

House Bill 4037

Sponsored by Representatives WRIGHT, DIEHL; Representatives BOICE, BREESE-IVERSON, GOODWIN, HELFRICH, HIEB, LEVY B, LEWIS, MANNIX, MCINTIRE, OSBORNE, OWENS, RESCHKE, SCHARF (Pre-session filed.)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act says that health care workers may not alter a minor's sex or refer the minor to another health care worker to alter the minor's sex. The Act says that public funds may not be used to alter a minor's sex. The Act says that health insurance policies may not pay to alter a minor's sex. The Act allows a health care worker licensing board to punish a health care worker who alters a minor's sex. The Act allows a person whose sex was altered when the person was a minor to sue the health care worker who altered the minor's sex or who referred the minor to the health care worker who altered the minor's sex. The Act goes into effect when the Governor signs it. (Flesch Readability Score: 71.5).

Prohibits a medical health care professional from referring a minor for, or performing on a minor, a sex alteration procedure. Defines the term "sex alteration procedure." Provides that the performance of a sex alteration procedure on a minor is unprofessional conduct subject to discipline by the appropriate health professional licensing board. Allows an individual to bring a claim for a violation and to recover specified damages.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to procedures to alter a minor's sex; creating new provisions; amending ORS 435.225 and
3 435.240; and declaring an emergency.

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

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

8 Whereas according to the American Psychiatric Association, prevalence ranges from 0.005 to
9 0.014 percent of male adults and from 0.002 to 0.003 percent of female adults; and

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

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

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

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

22 Whereas health care providers are also prescribing cross-sex hormones for children who expe-

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.

1 rience distress related to a fixation on the reality of their sex, despite the fact that no randomized
 2 clinical trials have been conducted on the efficacy or safety of the use of cross-sex hormones in
 3 adults or children for the purpose of treating such distress; and

4 Whereas the use of cross-sex hormones comes with serious known risks, including, for female
 5 individuals, erythrocytosis, severe liver dysfunction, coronary artery disease, cerebrovascular dis-
 6 ease, hypertension, increased risk of breast and uterine cancers and irreversible infertility, and for
 7 male individuals, thromboembolic disease, cholelithiasis, coronary artery disease,
 8 macroprolactinoma, cerebrovascular disease, hypertriglyceridemia, breast cancer and irreversible
 9 infertility; and

10 Whereas genital and nongenital modification, amputation and mutilation surgeries are generally
 11 not recommended for children, although evidence indicates referrals for children to undergo such
 12 surgeries are becoming more frequent; and

13 Whereas genital modification, amputation and mutilation surgeries include several irreversible
 14 invasive procedures for both male and female individuals and involve alterations of biologically
 15 normal and functional body parts, including, for male individuals, surgery that may involve genital
 16 mutilation including penectomy, orchiectomy, vaginoplasty, clitoroplasty and vulvoplasty, and for
 17 female individuals, surgery that may involve a hysterectomy or oophorectomy, reconstruction of the
 18 urethra, genital mutilation including metoidioplasty or phalloplasty, vaginectomy, scrotoplasty and
 19 implantation of erection or testicular prostheses; and

20 Whereas the complications, risks and long-term care concerns associated with genital modifica-
 21 tion, amputation and mutilation surgeries for both male and female individuals are numerous and
 22 complex; and

23 Whereas nongenital surgeries include various invasive procedures for male and female individ-
 24 uals and also involve the modification, amputation and mutilation of biologically normal and func-
 25 tional body parts, including, for male individuals, procedures such as augmentation mammoplasty,
 26 facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal
 27 augmentation, hair reconstruction and other aesthetic procedures, and for female individuals, pro-
 28 cedures such as subcutaneous mastectomy, voice surgery, liposuction, lipofilling, pectoral implants
 29 and other aesthetic procedures; and

30 Whereas it is an accepted principle of economics and public policy that when a service or
 31 product is subsidized or paid for, demand for that service or product increases, and just between
 32 2015 and 2016, sex alteration surgeries increased by 20 percent; and

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

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

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

41 **SECTION 1. As used in sections 1 to 4 of this 2024 Act:**

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

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

1 (3) "Medical health care professional" means the following individuals:

2 (a) A nurse licensed under ORS 678.010 to 678.410;

3 (b) A physician licensed under ORS chapter 677;

4 (c) A physician assistant licensed under ORS 677.505 to 677.525;

5 (d) A psychologist licensed under ORS 675.010 to 675.150;

6 (e) A pharmacist licensed under ORS chapter 689; or

7 (f) Other individual licensed to provide medical health care services.

8 (4) "Minor" means an individual who is under 18 years of age.

9 (5) "Sex" means the biological indication of male and female, such as sex chromosomes,
10 naturally occurring sex hormones, gonads and nonambiguous internal and external genitalia
11 present at birth, without regard to an individual's psychological, chosen or subjective expe-
12 rience.

13 (6)(a) "Sex alteration procedure" means, when performed or used for the purpose of ap-
14 proximating the secondary sex characteristics of the opposite sex, a medical or surgical
15 service, physician service, inpatient or outpatient hospital service or prescription drug in-
16 tended to alter or remove physical or anatomical characteristics or features that are typical
17 for the individual's sex or to cosmetically create physiological or anatomical characteristics
18 that resemble a sex different from the individual's sex.

19 (b) "Sex alteration procedure" does not include:

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

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

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

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

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

30 (b) Refer the minor to another medical health care professional for the purpose of ob-
31 taining a sex alteration procedure.

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

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

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

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

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

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

1 provided to minors.

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

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

6 (5) A policy for health insurance may not provide payment or reimbursement for sex al-
7 teration procedures provided to minors.

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

12 **SECTION 5.** (1) A person may bring a claim for a violation of section 2 or 3 of this 2024
13 Act and recover economic and noneconomic damages, injunctive relief or declaratory relief.

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

16 (b) An individual subjected as a minor to a violation of section 2 or 3 of this 2024 Act
17 may bring a claim under this section at any time before the individual reaches 38 years of
18 age.

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

21 (4) The Attorney General may bring an action to enforce compliance with section 2 or 3
22 of this 2024 Act.

23 **SECTION 6.** ORS 435.225 is amended to read:

24 435.225. (1) An officer, employee or agent of a public body may refuse to accept the duty of of-
25 fering reproductive health care information and services to the extent that such duty is contrary to
26 the personal or religious beliefs of the officer, employee or agent. However, such officer, employee
27 or agent shall notify the immediate supervisor in writing of such refusal in order that arrangements
28 may be made for eligible individuals to obtain such information and services from another officer,
29 employee or agent.

30 (2)(a) If an officer, employee or agent of a public body refuses to provide reproductive health
31 care information and services as provided in subsection (1) of this section, the public body shall
32 immediately make arrangements for an individual to receive reproductive health care information
33 and services from another officer, employee or agent of the public body.

34 (b) A public body is not required to make the arrangements described in paragraph (a)
35 of this subsection if the arrangements would constitute an impermissible referral of a minor
36 for a sex alteration procedure under section 2 of this 2024 Act.

37 (3) The refusal of an officer, employee or agent of a public body to provide reproductive health
38 care information and services under subsection (1) of this section may not be grounds for any dis-
39 ciplinary action, for dismissal, for any interdepartmental transfer, for any other discrimination in
40 employment, or for suspension from employment, or for any loss in pay or other benefits.

41 **SECTION 7.** ORS 435.240 is amended to read:

42 435.240. (1) Except as provided in ORS 435.225 and sections 2 and 3 of this 2024 Act, a
43 public body or[, *except as provided in ORS 435.225,*] an officer, employee or agent of a public body
44 may not:

45 (a) Deprive a consenting individual of the choice of exercising the individual's reproductive

1 health rights under ORS 435.210;

2 (b) Interfere with or restrict, in the regulation of benefits, facilities, services or information, the
3 choice of a consenting individual to exercise the individual's reproductive health rights under ORS
4 435.210;

5 (c) Prohibit a health care provider, who is acting within the scope of the health care provider's
6 license, from providing reproductive health care information and services to a consenting individual;

7 (d) Interfere with or restrict, in the regulation of benefits, facilities, services or information, the
8 choice of a health care provider, who is acting within the scope of the health care provider's license,
9 to provide reproductive health care information and services to a consenting individual;

10 (e) Subject an individual to criminal or civil liability or penalty, or otherwise deprive the indi-
11 vidual of any rights, based on the individual's actions or omissions in exercising the individual's
12 reproductive health rights under ORS 435.210, including any action or omission affecting an actual,
13 potential or alleged pregnancy outcome; or

14 (f) Subject any person to criminal or civil liability or penalty, or otherwise deprive any person
15 of the person's rights, based solely on the person's actions in the provision of aid, assistance, re-
16 sources or support to an individual in the exercise of the individual's reproductive health rights,
17 provided that the person's actions do not otherwise violate the laws of this state.

18 (2)(a) Nothing in this section is intended to prevent the application of laws, rules, ordinances
19 or taxes that affect the method or manner of sales or distribution of contraceptive devices or the
20 provision of reproductive health care, provided that the laws, rules, ordinances or taxes are designed
21 to promote public health and safety and do not unreasonably burden public access to contraception
22 or other reproductive health care.

23 (b) Nothing in this section requires a public body to provide or pay for reproductive health care.

24 **SECTION 8. This 2024 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect**
26 **on its passage.**