

By: Leach

H.B. No. 4624

A BILL TO BE ENTITLED

AN ACT

relating to gender modification procedures and treatments for certain minors; providing a civil penalty.

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

SECTION 1. GENDER MODIFICATION PROCEDURES AND TREATMENTS. Chapter 161, Health and Safety Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. GENDER MODIFICATION PROCEDURES AND TREATMENTS ON MINORS

Sec. 161.701. DEFINITIONS. In this subchapter:

(1) "Congenital defect" means a physical or chemical abnormality present in a minor that is inconsistent with the normal development of a human being of the minor's sex, including abnormalities caused by a medically verifiable disorder of sex development. The term does not include gender dysphoria, gender identity disorder, gender incongruence, or any mental condition, disorder, disability, or abnormality.

(2) "Gender modification procedure or treatment" means a health care procedure or treatment performed or administered for the purpose of:

(A) enabling a minor to identify with, or live as, a purported identity inconsistent with the minor's sex; or

(B) treating purported discomfort or distress from a discordance between the minor's sex and asserted identity.

1 (3) "Health care procedure or treatment" includes:

2 (A) surgically removing, modifying, altering, or
3 entering into tissues, cavities, or organs of a human being; or

4 (B) prescribing, administering, or dispensing
5 any drug or device to a human being.

6 (4) "Health care provider" means an individual or
7 facility licensed, certified, or otherwise authorized by this
8 state's laws to provide or render health care or to dispense or
9 prescribe a prescription drug in the ordinary course of business or
10 practice of a profession.

11 (5) "Minor" means an individual who is younger than 18
12 years of age for whom the disabilities of minority have not been
13 removed.

14 (6) "Sex" means an individual's immutable
15 characteristics of the reproductive system that define the
16 individual as male or female, as determined by anatomy and genetics
17 existing at the time of birth.

18 Sec. 161.702. CONSTRUCTION OF SUBCHAPTER. (a) This
19 subchapter is remedial in nature and must be liberally construed to
20 accomplish its purposes.

21 (b) This subchapter may not be construed to impose liability
22 on a minor on whom a gender modification procedure or treatment is
23 performed or administered in violation of Section 161.703.

24 Sec. 161.703. PROHIBITED GENDER MODIFICATION PROCEDURES
25 AND TREATMENTS FOR CERTAIN MINORS. Except as provided by Section
26 161.704, a health care provider may not perform or offer to perform
27 on a minor, or administer or offer to administer to a minor, a

1 gender modification procedure or treatment.

2 Sec. 161.704. EXCEPTIONS. (a) This subchapter does not
3 apply to a health care provider performing, offering to perform,
4 administering, or offering to administer a health care procedure or
5 treatment to a minor if the performance or administration of the
6 procedure or treatment is to treat a minor's congenital defect,
7 disease, or physical injury.

8 (b) For purposes of Subsection (a), "disease" does not
9 include:

10 (1) gender dysphoria, gender identity disorder, or
11 gender incongruence; or

12 (2) any mental condition, disorder, disability, or
13 abnormality.

14 (c) This subchapter does not apply to a health care provider
15 performing, offering to perform, administering, or offering to
16 administer a health care procedure or treatment to a minor if the
17 performance or administration of the procedure or treatment is
18 continuing a procedure or treatment on the minor that began before
19 September 1, 2023, and the minor's treating physician certifies in
20 writing that, in the physician's good-faith medical judgment, based
21 on the facts known to the physician at the time, ending the
22 procedure or treatment would be harmful to the minor.

23 (c-1) The certification under Subsection (c) must include
24 the physician's findings supporting the certification and must be
25 placed in the minor's medical record.

26 (c-2) Subsection (c) may not be construed to:

27 (1) allow a health care provider to perform or

1 administer a gender modification procedure or treatment that is
2 different from the gender modification procedure or treatment
3 performed before September 1, 2023; and

4 (2) waive a minor's right to bring an action under
5 Section 161.706 for a gender modification procedure or treatment
6 that does not comply with this subchapter after September 1, 2023.

7 (c-3) This subsection and Subsections (c), (c-1), and (c-2)
8 expire September 1, 2033.

9 Sec. 161.705. EFFECT OF CONSENT. (a) It is not a defense to
10 any legal liability incurred as the result of a violation of Section
11 161.703 that the minor, or a parent, legal guardian, or conservator
12 of the minor, consented to the conduct that constituted the
13 violation.

14 (b) This subchapter supersedes any other law regarding a
15 minor's ability to consent to a gender modification procedure or
16 treatment.

17 Sec. 161.706. CIVIL ACTION; EFFECT ON IMMUNITY. (a) A
18 minor injured as a result of a violation of Section 161.703, or a
19 parent, legal guardian, or managing conservator of the minor, other
20 than a parent, guardian, or conservator described by Subdivision
21 (2), may bring a civil action against:

22 (1) a health care provider who violated Section
23 161.703; and

24 (2) the minor's parent, legal guardian, or conservator
25 who consented to the conduct that constituted the violation.

26 (b) Subsection (a)(2) waives any common law immunity
27 granted to a parent, legal guardian, or conservator to the extent of

1 liability created by this section.

2 Sec. 161.707. WRONGFUL DEATH ACTION. A parent, legal
3 guardian, or conservator or next of kin of a minor may bring a
4 wrongful death action under Section 161.706 in accordance with
5 Subchapter A, Chapter 71, Civil Practice and Remedies Code, against
6 a health care provider who violates Section 161.703 if the minor who
7 is the subject of the action is deceased and:

8 (1) the minor's death is the result of the physical or
9 emotional harm inflicted on the minor by the violation; and

10 (2) the parent, guardian, or conservator did not
11 consent to the conduct that constituted the violation.

12 Sec. 161.708. LIMITATIONS PERIOD. Notwithstanding any
13 other law, a claimant must bring an action under Section 161.706 not
14 later than the earlier of:

15 (1) the 30th anniversary of the date the minor who is
16 the subject of the action becomes 18 years of age; or

17 (2) the 10th anniversary of the minor's death.

18 Sec. 161.709. DAMAGES. (a) A claimant may recover
19 compensatory damages, exemplary damages, and reasonable attorney's
20 fees, court costs, and expenses in an action brought under Section
21 161.706.

22 (b) Compensatory damages include:

23 (1) reasonable economic losses caused by the
24 emotional, mental, or physical effects of the violation, including:

25 (A) the cost of counseling, hospitalization, and
26 any other medical expenses connected with treating the harm caused
27 by the violation;

1 (B) out-of-pocket costs of the minor paid to the
2 health care provider for the prohibited medical procedure; and
3 (C) loss of income caused by the violation; and
4 (2) noneconomic damages caused by the violation,
5 including psychological and emotional anguish.

6 Sec. 161.710. REQUIRED NOTICE OF KNOWING OR INTENTIONAL
7 VIOLATION. If a court finds that a defendant knowingly or
8 intentionally violated Section 161.703 in an action brought under
9 Section 161.706, the court shall notify the appropriate state
10 regulatory authority for the defendant and the attorney general by
11 mailing a certified copy of the signed judgment for the action to
12 the state regulatory authority and the attorney general.

13 Sec. 161.711. ATTORNEY GENERAL POWERS AND DUTIES; CIVIL
14 PENALTY. (a) The attorney general shall establish a process by
15 which knowing or intentional violations of Section 161.703 are
16 reported.

17 (b) The attorney general may bring an action against a
18 health care provider who knowingly or intentionally violates
19 Section 161.703 not later than the 20th anniversary of the
20 violation to:

21 (1) enjoin further violations;
22 (2) recover any profits received due to the procedure
23 or treatment that is the subject of the violation; and
24 (3) recover a civil penalty in an amount of \$25,000 per
25 violation.

26 (c) The attorney general shall deposit a civil penalty
27 collected under this section in the general revenue fund.

1 (d) The attorney general is entitled to reasonable
2 attorney's fees, court costs, and expenses if the attorney general
3 prevails in an action brought under this section.

4 (e) Venue for an action brought under this section is in a
5 district court of Williamson County or the county where the
6 violation occurred.

7 Sec. 161.712. STATE REGULATORY AUTHORITY EMERGENCY ACTION.

8 A violation of Section 161.703 constitutes a potential threat to
9 public health, safety, and welfare and requires emergency action by
10 the health care provider's appropriate state regulatory authority.
11 On receiving notification under Section 161.710 or when the
12 authority otherwise becomes aware of the violation, the authority
13 shall take appropriate disciplinary action against the provider.

14 SECTION 2. SEVERABILITY. If any provision of this Act or
15 its application to any person or circumstance is held invalid, the
16 invalidity does not affect other provisions or applications of this
17 Act that can be given effect without the invalid provision or
18 application, and to this end the provisions of this Act are declared
19 to be severable.

20 SECTION 3. TRANSITIONS. (a) Subchapter X, Chapter 161,
21 Health and Safety Code, as added by this Act, applies only to a
22 medical procedure or treatment performed or administered on or
23 after the effective date of this Act.

24 (b) Subchapter X, Chapter 161, Health and Safety Code, as
25 added by this Act, applies only to a cause of action that accrues on
26 or after the effective date of this Act.

27 SECTION 4. EFFECTIVE DATE. This Act takes effect September

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1 1, 2023.