GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2023

H.B. 786 Apr 18, 2023 HOUSE PRINCIPAL CLERK

HOUSE BILL DRH40396-NB-138

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Short Title:	Youth Health Protection Act.	(Public)
Sponsors:	Representative Kidwell.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO PROTECT MINORS FROM ADMINISTRATION OF PUBERTY BLOCKERS AND CROSS-SEX HORMONES AND OTHER RELATED ACTIONS, PROCEDURES, AND TREATMENTS AND TO PROHIBIT OBSCENITY ON SMART PHONES FOR MINORS.

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

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

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

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

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

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

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

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

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



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49 "§ 90-21.140. Definitions.

The following definitions apply in this Article:

muscle mass, bone density, body hair, and a deeper voice in female children taking testosterone. Some children are administered these hormones independent of any prior pubertal blockade; and

Whereas, the final phase of treatment is for the individual to undergo cosmetic and other surgical procedures, often to create an appearance similar to that of the opposite sex. These surgical procedures may include a mastectomy to remove a female adolescent's breasts and "bottom surgery" that removes a minor's healthy reproductive organs and creates an artificial form aiming to approximate the appearance of the genitals of the opposite sex; and

Whereas, for minors who are placed on puberty blockers that inhibit their bodies from experiencing the natural process of sexual development, the overwhelming majority will continue down a path toward cross-sex hormones and cosmetic surgery; and

Whereas, this unproven, poorly studied series of interventions results in numerous harmful effects for minors, as well as risks of effects simply unknown due to the new and experimental nature of these interventions; and

Whereas, among the known harms from puberty blockers is diminished bone density; the full effect of puberty blockers on brain development and cognition is yet unknown, though reason for concern is now present. There is no research on the long-term risks to minors of persistent exposure to puberty blockers. With the administration of cross-sex hormones comes increased risks of cardiovascular disease, thromboembolic stroke, asthma, COPD, and cancer; and

Whereas, puberty blockers prevent gonadal maturation and thus render patients taking these drugs infertile. Introducing cross-sex hormones to children with immature gonads as a direct result of pubertal blockade is expected to cause irreversible sterility. Sterilization is also permanent for those who undergo surgery to remove reproductive organs, and such persons are likely to suffer through a lifetime of complications from the surgery, infections, and other difficulties requiring yet more medical intervention; and

Whereas, several studies demonstrate that hormonal and surgical interventions often do not resolve the underlying psychological issues affecting the individual. For example, individuals who undergo cross-sex cosmetic surgical procedures have been found to suffer from elevated mortality rates higher than the general population. They experience significantly higher rates of substance abuse, depression, and psychiatric hospitalizations; and

Whereas, minors, and often their parents, are unable to comprehend and fully appreciate the risk and life implications-including permanent sterility-that result from the use of puberty blockers, cross-sex hormones, and surgical procedures; and

Whereas, it is of grave concern to this legislature that the medical community is allowing individuals who experience distress with their biological sex to be subjects of irreversible and drastic non-genital gender reassignment surgery and irreversible, permanently sterilizing genital gender reassignment surgeries, despite the lack of studies showing that such extreme interventions have benefits that outweigh their risks or chances of cure. In fact, they may increase the risk of suicide; and

Whereas, for these reasons, the decision to pursue a course of hormonal and surgical interventions to address a discordance between the individual's sex and sense of identity should not be presented to or determined for minors who are incapable of comprehending the negative implications and life-course difficulties attending to these interventions; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1M.

"Youth Health Protection Act.

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

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

- (a) Notwithstanding any other provision of law, it shall be unlawful for any medical professional or mental health care professional or counselor to knowingly engage in any of the following practices upon a minor, or cause them to be performed for the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's sex:
 - (1) <u>Performing surgeries that sterilize, including castration, vasectomy,</u> hysterectomy, oophorectomy, orchiectomy, or penectomy.
 - (2) Performing surgeries that artificially construct tissue with the appearance of genitalia that differs from the individual's sex, including metoidioplasty, phalloplasty, and vaginoplasty.
 - (3) Performing a mastectomy.
 - (4) Prescribing, administering, or supplying gonadotropin releasing hormone analogues or other synthetic drugs used to stop luteinizing hormone and follicle stimulating hormone secretion, synthetic antiandrogen drugs used to block the androgen receptor, or any drug to suppress or delay normal puberty.
 - (5) Prescribing, administering, or supplying testosterone, estrogen, or progesterone to a minor in an amount greater than would normally be produced endogenously in a healthy individual of that individual's age and sex.
 - (6) Removing any otherwise healthy or nondiseased body part or tissue.
- (b) It shall be unlawful for any medical professional or mental health care professional or counselor to knowingly engage in conduct that aids or abets the practices described in subsection (a) of this section to a minor. This section may not be construed to impose liability on any speech protected by federal or State law.
- (c) A medical professional or mental health care professional or counselor who engages in any of the practices identified in subsection (a) of this section or causes them to be performed shall be considered to have engaged in unprofessional conduct and shall be subject to revocation of licensure for a minimum of one year and other appropriate discipline by the medical professional's licensing or certifying board. The medical professional shall also be subject to a

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

- (d) This section does not apply to any of the following:
 - (1) The good-faith medical decision of a parent or guardian of a minor born with a medically verifiable genetic disorder of sexual development, including any of the following:
 - a. A minor with external biological sex characteristics that are irresolvably ambiguous, such as a minor born having 46 XX chromosomes with virilization, 46 XY chromosomes with under-virilization, or having both ovarian and testicular tissue.
 - b. When a physician has otherwise diagnosed a disorder of sexual development, in which the physician has determined through genetic testing that the minor does not have the normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for male or female sexes.
 - (2) The treatment of any infection, disease, or disorder that has been caused or exacerbated by the performance of a procedure described in subsection (a) of this section, whether or not the procedures were performed in accordance with State or federal law.
 - (3) Any procedure undertaken because an individual suffers from a physical disorder, physical injury, or physical illness that is certified by a physician and that would place the individual in imminent danger of death or impairment of major bodily function unless surgery is performed.
- (e) Notwithstanding any other provision of law, it shall be unlawful for any health care provider, as defined in G.S. 90-21.11, that receives State funds to furnish, provide, or perform any health care service that constitutes the performance of or preparation for a gender transition procedure to a minor.

"§ 90-21.142. Counseling.

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

"§ 90-21.143. Protection of parental rights.

- (a) Parents, guardians, or custodians, in exercising the fundamental right to care for their child, may withhold consent for any treatment, activity, or mental health care services that are designed and intended to form their child's conceptions of sex and gender or to treat gender dysphoria or gender nonconformity. The State, its agents, and political subdivisions shall not infringe upon or impede the exercise of this right under this section.
- (b) No government agent, nor any employee of this State, any political subdivision of this State, or any other governmental entity, except for law enforcement personnel, shall encourage or coerce a minor to withhold information from the minor's parent. Nor shall any such employee withhold from a minor's parents information that is relevant to the physical or mental health of their child and of a sort that parents interested in and responsible for the well-being of a minor reasonably would demand and should be apprised of. Such conduct shall be grounds for discipline of the employee, in addition to any other remedies provided to a parent under this Article.
- (c) If a government agent has knowledge that a minor under its care or supervision has exhibited symptoms of gender dysphoria, gender nonconformity, or otherwise demonstrates a desire to be treated in a manner incongruent with the minor's sex, the government agent or entity

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with knowledge of that circumstance shall immediately notify, in writing, each of the minor's 1 2 parents, guardians, or custodians. The notice shall describe all of the relevant circumstances with 3 reasonable specificity. 4

"§ 90-21.144. Whistleblower protection.

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- No person shall be discriminated against in any manner because the person does any of the following:
 - (1) Provided, caused to be provided, or takes steps to provide or cause to be provided to his or her employer, the Attorney General, any State agency, the United States Department of Health and Human Services, or any other federal agency any information or an act or omission that is a violation of any provision of this Article.
 - (2) Testified or prepared to testify in a proceeding concerning a violation of this Article.
 - (3) Assisted or participated in a proceeding concerning a violation of this Article.
- (b) Unless a disclosure or report of information is specifically prohibited by law, no person shall be discriminated against in any manner because the person disclosed any information under this Article that the person believes evinces any of the following:
 - (1) Any violation of law, rule, or regulation.
 - Any violation of any standard of care or other ethical guidelines for the (2) provision of any health care service.
 - Gross mismanagement, a gross waste of funds, an abuse of authority, or a (3) substantial and specific danger to public health or safety.

"§ 90-21.145. Civil remedies.

- A civil action for compensatory or special damages, injunctive relief, or any other relief available under law may be brought by any person for any violation of any provision of this Article against the clinic, health care system, medical professional, or other person responsible for the violation.
- Any party aggrieved or harmed by any violation of this Article shall be required to (b) bring suit for violation of this Article no later than two years after the day the cause of action accrued. Minors injured by practices prohibited under this Article may bring an action during their minority through a parent and may bring an action in their own name upon reaching majority at any time from that date until 20 years from the date the minor attained the age of majority.
- Persons who prevail on a claim brought pursuant to this section shall be entitled, upon the finding of a violation, to recover the following:
 - Monetary damages, including all psychological, emotional, and physical harm (1) suffered.
 - (2) Total costs of the action and reasonable attorneys' fees.
 - Any other appropriate relief. (3)
- Standing to assert a claim or defense under this section shall be governed by the general rules of standing.

'§ 90-21.146. Preemption.

- A political subdivision of this State is preempted from enacting, adopting, maintaining, or enforcing any order, ordinance, rule, regulation, policy, or other similar measure that prohibits, restricts, limits, controls, directs, or otherwise interferes with the professional conduct and judgment of a mental health care professional or counselor, including speech, undertaken within the course of treatment and communication with clients, patients, other persons, or the public, including therapies, counseling, referrals, and education.
- The Attorney General or a mental health care professional or counselor may bring an action for an injunction to prevent or restrain violations of this section. A mental health care professional may recover reasonable costs and attorneys' fees incurred in obtaining an injunction under this section.

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General Assembly Of North Carolina Session 2023 Sovereign and governmental immunity to suit and from liability is waived and 1 (c) 2 abolished to the extent of the liability created by this section." **SECTION 1.(b)** Article 6 of Chapter 143C of the General Statutes is amended by 3 4 adding a new section to read: 5 "§ 143C-6-5.6. Limitation on use of State funds for gender transition procedures. No State funds may be used, directly or indirectly, for the performance of or in furtherance 6 7 of gender transition procedures or to support the administration of any governmental health plan 8 or government-offered insurance policy offering gender transition procedures." 9 **SECTION 2.** Chapter 48A of the General Statutes is amended by adding a new 10 Article to read: 11 "Article 3. 12 "Children's Default to Safety Act. 13 "Part 1. Electronic Device Obscenity Filter. 14 "§ 48A-20. Short title. This Article may be cited as the "Children's Default to Safety Act." 15 "§ 48A-21. Definitions. 16 17 The following definitions apply in this Article: 18 (1) Activate. – The process of powering on an electronic device and associating 19 it with a new user account. 20 (2) Electronic device. – A tablet or a smart phone. 21 (3) Internet. – A publicly available and accessible domain. 22 <u>(4)</u> 23 24 (5) 25 26

- Manufacturer. A person that is engaged in the business of manufacturing an electronic device and has an agent registered to conduct business in this State.
- Obscenity filter. Software installed on an electronic device that is capable of preventing the electronic device from accessing or displaying obscenity through the internet or any applications owned and controlled by the manufacturer and installed on the device.
- Smart phone. An electronic device that combines a cell phone with a <u>(6)</u> handheld computer, typically offering internet access, data storage, text, and email capabilities.
- Tablet. An electronic device equipped with a mobile operating system, (7) touchscreen display, and rechargeable battery, typically offering internet access.

"§ 48A-22. Obscenity filter required.

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A manufacturer shall manufacture an electronic device that, when activated in the State, automatically enables an obscenity filter that does all of the following:

- (1) Prevents the user from accessing or downloading material that is obscene to minors on mobile data networks, applications owned and controlled by the manufacturer, and wired or wireless internet networks.
- Notifies a user of the electronic device when the obscenity filter blocks the (2) device from downloading an application or accessing a website.
- Gives a user with a passcode the opportunity to unblock a filtered application **(3)** or website.
- Reasonably precludes a user other than a user with a passcode the opportunity <u>(4)</u> to deactivate, modify, or uninstall the obscenity filter.

"§ 48A-23. Liability; limitations.

- A manufacturer of an electronic device is liable if, on activation of an electronic device sold and activated in the State, the electronic device or manufacturer does the following:
 - The electronic device does not enable an obscenity filter that prevents the <u>(1)</u> display of obscene material to minors in such a way that minors will be able

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- to view the material, or the manufacturer knowingly or in reckless disregard provides the passcode to a minor to unblock the obscenity filter.
 - (2) The electronic device displays or disseminates obscene material to a minor, including any performance that is obscene to minors.
 - (b) Nothing in this Article shall affect any other private right of action existing under other State or federal law, including contract law.
 - (c) This section shall not apply to a manufacturer that makes a good-faith effort to provide a device that, on activation of the device in the State, automatically enables a generally accepted and commercially reasonable method of filtration in accordance with this Article and industry standards.
 - (d) A person who is not a minor's parent or legal guardian may not provide a minor with the passcode to remove the obscenity filter.

"§ 48A-24. Damages.

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

"§ 48A-25. Civil action for enforcement.

- (a) Except as provided in subsection (h) of this section, a manufacturer that is found liable under this Article shall be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) per violation, plus costs and attorneys' fees, in addition to any other applicable penalty under State law. The civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. For purposes of assessing a civil penalty under this section, a manufacturer is considered to have committed a separate violation for each electronic device sold and activated in the State.
- (b) To prevail under this section, a plaintiff shall prove and a court shall find, by clear and convincing evidence, that a manufacturer manufactured a device on or after October 1, 2023, and that it was activated in violation of this Article.
 - (c) The plaintiff shall prove all other elements by a preponderance of the evidence.
- (d) For each violation, the court shall specify the amount of the civil penalty, filing fees, costs, and attorneys' fees.
- (e) <u>In assessing the amount of a civil penalty for a violation of this Article, the court shall</u> consider all of the following:
 - (1) Nature and extent of the violation.
 - (2) Number and severity of the violations.
 - (3) Economic effect of the penalty on the violator.
 - (4) Good-faith measures the violator took to comply with this Article.
 - (5) Timing of the measures the violator took to comply with this Article.
 - (6) Willfulness of the violator's misconduct.
 - (7) Deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.
 - (8) Any other factors determined by the court to be pertinent.
- (f) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State or by a private individual in accordance with subsection (g) of this section.
- (g) A private individual may bring an action in the public interest to establish liability under this Article, if that individual has served the alleged violator and the Attorney General a notice of an alleged violation of this section and the Attorney General has not provided a letter to the noticing party within 45 days after the day on which the Attorney General receives the notice of an alleged violation indicating either (i) an action is currently being pursued or will be

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

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

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

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

- (a) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposefully do any of the following:
 - (1) Display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material. However, a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor.
 - (2) Sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material.
 - (3) Present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.
 - (b) A person does not violate this section if any of the following are satisfied:
 - (1) The person had reasonable cause to believe the minor was 18 years of age. For the purposes of this subdivision, "reasonable cause" includes, but is not limited to, being shown a draft card, driver's license, marriage license, birth certificate, education identification card, governmental identification card, tribal identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age.
 - (2) The person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of the school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution.
 - (3) The person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum.
 - (4) An exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum.
 - (5) The person is a retail sale clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance."

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

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

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