HOUSE BILL NO. 427

INTRODUCED BY J. FULLER

A BILL FOR AN ACT ENTITLED: “AN ACT PROVIDING FOR YOUTH HEALTH PROTECTION LAWS; PROHIBITING SURGICAL PROCEDURES FOR THE TREATMENT OF GENDER DYSPHORIA IN MINORS; PROVIDING ENFORCEMENT; AND PROVIDING DEFINITIONS.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Youth Health Protection Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 5] is to enhance the protection of minors, pursuant to Article II, section 15, of the Montana constitution, who experience distress at identifying with their biological sex from being subjects of irreversible and drastic nongenital gender reassignment surgery and irreversible, permanently sterilizing genital gender reassignment surgery.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 5], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or female.

(2) "Gender dysphoria" means a medical diagnosis based on a persistent, marked difference between a patient's expressed or experienced gender and the gender others would assign the patient causing clinically significant distress or impairment, as defined in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders.

(3) "Gender reassignment surgery" means any medical surgical service that seeks to surgically alter or remove healthy physical or anatomical characteristics or features that are typical for the individual's biological sex in order to instill or create physiological or anatomical characteristics that resemble a sex different from the

individual's birth sex, including but not limited to genital or nongenital gender reassignment surgery performed for the purpose of assisting an individual with a gender transition.

(4) "Gender transition" means the process in which an individual goes from identifying with and living as a gender that corresponds with the individual's biological sex to identifying with and living as a gender different from the individual's biological sex and which may involve social, legal, or physical changes.

(5) (a) "Gender transition procedures" means gender reassignment surgery or nongender reassignment surgery.

(b) The term does not include:

(i) puberty-blocking drugs, cross-sex hormones, or other nonsurgical mechanisms that prevent the development of feminizing or masculinizing features or promote the development of feminizing or masculinizing features in the opposite;

(ii) services to those born with a medically verifiable disorder of sex development, including an individual with external biological sex characteristics that are irresolvably ambiguous, such as those born with 46, XX chromosomes with virilization, 46, XY chromosomes with undervirilization, or having both ovarian and testicular tissues;

(iii) services provided when a physician has diagnosed a disorder of sexual development in which the physician has determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a biological male or a biological female;

(iv) the treatment of an infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not the gender transition procedure was performed in accordance with state or federal law; or

(v) a procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the individual in imminent danger of death or impairment of a major bodily function unless surgery is performed.

(6) "Genital gender reassignment surgery" includes but is not limited to the following surgical procedures when performed for the purpose of assisting an individual with a gender transition:

(a) penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty for biological male patients; or

(b) hysterectomy or oophorectomy, reconstruction of the fixed part of the urethra with or without a metoidioplasty or a phalloplasty, vaginectomy, scrotoplasty, or implantation of erection or testicular prostheses for biologically female patients.

(7) "Health care provider" means a physician licensed under Title 37, chapter 3, an advanced practice registered nurse licensed under Title 37, chapter 8, or a physician assistant licensed under Title 37.

(8) "Nongenital gender reassignment surgery" includes but is not limited to the following surgical procedures when performed for the purposes of assisting an individual with a gender transition:

(a) augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation (implants), hair reconstruction, or aesthetic procedures for biologically male patients; or

(b) subcutaneous mastectomy, voice surgery, liposuction, lipofilling, pectoral implants, or aesthetic procedures for biologically female patients.

((9) "Sex", "birth sex", or "biological sex" refers to the biological indication of male or female as understood in the context of reproductive potential or capacity, including sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective experience of gender.

NEW SECTION. **Section 4. Surgical procedures prohibited.** A health care provider may not:

(1) perform gender transition procedures on a minor to treat gender dysphoria;

(2) remove any otherwise healthy or nondiseased body part or tissue of a minor to treat gender dysphoria; or

(3) refer a minor to a health care provider for gender transition procedures.

NEW SECTION. **Section 5. Enforcement -- cause of action.** (1) A referral for or provision of gender transition procedures to a minor is considered unprofessional conduct and the health care provider is subject to discipline by the appropriate licensing entity under Title 37.

(2) A person may assert an actual or threatened violation of [sections 1 through 5] as a claim or defense in a judicial or administrative proceeding and obtain compensatory damages, injunctive relief,

declaratory relief, or any other appropriate relief.

(3) (a) Except as provided in subsection (3)(b), a person may not bring a claim for a violation of [sections 1 through 5] later than 2 years after the day the cause of action accrues.

(b) A minor who has undergone a gender transition procedure may bring a cause of action through a parent or next friend and may bring an action in the minor's own name on reaching majority. The action must be commenced before the minor reaches 27 years of age.

(4) An action under [sections 1 through 5] may be commenced and relief granted in a judicial proceeding regardless of whether the person commencing the action has sought or exhausted available administrative remedies.

(5) In an action or proceeding to enforce a provision of [sections 1 through 5], a prevailing party who establishes a violation of [sections 1 through 5] is entitled to recover reasonable attorney fees.

(6) The attorney general may bring an action to enforce compliance with [sections 1 through 5] no later than 2 years after the date that the cause of action occurs. Nothing in [sections 1 through 5] may be construed to deny, impair, or otherwise affect a right or authority of the attorney general, the state, or an agency, officer, or employee of the state to institute or intervene in a proceeding.

NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 through 5].

NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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