House Bill 3137

Sponsored by Representative DIEHL

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prohibits medical health care professional from performing or providing sex alteration procedure on minor. Defines “sex alteration procedure.” Provides that sex alteration procedure on minor is unprofessional conduct subject to discipline by appropriate health professional licensing board. Allows individual to bring claim for violation and recover specified damages.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to procedures to alter minor's sex; and declaring an emergency.

Whereas Oregon has a compelling governmental interest in protecting the health and safety of its residents, especially vulnerable children; and

Whereas only a tiny percentage of the American population experiences distress related to a fixation on the reality of their sex; and

Whereas according to the American Psychiatric Association, prevalence ranges from 0.005 to 0.014 percent of adult males and from 0.002 to 0.003 percent of adult females; and

Whereas studies consistently demonstrate that the vast majority of children who experience distress related to a fixation on the reality of their sex come to accept their sex in adolescence or adulthood; and

Whereas scientific studies show that individuals struggling with distress related to a fixation on the reality of their sex often have already experienced psychopathology, which indicates these individuals should be encouraged to seek mental health care services; and

Whereas suicide rates, psychiatric morbidities and mortality rates remain markedly elevated above the background population after inpatient sex alteration procedures have been performed; and

Whereas some health care providers are prescribing drugs in order to delay the onset or progression of normally timed puberty in children who experience distress related to a fixation on the reality of their sex, despite the lack of any long-term longitudinal studies evaluating the risks and benefits of using these drugs for the treatment of such distress; and

Whereas health care providers are also prescribing cross-sex hormones for children who experience distress related to a fixation on the reality of their sex, despite the fact that no randomized clinical trials have been conducted on the efficacy or safety of the use of cross-sex hormones in adults or children for the purpose of treating such distress; and

Whereas the use of cross-sex hormones comes with serious known risks, including, for females, erythrocytosis, severe liver dysfunction, coronary artery disease, cerebrovascular disease, hypertension, increased risk of breast and uterine cancers and irreversible infertility, and for males, thromboembolic disease, cholelithiasis, coronary artery disease, macroprolactinoma, cerebrovascular disease, hypertriglyceridemia, breast cancer and irreversible infertility; and

Whereas genital and nongenital modification, amputation and mutilation surgeries are generally

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in boldfaced type.

LC 3655
not recommended for children, although evidence indicates referrals for children to undergo such surgeries are becoming more frequent; and

Whereas genital modification, amputation and mutilation surgeries include several irreversible invasive procedures for both males and females and involve alterations of biologically normal and functional body parts, including, for males, surgery that may involve genital mutilation including penectomy, orchietomy, vaginoplasty, clitoroplasty and vulvoplasty, and for females, surgery that may involve a hysterectomy or oophorectomy, reconstruction of the urethra, genital mutilation including metoidioplasty or phalloplasty, vaginectomy, scrotoplasty and implantation of erection or testicular prostheses; and

Whereas the complications, risks and long-term care concerns associated with genital modification, amputation and mutilation surgeries for both males and females are numerous and complex; and

Whereas nongenital surgeries include various invasive procedures for males and females and also involve the modification, amputation and mutilation of biologically normal and functional body parts, including, for males, procedures such as augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation, hair reconstruction and other aesthetic procedures, and for females, procedures such as subcutaneous mastectomy, voice surgery, liposuction, lipofilling, pectoral implants and other aesthetic procedures; and

Whereas it is an accepted principle of economics and public policy that when a service or product is subsidized or paid for, demand for that service or product increases, and just between 2015 and 2016, sex alteration surgeries increased by 20 percent; and

Whereas it is of grave concern to Oregonians that the medical community is allowing individuals who experience distress related to a fixation on the reality of their sex to be subject to irreversible and drastic nongenital surgery and irreversible, permanently sterilizing genital modification, amputation and mutilation surgeries, despite the lack of studies showing that the benefits of such extreme interventions outweigh the risks; and

Whereas the risks of these procedures far outweigh any benefit at this stage of clinical study on these procedures; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 2 to 4 of this 2023 Act:

(1) “Female” means the sex that typically has the capacity to bear young or produce eggs.

(2) “Male” means the sex that typically has the capacity to produce relatively small, usually motile, gametes that fertilize the eggs of a female.

(3) “Medical health care professional” means the following individuals:

(a) A nurse licensed under ORS 678.010 to 678.410;
(b) A physician licensed under ORS chapter 677;
(c) A physician assistant licensed under ORS 677.505 to 677.525;
(d) A psychologist licensed under ORS 675.010 to 675.150;
(e) A pharmacist licensed under ORS chapter 689; or
(f) Other individual licensed to provide medical health care services.

(4) “Minor” means an individual who is under 18 years of age.

(5) “Sex” means the biological indication of male and female, such as sex chromosomes, naturally occurring sex hormones, gonads and nonambiguous internal and external genitalia
present at birth, without regard to an individual's psychological, chosen or subjective experience.

(6)(a) “Sex alteration procedure” means, when performed or used for the purpose of approximating the secondary sex characteristics of the opposite sex, a medical or surgical service, physician service, inpatient or outpatient hospital service or prescription drug intended to alter or remove physical or anatomical characteristics or features that are typical for the individual’s sex or to cosmetically create physiological or anatomical characteristics that resemble a sex different from the individual's sex.

(b) “Sex alteration procedure” does not include:

(A) A service provided to an individual born with a medically verifiable disorder of sex development;

(B) A service provided to an individual diagnosed, through genetic or biochemical testing, with a disorder of sexual development resulting from not having typical sex chromosome structure, sex steroid hormone production or sex steroid hormone action; or

(C) The treatment of an infection, injury, disease or disorder caused or exacerbated by the performance of a sex alteration procedure.

SECTION 2. (1) A medical health care professional may not, for an individual who is a minor:

(a) Perform a sex alteration procedure on the minor; or

(b) Refer the minor to another medical health care professional for the purpose of obtaining a sex alteration procedure.

(2) A mental health professional may not refer a minor to a medical health care professional for the purpose of obtaining a sex alteration procedure.

(3) An employee or contractor of a public or private school may not, for an individual who is a minor:

(a) Encourage or coerce the minor to withhold from the minor's parent or legal guardian the fact that the minor's self-perception is inconsistent with the minor's sex; or

(b) Withhold from the minor's parent or legal guardian information related to the minor's self-perception being inconsistent with the minor's sex.

SECTION 3. (1) Public funds may not be directly or indirectly used for or granted, paid or distributed to an entity, organization or individual that provides or performs a sex alteration procedure to or for a minor.

(2) The health care services provided by or in a health care facility owned or operated by the state or a county or local government, or by a physician or other individual employed by the state or a county or local government may not include sex alteration procedures provided to minors.

(3) Any amount paid by an individual or an entity for the provision of sex alteration procedures for minors, or as premiums for a policy for health insurance that includes coverage for sex alteration procedures for minors is not tax deductible.

(4) Medical assistance may not include sex alteration procedures provided to minors.

(5) A policy for health insurance may not provide payment or reimbursement for sex alteration procedures provided to minors.

SECTION 4. The provision of a sex alteration procedure to a minor shall be considered unprofessional conduct by a medical health care professional for which the medical health care professional may be subject to disciplinary action by the appropriate health professional
licensing board.

SECTION 5. (1) A person may bring a claim for a violation of section 2 or 3 of this 2023 Act and recover economic and noneconomic damages, injunctive relief or declaratory relief.

(2)(a) Except as provided in paragraph (b) of this subsection, an action under this section must be commenced not later than two years after the action accrues.

(b) An individual subjected as a minor to a violation of section 2 or 3 of this 2023 Act may bring a claim under this section at any time before the individual reaches 38 years of age.

(3) The court shall award reasonable attorney fees to a prevailing plaintiff in a civil action under this section.

(4) The Attorney General may bring an action to enforce compliance with section 2 or 3 of this 2023 Act.

SECTION 6. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.