

House Substitute for SENATE BILL No. 233

By Committee on Health and Human Services

3-11

1 AN ACT concerning children and minors; relating to healthcare of minors;
2 enacting the forbidding abusive child transitions act; prohibiting
3 healthcare providers from treating a child whose gender identity is
4 inconsistent with the child's sex; authorizing a civil cause of action
5 against healthcare providers for providing such treatments; restricting
6 use of state funds to promote gender transitioning; prohibiting
7 professional liability insurance from covering damages for healthcare
8 providers that provide gender transition treatment to children; requiring
9 professional discipline against a healthcare provider who performs such
10 treatments; adding violation of the act to the definition of
11 unprofessional conduct for physicians ~~and nurses~~; amending K.S.A. 65-
12 2837 ~~and K.S.A. 2023 Supp. 65-1120~~ and repealing the existing
13 ~~sections~~ {section}.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) The provisions of sections 1 through 6, and
17 amendments thereto, shall be known and may be cited as the forbidding
18 abusive child transitions act.

19 (b) As used in this act:

20 (1) "Child" means an individual less than 18 years of age.

21 (2) "Female" means an individual who is a member of the female sex.

22 (3) "Gender" means the psychological, behavioral, social and cultural
23 aspects of being male or female.

24 (4) "Gender dysphoria" is the diagnosis of gender dysphoria in the
25 fifth edition of the diagnostic and statistical manual of mental disorders.

26 (5) "Healthcare provider" means an individual who is licensed,
27 certified or otherwise authorized by the laws of this state to administer
28 healthcare services in the ordinary course of the practice of such
29 individual's profession.

30 (6) "Male" means an individual who is a member of the male sex.

31 (7) "Perceived sex" is an individual's internal sense of such
32 individual's sex.

33 (8) "Perceived gender" is an individual's internal sense of such
34 individual's gender.

35 (9) "Sex" means the biological indication of male and female in the
36 context of reproductive potential or capacity, including sex chromosomes,

1 naturally occurring sex hormones, gonads and nonambiguous internal and
2 external genitalia present at birth, without regard to an individual's
3 psychological, chosen or subjective experience of gender.

4 (10) "Social transitioning" means acts other than medical or surgical
5 interventions that are undertaken for the purpose of presenting as a
6 member of the opposite sex, including the changing of an individual's
7 preferred pronouns or manner of dress.

8 New Sec. 2. (a) A recipient of state funds shall not use such funds to
9 provide or subsidize medication or surgery as a treatment for a child's
10 perception of gender or sex that is inconsistent with such child's sex.

11 (b) An individual or entity that receives state funds to pay for or
12 subsidize the treatment of children for psychological conditions, including
13 gender dysphoria, shall not promote or advocate medication or surgery as a
14 treatment for a child whose perceived gender or perceived sex is
15 inconsistent with such child's sex.

16 (c) The Kansas program of medical assistance and its managed care
17 organizations shall not reimburse or provide coverage for medication or
18 surgery as a treatment for a child whose perceived gender or perceived sex
19 is inconsistent with such child's sex.

20 (d) Except to the extent required by the first amendment to the United
21 States constitution, a state property, facility or building shall not be used to
22 promote or advocate the use of social transitioning, medication or surgery
23 as a treatment for a child whose perceived gender or perceived sex is
24 inconsistent with such child's sex.

25 (e) A state property, facility or building shall not be used to prescribe,
26 administer or dispense medication or perform surgery as a treatment for a
27 child whose perceived gender or perceived sex is inconsistent with such
28 child's sex.

29 (f) A state employee whose official duties include the care of children
30 shall not, while engaged in those official duties, provide or promote the
31 use of social transitioning, medication, or surgery as a treatment for a child
32 whose perceived gender or perceived sex is inconsistent with such child's
33 sex.

34 (g) As used in this section, "medication" means:

35 (1) Supraphysiologic doses of testosterone or other androgens; or

36 (2) puberty blockers such as GnRH agonists or other synthetic drugs
37 that suppress the production of estrogen and progesterone to delay or
38 suppress pubertal development in female children.

39 New Sec. 3. (a) Except as provided in subsection (c), a healthcare
40 provider shall not knowingly provide the following to a female child
41 whose perceived gender or sex is not female as treatment for distress
42 arising from such female child's perception that such child's gender or sex
43 is not female:

1 (1) Surgical procedures, including vaginectomy, hysterectomy,
2 oophorectomy, ovariectomy, reconstruction of the urethra, metoidioplasty
3 phalloplasty, scrotoplasty, implantation of erection or testicular protheses,
4 subcutaneous mastectomy, voice surgery, liposuction, lipofilling or
5 pectoral implants;

6 (2) supraphysiologic doses of testosterone or other androgens; or

7 (3) puberty blockers such as GnRH agonists or other synthetic drugs
8 that suppress the production of estrogen and progesterone to delay or
9 suppress pubertal development in female children.

10 (b) Except as provided in subsection (c), a healthcare provider shall
11 not knowingly provide the following to a male child whose perceived
12 gender or sex is not male as treatment for distress arising from such male
13 child's perception that such child's gender or sex is not male:

14 (1) Surgical procedures, including a penectomy, orchiectomy,
15 vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial
16 feminization surgery, liposuction, lipofilling, voice surgery, thyroid
17 cartilage reduction or gluteal augmentation;

18 (2) supraphysiologic doses of estrogen; or

19 (3) puberty blockers such as GnRH agonists or other synthetic drugs
20 that suppress the production of testosterone or delay or suppress pubertal
21 development in male children.

22 (c) The treatments prohibited by subsections (a) and (b) shall not
23 apply to treatment provided for other purposes, including:

24 (1) Treatment for individuals born with a medically verifiable
25 disorder of sex development, including:

26 (A) An individual born with external biological sex characteristics
27 that are irresolvably ambiguous, including an individual born with 46 XX
28 chromosomes with virilization, 46 XY chromosomes with under
29 virilization or having both ovarian and testicular tissue; or

30 (B) an individual whom a physician has otherwise diagnosed with a
31 disorder of sexual development that the physician has determined through
32 genetic or biochemical testing that such individual does not have normal
33 sex chromosome structure, sex steroid hormone production or sex steroid
34 hormone action for a male or female; and

35 (2) treatment of any infection, injury, disease or disorder that has
36 been caused or exacerbated by the performance of a procedure listed in
37 subsections (a) or (b).

38 New Sec. 4. (a) If a healthcare provider violates the provisions of
39 section 3, and amendments thereto:

40 (1) The healthcare provider has engaged in unprofessional conduct
41 and, notwithstanding any provision of law to the contrary, the license of
42 such healthcare provider shall be revoked by the appropriate licensing
43 entity or disciplinary review board with competent jurisdiction in this

1 state.

2 (b) A healthcare provider who provides treatment to a child in
3 violation of section 3(a) or (b), and amendments thereto, shall be held
4 strictly liable to such child if the treatment or effects of such treatment
5 results in any physical, psychological, emotional or physiological harms to
6 such child in the next 10 years from the date that the individual turns 18
7 years of age.

8 (c) The parents of a child who has experienced violation of section
9 3(a) or (b), and amendments thereto, shall have a private cause of action
10 against a healthcare provider for damages and equitable relief as the court
11 may determine is justified. A prevailing party may recover the costs of the
12 suit and reasonable attorney fees.

13 (d) (1) An individual who was provided treatment as a child in
14 violation of section 3(a) or (b), and amendments thereto, shall have a
15 private cause of action against the healthcare provider who provided such
16 treatment for actual damages, punitive damages, injunctive relief, the cost
17 of the suit and reasonable attorney fees.

18 (2) An action against a healthcare provider pursuant to this subsection
19 shall be filed within 10 years from the date that the individual turns 18
20 years of age.

21 New Sec. 5. A professional liability insurance policy issued to a
22 healthcare provider shall not include coverage for damages assessed
23 against the healthcare provider who provides treatment to a child in
24 violation of section 3(a) or (b), and amendments thereto.

25 New Sec. 6. If any provision or clause of this act or application
26 thereof to any person or circumstance is held invalid, such invalidity shall
27 not affect other provisions or applications of this act that can be given
28 effect without the invalid provision or application, and to this end the
29 provisions of this act are declared to be severable.

30 ~~Sec. 7. K.S.A. 2023 Supp. 65-1120 is hereby amended to read as~~
31 ~~follows: 65-1120. (a) *Grounds for disciplinary actions.* The board may~~
32 ~~deny, revoke, limit or suspend any license or authorization to practice~~
33 ~~nursing as a registered professional nurse, as a licensed practical nurse, as~~
34 ~~an advanced practice registered nurse or as a registered nurse anesthetist~~
35 ~~that is issued by the board or applied for under this act, or may require the~~
36 ~~licensee to attend a specific number of hours of continuing education in~~
37 ~~addition to any hours the licensee may already be required to attend or~~
38 ~~may publicly or privately censure a licensee or holder of a temporary~~
39 ~~permit or authorization, if the applicant, licensee or holder of a temporary~~
40 ~~permit or authorization is found after hearing:~~

41 ~~(1) To be guilty of fraud or deceit in practicing nursing or in~~
42 ~~procuring or attempting to procure a license to practice nursing;~~

43 ~~(2) to have been guilty of a felony or to have been guilty of a~~

1 ~~misdeemeanor involving an illegal drug offense unless the applicant or~~
2 ~~licensee establishes sufficient rehabilitation to warrant the public trust,~~
3 ~~except that notwithstanding K.S.A. 74-120, and amendments thereto, no~~
4 ~~license or authorization to practice nursing as a licensed professional~~
5 ~~nurse, as a licensed practical nurse, as an advanced practice registered~~
6 ~~nurse or registered nurse anesthetist shall be granted to a person with a~~
7 ~~felony conviction for a crime against persons as specified in article 34 of~~
8 ~~chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article~~
9 ~~54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 21-6104, 21-~~
10 ~~6325, 21-6326 or 21-6418, and amendments thereto;~~

11 ~~(3) has been convicted or found guilty or has entered into an agreed~~
12 ~~disposition of a misdemeanor offense related to the practice of nursing as~~
13 ~~determined on a case-by-case basis;~~

14 ~~(4) to have committed an act of professional incompetency as defined~~
15 ~~in subsection (c);~~

16 ~~(5) to be unable to practice with skill and safety due to current abuse~~
17 ~~of drugs or alcohol;~~

18 ~~(6) to be a person who has been adjudged in need of a guardian or~~
19 ~~conservator, or both, under the act for obtaining a guardian or conservator,~~
20 ~~or both, and who has not been restored to capacity under that act;~~

21 ~~(7) to be guilty of unprofessional conduct as defined by rules and~~
22 ~~regulations of the board;~~

23 ~~(8) to have willfully or repeatedly violated the provisions of the~~
24 ~~Kansas nurse practice act or any rules and regulations adopted pursuant to~~
25 ~~that act, including K.S.A. 65-1114 and 65-1122, and amendments thereto;~~

26 ~~(9) to have a license to practice nursing as a registered nurse or as a~~
27 ~~practical nurse denied, revoked, limited or suspended, or to be publicly or~~
28 ~~privately censured, by a licensing authority of another state, agency of the~~
29 ~~United States government, territory of the United States or country or to~~
30 ~~have other disciplinary action taken against the applicant or licensee by a~~
31 ~~licensing authority of another state, agency of the United States~~
32 ~~government, territory of the United States or country. A certified copy of~~
33 ~~the record or order of public or private censure, denial, suspension,~~
34 ~~limitation, revocation or other disciplinary action of the licensing authority~~
35 ~~of another state, agency of the United States government, territory of the~~
36 ~~United States or country shall constitute prima facie evidence of such a~~
37 ~~fact for purposes of this paragraph (9); or~~

38 ~~(10) to have assisted suicide in violation of K.S.A. 21-3406, prior to~~
39 ~~its repeal, or K.S.A. 21-5407, and amendments thereto, as established by~~
40 ~~any of the following:~~

41 ~~(A) A copy of the record of criminal conviction or plea of guilty for a~~
42 ~~felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 21-~~
43 ~~5407, and amendments thereto.;~~

1 ~~(B) a copy of the record of a judgment of contempt of court for~~
2 ~~violating an injunction issued under K.S.A. 2023 Supp. 60-4404, and~~
3 ~~amendments thereto; and~~

4 ~~(C) a copy of the record of a judgment assessing damages under~~
5 ~~K.S.A. 2023 Supp. 60-4405, and amendments thereto; or~~

6 ~~(11) violating the forbidding abusive child transitions act.~~

7 ~~(b) Proceedings. Upon filing of a sworn complaint with the board~~
8 ~~charging a person with having been guilty of any of the unlawful practices~~
9 ~~specified in subsection (a), two or more members of the board shall~~
10 ~~investigate the charges, or the board may designate and authorize an~~
11 ~~employee or employees of the board to conduct an investigation. After~~
12 ~~investigation, the board may institute charges. If an investigation, in the~~
13 ~~opinion of the board, reveals reasonable grounds for believing the~~
14 ~~applicant or licensee is guilty of the charges, the board shall fix a time and~~
15 ~~place for proceedings, which shall be conducted in accordance with the~~
16 ~~provisions of the Kansas administrative procedure act.~~

17 ~~(c) Witnesses. No person shall be excused from testifying in any~~
18 ~~proceedings before the board under this act or in any civil proceedings~~
19 ~~under this act before a court of competent jurisdiction on the ground that~~
20 ~~such testimony may incriminate the person testifying, but such testimony~~
21 ~~shall not be used against the person for the prosecution of any crime under~~
22 ~~the laws of this state except the crime of perjury as defined in K.S.A. 21-~~
23 ~~5903, and amendments thereto.~~

24 ~~(d) Costs. If final agency action of the board in a proceeding under~~
25 ~~this section is adverse to the applicant or licensee, the costs of the board's~~
26 ~~proceedings shall be charged to the applicant or licensee as in ordinary~~
27 ~~civil actions in the district court, but if the board is the unsuccessful party,~~
28 ~~the costs shall be paid by the board. Witness fees and costs may be taxed~~
29 ~~by the board according to the statutes relating to procedure in the district~~
30 ~~court. All costs accrued by the board, when it is the successful party, and~~
31 ~~which if the attorney general certifies cannot be collected from the~~
32 ~~applicant or licensee, shall be paid from the board of nursing fee fund. All~~
33 ~~moneys collected following board proceedings shall be credited in full to~~
34 ~~the board of nursing fee fund.~~

35 ~~(e) Professional incompetency defined. As used in this section,~~
36 ~~"professional incompetency" means:~~

37 ~~(1) One or more instances involving failure to adhere to the~~
38 ~~applicable standard of care to a degree which constitutes gross negligence,~~
39 ~~as determined by the board;~~

40 ~~(2) repeated instances involving failure to adhere to the applicable~~
41 ~~standard of care to a degree which constitutes ordinary negligence, as~~
42 ~~determined by the board; or~~

43 ~~(3) a pattern of practice or other behavior which that demonstrates a~~

1 ~~manifest incapacity or incompetence to practice nursing.~~

2 ~~(f) *Criminal justice information.* The board upon request shall receive~~
3 ~~from the Kansas bureau of investigation such criminal history record~~
4 ~~information relating to arrests and criminal convictions as necessary for~~
5 ~~the purpose of determining initial and continuing qualifications of~~
6 ~~licensees of and applicants for licensure by the board.~~

7 Sec. ~~8.~~ {7.} K.S.A. 65-2837 is hereby amended to read as follows: 65-
8 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this
9 section:

10 (a) "Professional incompetency" means:

11 (1) One or more instances involving failure to adhere to the
12 applicable standard of care to a degree that constitutes gross negligence, as
13 determined by the board.

14 (2) Repeated instances involving failure to adhere to the applicable
15 standard of care to a degree that constitutes ordinary negligence, as
16 determined by the board.

17 (3) A pattern of practice or other behavior that demonstrates a
18 manifest incapacity or incompetence to practice the healing arts.

19 (b) "Unprofessional conduct" means:

20 (1) Solicitation of professional patronage through the use of
21 fraudulent or false advertisements, or profiting by the acts of those
22 representing themselves to be agents of the licensee.

23 (2) Representing to a patient that a manifestly incurable disease,
24 condition or injury can be permanently cured.

25 (3) Assisting in the care or treatment of a patient without the consent
26 of the patient, the attending physician or the patient's legal representatives.

27 (4) The use of any letters, words or terms as an affix, on stationery, in
28 advertisements or otherwise indicating that such person is entitled to
29 practice a branch of the healing arts for which such person is not licensed.

30 (5) Performing, procuring or aiding and abetting in the performance
31 or procurement of a criminal abortion.

32 (6) Willful betrayal of confidential information.

33 (7) Advertising professional superiority or the performance of
34 professional services in a superior manner.

35 (8) Advertising to guarantee any professional service or to perform
36 any operation painlessly.

37 (9) Participating in any action as a staff member of a medical care
38 facility that is designed to exclude or that results in the exclusion of any
39 person licensed to practice medicine and surgery from the medical staff of
40 a nonprofit medical care facility licensed in this state because of the
41 branch of the healing arts practiced by such person or without just cause.

42 (10) Failure to effectuate the declaration of a qualified patient as
43 provided in K.S.A. 65-28,107(a), and amendments thereto.

1 (11) Prescribing, ordering, dispensing, administering, selling,
2 supplying or giving any amphetamines or sympathomimetic amines,
3 except as authorized by K.S.A. 65-2837a, and amendments thereto.

4 (12) Conduct likely to deceive, defraud or harm the public.

5 (13) Making a false or misleading statement regarding the licensee's
6 skill or the efficacy or value of the drug, treatment or remedy prescribed
7 by the licensee or at the licensee's direction in the treatment of any disease
8 or other condition of the body or mind.

9 (14) Aiding or abetting the practice of the healing arts by an
10 unlicensed, incompetent or impaired person.

11 (15) Allowing another person or organization to use the licensee's
12 license to practice the healing arts.

13 (16) Commission of any act of sexual abuse, misconduct or other
14 improper sexual contact that exploits the licensee-patient relationship with
15 a patient or a person responsible for ~~health care~~ *healthcare* decisions
16 concerning such patient.

17 (17) The use of any false, fraudulent or deceptive statement in any
18 document connected with the practice of the healing arts including the
19 intentional falsifying or fraudulent altering of a patient or medical care
20 facility record.

21 (18) Obtaining any fee by fraud, deceit or misrepresentation.

22 (19) Directly or indirectly giving or receiving any fee, commission,
23 rebate or other compensation for professional services not actually and
24 personally rendered, other than through the legal functioning of lawful
25 professional partnerships, corporations, limited liability companies or
26 associations.

27 (20) Failure to transfer patient records to another licensee when
28 requested to do so by the subject patient or by such patient's legally
29 designated representative.

30 (21) Performing unnecessary tests, examinations or services that have
31 no legitimate medical purpose.

32 (22) Charging an excessive fee for services rendered.

33 (23) Prescribing, dispensing, administering or distributing a
34 prescription drug or substance, including a controlled substance, in an
35 improper or inappropriate manner, or for other than a valid medical
36 purpose, or not in the course of the licensee's professional practice.

37 (24) Repeated failure to practice healing arts with that level of care,
38 skill and treatment that is recognized by a reasonably prudent similar
39 practitioner as being acceptable under similar conditions and
40 circumstances.

41 (25) Failure to keep written medical records that accurately describe
42 the services rendered to the patient, including patient histories, pertinent
43 findings, examination results and test results.

1 (26) Delegating professional responsibilities to a person when the
2 licensee knows or has reason to know that such person is not qualified by
3 training, experience or licensure to perform them.

4 (27) Using experimental forms of therapy without proper informed
5 patient consent, without conforming to generally accepted criteria or
6 standard protocols, without keeping detailed legible records or without
7 having periodic analysis of the study and results reviewed by a committee
8 or peers.

9 (28) Prescribing, dispensing, administering or distributing an anabolic
10 steroid or human growth hormone for other than a valid medical purpose.
11 Bodybuilding, muscle enhancement or increasing muscle bulk or strength
12 through the use of an anabolic steroid or human growth hormone by a
13 person who is in good health is not a valid medical purpose.

14 (29) Referring a patient to a ~~health-care~~ *healthcare* entity for services
15 if the licensee has a significant investment interest in the ~~health-care~~
16 *healthcare* entity, unless the licensee informs the patient in writing of such
17 significant investment interest and that the patient may obtain such
18 services elsewhere.

19 (30) Failing to properly supervise, direct or delegate acts that
20 constitute the healing arts to persons who perform professional services
21 pursuant to such licensee's direction, supervision, order, referral,
22 delegation or practice protocols.

23 (31) Violating K.S.A. 65-6703, and amendments thereto.

24 (32) *Violating the forbidding abusive child transitions act.*

25 (33) Charging, billing or otherwise soliciting payment from any
26 patient, patient's representative or insurer for anatomic pathology services,
27 if such services are not personally rendered by the licensee or under such
28 licensee's direct supervision. As used in this subsection, "anatomic
29 pathology services" means the gross or microscopic examination of
30 histologic processing of human organ tissue or the examination of human
31 cells from fluids, aspirates, washings, brushings or smears, including blood
32 banking services, and subcellular or molecular pathology services,
33 performed by or under the supervision of a person licensed to practice
34 medicine and surgery or a clinical laboratory. Nothing in this subsection
35 shall be construed to prohibit billing for anatomic pathology services by:

36 (A) A hospital;

37 (B) a clinical laboratory when samples are transferred between
38 clinical laboratories for the provision of anatomic pathology services; or

39 (C) a physician providing services to a patient pursuant to a medical
40 retainer agreement in compliance with K.S.A. 65-4978, and amendments
41 thereto, when the bill to the patient for such services:

42 (i) Identifies the laboratory or physician that performed the services;

43 (ii) discloses in writing to the patient the actual amount charged by

1 the physician or laboratory that performed the service; and

2 (iii) is consistent with rules and regulations adopted by the board for
3 appropriate billing standards applicable to such services when furnished
4 under these agreements.

5 ~~(33)~~(34) Engaging in conduct that violates patient trust and exploits
6 the licensee-patient relationship for personal gain.

7 ~~(34)~~(35) Obstructing a board investigation including, but not limited
8 to, engaging in one or more of the following acts:

9 (A) Falsifying or concealing a material fact;

10 (B) knowingly making or causing to be made any false or misleading
11 statement or writing; or

12 (C) other acts or conduct likely to deceive or defraud the board.

13 (c) "False advertisement" means any advertisement that is false,
14 misleading or deceptive in a material respect. In determining whether any
15 advertisement is misleading, there shall be taken into account not only
16 representations made or suggested by statement, word, design, device,
17 sound or any combination thereof, but also the extent to which the
18 advertisement fails to reveal facts material in the light of such
19 representations made.

20 (d) "Advertisement" means all representations disseminated in any
21 manner or by any means for the purpose of inducing, or that are likely to
22 induce, directly or indirectly, the purchase of professional services.

23 (e) "Licensee" for purposes of this section and K.S.A. 65-2836, and
24 amendments thereto, means all persons issued a license, permit or special
25 permit pursuant to article 28 of chapter 65 of the Kansas Statutes
26 Annotated, and amendments thereto.

27 (f) "License" for purposes of this section and K.S.A. 65-2836, and
28 amendments thereto, means any license, permit or special permit granted
29 under article 28 of chapter 65 of the Kansas Statutes Annotated, and
30 amendments thereto.

31 (g) "~~Health-care~~Healthcare entity" means any corporation, firm,
32 partnership or other business entity that provides services for diagnosis or
33 treatment of human health conditions and that is owned separately from a
34 referring licensee's principle practice.

35 (h) "Significant investment interest" means ownership of at least 10%
36 of the value of the firm, partnership or other business entity that owns or
37 leases the ~~health-care~~ healthcare entity, or ownership of at least 10% of the
38 shares of stock of the corporation that owns or leases the ~~health-care~~
39 healthcare entity.

40 ~~Sec. 9. {8.}~~ K.S.A. 65-2837 ~~and K.S.A. 2023 Supp. 65-1120 are {is}~~
41 hereby repealed.

42 ~~Sec. 10. {9.}~~ This act shall take effect and be in force from and after
43 its publication in the statute book.