

SENATE BILL NO. 218

INTRODUCED BY J. FULLER, G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A PRIVATE CAUSE OF ACTION FOR INJURIES CAUSED BY CERTAIN MEDICAL INTERVENTIONS AS TREATMENT OF GENDER DYSPHORIA; PROVIDING A STATUTE OF LIMITATIONS; AMENDING SECTION 27-2-205, MCA; REPEALING SECTION 50-4-1005, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Private cause of action for injuries caused by treatment of gender dysphoria -- statute of limitations -- definitions. (1) Any health care professional or physician who provides the medical treatments listed in subsection (4) is strictly liable to a minor, may be subject to a civil action if the medical treatment ~~or the after effects of the medical treatment result results~~ in any injury, including physical, psychological, emotional, or physiological harms, ~~within 25 years from the date of the last treatment that is~~ proximately caused by a deviation from the applicable medical standard of care of the health care professional or physician as established by qualified expert testimony.

(2) Except as provided in subsection (3), a person who suffers an injury described in subsection (1) or the person's legal guardian or estate may bring a civil action with respect to the injury ~~within 25 years from~~ AT ANY TIME UNTIL 2 YEARS AFTER THE PERSON REACHES THE AGE OF 30 OR UNTIL within 2 YEARS AFTER from the time of discovery by the injured party of both the injury and the causal relationship between the medical treatment and the injury, WHICHEVER IS LATER, against the offending health care professional or physician in a court of competent jurisdiction for:

- (a) declaratory or injunctive relief;
- (b) compensatory damages, ~~including but not limited to pain and suffering, loss of reputation, loss of income, and loss of consortium, including the loss of expectation of sharing parenthood; and~~
- ~~(c) —~~ punitive damages;

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1 ~~(d)(c)~~ any other appropriate relief; ~~and~~.

2 ~~(e) — attorney fees and costs.~~

3 (3) (a) If the person subjected to medical treatment is under legal disability at the time the person
4 discovers the injury and the causal relationship between the medical treatment and the injury, the limitation
5 period in subsection (2) does not begin to run until the removal of the disability.

6 (b) The limitation period in subsection (2) does not run until the minor reaches the age of 23 or
7 during a time period when the individual is subject to threats, intimidation, manipulation, fraudulent
8 concealment, or fraud perpetrated by the health care professional or physician who provided the medical
9 treatment described in subsection (1) or by any person acting in the interest of the health care professional or
10 physician.

11 (4) (a) Except as provided in subsection (5), a health care professional or physician may be found
12 liable under subsection (1) for an injury proximately caused by a deviation from the applicable medical standard
13 of care of the health care professional or physician, as established by qualified expert testimony, in providing
14 the following treatments ~~or the after-effects of the following treatments provided~~ to a minor female patient to
15 address the patient's perception that the patient's gender or sex is not female:

16 (i) surgical procedures, including a vaginectomy, hysterectomy, oophorectomy, ovariectomy,
17 reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular
18 prostheses, subcutaneous mastectomy, voice surgery, or pectoral implants;

19 (ii) supraphysiologic doses of testosterone or other androgens; or

20 (iii) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production
21 of estrogen and progesterone to delay or suppress pubertal development in female minors.

22 (b) Except as provided in subsection (5), a health care professional or physician may be found
23 liable under subsection (1) for an injury proximately caused by a deviation from the applicable medical standard
24 of care of the health care professional or physician, as established by qualified expert testimony, in providing
25 the following treatments ~~or the after-effects of the following treatments provided~~ to a minor male patient to
26 address the patient's perception that the patient's gender or sex is not male:

27 (i) surgical procedures, including a penectomy, orchiectomy, vaginoplasty, clitoroplasty,

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1 vulvoplasty, augmentation mammoplasty, facial feminization surgery, voice surgery, thyroid cartilage reduction,
2 or gluteal augmentation;

3 (ii) supraphysiologic doses of estrogen; or

4 (iii) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production
5 of testosterone or delay or suppress pubertal development in male minors.

6 (5) The medical treatments listed in subsections (4)(a) and (4)(b) may be the basis of a claim
7 under subsection (1) only when knowingly provided to address a minor female patient's perception that the
8 patient's gender or sex is not female or a minor male patient's perception that the patient's gender or sex is not
9 male and only when performed in a manner that deviates from the applicable medical standard of care as
10 established by qualified expert testimony. Subsections (4)(a) and (4)(b) do not apply for other purposes,
11 including:

12 (a) treatment for a person born with a medically verifiable disorder of sex development, including:

13 (i) a person born with external biological sex characteristics that are irresolvably ambiguous,
14 including an individual born with 46 XX chromosomes with virilization, an individual born with 46 XY
15 chromosomes with undervirilization, or an individual having both ovarian and testicular tissue; and

16 (ii) a person whom a physician has otherwise diagnosed with a disorder of sexual development in
17 which the physician has determined through genetic or biochemical testing that the person does not have
18 normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or
19 female; ~~and~~

20 (b) treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by
21 a medical treatment listed in subsection (4)(a) or (4)(b), whether or not the medical treatment was performed in
22 accordance with state and federal law and whether or not funding for the medical treatment is permissible
23 under state and federal law; or

24 (c) any other clinically appropriate or evidence-based basis for the treatment.

25 (6) As used in this section, unless the context clearly indicates otherwise, the following definitions
26 apply:

27 (a) "Female" means a member of the human species who, under normal development, has XX

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1 chromosomes and produces or would produce relatively large, relatively immobile gametes, or eggs, during her
2 life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An
3 individual who would otherwise fall within this definition, but for a biological or genetic condition, is female for
4 the purposes of this section.

5 (b) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or
6 female.

7 (c) "Health care professional" means a person who is licensed, certified, or otherwise authorized
8 by the laws of this state to administer health care in the ordinary course of the practice of the person's
9 profession.

10 (d) "Male" means a member of the human species who, under normal development, has XY
11 chromosomes and produces or would produce small, mobile gametes, or sperm, during his life cycle and has a
12 reproductive and endocrine system oriented around the production of those gametes. An individual who would
13 otherwise fall within this definition, but for a biological or genetic condition, is male for the purposes of this
14 section.

15 (e) "Physician" means a person who is licensed to practice medicine in this state.

16 (f) "Sex" means the organization of body parts and gametes for reproduction in human beings and
17 other organisms. In human beings, there are exactly two sexes, male and female, with two corresponding types
18 of gametes. The sexes are determined by the biological and genetic indication of male or female, including sex
19 chromosomes, naturally occurring sex chromosomes, gonads, and nonambiguous internal and external
20 genitalia present at birth, without regard to an individual's psychological, behavioral, social, cultural, chosen, or
21 subjective experience of gender.

22
23 **SECTION 2. SECTION 27-2-205, MCA, IS AMENDED TO READ:**

24 **"27-2-205. Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a
25 physician or surgeon, physician assistant, dentist, dental hygienist, registered nurse, advanced practice
26 registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical
27 therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory

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1 technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical
2 professional corporation, based upon alleged professional negligence or for rendering professional services
3 without consent or for an act, error, or omission, must, except as provided in ~~subsection~~ subsections (2) and
4 (3), be commenced within 2 years after the date of injury or within 2 years after the plaintiff discovers or through
5 the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may
6 an action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any
7 period during which there has been a failure to disclose any act, error, or omission upon which an action is
8 based and that is known to the defendant or through the use of reasonable diligence subsequent to the act,
9 error, or omission would have been known to the defendant.

10 (2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was
11 under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run
12 when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for
13 commencement of the action is tolled during any period during which the minor does not reside with a parent or
14 guardian.

15 (3) ~~(a) In an action brought for an injury described in [section 1], the time limitation in subsection~~
16 ~~(1) is tolled until the plaintiff reaches the age of 30 or until the plaintiff discovers both the injury and the causal~~
17 ~~relationship between the medical treatment and the injury, whichever is later.~~

18 ~~(b) — The time limitations in this section and in [section 1] for an injury described in [section 1] do not~~
19 ~~prohibit a plaintiff from commencing an action before the plaintiff reaches the age of 30."~~

20
21 NEW SECTION. Section 3. Repealer. The following section of the Montana Code Annotated is
22 repealed:

23 50-4-1005. Private cause of action for subsequent harm.

24
25 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as a new
26 part in Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [section 1].