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117TH CONGRESS
2D SESSION

S. 4457

To protect children from medical malpractice in the form of gender transition procedures.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2022

Mr. COTTON (for himself, Mr. DAINES, Mr. RUBIO, Mr. HAWLEY, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To protect children from medical malpractice in the form of gender transition procedures.

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 ''Protecting Minors from Medical Malpractice Act of 2022''.

SEC. 2. PRIVATE RIGHT OF ACTION FOR A GENDER-TRANSITION PROCEDURE PERFORMED ON A MINOR.

(a) IN GENERAL.—A medical practitioner, in any circumstance described in subsection (c), who performs a gender-transition procedure on an individual who is less

than 18 years of age shall, as described in subsection (b), be liable to the individual if injured (including any physical, psychological, emotional, or physiological harms) by such procedure, related treatment, or the aftereffects of the procedure or treatment.

(b) PRIVATE RIGHT OF ACTION.—An individual covered by subsection (a) who receives a gender-transition procedure from a medical practitioner (or a representative, including a legal guardian, on behalf of such individual) may, not later than the day that is 30 years after the date on which the individual turns 18 years of age, bring a civil action against such medical practitioner in a court of competent jurisdiction for—

(1) declaratory or injunctive relief;

(2) compensatory damages;

(3) punitive damages; and

(4) attorney's fees and costs.

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

(1) the medical practitioner or the individual receiving the gender-transition procedure 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 medical practitioner 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 medical practitioner 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 any 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.

SEC. 3. PRESERVING FREEDOM OF CONSCIENCE AND MEDICAL JUDGEMENT FOR MEDICAL PROVIDERS.

Notwithstanding any other provision of law, no provision of Federal law shall require, or be construed to require, a medical practitioner to perform a gender-transition procedure.

SEC. 4. PROHIBITION ON FUNDING FOR CERTAIN STATES.

Notwithstanding any other provision of law, any State that requires medical practitioners to perform any gender-transition procedure on an individual in the State shall be ineligible to receive any Federal funding from the Department of Health and Human Services.

SEC. 5. DEFINITIONS.

In this Act:

(1) BIOLOGICAL SEX.—The term ''biological sex'' means the genetic classification of an individual as male or female, as reflected in the organization of the body of such individual for a reproductive role

or capacity, such as through sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth, without regard to the subjective sense of identity of the individual.

(2) GENDER-TRANSITION PROCEDURE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''gender-transition procedure'' means—

(i) the prescription or administration of puberty-blocking drugs for the purpose of changing the body of an individual so that it conforms to the subjective sense of identity of the individual, in the case such identity is at odds with the individual's biological sex;

(ii) the prescription or administration of cross-sex hormones for the purpose of changing the body of an individual so that it conforms to the subjective sense of identity of the individual, in the case such identity is at odds with the individual's biological sex; or

(iii) a surgery to change the body of an individual so that it conforms to the subjective sense of identity of the indi-

vidual, in the case such identity is at odds with the individual's biological sex.

(B) EXCEPTION.—The term ''gender-transition procedure'' does not include—

(i) an intervention described in subparagraph (A) that is performed on—

(I) an individual with biological sex characteristics that are inherently ambiguous, such as those born with 46 XX chromosomes with virilization, 46 XY chromosomes with undervirilization, or having both ovarian and testicular tissue; or

(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, for a biological male or biological female;

(ii) the treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by the performance of an intervention described in subpara-

graph (A) without regard to whether the intervention was performed in accordance with State or Federal law or whether the intervention is covered by the private right of action under section 2; or

(iii) any 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 major bodily function unless the procedure is performed.

(3) MEDICAL PRACTITIONER.—The term ''medical practitioner'' means a person who is licensed, certified, or otherwise authorized by the laws of a State to administer health care in the ordinary course of the practice of the person's profession.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act.

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