

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 786
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40396-NB-138

Short Title: Youth Health Protection Act. (Public)

Sponsors: Representative Kidwell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT MINORS FROM ADMINISTRATION OF PUBERTY BLOCKERS
3 AND CROSS-SEX HORMONES AND OTHER RELATED ACTIONS, PROCEDURES,
4 AND TREATMENTS AND TO PROHIBIT OBSCENITY ON SMART PHONES FOR
5 MINORS.

6 Whereas, the State of North Carolina has a compelling government interest in
7 protecting the health and safety of its citizens, especially vulnerable children; and

8 Whereas, the sex of a person is the biological state of being female or male, based on
9 sex organs, chromosomes, and endogenous hormone profiles, and is genetically encoded into a
10 person at the moment of conception, and it cannot be changed; and

11 Whereas, some individuals, including minors, may experience discordance between
12 their sex and their internal sense of identity, and individuals who experience severe psychological
13 distress as a result of this discordance may be diagnosed with gender dysphoria; and

14 Whereas, the cause of the individual's impression of discordance between sex and
15 identity is unknown, and the diagnosis is based exclusively on the individual's self-report of
16 feelings and beliefs; and

17 Whereas, this internal sense of discordance is not permanent or fixed, but to the
18 contrary, numerous studies have shown that a substantial majority of children who experience
19 discordance between their sex and identity will outgrow the discordance once they go through
20 puberty and will eventually have an identity that aligns with their sex; and

21 Whereas, as a result, taking a "wait-and-see" approach to children who reveal signs
22 of gender nonconformity results in a large majority of those children resolving to an identity
23 congruent with their sex by late adolescence; and

24 Whereas, some in the medical community are aggressively pushing for interventions
25 on minors that medically alter the child's hormonal balance and remove healthy external and
26 internal sex organs when the child expresses a desire to appear as a sex different from his or her
27 own; and

28 Whereas, this course of treatment for minors commonly begins with encouraging and
29 assisting the child to socially transition to dressing and presenting as the opposite sex. In the case
30 of prepubertal children, as puberty begins, doctors then administer long-acting GnRH agonist
31 (puberty blockers) that suppress the pubertal development of the child. This use of puberty
32 blockers for gender nonconforming children is experimental and not FDA-approved; and

33 Whereas, after puberty blockade, the child is later administered "cross-sex" hormonal
34 treatments that induce the development of secondary sex characteristics of the other sex, such as
35 causing the development of breasts and wider hips in male children taking estrogen and greater



- 1 (1) Government agent. – Any agent, employee, volunteer, or contractor of a
2 public child services agency, private child placing agency, court, or school
3 district.
- 4 (2) Medical professional. – Any physician, surgeon, physician assistant, nurse,
5 clinical nurse specialist, nurse practitioner, anesthetist, psychiatrist, or
6 medical assistant licensed under this Chapter.
- 7 (3) Mental health care professional or counselor. – Any licensed medical, mental
8 health, or human services professional licensed under this Chapter, including
9 any psychologist, social worker, psychiatric nurse, allied mental health and
10 human services professional, licensed marriage and family therapist, certified
11 rehabilitation counselor, licensed clinical mental health counselor, or any of
12 their respective interns or trainees, or any other person designated or licensed
13 as a mental health or human service professional.
- 14 (4) Minor. – Any individual who is below 18 years of age.
- 15 (5) Political subdivision. – Any division of local government, county, city,
16 assessment district, municipal corporation, special purpose district, board,
17 department, commission, or any division of local government delegated the
18 right to exercise part of the sovereign power of that subdivision.
- 19 (6) Sex. – The biological state of being female or male, based on sex organs,
20 chromosomes, and endogenous hormone profiles, without regard to an
21 individual's psychological, chosen, or subjective experience of gender.

22 **§ 90-21.141. Prohibition of certain practices and health care services.**

23 (a) Notwithstanding any other provision of law, it shall be unlawful for any medical
24 professional or mental health care professional or counselor to knowingly engage in any of the
25 following practices upon a minor, or cause them to be performed for the purpose of attempting
26 to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that
27 appearance or perception is inconsistent with the minor's sex:

- 28 (1) Performing surgeries that sterilize, including castration, vasectomy,
29 hysterectomy, oophorectomy, orchiectomy, or penectomy.
- 30 (2) Performing surgeries that artificially construct tissue with the appearance of
31 genitalia that differs from the individual's sex, including metoidioplasty,
32 phalloplasty, and vaginoplasty.
- 33 (3) Performing a mastectomy.
- 34 (4) Prescribing, administering, or supplying gonadotropin releasing hormone
35 analogues or other synthetic drugs used to stop luteinizing hormone and
36 follicle stimulating hormone secretion, synthetic antiandrogen drugs used to
37 block the androgen receptor, or any drug to suppress or delay normal puberty.
- 38 (5) Prescribing, administering, or supplying testosterone, estrogen, or
39 progesterone to a minor in an amount greater than would normally be
40 produced endogenously in a healthy individual of that individual's age and
41 sex.
- 42 (6) Removing any otherwise healthy or nondiseased body part or tissue.

43 (b) It shall be unlawful for any medical professional or mental health care professional
44 or counselor to knowingly engage in conduct that aids or abets the practices described in
45 subsection (a) of this section to a minor. This section may not be construed to impose liability on
46 any speech protected by federal or State law.

47 (c) A medical professional or mental health care professional or counselor who engages
48 in any of the practices identified in subsection (a) of this section or causes them to be performed
49 shall be considered to have engaged in unprofessional conduct and shall be subject to revocation
50 of licensure for a minimum of one year and other appropriate discipline by the medical
51 professional's licensing or certifying board. The medical professional shall also be subject to a

1 civil penalty of up to one thousand dollars (\$1,000) per occurrence. The clear proceeds of civil
2 penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund
3 in accordance with G.S. 115C-457.2.

4 (d) This section does not apply to any of the following:

5 (1) The good-faith medical decision of a parent or guardian of a minor born with
6 a medically verifiable genetic disorder of sexual development, including any
7 of the following:

8 a. A minor with external biological sex characteristics that are
9 irresolvably ambiguous, such as a minor born having 46 XX
10 chromosomes with virilization, 46 XY chromosomes with
11 under-virilization, or having both ovarian and testicular tissue.

12 b. When a physician has otherwise diagnosed a disorder of sexual
13 development, in which the physician has determined through genetic
14 testing that the minor does not have the normal sex chromosome
15 structure, sex steroid hormone production, or sex steroid hormone
16 action for male or female sexes.

17 (2) The treatment of any infection, disease, or disorder that has been caused or
18 exacerbated by the performance of a procedure described in subsection (a) of
19 this section, whether or not the procedures were performed in accordance with
20 State or federal law.

21 (3) Any procedure undertaken because an individual suffers from a physical
22 disorder, physical injury, or physical illness that is certified by a physician and
23 that would place the individual in imminent danger of death or impairment of
24 major bodily function unless surgery is performed.

25 (e) Notwithstanding any other provision of law, it shall be unlawful for any health care
26 provider, as defined in G.S. 90-21.11, that receives State funds to furnish, provide, or perform
27 any health care service that constitutes the performance of or preparation for a gender transition
28 procedure to a minor.

29 **"§ 90-21.142. Counseling.**

30 A State office, agency, political subdivision of the State or local government, or any
31 organization with authority to license or discipline the members of a profession may not prohibit,
32 impose any penalty, or take any adverse action against any individual who gives or receives
33 counsel, advice, guidance, or any other speech or communication, whether described as therapy
34 or provided for a fee, consistent with conscience or religious belief.

35 **"§ 90-21.143. Protection of parental rights.**

36 (a) Parents, guardians, or custodians, in exercising the fundamental right to care for their
37 child, may withhold consent for any treatment, activity, or mental health care services that are
38 designed and intended to form their child's conceptions of sex and gender or to treat gender
39 dysphoria or gender nonconformity. The State, its agents, and political subdivisions shall not
40 infringe upon or impede the exercise of this right under this section.

41 (b) No government agent, nor any employee of this State, any political subdivision of this
42 State, or any other governmental entity, except for law enforcement personnel, shall encourage
43 or coerce a minor to withhold information from the minor's parent. Nor shall any such employee
44 withhold from a minor's parents information that is relevant to the physical or mental health of
45 their child and of a sort that parents interested in and responsible for the well-being of a minor
46 reasonably would demand and should be apprised of. Such conduct shall be grounds for
47 discipline of the employee, in addition to any other remedies provided to a parent under this
48 Article.

49 (c) If a government agent has knowledge that a minor under its care or supervision has
50 exhibited symptoms of gender dysphoria, gender nonconformity, or otherwise demonstrates a
51 desire to be treated in a manner incongruent with the minor's sex, the government agent or entity

1 with knowledge of that circumstance shall immediately notify, in writing, each of the minor's
2 parents, guardians, or custodians. The notice shall describe all of the relevant circumstances with
3 reasonable specificity.

4 **"§ 90-21.144. Whistleblower protection.**

5 (a) No person shall be discriminated against in any manner because the person does any
6 of the following:

7 (1) Provided, caused to be provided, or takes steps to provide or cause to be
8 provided to his or her employer, the Attorney General, any State agency, the
9 United States Department of Health and Human Services, or any other federal
10 agency any information or an act or omission that is a violation of any
11 provision of this Article.

12 (2) Testified or prepared to testify in a proceeding concerning a violation of this
13 Article.

14 (3) Assisted or participated in a proceeding concerning a violation of this Article.

15 (b) Unless a disclosure or report of information is specifically prohibited by law, no
16 person shall be discriminated against in any manner because the person disclosed any information
17 under this Article that the person believes evinces any of the following:

18 (1) Any violation of law, rule, or regulation.

19 (2) Any violation of any standard of care or other ethical guidelines for the
20 provision of any health care service.

21 (3) Gross mismanagement, a gross waste of funds, an abuse of authority, or a
22 substantial and specific danger to public health or safety.

23 **"§ 90-21.145. Civil remedies.**

24 (a) A civil action for compensatory or special damages, injunctive relief, or any other
25 relief available under law may be brought by any person for any violation of any provision of
26 this Article against the clinic, health care system, medical professional, or other person
27 responsible for the violation.

28 (b) Any party aggrieved or harmed by any violation of this Article shall be required to
29 bring suit for violation of this Article no later than two years after the day the cause of action
30 accrued. Minors injured by practices prohibited under this Article may bring an action during
31 their minority through a parent and may bring an action in their own name upon reaching majority
32 at any time from that date until 20 years from the date the minor attained the age of majority.

33 (c) Persons who prevail on a claim brought pursuant to this section shall be entitled, upon
34 the finding of a violation, to recover the following:

35 (1) Monetary damages, including all psychological, emotional, and physical harm
36 suffered.

37 (2) Total costs of the action and reasonable attorneys' fees.

38 (3) Any other appropriate relief.

39 (d) Standing to assert a claim or defense under this section shall be governed by the
40 general rules of standing.

41 **"§ 90-21.146. Preemption.**

42 (a) A political subdivision of this State is preempted from enacting, adopting,
43 maintaining, or enforcing any order, ordinance, rule, regulation, policy, or other similar measure
44 that prohibits, restricts, limits, controls, directs, or otherwise interferes with the professional
45 conduct and judgment of a mental health care professional or counselor, including speech,
46 undertaken within the course of treatment and communication with clients, patients, other
47 persons, or the public, including therapies, counseling, referrals, and education.

48 (b) The Attorney General or a mental health care professional or counselor may bring an
49 action for an injunction to prevent or restrain violations of this section. A mental health care
50 professional may recover reasonable costs and attorneys' fees incurred in obtaining an injunction
51 under this section.

1 to view the material, or the manufacturer knowingly or in reckless disregard
2 provides the passcode to a minor to unblock the obscenity filter.

3 (2) The electronic device displays or disseminates obscene material to a minor,
4 including any performance that is obscene to minors.

5 (b) Nothing in this Article shall affect any other private right of action existing under
6 other State or federal law, including contract law.

7 (c) This section shall not apply to a manufacturer that makes a good-faith effort to provide
8 a device that, on activation of the device in the State, automatically enables a generally accepted
9 and commercially reasonable method of filtration in accordance with this Article and industry
10 standards.

11 (d) A person who is not a minor's parent or legal guardian may not provide a minor with
12 the passcode to remove the obscenity filter.

13 **§ 48A-24. Damages.**

14 If a court finds that a manufacturer is liable pursuant to this Article, the court may award the
15 plaintiff actual damages. When the amount of actual damages is difficult to ascertain due to the
16 nature of the injury, the court, in its discretion, may award liquidated damages in the amount of
17 ten thousand dollars (\$10,000) to the injured party. A class action may also be brought under this
18 Article.

19 **§ 48A-25. Civil action for enforcement.**

20 (a) Except as provided in subsection (h) of this section, a manufacturer that is found liable
21 under this Article shall be assessed a civil penalty not to exceed ten thousand dollars (\$10,000)
22 per violation, plus costs and attorneys' fees, in addition to any other applicable penalty under
23 State law. The civil penalty may be assessed and recovered in a civil action brought in any court
24 of competent jurisdiction. For purposes of assessing a civil penalty under this section, a
25 manufacturer is considered to have committed a separate violation for each electronic device sold
26 and activated in the State.

27 (b) To prevail under this section, a plaintiff shall prove and a court shall find, by clear
28 and convincing evidence, that a manufacturer manufactured a device on or after October 1, 2023,
29 and that it was activated in violation of this Article.

30 (c) The plaintiff shall prove all other elements by a preponderance of the evidence.

31 (d) For each violation, the court shall specify the amount of the civil penalty, filing fees,
32 costs, and attorneys' fees.

33 (e) In assessing the amount of a civil penalty for a violation of this Article, the court shall
34 consider all of the following:

35 (1) Nature and extent of the violation.

36 (2) Number and severity of the violations.

37 (3) Economic effect of the penalty on the violator.

38 (4) Good-faith measures the violator took to comply with this Article.

39 (5) Timing of the measures the violator took to comply with this Article.

40 (6) Willfulness of the violator's misconduct.

41 (7) Deterrent effect that the imposition of the penalty would have on both the
42 violator and the regulated community as a whole.

43 (8) Any other factors determined by the court to be pertinent.

44 (f) Actions pursuant to this section may be brought by the Attorney General in the name
45 of the people of the State or by a private individual in accordance with subsection (g) of this
46 section.

47 (g) A private individual may bring an action in the public interest to establish liability
48 under this Article, if that individual has served the alleged violator and the Attorney General a
49 notice of an alleged violation of this section and the Attorney General has not provided a letter
50 to the noticing party within 45 days after the day on which the Attorney General receives the
51 notice of an alleged violation indicating either (i) an action is currently being pursued or will be

1 pursued by the Attorney General regarding the violation or (ii) the Attorney General believes that
2 there is no merit to the action. If an action is commenced, the plaintiff may amend the complaint
3 to include additional violations in the claim that are discovered in the discovery process.

4 (h) A manufacturer who makes a good-faith effort to install and enable on activation in
5 the State a generally accepted and commercially reasonable method of filtration in accordance
6 with this Article and industry standards is not liable under this Article.

7 "Part 2. Public Display or Dissemination of Obscene Material to Minors.

8 **"§ 48A-30. Public display or dissemination of obscene material to minors.**

9 (a) A person having custody, control, or supervision of any commercial establishment or
10 newsstand may not knowingly or purposefully do any of the following:

11 (1) Display obscene material to minors in such a way that minors, as a part of the
12 invited public, will be able to view the material. However, a person is
13 considered not to have displayed obscene material to minors if the material is
14 kept behind devices commonly known as blinder racks so that the lower
15 two-thirds of the material is not exposed to view or other reasonable efforts
16 were made to prevent view of the material by a minor.

17 (2) Sell, furnish, present, distribute, or otherwise disseminate to a minor or allow
18 a minor to view, with or without consideration, any obscene material.

19 (3) Present to a minor or participate in presenting to a minor, with or without
20 consideration, any performance that is obscene to minors.

21 (b) A person does not violate this section if any of the following are satisfied:

22 (1) The person had reasonable cause to believe the minor was 18 years of age. For
23 the purposes of this subdivision, "reasonable cause" includes, but is not
24 limited to, being shown a draft card, driver's license, marriage license, birth
25 certificate, education identification card, governmental identification card,
26 tribal identification card, or other official or apparently official card or
27 document purporting to establish that the person is 18 years of age.

28 (2) The person is, or is acting as, an employee of a bona fide public school,
29 college, or university or a retail outlet affiliated with and serving the
30 educational purposes of the school, college, or university and the material or
31 performance was disseminated in accordance with policies approved by the
32 governing body of the institution.

33 (3) The person is an officer, director, trustee, or employee of a public library or
34 museum and the material or performance was acquired by the library or
35 museum and disseminated in accordance with policies approved by the
36 governing body of the library or museum.

37 (4) An exhibition in a state of nudity is for a bona fide scientific or medical
38 purpose for a bona fide school, library, or museum.

39 (5) The person is a retail sale clerk with no financial interest in the material or
40 performance or in the establishment displaying or selling the material or
41 performance."

42 **SECTION 3.** If any provision of this act or its application is held invalid, the
43 invalidity does not affect other provisions or applications of this act that can be given effect
44 without the invalid provisions or application, and, to this end, the provisions of this act are
45 severable.

46 **SECTION 4.** Section 2 of this act becomes effective January 1, 2024, and applies to
47 electronic devices manufactured in or outside this State or sold and activated in this State on or
48 after that date. The remainder of this act becomes effective October 1, 2023.