

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE PERFORMANCE OF GENDER TRANSITION  
5 SURGERY ON MINORS; PROVIDING DEFINITIONS; PROVIDING REMEDIES; PROVIDING A STATUTE OF  
6 LIMITATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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8 WHEREAS, the State of Montana has a compelling government interest in protecting the health and  
9 safety of its citizens, especially vulnerable children; and

10 WHEREAS, only a tiny percentage of the American population experiences distress at identifying with  
11 their biological sex, and, according to the American Psychiatric Association, prevalence ranges from 0.0005%  
12 to 0.014% for natal adult males and from 0.002% to 0.003% for natal adult females; and

13 WHEREAS, studies consistently demonstrate that the vast majority of children who are gender  
14 nonconforming or experience distress at identifying with their biological sex come to identify with their biological  
15 sex in adolescence or adulthood, thereby rendering most medical health care interventions needless and  
16 questionable; and

17 WHEREAS, scientific studies show that individuals struggling with distress at identifying with their  
18 biological sex often have already experienced psychopathology, adverse childhood experiences, and troubled  
19 family dynamics, which indicates these individuals should be encouraged to seek mental health care services  
20 before undertaking any surgical intervention; and

21 WHEREAS, suicide rates, psychiatric morbidities, and mortality rates remain markedly elevated above  
22 the background population after inpatient gender reassignment procedures have been performed; and

23 WHEREAS, genital gender reassignment surgery includes several irreversible invasive procedures for  
24 males and females and involves alterations of biologically normal and functional body parts, including: (1) for  
25 biological males, genital reconstruction, including penectomy, orchiectomy, vaginoplasty, clitoroplasty, and  
26 vulvoplasty; and (2) for biological females, hysterectomy or oophorectomy, reconstruction of the urethra, and  
27 genital reconstruction, including metoidioplasty or phalloplasty, vaginectomy, scrotoplasty, and implantation of  
28 erection or testicular prostheses; and

1           WHEREAS, the complications, risks, and long-term care concerns associated with genital gender  
2 reassignment surgery for both males and females are numerous and complex; and

3           WHEREAS, nongenital gender reassignment surgery includes various invasive procedures for males  
4 and females and also involves the alteration or removal of biologically normal and functional body parts,  
5 including: (1) for biological males, augmentation mammoplasty, facial feminization surgery, liposuction,  
6 lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation, hair reconstruction, and other  
7 aesthetic procedures; and (2) for biological females, subcutaneous mastectomy, liposuction, lipofilling, voice  
8 surgery, pectoral implants, and other aesthetic procedures; and

9           WHEREAS, it is an accepted principle of economics and public policy that when a service or product is  
10 subsidized or paid for, demand for that service or product increases, and, just between 2015 and 2016, gender  
11 reassignment surgeries increased by 20%; and

12           WHEREAS, it is of grave concern to the Legislature that the medical community is allowing individuals  
13 who experience distress at identifying with their biological sex to be subjects of irreversible and drastic  
14 nongenital gender reassignment surgery and irreversible, permanently sterilizing genital gender reassignment  
15 surgery despite the lack of studies showing that the benefits of such extreme interventions outweigh the risks;  
16 and

17           WHEREAS, the risks of gender transition procedures far outweigh any benefit at this stage of clinical  
18 study on these procedures.

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20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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22           NEW SECTION. Section 1. Definitions. As used in [sections 1 through 3], the following definitions  
23 apply:

24           (1) "Minor" means an individual under 18 years of age.

25           (2) "Sex" means the biological indication of male or female in the context of reproductive potential  
26 or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal  
27 and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective  
28 experience of gender.

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**NEW SECTION. Section 2. Prohibition on performance of gender transition surgery on minors.**

(1) Except as provided in subsection (3), a physician or other medical health care professional may not knowingly engage in or cause any of the following practices to be performed on any minor if the practice is performed for the purpose of attempting to alter the appearance of or affirm the minor's perception of the minor's gender or sex, if that appearance or perception is inconsistent with the minor's sex:

- (a) penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty for biologically male patients or hysterectomy or oophorectomy for biologically female patients;
- (b) metoidioplasty, phalloplasty, vaginectomy, scrotoplasty, or implantation of erection or testicular prostheses for biologically female patients; or
- (c) augmentation mammoplasty for biologically male patients and subcutaneous mastectomy for female patients.

(2) A physician, mental health provider, or other medical health care professional may not knowingly engage in conduct that aids or abets the practices described in subsection (1) to any minor. This subsection (2) may not be construed to impose liability on any speech or conduct protected by state or federal law.

(3) Subsections (1) and (2) do not apply to:

- (a) services provided to individuals born with a medically verifiable disorder of sex development, including a person with external biological sex characteristics that are irresolvably ambiguous, such as an individual born with 46 XX chromosomes with virilization or 46 XY chromosomes with undervirilization or having both ovarian and testicular tissue;
- (b) services provided to an individual when a physician has otherwise diagnosed a disorder of sexual development in which the physician has determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a biological male or biological female;
- (c) the treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by the performance of gender transition procedures, whether or not the procedures were performed in accordance with state or federal law; or

1 (d) any procedure undertaken because an individual suffers from a physical disorder, physical  
2 injury, or physical illness that is certified by a physician and that would place the individual in imminent danger  
3 or result in death or the impairment of a major bodily function unless surgery is performed.  
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5 NEW SECTION. Section 3. Remedies -- statute of limitations. (1) The provision of services to a  
6 minor that are prohibited under [section 2] constitutes unprofessional conduct. A physician, mental health  
7 provider, or other medical health care professional committing unprofessional conduct shall have the  
8 individual's license suspended for a minimum of 2 years along with any other disciplinary measures that may be  
9 imposed for unprofessional conduct by the individual's licensing authority.

10 (2) A person may assert an actual or threatened violation of [section 2] as a claim or defense in a  
11 judicial or administrative proceeding and obtain compensatory damages, injunctive relief, declaratory relief, or  
12 any other appropriate relief.

13 (3) A person shall bring a claim for a violation of [section 2] no later than 5 years after the day the  
14 cause of action accrued, except that a minor may bring an action before reaching 18 years of age through a  
15 parent or guardian and, on turning 18 years old, may bring an action in the minor's own name until the minor  
16 turns 38 years old.

17 (4) An action under this section may be commenced, and relief may be granted, in a judicial  
18 proceeding without regard to whether the person commencing the action has sought or exhausted available  
19 administrative remedies.

20 (5) In any action or proceeding under this section, a prevailing party who establishes a violation of  
21 [section 2] is entitled to reasonable attorney fees.

22 (6) The attorney general may bring an action to enforce compliance with [section 2]. Nothing in this  
23 section may be construed to deny, impair, or otherwise affect any right or authority of the attorney general, the  
24 state, or any agency, officer, or employee of the state to institute or intervene in any proceeding.  
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26 NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be  
27 codified as a new part in Title 41, chapter 1, and the provisions of Title 41, chapter 1, apply to [sections 1  
28 through 3].

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2           NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are  
3 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
4 the part remains in effect in all valid applications that are severable from the invalid applications.

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6           NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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