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SENATE BILL NO. 791

Offered January 11, 2023

Prefiled November 29, 2022

A *BILL to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376 through 32.1-379, and by adding a section numbered 38.2-3449.2, relating to establishment of the Save Adolescents from Experimentation (SAFE) Act; health benefit plans; coverage for gender transition procedures.*

Patrons—Chase; Delegates: Freitas, March and Scott, P.A.

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376 through 32.1-379, and by adding a section numbered 38.2-3449.2 as follows:

CHAPTER 21.**SAVE ADOLESCENTS FROM EXPERIMENTATION (SAFE) ACT.****§ 32.1-376. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Biological sex" means the biological indication of male and female in the context of reproductive potential or capacity, 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 of gender.

"Cross-sex hormones" means:

1. Testosterone or other androgens given to biological females in amounts that are larger or more potent than would normally occur naturally in healthy biological sex females; and

2. Estrogen given to biological males in amounts that are larger or more potent than would normally occur naturally in healthy biological sex males.

"Gender" means the psychological, behavioral, social, and cultural aspects of being male or female.

"Gender reassignment surgery" means any medical or surgical service that seeks to surgically alter or remove healthy physical or anatomical characteristics or features that are typical for the individual's biological sex in order to instill or create physiological or anatomical characteristics that resemble a sex different from the individual's biological sex, including without limitation genital or nongenital gender reassignment surgery performed for the purpose of assisting an individual with a gender transition.

"Gender transition" means the process in which an individual goes from identifying with and living as a gender that corresponds to the individual's biological sex to identifying with and living as a gender different from his or her biological sex, which process may involve social, legal, or physical changes.

"Gender transition procedure" means any medical or surgical service, including without limitation physician's services, inpatient and outpatient hospital services, or prescribed drugs related to gender transition, that seeks to:

1. Alter or remove physical or anatomical characteristics or features that are typical for an individual's biological sex; or

2. Instill or create physiological or anatomical characteristics that resemble a sex different from an individual's biological sex, including without limitation (i) medical services that provide puberty-blocking drugs, cross-sex hormones, or other mechanisms to promote the development of feminizing or masculinizing features in the opposite biological sex or (ii) genital or nongenital gender reassignment surgery performed for the purpose of assisting an individual with a gender transition.

"Gender transition procedure" does not include:

1. Services to individuals born with a medically verifiable disorder of sex development, including an individual with external biological sex characteristics that are irresolvably ambiguous, such as a person born with 46, XX with virilization, with 46, XY with undervirilization, or having both ovarian and testicular tissue;

2. Services provided when a physician has otherwise diagnosed a disorder of sexual development or the physician has determined through genetic or biochemical testing that an individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

3. The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not the gender transition procedure was

59 performed in accordance with state and federal law or whether or not funding for the gender transition
60 procedure is permissible under this chapter; or

61 4. Any procedure undertaken because the individual suffers from a physical disorder, physical injury,
62 or physical illness that would, as certified by a physician, place the individual in imminent danger of
63 death or impairment of major bodily function unless surgery is performed.

64 "Genital gender reassignment surgery" means a medical procedure performed for the purpose of
65 assisting an individual with a gender transition, including without limitation:

66 1. Surgical procedures such as penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty
67 for biologically male patients or hysterectomy or oophorectomy for biologically female patients;

68 2. Reconstruction of the fixed part of the urethra with or without a metoidioplasty; or

69 3. Phalloplasty, vaginectomy, scrotoplasty, or implantation of erection or testicular prostheses for
70 biologically female patients.

71 "Health care professional" means an individual who is licensed, certified, or otherwise authorized by
72 the laws of the Commonwealth to administer health care in the ordinary course of the practice of his
73 profession.

74 "Nongenital gender reassignment surgery" means medical procedures performed for the purpose of
75 assisting an individual with a gender transition, including without limitation:

76 1. Surgical procedures for biologically male patients such as augmentation mammoplasty, facial
77 feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal
78 augmentation, hair reconstruction, or various aesthetic procedures; or

79 2. Surgical procedures for biologically female patients such as subcutaneous mastectomy, voice
80 surgery, liposuction, lipofilling, pectoral implants, or various aesthetic procedures.

81 "Physician" means a person who is licensed to practice medicine in the Commonwealth.

82 "Puberty-blocking drugs" means gonadotropin-releasing hormone analogues or other synthetic drugs
83 used in biological males to stop luteinizing hormone secretion and therefore testosterone secretion, or
84 synthetic drugs used in biological females which stop the production of estrogens and progesterone,
85 when used to delay or suppress pubertal development in minors for the purpose of assisting an
86 individual with a gender transition.

87 "Public funds" means state, county, or local government moneys, in addition to any department,
88 agency, or instrumentality moneys authorized or appropriated under state law or derived from any fund
89 in which such moneys are deposited.

90 **§ 32.1-377. Prohibition of gender transition procedures for minors.**

91 A. A physician or other health care professional shall not provide gender transition procedures to
92 any individual younger than 18 years of age.

93 B. A physician or other health care professional shall not refer any individual younger than 18 years
94 of age to any health care professional for gender transition procedures.

95 C. A physician or other health care professional may provide any of the following procedures that
96 are not gender transition procedures to an individual younger than 18 years of age:

97 1. Services to individuals born with a medically verifiable disorder of sex development, including an
98 individual with external biological sex characteristics that are irresolvably ambiguous, such as those
99 born with 46,XX with virilization, with 46,XY with undervirilization, or having both ovarian and
100 testicular tissue;

101 2. Services provided when a physician has otherwise diagnosed a disorder of sexual development or
102 the physician has determined through genetic or biochemical testing that the person does not have
103 normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

104 3. The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated
105 by the performance of gender transition procedures, whether or not the gender transition procedure was
106 performed in accordance with state and federal law or whether or not funding for the gender transition
107 procedure is permissible under this chapter; or

108 4. Any procedure undertaken because the individual suffers from a physical disorder, physical injury,
109 or physical illness that would, as certified by a physician, place the individual in imminent danger of
110 death or impairment of major bodily function unless surgery is performed.

111 **§ 32.1-378. Prohibition on use of public funds for gender transition procedures.**

112 A. Public funds shall not be directly or indirectly used, granted, paid, or distributed to any entity,
113 organization, or individual that provides gender transition procedures to an individual younger than 18
114 years of age.

115 B. Health care services furnished in the following situations shall not include gender transition
116 procedures to an individual younger than 18 years of age:

117 1. By or in a health care facility owned by the state or a county or local government; or

118 2. By a physician or other health care professional who is an employee of the Commonwealth.

119 C. Any amount paid by an individual or an entity during a taxable year for provision of gender
120 transition procedures or as premiums for health care coverage that includes coverage for gender

transition procedures is not tax-deductible.

D. The State Plan for Medical Assistance Services shall not reimburse or provide coverage for gender transition procedures to an individual younger than 18 years of age.

§ 32.1-379. Enforcement.

A. Any referral for or provision of gender transition procedures to an individual younger than 18 years of age is unprofessional conduct and is subject to discipline by the appropriate licensing entity or disciplinary review board with competent jurisdiction in the Commonwealth.

B. An individual may assert an actual or threatened violation of this chapter as a claim or defense in a judicial or administrative proceeding and obtain compensatory damages, injunctive relief, declaratory relief, or any other appropriate relief.

C. An individual shall bring a claim for a violation of this chapter no later than two years after the date the cause of action accrues.

D. An individual younger than 18 years of age may bring an action under this chapter throughout the individual's minority through a parent or next friend and may bring an action in his own name upon reaching majority at any time from that point until 20 years after reaching 18 years of age.

E. Notwithstanding any other provision of law, an action under this chapter may be commenced, and relief may be granted, in a judicial proceeding without regard to whether the individual commencing the action has sought or exhausted available administrative remedies.

F. In any action or proceeding to enforce a provision of this chapter, a prevailing party who establishes a violation of this chapter shall recover reasonable attorney fees.

G. The Attorney General may bring an action to enforce compliance with this chapter.

H. This chapter does not deny, impair, or otherwise affect any right or authority of the Attorney General, the Commonwealth, or any agency, officer, or employee of the state, acting under any law other than this chapter, to institute or intervene in any proceeding.

§ 38.2-3449.2. Insurance coverage of gender transition procedures for minors prohibited.

A. As used in this section, "gender transition procedure" means the same as defined in § 32.1-376.

B. Notwithstanding the provisions of § 38.2-3449.1, no health carrier shall (i) provide coverage for any gender transition procedures for individuals who are younger than 18 years of age or (ii) be required to provide coverage for any gender transition procedures for individuals 18 years of age or older.