

Senate Bill No. 201—Senators Parks, Ratti, Ford, Atkinson, Spearman; Cancela, Cannizzaro, Denis, Farley, Manendo, Segerblom and Woodhouse

Joint Sponsors: Assemblymen Araujo, Carrillo, Carlton, Neal, Cohen; Brooks, Flores, Krasner, Ohrenschall, Swank, Thompson and Yeager

CHAPTER.....

AN ACT relating to health care professionals; prohibiting certain health care professionals from providing sexual orientation or gender identity conversion therapy to a minor; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Legislature has the power to regulate licensed health care professionals for the benefit of the public's health, safety and welfare and to protect the well-being of patients from ineffective or harmful professional services. (*Dent v. West Virginia*, 129 U.S. 114, 122-23 (1889); *Hawker v. New York*, 170 U.S. 189, 191-95 (1898); *State ex rel. Kassabian v. State Bd. of Med. Exam'rs*, 68 Nev. 455, 463-65 (1951)) In exercising that power, the Legislature has enacted existing laws that regulate homeopathic physicians, advanced practitioners of homeopathy, homeopathic assistants and certain mental health professionals including psychiatrists, psychologists, licensed marriage and family therapists, certain registered nurses and certain licensed clinical or independent social workers. (Chapters 630, 630A, 632, 633 and 641-641B of NRS)

The purpose of this bill is to protect the well-being of children who are under 18 years of age by prohibiting such licensed health care professionals from providing children with conversion therapies, which are any practices or treatments that seek to change the sexual orientation or gender identity of the children. In **section 1** of this bill, the Legislature finds and declares that there is a legitimate and compelling need to protect the well-being of children from the harmful and destructive effects of conversion therapies because such therapies have not been proven to be medically or clinically effective but have been shown to have a high potential to cause substantial harm to the physical and psychological well-being of children who are much more vulnerable to the potentially traumatic effects of such intensive conversion therapies.

To carry out the Legislature's objectives, **section 1.5** of this bill prohibits homeopathic physicians, advanced practitioners of homeopathy, homeopathic assistants and certain mental health professionals from providing sexual orientation or gender identity conversion therapies to children who are under 18 years of age. However, there is nothing in this bill that regulates or prohibits licensed health care professionals from engaging in expressive speech or religious counseling with such children if the licensed health care professionals: (1) are acting in their pastoral or religious capacity as members of the clergy or as religious counselors; and (2) do not hold themselves out as operating pursuant to their professional licenses when so acting in their pastoral or religious capacity.

This bill is modeled on similar laws enacted in California and New Jersey. (Cal. Bus. & Prof. Code §§ 865 et seq.; N.J. Stat. Ann. §§ 45:1-54 et seq.) In interpreting those laws, courts have determined that the laws do not regulate or prohibit licensed health care professionals from engaging in expressive speech or religious



counseling with children who are under 18 years of age if the licensed health care professionals: (1) are acting in their pastoral or religious capacity as members of the clergy or as religious counselors; and (2) do not hold themselves out as operating pursuant to their professional licenses when so acting in their pastoral or religious capacity. In addition, courts have also held that the laws: (1) are a constitutional exercise of the legislative power to regulate licensed health care professionals for the benefit of the public's health, safety and welfare and to protect the well-being of children from ineffective or harmful professional services; (2) do not violate any rights to freedom of speech, association or religion and are not unconstitutionally overbroad or vague under the First and Fourteenth Amendments to the United States Constitution; and (3) do not violate any other fundamental or substantive due process rights of licensed health care professionals or the parents or children who seek their professional services. (*Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014), *cert. denied*, 134 S.Ct. 2871 and 2881 (2014); *Welch v. Brown*, 834 F.3d 1041 (9th Cir. 2016), *cert. denied*, No. 16-845, --- S.Ct. --- (May 1, 2017); *King v. Governor of New Jersey*, 767 F.3d 216 (3d Cir. 2014), *cert. denied*, 135 S.Ct. 2048 (2015); *Doe v. Governor of New Jersey*, 783 F.3d 150 (3d Cir. 2015), *cert. denied*, 136 S.Ct. 1155 (2016))

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 1. The Legislature hereby finds that:

(a) For the past several decades, there has been a growing consensus among medical and mental health professionals that conversion therapies, which involve any practices or treatments that seek to change the sexual orientation or gender identity of a patient, also known as reparative therapies or sexual orientation change efforts:

(1) Have been based on developmental theories whose scientific validity is questionable;

(2) Have relied on anecdotal reports of cures that have not been tested, substantiated or verified by any rigorous scientific research or peer-reviewed studies; and

(3) Have not been proven to be medically or clinically effective but have been shown to have a high potential to cause substantial harm to the physical and psychological well-being of the patient, especially children under 18 years of age because they are much more vulnerable to the potentially traumatic effects of such intensive conversion therapies.

(b) A significant number of well-known and well-respected professional and scientific organizations have publicly denounced or disavowed conversion therapies because of the highly doubtful effectiveness and highly probable harmfulness of such therapies.



Such organizations include, without limitation, the American Psychological Association, American Psychiatric Association, American Psychoanalytic Association, American Counseling Association Governing Council, American Medical Association Council on Scientific Affairs, American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American School Counselor Association, National Association of Social Workers and Pan American Health Organization.

(c) Such organizations have determined that conversion therapies may be particularly harmful or destructive to children because such therapies:

(1) Aggravate and intensify harmful or destructive feelings, including, without limitation, confusion, depression, guilt, shame, stress, loneliness, helplessness, hopelessness, pointlessness, disappointment, self-blame, self-hatred, low self-esteem, marginalization, dehumanization, hostility, anger, betrayal or loss of faith, belief, interest, concern or motivation; and

(2) Increase the risk of harmful or destructive behaviors, including, without limitation, social withdrawal, isolation, substance abuse, suicide, deception, high-risk sexual behaviors and unlawful behaviors.

2. The Legislature hereby declares that there is a legitimate and compelling need to protect the well-being of children who are under 18 years of age from the harmful and destructive effects of conversion therapies by prohibiting certain licensed health care professionals from providing children with conversion therapies because such therapies have not been proven to be medically or clinically effective but have been shown to have a high potential to cause substantial harm to the physical and psychological well-being of children, who are much more vulnerable to the potentially traumatic effects of such intensive conversion therapies.

Sec. 1.5. Chapter 629 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A psychotherapist shall not provide any conversion therapy to a person who is under 18 years of age regardless of the willingness of the person or his or her parent or legal guardian to authorize such therapy.

2. Any violation of subsection 1 is a ground for disciplinary action by a state board that licenses a psychotherapist as defined in subsection 3.

3. As used in this section:

(a) "Conversion therapy" means any practice or treatment that seeks to change the sexual orientation or gender identity of a



person, including, without limitation, a practice or treatment that seeks to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same gender. The term does not include counseling that:

(1) Provides assistance to a person undergoing gender transition; or

(2) Provides acceptance, support and understanding of a person or facilitates a person's ability to cope, social support and identity exploration and development, including, without limitation, an intervention to prevent or address unlawful conduct or unsafe sexual practices that is neutral as to the sexual-orientation of the person receiving the intervention and does not seek to change the sexual orientation or gender identity of the person receiving the intervention.

(b) "Psychotherapist" means:

(1) A psychiatrist licensed to practice medicine in this State pursuant to chapter 630;

(2) A homeopathic physician, advanced practitioner of homeopathy or homeopathic assistant licensed or certified pursuant to chapter 630A or NRS;

(3) A psychiatrist licensed to practice medicine in this State pursuant to chapter 633;

(4) A psychologist licensed to practice in this State pursuant to chapter 641 of NRS;

(5) A social worker licensed in this State as an independent social worker or a clinical social worker pursuant to chapter 641B of NRS;

(6) A registered nurse holding a master's degree in the field of psychiatric nursing and licensed to practice professional nursing in this State pursuant to chapter 632 of NRS;

(7) A marriage and family therapist or clinical professional counselor licensed in this State pursuant to chapter 641A of NRS;
or

(8) A person who provides counseling services as part of his or her training for any of the professions listed in subparagraphs (1) to (7), inclusive.

Sec. 2. This act becomes effective:

1. Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

2. On January 1, 2018, for all other purposes.

