

114TH CONGRESS  
2D SESSION

# S. 2880

To prohibit, as an unfair and deceptive act or practice, commercial sexual orientation conversion therapy, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 28, 2016

Mrs. MURRAY (for herself, Mr. BOOKER, Mr. BROWN, Ms. BALDWIN, Mr. LEAHY, Mr. DURBIN, Mr. SCHUMER, Mr. MARKEY, Ms. CANTWELL, Ms. HIRONO, Mrs. GILLIBRAND, Mr. WYDEN, Mr. SANDERS, Mr. FRANKEN, Ms. WARREN, Mr. MERKLEY, Mr. MURPHY, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mrs. BOXER, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To prohibit, as an unfair and deceptive act or practice, commercial sexual orientation conversion therapy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Therapeutic Fraud  
5 Prevention Act of 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1           (1) being lesbian, gay, bisexual, transgender, or  
2           gender nonconforming is not a disorder, disease, ill-  
3           ness, deficiency, or shortcoming;

4           (2) the national community of professionals in  
5           education, social work, health, mental health, and  
6           counseling has determined that there is no scientif-  
7           ically valid evidence that supports the practice of at-  
8           tempting to prevent a person from being lesbian,  
9           gay, bisexual, transgender, or gender nonconforming;

10          (3) such professionals have determined that  
11          there is no evidence that conversion therapy is effec-  
12          tive or that an individual's sexual orientation or gen-  
13          der identity can be changed by conversion therapy;

14          (4) such professionals have also determined  
15          that the potential risks of conversion therapy are not  
16          only that it is ineffective, but also that it is substan-  
17          tially dangerous to an individual's mental and phys-  
18          ical health, and has been shown to contribute to de-  
19          pression, self-harm, low self-esteem, family rejection,  
20          and suicide; and

21          (5) it is in the interest of the Nation to make  
22          sure that lesbian, gay, bisexual, transgender, and  
23          gender nonconforming people and their families are  
24          not defrauded by persons seeking to profit by offer-  
25          ing this harmful and wholly ineffective therapy.

1 **SEC. 3. UNFAIR OR DECEPTIVE ACTS AND PRACTICES RE-**  
 2 **LATED TO CONVERSION THERAPY.**

3 (a) **UNLAWFUL CONDUCT.**—It shall be unlawful for  
 4 any person—

5 (1) to provide conversion therapy to any indi-  
 6 vidual if such person receives monetary compensa-  
 7 tion in exchange for such services; or

8 (2) to advertise for the provision of conversion  
 9 therapy and claim in such advertising—

10 (A) to change another individual’s sexual  
 11 orientation or gender identity;

12 (B) to eliminate or reduce sexual or ro-  
 13 mantic attractions or feelings toward individ-  
 14 uals of the same gender; or

15 (C) that such efforts are harmless or with-  
 16 out risk to individuals receiving such therapy.

17 (b) **ENFORCEMENT BY FEDERAL TRADE COMMIS-**  
 18 **SION.**—

19 (1) **VIOLATION OF RULE.**—A violation of sub-  
 20 section (a) shall be treated as a violation of a rule  
 21 defining an unfair or deceptive act or practice pre-  
 22 scribed under section 18(a)(1)(B) of the Federal  
 23 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

24 (2) **POWERS OF COMMISSION.**—

25 (A) **IN GENERAL.**—The Commission shall  
 26 enforce this section in the same manner, by the

1 same means, and with the same jurisdiction,  
2 powers, and duties as though all applicable  
3 terms and provisions of the Federal Trade  
4 Commission Act (15 U.S.C. 41 et seq.) were in-  
5 corporated into and made a part of this Act.

6 (B) PRIVILEGES AND IMMUNITIES.—Any  
7 person who violates this subsection (a) shall be  
8 subject to the penalties and entitled to the  
9 privileges and immunities provided in the Fed-  
10 eral Trade Commission Act (15 U.S.C. 41 et  
11 seq.).

12 (3) REGULATIONS.—The Commission may pro-  
13 mulgate, in accordance with section 553 of title 5,  
14 United States Code, such regulations as the Com-  
15 mission considers appropriate to carry out this sec-  
16 tion.

17 (c) ENFORCEMENT BY STATES.—

18 (1) IN GENERAL.—In any case in which the at-  
19 torney general of a State has reason to believe that  
20 an interest of the residents of the State has been or  
21 is threatened or adversely affected by the engage-  
22 ment of any person subject to subsection (a) in a  
23 practice that violates such subsection, the attorney  
24 general of the State may, as *parens patriae*, bring  
25 a civil action on behalf of the residents of the State

1 in an appropriate district court of the United States  
2 to obtain appropriate relief.

3 (2) RIGHTS OF FEDERAL TRADE COMMIS-  
4 SION.—

5 (A) NOTICE TO FEDERAL TRADE COMMIS-  
6 SION.—

7 (i) IN GENERAL.—Except as provided  
8 in clause (iii), the attorney general of a  
9 State shall notify the Federal Trade Com-  
10 mission in writing that the attorney gen-  
11 eral intends to bring a civil action under  
12 paragraph (1) before initiating the civil ac-  
13 tion.

14 (ii) CONTENTS.—The notification re-  
15 quired by clause (i) with respect to a civil  
16 action shall include a copy of the complaint  
17 to be filed to initiate the civil action.

18 (iii) EXCEPTION.—If it is not feasible  
19 for the attorney general of a State to pro-  
20 vide the notification required by clause (i)  
21 before initiating a civil action under para-  
22 graph (1), the attorney general shall notify  
23 the Commission immediately upon insti-  
24 tuting the civil action.

1 (B) INTERVENTION BY FEDERAL TRADE  
2 COMMISSION.—The Commission may—

3 (i) intervene in any civil action  
4 brought by the attorney general of a State  
5 under paragraph (1); and

6 (ii) upon intervening—

7 (I) be heard on all matters arising  
8 in the civil action; and

9 (II) file petitions for appeal of a  
10 decision in the civil action.

11 (3) INVESTIGATORY POWERS.—Nothing in this  
12 subsection may be construed to prevent the attorney  
13 general of a State from exercising the powers conferred  
14 on the attorney general by the laws of the  
15 State to conduct investigations, to administer oaths  
16 or affirmations, or to compel the attendance of witnesses  
17 or the production of documentary or other  
18 evidence.

19 (4) PREEMPTIVE ACTION BY FEDERAL TRADE  
20 COMMISSION.—If the Federal Trade Commission institutes  
21 a civil action or an administrative action  
22 with respect to a violation of subsection (a), the attorney  
23 general of a State may not, during the pendency  
24 of such action, bring a civil action under paragraph  
25 (1) against any defendant named in the com-

1       plaint of the Commission for the violation with re-  
2       spect to which the Commission instituted such ac-  
3       tion.

4               (5) VENUE; SERVICE OF PROCESS.—

5               (A) VENUE.—Any action brought under  
6       paragraph (1) may be brought in—

7               (i) the district court of the United  
8       States that meets applicable requirements  
9       relating to venue under section 1391 of  
10      title 28, United States Code; or

11              (ii) another court of competent juris-  
12      diction.

13              (B) SERVICE OF PROCESS.—In an action  
14      brought under paragraph (1), process may be  
15      served in any district in which the defendant—

16              (i) is an inhabitant;

17              (ii) may be found;

18              (iii) transacts business; or

19              (iv) wherever venue is proper under  
20      section 1391 of title 28, United States  
21      Code.

22              (6) ACTIONS BY OTHER STATE OFFICIALS.—

23              (A) IN GENERAL.—In addition to civil ac-  
24      tions brought by attorneys general under para-  
25      graph (1), any other officer of a State who is

1 authorized by the State to do so may bring a  
2 civil action under paragraph (1), subject to the  
3 same requirements and limitations that apply  
4 under this subsection to civil actions brought by  
5 attorneys general.

6 (B) SAVINGS PROVISION.—Nothing in this  
7 subsection may be construed to prohibit an au-  
8 thorized official of a State from initiating or  
9 continuing any proceeding in a court of the  
10 State for a violation of any civil or criminal law  
11 of the State.

12 **SEC. 4. DEFINITIONS.**

13 In this Act:

14 (1) CONVERSION THERAPY.—The term “conver-  
15 sion therapy”—

16 (A) means any practices or treatments by  
17 any person that seek to change another individ-  
18 ual’s sexual orientation or gender identity, in-  
19 cluding efforts to change behaviors or gender  
20 expressions, or to eliminate or reduce sexual or  
21 romantic attractions or feelings toward individ-  
22 uals of the same gender, if such person receives  
23 monetary compensation in exchange for such  
24 practices or treatments; and



1 (B) does not include practices or treat-  
2 ments that—

3 (i) provide assistance to an individual  
4 undergoing a gender transition; or

5 (ii) provide acceptance, support, and  
6 understanding of a client or facilitation of  
7 a client’s coping, social support, and iden-  
8 tity exploration and development, including  
9 sexual orientation-neutral interventions to  
10 prevent or address unlawful conduct or un-  
11 safe sexual practices,

12 if such practices or treatments do not seek to  
13 change sexual orientation or gender identity.

14 (2) GENDER IDENTITY.—The term “gender  
15 identity” means the gender-related identity, appear-  
16 ance, mannerisms, or other gender-related character-  
17 istics of an individual, regardless of the individual’s  
18 designated sex at birth.

19 (3) SEXUAL ORIENTATION.—The term “sexual  
20 orientation” means homosexuality, heterosexuality,  
21 or bisexuality.

22 **SEC. 5. SEVERABILITY.**

23 If any provision of this Act, or the application of such  
24 provision to any person or circumstance, is held to be un-  
25 constitutional, the remainder of this Act, and its applica-

- 1 tion to any person or circumstance shall not be affected
- 2 thereby.

