothing in this section shall be construed to exclude determination
26 of additional conduct that is unprofessional by adjudication in
27 individual contested cases.

28 Sec. 2. Sections 2 to 7 of this act shall be known and may be cited
29 as the Let Them Grow Act.

30 Sec. 3. The Legislature finds that:

31 (1) The state has a compelling government interest in protecting the

1 health and safety of its citizens, especially vulnerable children;

2 (2) Genital and nongenital gender altering surgeries are generally
3 not recommended for children, although evidence indicates referral for
4 children to have such surgeries are becoming more frequent; and

5 (3) Genital and nongenital gender altering surgery includes several
6 irreversible and invasive procedures for biological males and biological
7 females and involves the alteration of biologically healthy and
8 functional body parts.

9 Sec. 4. For purposes of the Let Them Grow Act:

10 (1) Biological sex means the biological indication of male and
11 female in the context of reproductive potential or capacity, such as sex
12 chromosomes, naturally occurring sex hormones, gonads, and nonambiguous
13 internal and external genitalia present at birth, without regard to an
14 individual's psychological, chosen, or subjective experience of gender;

15 (2) Cross-sex hormones means testosterone or other androgens given
16 to biological females in amounts that are larger or more potent than
17 would normally occur naturally in healthy biological sex females and
18 estrogen given to biological males in amounts that are larger or more
19 potent than would normally occur naturally in healthy biological sex
20 males;

21 (3) Gender means the psychological, behavioral, social, and cultural
22 aspects of being male or female;

23 (4) Gender altering surgery means any medical or surgical service
24 that seeks to surgically alter or remove healthy physical or anatomical
25 characteristics or features that are typical for the individual's
26 biological sex in order to instill or create physiological or anatomical
27 characteristics that resemble a sex different from the individual's
28 biological sex, including without limitation, genital or nongenital
29 gender altering surgery performed for the purpose of assisting an
30 individual with a gender alteration;

31 (5) Gender alteration means the process in which a person goes from

1 identifying with and living as a gender that corresponds to his or her
2 biological sex to identifying with and living as a gender different from
3 his or her biological sex and may involve social, legal, or physical
4 changes;

5 (6)(a) Gender altering procedures includes any medical or surgical
6 service, including without limitation physician's services, inpatient and
7 outpatient hospital services, or prescribed drugs related to gender
8 alteration, that seeks to:

9 (i) Alter or remove physical or anatomical characteristics or
10 features that are typical for the individual's biological sex; or

11 (ii) Instill or create physiological or anatomical characteristics
12 that resemble a sex different from the individual's biological sex,
13 including without limitation medical services that provide puberty-
14 blocking drugs, cross-sex hormones, or other mechanisms to promote the
15 development of feminizing or masculinizing features in the opposite
16 biological sex, or genital or nongenital gender altering surgery
17 performed for the purpose of assisting an individual with a gender
18 alteration;

19 (b) Gender altering procedures does not include:

20 (i) Services to persons born with a medically verifiable disorder of
21 sex development, including a person with external biological sex
22 characteristics that are irresolvably ambiguous, such as those born with
23 46 XX chromosomes with virilization, 46 XY chromosomes with
24 undervirilization, or having both ovarian and testicular tissue;

25 (ii) Services provided when a health care practitioner has otherwise
26 diagnosed a disorder of sexual development that the health care
27 practitioner has determined, through genetic or biochemical testing, that
28 the person does not have normal sex chromosome structure, sex steroid
29 production, or sex steroid hormone action;

30 (iii) The acute and chronic treatment of any infection, injury,
31 disease, or disorder that has been caused by or exacerbated by the

1 performance of gender altering procedures, whether or not the gender
2 altering procedure was performed in accordance with state and federal
3 law; or

4 (iv) Any procedure undertaken because the individual suffers from a
5 physical disorder, physical injury, or physical illness that would, as
6 certified by the health care practitioner, place the individual in
7 imminent danger of death or impairment of major bodily function unless
8 surgery is performed;

9 (7) Genital gender altering surgery means a medical procedure
10 performed for the purpose of assisting an individual with a gender
11 alteration, including without limitation:

12 (a) Surgical procedures such as penectomy, orchiectomy,
13 vaginoplasty, clitoroplasty, or vulvoplasty for biologically male
14 patients or hysterectomy or ovariectomy for biologically female patients;

15 (b) Reconstruction of the fixed part of the urethra with or without
16 a metoidioplasty; or

17 (c) Phalloplasty, vaginectomy, scrotoplasty, or implantation of
18 erection or testicular prostheses for biologically female patients;

19 (8) Health care practitioner means a person licensed or certified
20 under the Uniform Credentialing Act;

21 (9) Puberty-blocking drugs means gonadotropin-releasing hormone
22 analogues or other synthetic drugs used in biological males to stop
23 luteinizing hormone secretion and therefore testosterone secretion, or
24 synthetic drugs used in biological females which stop the production of
25 estrogens and progesterone, when used to delay or suppress pubertal
26 development in children for the purpose of assisting an individual with a
27 gender alteration; and

28 (10) Nongenital gender altering surgery means medical procedures
29 performed for the purpose of assisting an individual with a gender
30 alteration, including without limitation:

31 (a) Surgical procedures for biologically male patients, such as

1 augmentation mammoplasty, facial feminization surgery, liposuction,
2 lipofilling, voice surgery, thyroid cartilage reduction, gluteal
3 augmentation, hair reconstruction, or various aesthetic procedures; or

4 (b) Surgical procedures for biologically female patients, such as
5 subcutaneous mastectomy, voice surgery, liposuction, lipofilling,
6 pectoral implants, or various aesthetic procedures.

7 Sec. 5. (1) No health care practitioner shall (a) perform gender
8 altering procedures in this state for an individual younger than nineteen
9 years of age or (b) refer an individual younger than nineteen years of
10 age for gender altering procedures.

11 (2) The intentional and knowing performance of or referral for
12 gender altering procedures by a health care practitioner for an
13 individual younger than nineteen years of age in violation of subsection
14 (1) of this section shall be considered unprofessional conduct as defined
15 in section 38-179.

16 Sec. 6. State funds shall not be directly or indirectly used,
17 granted, paid, or distributed to any entity, organization, or individual
18 that provides gender altering procedures to an individual younger than
19 nineteen years of age.

20 Sec. 7. An individual that received a gender altering procedure
21 while such individual was younger than nineteen years of age, or the
22 parent or guardian of such an individual, may bring a civil action for
23 appropriate relief against the health care practitioner who performed the
24 gender altering procedure or referred the individual under nineteen years
25 of age for the gender altering procedure. Appropriate relief in an action
26 under this section includes actual damages and reasonable attorney's
27 fees. An action under this section shall be brought within 2 years from
28 discovery of damages.

29 Sec. 8. This act becomes operative on October 1, 2023.

30 Sec. 9. If any section in this act or any part of any section is
31 declared invalid or unconstitutional, the declaration shall not affect

1 the validity or constitutionality of the remaining portions.

2 Sec. 10. Original section 38-179, Revised Statutes Cumulative
3 Supplement, 2022, is repealed.