

118TH CONGRESS
1ST SESSION

S. 635

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

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2023

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Minors
5 from Medical Malpractice Act of 2023”.

6 **SEC. 2. PRIVATE RIGHT OF ACTION FOR A GENDER-TRANSI-**
7 **TION PROCEDURE PERFORMED ON A MINOR.**

8 (a) IN GENERAL.—A medical practitioner, in any cir-
9 cumstance described in subsection (c), who performs a

1 gender-transition procedure on an individual who is less
2 than 18 years of age shall, as described in subsection (b),
3 be liable to the individual if injured (including any phys-
4 ical, psychological, emotional, or physiological harms) by
5 such procedure, related treatment, or the aftereffects of
6 the procedure or treatment.

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

- 15 (1) declaratory or injunctive relief;
- 16 (2) compensatory damages;
- 17 (3) punitive damages; and
- 18 (4) attorney’s fees and costs.

19 (c) CIRCUMSTANCES.—For the purposes of sub-
20 section (a), the circumstances described in this subsection
21 are that—

- 22 (1) the medical practitioner or the individual re-
23 ceiving the gender-transition procedure traveled in
24 interstate or foreign commerce, or traveled using a
25 means, channel, facility, or instrumentality of inter-

1 state or foreign commerce, in furtherance of or in
2 connection with the conduct described in subsection
3 (a);

4 (2) the medical practitioner used a means,
5 channel, facility, or instrumentality of interstate or
6 foreign commerce in furtherance of or in connection
7 with the conduct described in subsection (a);

8 (3) any payment of any kind was made, directly
9 or indirectly, in furtherance of or in connection with
10 the conduct described in subsection (a) using any
11 means, channel, facility, or instrumentality of inter-
12 state or foreign commerce or in or affecting inter-
13 state or foreign commerce;

14 (4) the medical practitioner transmitted in
15 interstate or foreign commerce any communication
16 relating to or in furtherance of the conduct de-
17 scribed in subsection (a) using any means, channel,
18 facility, or instrumentality of interstate or foreign
19 commerce or in or affecting interstate or foreign
20 commerce by any means or in any manner, including
21 by computer, mail, wire, or electromagnetic trans-
22 mission;

23 (5) any instrument, item, substance, or other
24 object that has traveled in interstate or foreign com-

1 merce was used to perform the conduct described in
2 subsection (a);

3 (6) the conduct described in subsection (a) oc-
4 curred within the special maritime and territorial ju-
5 risdiction of the United States, or any territory or
6 possession of the United States; or

7 (7) the conduct described in subsection (a) oth-
8 erwise occurred in or affected interstate or foreign
9 commerce.

10 **SEC. 3. PRESERVING FREEDOM OF CONSCIENCE AND MED-**
11 **ICAL JUDGEMENT FOR MEDICAL PROVIDERS.**

12 Notwithstanding any other provision of law, no provi-
13 sion of Federal law shall require, or be construed to re-
14 quire, a medical practitioner to perform a gender-transi-
15 tion procedure.

16 **SEC. 4. PROHIBITION ON FUNDING FOR CERTAIN STATES.**

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

22 **SEC. 5. DEFINITIONS.**

23 In this Act:

24 (1) **BIOLOGICAL SEX.**—The term “biological
25 sex” means the genetic classification of an individual

1 as male or female, as reflected in the organization
2 of the body of such individual for a reproductive role
3 or capacity, such as through sex chromosomes, natu-
4 rally occurring sex hormones, and internal and ex-
5 ternal genitalia present at birth, without regard to
6 the subjective sense of identity of the individual.

7 (2) GENDER-TRANSITION PROCEDURE.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B), the term “gender-transition
10 procedure” means—

11 (i) the prescription or administration
12 of puberty-blocking drugs for the purpose
13 of changing the body of an individual so
14 that it conforms to the subjective sense of
15 identity of the individual, in the case such
16 identity is at odds with the individual’s bi-
17 ological sex;

18 (ii) the prescription or administration
19 of cross-sex hormones for the purpose of
20 changing the body of an individual so that
21 it conforms to the subjective sense of iden-
22 tity of the individual, in the case such
23 identity is at odds with the individual’s bi-
24 ological sex; or

1 (iii) a surgery to change the body of
2 an individual so that it conforms to the
3 subjective sense of identity of the indi-
4 vidual, in the case such identity is at odds
5 with the individual's biological sex.

6 (B) EXCEPTION.—The term “gender-tran-
7 sition procedure” does not include—

8 (i) an intervention described in sub-
9 paragraph (A) that is performed on—

10 (I) an individual with biological
11 sex characteristics that are inherently
12 ambiguous, such as those born with
13 46 XX chromosomes with virilization,
14 46 XY chromosomes with
15 undervirilization, or having both ovar-
16 ian and testicular tissue; or

17 (II) an individual with respect to
18 whom a physician has determined
19 through genetic or biochemical testing
20 that the individual does not have nor-
21 mal sex chromosome structure, sex
22 steroid hormone production, or sex
23 steroid hormone action, for a biologi-
24 cal male or biological female;

1 (ii) the treatment of any infection, in-
2 jury, disease, or disorder that has been
3 caused or exacerbated by the performance
4 of an intervention described in subpara-
5 graph (A) without regard to whether the
6 intervention was performed in accordance
7 with State or Federal law or whether the
8 intervention is covered by the private right
9 of action under section 2; or

10 (iii) any procedure undertaken be-
11 cause the individual suffers from a physical
12 disorder, physical injury, or physical illness
13 that would, as certified by a physician,
14 place the individual in imminent danger of
15 death or impairment of major bodily func-
16 tion unless the procedure is performed.

17 (3) MEDICAL PRACTITIONER.—The term “med-
18 ical practitioner” means a person who is licensed,
19 certified, or otherwise authorized by the laws of a
20 State to administer health care in the ordinary
21 course of the practice of the person’s profession.

22 **SEC. 6. EFFECTIVE DATE.**

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

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