

STATE OF KANSAS



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GOVERNOR LAURA KELLY

MESSAGE FROM THE GOVERNOR

REGARDING VETO OF SENATE BILL 26, SENATE BILL 180, SENATE BILL 228,
AND S. SUB FOR HOUSE BILL 2138

Companies have made it clear that they are not interested in doing business with states that discriminate against workers and their families. By stripping away rights from Kansans and opening the state up to expensive and unnecessary lawsuits, these bills would hurt our ability to continue breaking economic records and landing new business deals.

I'm focused on the economy. Anyone care to join me?

Therefore, under Article 2, Section 14(a) of the Constitution, I hereby veto Senate Bill 26, Senate Bill 180, Senate Bill 228, and S. Sub. For House Bill 2138.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR

A handwritten signature in blue ink, appearing to read "Laura Kelly", written over a horizontal line.

DATED

A handwritten date in blue ink, "April 20, 2023", written over a horizontal line.

SENATE BILL No. 26

AN ACT concerning gender identity medical care; creating a civil cause of action against a physician who performs childhood gender reassignment service; requiring revocation of a physician's license if such physician performs childhood gender reassignment service; amending K.S.A. 2022 Supp. 65-2836 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) An individual who had a childhood gender reassignment service performed on such individual as a child may bring a civil cause of action against the physician who performed the childhood gender reassignment service.

(1) An action against a physician pursuant to this section may be commenced not more than three years after the date the individual attains 18 years of age.

(b) As used in this section:

(1) "Childhood gender reassignment service" means performing, or causing to be performed, acts including, but not limited to, any of the following performed upon a child under 18 years of age for the purpose of attempting to affirm the child's perception of the child's sex or gender, if that perception is inconsistent with the child's sex:

(A) A surgery that sterilizes or is intended to result in sterilization, including, but not limited to, castration, vasectomy, hysterectomy, oophorectomy, orchiectomy and penectomy;

(B) a surgery that artificially constructs tissue with the appearance of genitalia, including, but not limited to, metoidioplasty, phalloplasty and vaginoplasty;

(C) a mastectomy;

(D) prescribing, dispensing, administering or otherwise supplying the following medications:

(i) Puberty-blocking medication to delay, hinder, stop or reverse normal puberty;

(ii) supraphysiologic doses of testosterone to females; or

(iii) supraphysiologic doses of estrogen to males; or

(E) removing any body part or tissue.

(2) "Physician" means a person licensed by the board of healing arts to practice medicine and surgery.

(3) "Sex" means the biological state of being female or male based on the individual's sex organs, chromosomes and endogenous hormone profiles.

(4) "Supraphysiologic doses" means a pharmacologic dosage regimen that produces blood concentrations greater than the accepted range for a child's age and sex.

(c) The provisions of this section shall not apply if the child was born with a medically verifiable disorder of sex development, including, but not limited to:

(1) A child with external biological sex characteristics that are irresolvably ambiguous, such as a child born having 46,XX chromosomes with virilization, 46,XY chromosomes with undervirilization or both ovarian and testicular tissue; or

(2) when a physician has otherwise diagnosed a disorder of sexual development, in which the physician has determined through genetic or biochemical testing that the child does not have the normal sex chromosome structure, sex steroid hormone production or sex steroid hormone action for a male or female of the child's age.

(d) (1) An individual who brings an action under this section may seek actual damages, exemplary or punitive damages, injunctive relief and other appropriate relief.

(2) In an action brought under this section, the court shall award a prevailing plaintiff the cost of the suit including reasonable attorney fees.

(e) This section shall be applicable to:

(1) Any action commenced on or after July 1, 2023, including any action that would be barred by the period of limitation applicable prior to July 1, 2023; and

(2) any action commenced prior to July 1, 2023, and pending on July 1, 2023.

(f) This section shall be known and may be cited as the Kansas child mutilation prevention act.

Sec. 2. K.S.A. 2022 Supp. 65-2836 is hereby amended to read as follows: 65-2836. (a) A licensee's license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

~~(a)~~(1) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

~~(b)~~(2) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

~~(c)~~(3) The licensee has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, whether or not related to the practice of the healing arts, or the licensee has been convicted in a special or general court-martial, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony or substantially similar offense in another jurisdiction, or following conviction in a general court-martial occurring after July 1, 2000, unless a $\frac{2}{3}$ majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony or convicted in a general court-martial and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a $\frac{2}{3}$ majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

~~(d)~~(4) The licensee has used fraudulent or false advertisements.

~~(e)~~(5) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

~~(f)~~(6) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment that are relevant to the practice of the healing arts.

~~(g)~~(7) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

~~(h)~~(8) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation, under a business entity that holds a certificate of

authorization pursuant to K.S.A. 2022 Supp. 65-28,134, and amendments thereto, or under any other legal entity duly authorized to provide such professional services in the state of Kansas.

(~~h~~)(9) The licensee's ability to practice the healing arts with reasonable skill and safety to patients is impaired by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. All information, reports, findings and other records relating to impairment shall be confidential and not subject to discovery by or release to any person or entity outside of a board proceeding.

(~~h~~)(10) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country.

(~~h~~)(11) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(~~h~~)(12) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122, and amendments thereto.

(~~m~~)(13) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.

(~~n~~)(14) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(~~o~~)(15) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(~~p~~)(16) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

(~~q~~)(17) The licensee has violated a federal law or regulation relating to controlled substances.

(~~r~~)(18) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(~~s~~)(19) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, healthcare facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

(~~t~~)(20) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a healthcare facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

(~~u~~)(21) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

~~(v)~~(22) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

~~(w)~~(23) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

~~(x)~~(24) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

~~(y)~~(25) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a, and amendments thereto.

~~(z)~~(26) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404, and amendments thereto.

~~(aa)~~(27) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

~~(bb)~~(28) The licensee as the supervising physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.

~~(ee)~~(29) The licensee has assisted suicide in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2022 Supp. 21-5407, and amendments thereto, as established by any of the following:

~~(1)~~(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2022 Supp. 21-5407, and amendments thereto.

~~(2)~~(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.

~~(3)~~(C) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.

~~(dd)~~(30) The licensee has given a worthless check or stopped payment on a debit or credit card for fees or moneys legally due to the board.

~~(ee)~~(31) The licensee has knowingly or negligently abandoned medical records.

(b) A physician's license shall be revoked upon a finding that the physician has performed a childhood gender reassignment service, as defined in section 1, and amendments thereto.

Sec. 3. K.S.A. 2022 Supp. 65-2836 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.