



2023 SENATE BILL 704

November 21, 2023 - Introduced by Senators L. JOHNSON, SMITH and LARSON, cosponsored by Representatives EMERSON, PALMERI, C. ANDERSON, CONLEY, JACOBSON, SINICKI, ANDRACA, JOERS, J. ANDERSON, SHELTON, RATCLIFF, CONSIDINE and DRAKE. Referred to Committee on Health.

1 **AN ACT to create** 48.374 of the statutes; **relating to:** a minor's authority to
2 consent to health care.

Analysis by the Legislative Reference Bureau

This bill allows a minor who is an unaccompanied youth to consent to, contract for, and receive medical, dental, or behavioral health examinations, care, or treatment without a parent's or guardian's permission, authority, or consent under certain circumstances. The bill defines "unaccompanied youth" as the term is defined under federal law, which is a homeless youth not in the physical custody of a parent or guardian.

Under the bill, in order to consent to health care, such a minor must be at least 14 years of age and must not be under the supervision of a county department of human services or social services, a licensed child welfare agency, the Department of Children and Families, or the Department of Corrections. Also under the bill, one of the following must confirm in writing that the minor is an unaccompanied youth: a local educational agency liaison for homeless children and youths designated under federal law, a school social worker or counselor, an employee who conducts intake at a shelter facility or transitional living program where the minor has been admitted as an unaccompanied youth under current law, or the director, or his or her designee, of a governmental or nonprofit entity that receives public or private funding to provide services to individuals who are homeless or to unaccompanied youth.

The bill provides as an exception that the authority of a minor to consent to health care does not apply to certain medical intervention practices if done for the purpose of changing the minor's body to correspond to a sex that is discordant with

SENATE BILL 704

the minor's biological sex. Under the bill, this exception does not apply to any of the following: 1) a medical service provided in accordance with a good faith medical decision of a minor born with a medically verifiable genetic disorder of sex development; 2) the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of a gender transition medical procedure, whether or not that procedure was performed in accordance with state and federal law; or 3) any procedure undertaken because the minor suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the minor in imminent danger of death or impairment of a major bodily function unless surgery is performed.

Under the bill, a professional who provides medical, dental, or behavioral health examinations, care, or treatment to a minor based on the minor's consent given in conformity with the bill may not be held liable in a civil or criminal action for providing those services without having obtained permission from the minor's parent or guardian.

The bill specifies that it does not apply to a minor's consent to an abortion, which under current law requires parental consent except in certain circumstances.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.374 of the statutes is created to read:

2 **48.374 Minor consent for medical care. (1)** In this section:

3 (a) "Biological sex" means the biological state of being female or male based on
4 sex organs, chromosomes, and endogenous hormone profiles.

5 (b) "Unaccompanied youth" has the meaning given in 42 USC 11434a (6).

6 **(2)** Except as provided under sub. (2m) and s. 48.375, a minor may consent to,
7 contract for, and receive medical, dental, or behavioral health examinations, care, or
8 treatment without a parent's or guardian's permission, authority, or consent if all of
9 the following apply:

10 (a) The minor is 14 years of age or older.

11 (b) The minor is not under the supervision of a county department, a licensed
12 child welfare agency, the department, or the department of corrections under this
13 chapter or ch. 938 or under the jurisdiction of the court.

SENATE BILL 704

1 (c) One of the following, who has obtained the minor's consent to disclose the
2 minor's status as an unaccompanied youth, confirms in writing that the minor is an
3 unaccompanied youth:

4 1. A local educational agency liaison for homeless children and youth
5 designated under 42 USC 11432 (g) (1) (J) (ii).

6 2. A school social worker or counselor.

7 3. An employee who conducts intake at a shelter facility or transitional living
8 program where the minor has been admitted under s. 48.9875.

9 4. The director, or his or her designee, of a governmental or nonprofit entity that
10 receives public or private funding to provide services to individuals who are homeless
11 or to unaccompanied youth.

12 5. An attorney representing the minor in any legal matter.

13 **(2m)** (a) Subsection (2) does not apply to any of the following practices upon a
14 minor for the purpose of changing the minor's body to correspond to a sex that is
15 discordant with the minor's biological sex:

16 1. Performing a surgery that sterilizes an individual, including castration,
17 vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy,
18 phalloplasty, and vaginoplasty.

19 2. Performing a mastectomy.

20 3. Administering, prescribing, or supplying any of the following medications:

21 a. Puberty-blocking drugs to stop or delay normal puberty.

22 b. Supraphysiologic doses of testosterone or other androgens to biological
23 females.

24 c. Supraphysiologic doses of estrogen to biological males.

25 4. Removing any otherwise healthy or nondiseased body part or tissue.

SENATE BILL 704**SECTION 1**

1 (b) The exception under par. (a) does not apply to any of the following:

2 1. A medical service provided in accordance with a good faith medical decision
3 of a minor born with a medically verifiable genetic disorder of sex development,
4 including any of the following:

5 a. External biological sex characteristics that are irresolvably ambiguous, such
6 as those born with 46,XX karyotype with virilization, 46,XY karyotype with
7 undervirilization, or having both ovarian and testicular tissue.

8 b. A sexual development disorder when a physician has determined through
9 genetic testing that the minor does not have the normal sex chromosome structure,
10 sex steroid hormone production, or sex steroid hormone action for a biological male
11 or biological female.

12 2. The treatment of any infection, injury, disease, or disorder that has been
13 caused by or exacerbated by the performance of a gender transition medical
14 procedure, whether or not that procedure was performed in accordance with state
15 and federal law.

16 3. Any procedure undertaken because the minor suffers from a physical
17 disorder, physical injury, or physical illness that would, as certified by a physician,
18 place the minor in imminent danger of death or impairment of a major bodily
19 function unless surgery is performed.

20 **(3)** (a) A physician or other qualified professional licensed to practice in this
21 state who provides medical, dental, or behavioral health examinations, care, or
22 treatment to a minor based on consent given by the minor in conformity with this
23 section may not be held liable in a civil or criminal action for providing those services
24 without having obtained permission from the minor's parent or guardian.

SENATE BILL 704

1 (b) This section does not relieve a physician or other qualified professional
2 licensed in this state from liability for negligence in the diagnosis or treatment of a
3 minor.

4 **(4)** (a) Identification of a minor as an unaccompanied youth does not by itself
5 establish that the minor has been abused or neglected.

6 (b) This section does not supersede the mandatory reporting requirements
7 under s. 48.981.

8 (c) This section does not affect any rights a minor has to consent to treatment
9 under ch. 51.

10

(END)