

SENATE BILL 5

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 8;
Title 9; Title 14; Title 33; Title 63 and Title 68,
relative to health.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, is amended by adding the following as a new part:

63-1-801. Short title.

This part is known and may be cited as the "Youth Health Protection Act."

63-1-802. Part definitions.

As used in this part:

- (1) "Facility" has the same meaning as defined in § 68-11-201;
- (2) "Government agent" means an agent, employee, volunteer, or contractor of a public child services agency, private child placing agency, court, or local education agency;
- (3) "Healthcare provider" means a medical professional or facility;
- (4) "Medical professional" means an individual who is licensed, certified, registered, or permitted to engage in the delivery of health care in this state under this title or title 68, and is regulated by the department of health or a health-related board attached to the department of health;
- (5) "Mental healthcare professional or counselor" means a medical professional, including an intern, trainee, volunteer, or other individual who is engaged in the delivery of mental healthcare or counseling services;
- (6) "Minor" means an individual who has not reached the later of:

(A) Eighteen (18) years of age; or

(B) Completion of Tanner stage 5 development;

(7) "Political subdivision" means a local governmental entity, including, but not limited to, a municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of this state, or an instrumentality of government created by one (1) or more local governmental entities; and

(8) "Sex" means the biological state of being female or male, based on sex organs, chromosomes, and endogenous hormone profiles.

63-1-803. Prohibition of certain practices and healthcare services.

(a) Notwithstanding another law, and except as provided in subsection (c), it is unlawful for an individual to engage in the following practices upon a minor, or cause the practices to be performed, to facilitate the minor's desire to present or appear in a manner that is inconsistent with the minor's sex:

(1) Surgery that sterilizes the minor, including castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, and vaginoplasty;

(2) A mastectomy;

(3) Administering or supplying the following medications that induce transient or permanent infertility:

(A) Puberty-blocking medication to stop or delay normal puberty;

(B) Supraphysiologic doses of testosterone or other androgens to members of the female sex; or

(C) Supraphysiologic doses of estrogen or synthetic compounds with estrogenic activity to members of the male sex; or

(4) Removing an otherwise healthy or non-diseased body part or tissue.

(b) A medical professional who engages in a practice identified in subsection (a), or causes the practice to be performed, commits unprofessional conduct and is subject to revocation of licensure and other appropriate discipline by the medical professional's licensing authority. The medical professional is subject to a civil penalty of up to one thousand dollars (\$1,000) per occurrence. Penalties imposed under this part must be deposited into the state general fund.

(c) This section does not apply to:

(1) The good-faith medical decision of a parent or guardian of a minor born with a medically verifiable genetic disorder of sexual development, including the following:

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

(B) When a physician has otherwise diagnosed a disorder of sexual development, in which the physician has determined through genetic testing that the minor does not have the normal sex chromosome structure for male or female sexes; or

(2) Treatment of a minor who, before the effective date of this act, had received one (1) or more courses of treatment described in subdivision (a)(3).

(d) Notwithstanding another law, it is unlawful for a healthcare provider that receives state funds to furnish, provide, or perform a healthcare service that constitutes the performance of or preparation for a gender transition procedure to a minor.

63-1-804. Counseling.

An office, agency, or political subdivision of this state, or an organization with authority to license or discipline the members of a profession, shall not prohibit, impose a penalty, or take adverse action against an individual who gives or receives counsel, advice, guidance, or other speech or communication, whether described as therapy or provided for a fee, consistent with conscience or religious belief.

63-1-805. Protection of parental rights.

(a) A parent, guardian, or custodian, in exercising the fundamental right to care for a child, may withhold consent for a treatment, activity, or mental healthcare service that is designed and intended to form the child's conceptions of sex and gender or to treat gender dysphoria or gender nonconformity. An employee or agent of this state or a political subdivision shall not infringe upon or impede the exercise of the right described in this section.

(b)

(1) Except for a law enforcement officer acting pursuant to a law enforcement investigation, an employee or agent of this state or a political subdivision shall not:

(A) Encourage or coerce a minor to withhold information from the minor's parent; or

(B) Withhold from a minor's parents information that is relevant to the physical or mental health of their child and of a sort that parents interested in and responsible for the well-being of a minor reasonably would demand and should be apprised of.

(2) A violation of subdivision (b)(1) is grounds for discipline of the employee or agent, in addition to other remedies provided to a parent under this part.

(c) If an employee or agent of this state or a political subdivision has knowledge that a minor under the care or supervision of this state or a political subdivision has exhibited symptoms of gender dysphoria, gender nonconformity, or otherwise demonstrates a desire to be treated in a manner incongruent with the minor's sex, then the employee or agent with that knowledge must immediately notify, in writing, each of the minor's parents, guardians, or custodians. The notice must describe all of the relevant information known to the employee or agent with reasonable specificity.

63-1-806. Whistleblower protection.

(a) A person shall not be discriminated against in any manner because the person does the following:

(1) Provides, causes to be provided, or takes steps to provide or cause to be provided to the person's employer, the attorney general and reporter, an entity of this state or a political subdivision, or an entity of the federal government, information about an act or omission that is a violation of this part;

(2) Testifies or prepares to testify in a proceeding concerning a violation of this part; or

(3) Assists or participates in a proceeding concerning a violation of this part.

(b) Unless a disclosure or report of information is specifically prohibited by law, a person shall not be discriminated against in any manner because the person discloses information under this part that the person believes evinces the following:

(1) A violation of law or rule;

(2) A violation of a standard of care or other ethical guideline for the provision of a healthcare service; or

(3) An act of gross mismanagement, gross waste of funds, or abuse of authority, or which poses a substantial and specific danger to public health or safety.

63-1-807. Civil remedies.

(a) A civil action for compensatory or special damages, injunctive relief, or other relief available under law may be brought by a person for a violation of a provision of this part against a medical professional, healthcare entity, government agent, or other individual or entity responsible for the violation.

(b) A party aggrieved or harmed by a violation of this part must bring suit for a violation of this part no later than two (2) years after the day the cause of action accrued. A minor injured by a practice prohibited under this part may bring an action during their minority through a parent, or guardian, and may bring an action in their own name upon reaching majority at any time from that date until twenty (20) years from the date the minor attained the age of majority.

(c) A person who prevails on a claim brought pursuant to this section is entitled, upon the finding of a violation, to recover the following:

(1) Monetary damages, including all psychological, emotional, and physical harm suffered;

(2) Total costs of the action and reasonable attorneys' fees; and

(3) Other appropriate relief.

(d) Standing to assert a claim or defense under this section is governed by the general law of standing.

63-1-808. Preemption.

(a) A political subdivision shall not enact, adopt, maintain, or enforce a law, ordinance, rule, order, policy, or other measure that prohibits, restricts, limits, controls,

directs, or otherwise interferes with the professional conduct and judgment of a mental healthcare professional or counselor, including speech, undertaken within the course of treatment and communication with a client, patient, other person, or the public, including therapy, counseling, referral, and education.

(b) The attorney general and reporter or a mental healthcare professional or counselor may bring an action for an injunction to prevent or restrain a violation of this section. A mental healthcare professional may recover reasonable costs and attorneys' fees incurred in obtaining an injunction under this section.

(c) Sovereign and governmental immunity to suit and from liability is waived and abolished to the extent of the liability created by this section.

63-1-809. Limitation on use of state funds.

Funds of this state or a political subdivision of this state must not be used, directly or indirectly, for the performance of or in furtherance of gender transition procedures or to support the administration of a governmental health plan or government-offered insurance policy offering gender transition procedures.

SECTION 2. Tennessee Code Annotated, Section 63-1-169, is amended by deleting the section.

SECTION 3. If a provision of this act or its application is held invalid, then the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 4. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 5. This act takes effect July 1, 2023, the public welfare requiring it.