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115TH CONGRESS
1ST SESSION

S. 928

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

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2017

Mrs. MURRAY (for herself, Mr. BOOKER, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BROWN, Ms. CANTWELL, Ms. DUCKWORTH, Mr. MARKEY, Ms. WARREN, Mrs. GILLIBRAND, Ms. HIRONO, Mr. SANDERS, Mr. WHITEHOUSE, Ms. HASSAN, Mr. WYDEN, Mr. MERKLEY, Mr. SCHATZ, Mr. MURPHY, Mr. LEAHY, Mr. CASEY, Mr. FRANKEN, Ms. HARRIS, and Mr. DURBIN) 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 or deceptive act or practice, commercial sexual orientation conversion therapy, 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 ''Therapeutic Fraud Prevention Act of 2017''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Being lesbian, gay, bisexual, transgender, or gender nonconforming is not a disorder, disease, illness, deficiency, or shortcoming.

(2) The national community of professionals in education, social work, health, mental health, and counseling has determined that there is no scientifically valid evidence that supports the practice of attempting to prevent a person from being lesbian, gay, bisexual, transgender, or gender nonconforming.

(3) Such professionals have determined that there is no evidence that conversion therapy is effective or that an individual's sexual orientation or gender identity can be changed by conversion therapy.

(4) Such professionals have also determined that the potential risks of conversion therapy are not only that it is ineffective, but also that it is substantially dangerous to an individual's mental and physical health, and has been shown to contribute to depression, self-harm, low self-esteem, family rejection, and suicide.

(5) It is in the interest of the Nation to prevent lesbian, gay, bisexual, transgender, and gender nonconforming people and their families from being defrauded by persons seeking to profit by offering this harmful and wholly ineffective therapy.

SEC. 3. DEFINITIONS.

In this Act:

(1) CONVERSION THERAPY.—The term ''conversion therapy''—

(A) means any practice or treatment by any person that seeks to change another individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender, if such person receives monetary compensation in exchange for such practices or treatments; and

(B) does not include any practice or treatment, which does not seek to change sexual orientation or gender identity, that—

(i) provides assistance to an individual undergoing a gender transition; or

(ii) provides acceptance, support, and understanding of a client or facilitation of a client's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices.

(2) GENDER IDENTITY.—The term ''gender identity'' means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

(3) PERSON.—The term ''person'' means any individual, partnership, corporation, cooperative, association, or any other entity.

(4) SEXUAL ORIENTATION.—The term ''sexual orientation'' means homosexuality, heterosexuality, or bisexuality.

SEC. 4. UNFAIR OR DECEPTIVE ACTS AND PRACTICES RELATED TO CONVERSION THERAPY.

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

(1) to provide conversion therapy to any individual if such person receives compensation in exchange for such services;

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

(A) to change another individual's sexual orientation or gender identity;

(B) to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender; or

(C) that such efforts are harmless or without risk to individuals receiving such therapy; or

(3) to knowingly assist or facilitate the provision of conversion therapy to an individual if such person receives compensation from any source in connection with providing conversion therapy.

(b) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) VIOLATION OF RULE.—A violation of subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) POWERS OF COMMISSION.—

(A) IN GENERAL.—The Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

(B) PRIVILEGES AND IMMUNITIES.—Any person who violates subsection (a) shall be sub-

ject to the penalties, and entitled to the privileges and immunities, provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(3) REGULATIONS.—The Federal Trade Commission may promulgate, in accordance with section 553 of title 5, United States Code, such regulations as the Commission considers appropriate to carry out this section.

(c) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—If the attorney general of a State has reason to believe that an interest of the residents of the State has been or is being threatened or adversely affected by a practice that violates subsection (a), the attorney general of the State may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

(2) RIGHTS OF FEDERAL TRADE COMMISSION.—

(A) NOTICE TO FEDERAL TRADE COMMISSION.—

(i) IN GENERAL.—Except as provided in clause (iii), the attorney general of a State, before initiating a civil action under

paragraph (1), shall provide written notification to the Federal Trade Commission that the attorney general intends to bring such civil action.

(ii) CONTENTS.—The notification required under clause (i) shall include a copy of the complaint to be filed to initiate the civil action.

(iii) EXCEPTION.—If it is not feasible for the attorney general of a State to provide the notification required under clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

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

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

(ii) upon intervening—

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

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

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

(4) PREEMPTIVE ACTION BY FEDERAL TRADE COMMISSION.—If the Federal Trade Commission institutes a civil action or an administrative action with respect to a violation of subsection (a), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

(5) VENUE; SERVICE OF PROCESS.—

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

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

(ii) another court of competent jurisdiction.

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

(i) the defendant is an inhabitant, may be found, or transacts business; or

(ii) venue is proper under section 1391 of title 28, United States Code.

(6) ACTIONS BY OTHER STATE OFFICIALS.—

(A) IN GENERAL.—In addition to a civil action brought by an attorney general under paragraph (1), any other officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) SAVINGS PROVISION.—Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

SEC. 5. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and its application to any person or circumstance shall not be affected thereby.

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