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117TH CONGRESS
2D SESSION

H. R. 8731

To amend chapter 110 of title 18, United States Code, to prohibit gender affirming care on minors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 19, 2022

Mrs. GREENE of Georgia (for herself, Mrs. MILLER of Illinois, Mr. DUNCAN, Mr. GOOD of Virginia, Mr. NORMAN, Mr. GAETZ, Mr. TONY GONZALES of Texas, Mr. HIGGINS of Louisiana, Mr. OWENS, Ms. TENNEY, Mr. CLYDE, Mrs. HARSHBARGER, and Mr. GOODEN of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Energy and Commerce, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend chapter 110 of title 18, United States Code, to prohibit gender affirming care on minors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protect Children's Innocence Act''.

TITLE I—GENDER AFFIRMING CARE FOR MINORS PROHIBITED

SEC. 101. GENDER AFFIRMING CARE ON MINORS PROHIBITED.

Chapter 110 of title 18, United States Code, is amended—

(1) by adding at the end the following:

"§ 2260B. Gender affirming care for minors

''(a) IN GENERAL.—Whoever, in any circumstance described in subsection (e), knowingly performs any gender affirming care on a minor is guilty of a class C felony.

''(b) PROHIBITION ON PROSECUTION OF PERSON ON WHOM INTERVENTION IS PERFORMED.—No person on whom the gender affirming care under subsection (a) is performed may be arrested or prosecuted for an offense under this section.

''(c) CIVIL ACTION.—A person on whom gender affirming care is performed under this section may bring a civil action for appropriate relief, including compensatory and punitive damages, against each person who performed the gender affirming care.

''(d) DEFINITIONS.—In this section:

''(1) GENDER AFFIRMING CARE.—

''(A) IN GENERAL.—For purposes of this chapter, except as provided in subparagraph

(B), the term 'gender affirming care' means, with respect to an individual, any of the following:

''(i) Performing any surgery for the purpose of changing the body of such individual to correspond to a sex that differs from their biological sex, including—

''(I) castration;

''(II) orchiectomy;

''(III) scrotoplasty;

''(IV) vasectomy;

''(V) hysterectomy;

''(VI) oophorectomy;

''(VII) ovariectomy;

''(VIII) metoidioplasty;

''(IX) penectomy;

''(X) phalloplasty;

''(XI) vaginoplasty;

''(XII) vaginectomy;

''(XIII) vulvoplasty;

''(XIV) reduction thyrochondroplasty;

''(XV) chondrolaryngoplasty; and

''(XVI) mastectomy.

"(ii) Any plastic surgery that feminizes or masculinizes the facial features for the purposes described in clause (i).

"(iii) Any placement of chest implants to create feminine breasts for the purposes described in clause (i).

"(iv) Any placement of fat or artificial implants in the gluteal region for the purposes described in clause (i).

"(v) Administering, supplying, prescribing, dispensing, distributing, or otherwise conveying to an individual medications for the purposes described in clause (i), including—

"(I) gonadotropin-releasing hormone (GnRH) analogues or other puberty-blocking drugs to stop or delay normal puberty;

"(II) testosterone or other androgens to biological females at doses that are supraphysiologic to the female sex; and

"(III) estrogen to biological males at doses that are supraphysiologic to the male sex.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to the following individuals:

''(i) An individual with both ovarian and testicular tissue.

''(ii) An individual with respect to whom a 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.

''(iii) An individual experiencing infection, disease, injury, or disorder caused or exacerbated by previous gender transition procedures.

''(iv) An individual suffering 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 the procedure is performed.

''(2) BIOLOGICAL SEX.—The term 'biological sex' means the indication of male or female sex by reproductive potential or capacity, sex chromosomes,

naturally occurring sex hormones, gonads, or internal or external genitalia present at birth.

''(3) MINOR.—The term 'minor' means any person under the age of eighteen years.

''(e) CIRCUMSTANCES DESCRIBED.—For purposes of subsection (a), the circumstances described in this subsection are that—

''(1) the defendant or victim traveled in interstate or foreign commerce, or traveled using a means, channel, facility, or instrumentality of interstate or foreign commerce, in furtherance of or in connection with the conduct described in subsection (a);

''(2) the defendant used a means, channel, facility, or instrumentality of interstate or foreign commerce in furtherance of or in connection with the conduct described in subsection (a);

''(3) any payment of any kind was made, directly or indirectly, in furtherance of or in connection with the conduct described in subsection (a) using any means, channel, facility, or instrumentality of interstate or foreign commerce or in or affecting interstate or foreign commerce;

''(4) the defendant transmitted in interstate or foreign commerce any communication relating to or

in furtherance of the conduct described in subsection (a) using any means, channel, facility, or instrumentality of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means or in manner, including by computer, mail, wire, or electromagnetic transmission;

''(5) any instrument, item, substance, or other object that has traveled in interstate or foreign commerce was used to perform the conduct described in subsection (a);

''(6) the conduct described in subsection (a) occurred within the special maritime and territorial jurisdiction of the United States, or any territory or possession of the United States; or

''(7) the conduct described in subsection (a) otherwise occurred in or affected interstate or foreign commerce.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting provision of the medical services described in subsection (d)(1)(A) to address legitimate health issues, such as any male or female reproductive cancers, apart from changing the body to correspond to a sex that differs from one's biological sex.''; and

(2) by amending the table of sections for such chapter by adding at the end the following:

''2260B. Gender affirming care on minors.''.

TITLE II—PROHIBITING FEDERALLY FUNDED GENDER AFFIRMING CARE

SEC. 201. PROHIBITING TAXPAYER-FUNDED GENDER AFFIRMING CARE.

Title 1, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 4—PROHIBITING TAXPAYER-FUNDED GENDER AFFIRMING CARE

''301. Prohibition on funding for gender affirming care.
''302. Prohibition on funding for health benefits plans that cover gender affirming care.
''303. Limitation on Federal facilities and employees, Federal lands and territories, and Tribal territories.
''304. Construction relating to separate coverage.
''305. Construction relating to the use of non-Federal funds for health coverage.
''306. Construction relating to complications arising from gender affirming care.
''307. Treatment of individuals born with medically verifiable disorder of sex development.
''308. Gender affirming care defined.
''309. Rule of construction.

''§ 301. Prohibition on funding for gender affirming care

''No funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, including funds provided under titles XVIII, XIX, and XXI of the Social Security Act, shall be expended for any gender affirming care.

"§ 302. Prohibition on funding for health benefits plans that cover gender affirming care

''No funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall be expended for health benefits coverage that includes coverage of gender affirming care.

"§ 303. Limitation on Federal facilities and employees, Federal lands and territories, and Tribal territories

''No health care service furnished—

''(1) by or in a health care facility owned or operated by the Federal Government, Federal land or territory, or a Tribal territory; or

''(2) by any physician or other individual employed by the Federal Government, Federal land or territory, or a Tribal territory to provide health care services within the scope of the physician's or individual's employment,

may include gender affirming care.

"§ 304. Construction relating to separate coverage

''Nothing in this chapter shall be construed as prohibiting any individual, entity, or State or locality from purchasing separate coverage for gender affirming care or health benefits coverage that includes gender affirming care so long as such coverage is paid for entirely using

only funds not authorized or appropriated by Federal law, federal programs, platforms, or infrastructure, such coverage does not cover any practice that would be subject to penalty under section 2260B of title 18, United States Code, and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State's or locality's contribution of Medicaid matching funds.

"§ 305. Construction relating to the use of non-Federal funds for health coverage

''Nothing in this chapter shall be construed as restricting the ability of any non-Federal health benefits coverage provider from offering coverage for gender affirming care, or the ability of a State or locality to contract separately with such a provider for such coverage, so long as only funds not authorized or appropriated by Federal law are used, such coverage does not cover any practice that would be subject to penalty under section 2260B of title 18, United States Code, and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State's or locality's contribution of Medicaid matching funds.

"§ 306. Construction relating to complications arising from gender affirming care

''Nothing in this chapter shall be construed to apply to the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of a gender affirming care. This rule of construction shall be applicable without regard to whether the gender affirming care was performed in accord with Federal or State law, and without regard to whether funding for the gender affirming care is permissible under section 307.

"§ 307. Treatment of individuals born with medically verifiable disorder of sex development

''The limitations established in sections 301, 302, and 303 shall not apply with respect to an individual described in section 2260B(d)(1)(B) of title 18, United States Code.

"§ 308. Gender affirming care defined

''For purposes of this chapter, the term 'gender affirming care' has the meaning given such term in section 2260B(d)(1) of title 18, United States Code.

"§ 309. Rule of construction

''Nothing in this chapter shall be construed as prohibiting provision of the medical services described in section 2260B(d)(1)(A) of title 18, United States Code, to address any male or female reproductive cancers, apart

from changing the body to correspond to a sex that differs from one's biological sex.''.

SEC. 202. AMENDMENT TO TABLE OF CHAPTERS.

The table of chapters for title 1, United States Code, is amended by adding at the end the following new item:

''4. Prohibiting taxpayer-funded gender affirming care ... 301''.

TITLE III—APPLICATION UNDER THE AFFORDABLE CARE ACT

SEC. 301. CLARIFYING APPLICATION OF PROHIBITION TO PREMIUM CREDITS AND COST-SHARING REDUCTIONS UNDER ACA.

(a) IN GENERAL.—

(1) DISALLOWANCE OF REFUNDABLE CREDIT AND COST-SHARING REDUCTIONS FOR COVERAGE UNDER QUALIFIED HEALTH PLAN WHICH PROVIDES COVERAGE FOR GENDER AFFIRMING CARE.—

(A) IN GENERAL.—Subparagraph (A) of section 36B(c)(3) of the Internal Revenue Code of 1986 is amended by inserting before the period at the end the following: ''or any health plan that includes coverage for gender affirming care (other than any gender affirming care or treatment described in section 306 or 307 of title 1, United States Code)''.

(B) OPTION TO PURCHASE OR OFFER SEPARATE COVERAGE OR PLAN.—Paragraph (3) of

section 36B(c) of such Code is amended by adding at the end the following new subparagraph:

"(C) SEPARATE COVERAGE OR PLAN FOR GENDER AFFIRMING CARE ALLOWED.—

"(i) OPTION TO PURCHASE SEPARATE COVERAGE OR PLAN.—Nothing in subparagraph (A) shall be construed as prohibiting any individual from purchasing separate coverage for gender affirming care described in such subparagraph, or a health plan that includes such gender affirming care, so long as no credit is allowed under this section with respect to the premiums for such coverage or plan and such coverage or plan does not cover any practice that would be subject to penalty under section 2260B of title 18, United States Code.

"(ii) OPTION TO OFFER COVERAGE OR PLAN.—Nothing in subparagraph (A) shall restrict any non-Federal health insurance issuer offering a health plan from offering separate coverage for gender affirming care described in such subparagraph, or a

plan that includes such gender affirming care, so long as premiums for such separate coverage or plan are not paid for with any amount attributable to the credit allowed under this section (or the amount of any advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act) and such coverage or plan does not cover any practice that would be subject to penalty under section 2260B of title 18, United States Code.''.

(2) DISALLOWANCE OF SMALL EMPLOYER HEALTH INSURANCE EXPENSE CREDIT FOR PLAN WHICH INCLUDES COVERAGE FOR GENDER AFFIRMING CARE.—Subsection (h) of section 45R of the Internal Revenue Code of 1986 is amended—

(A) by striking ''Any term'' and inserting the following:

''(1) IN GENERAL.—Any term''; and

(B) by adding at the end the following new paragraph:

''(2) EXCLUSION OF HEALTH PLANS INCLUDING COVERAGE FOR GENDER AFFIRMING CARE.—

''(A) IN GENERAL.—The term 'qualified health plan' does not include any health plan

that includes coverage for gender affirming care (other than any gender affirming care or treatment described in section 306 or 307 of title 1, United States Code).

"(B) SEPARATE COVERAGE OR PLAN FOR GENDER AFFIRMING CARE ALLOWED.—

"(i) OPTION TO PURCHASE SEPARATE COVERAGE OR PLAN.—Nothing in subparagraph (A) shall be construed as prohibiting any employer from purchasing for its employees separate coverage for gender affirming care described in such subparagraph, or a health plan that includes such gender affirming care, so long as no credit is allowed under this section with respect to the employer contributions for such coverage or plan and such coverage does not cover any practice that would be subject to penalty under section 2260B of title 18, United States Code.

"(ii) OPTION TO OFFER COVERAGE OR PLAN.—Nothing in subparagraph (A) shall restrict any non-Federal health insurance issuer offering a health plan from offering separate coverage for gender affirming

care described in such subparagraph, or a plan that includes such gender affirming care, so long as such separate coverage or plan is not paid for with any employer contribution eligible for the credit allowed under this section and such coverage or plan does not cover any practice that would be subject to penalty under section 2260B of title 18, United States Code.''.

(b) APPLICATION TO MULTI-STATE PLANS.—Section 1334(a) of Public Law 111–148 (42 U.S.C. 18054(a)) is amended by adding at the end the following new paragraph:

''(7) COVERAGE CONSISTENT WITH FEDERAL POLICY REGARDING GENDER AFFIRMING CARE.—In entering into contracts under this subsection, the Director shall ensure that no multi-State qualified health plan offered in an Exchange provides health benefits coverage for which the expenditure of Federal funds is prohibited under chapter 4 of title 1, United States Code.''.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years ending after the date that is one year after the date of enactment of this Act, but only with respect to plan years beginning

after such date, and the amendment made by subsection (b) shall apply to plan years beginning after such date.

TITLE IV—ADDITIONAL PROVISIONS

SEC. 401. PROHIBITION ON INSTITUTIONS OF HIGHER EDUCATION AND ACCREDITING AGENCIES OR ASSOCIATIONS.

(a) PROHIBITION ON INSTITUTIONS OF HIGHER EDUCATION.—Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)) is amended by adding at the end the following:

''(30) The institution will not offer instruction in gender-affirming care (as defined in section 2260B(d) of title 18, United States Code).''.

(b) PROHIBITION ON ACCREDITING AGENCIES OR ASSOCIATIONS.—Section 496(a) of the Higher Education Act of 1965 (20 U.S.C. 1099b(a)) is amended—

(1) by striking ''and'' at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting ''; and''; and

(3) by adding at the end the following:

''(9) such agency or association does not accredit any institution that offers instruction in gen-

der-affirming care (as defined in section 2260B(d) of title 18, United States Code).''.

SEC. 402. IMMIGRATION CONSEQUENCES WITH RESPECT TO PROVIDING GENDER AFFIRMING CARE.

(a) DEFINITIONS.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(53) The term 'gender affirming care' shall have the meaning given such term in section 2260B(d) of title 18, United States Code.''.

(b) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Section 212(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)(A)) is amended—

(1) in clause (iii)(II), strike ''or'' at the end;

(2) in clause (iv), strike the comma at the end and insert '', or''; and

(3) by adding at the end the following:

''(v) who is determined to have performed gender affirming care on a child that has not attained the age of 18 years old,''.

(c) CLASSES OF DEPORTABLE ALIENS.—Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended by adding at the end the following:

"(8) GENDER AFFIRMING CARE.—Any alien who has performed gender affirming care on a child that has not attained the age of 18 years old is deportable.".

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