

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 if the medical treatment or the after-effects of the medical treatment result in any injury, including physical, psychological, emotional, or physiological harms, within 25 years from the date of the last treatment.

(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 2 years after 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;
  - (c) punitive damages;
  - (d) any other appropriate relief; and
  - (e) attorney fees and costs.
- (3) (a) If the person subjected to medical treatment is under legal disability at the time the person

discovers the injury and the causal relationship between the medical treatment and the injury, the limitation period in subsection (2) does not begin to run until the removal of the disability.

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

(4) (a) Except as provided in subsection (5), a health care professional or physician may be found liable under subsection (1) for an injury caused by the following treatments or the after-effects of the following treatments provided to a female patient to address the patient's perception that the patient's gender or sex is not female:

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

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

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

(b) Except as provided in subsection (5), a health care professional or physician may be found liable under subsection (1) for an injury caused by the following treatments or the after-effects of the following treatments provided to a male patient to address the patient's perception that the patient's gender or sex is not male:

(i) surgical procedures, including a penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial feminization surgery, voice surgery, thyroid cartilage reduction, or gluteal augmentation;

(ii) supraphysiologic doses of estrogen; or

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

(5) The medical treatments listed in subsections (4)(a) and (4)(b) may be the basis of a claim under subsection (1) only when knowingly provided to address a female patient's perception that the patient's

gender or sex is not female or a male patient's perception that the patient's gender or sex is not male.

Subsections (4)(a) and (4)(b) do not apply for other purposes, including:

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

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

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

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

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

(a) "Female" means a member of the human species who, under normal development, has XX chromosomes and produces or would produce relatively large, relatively immobile gametes, or eggs, during her life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is female for the purposes of this section.

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

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

(d) "Male" means a member of the human species who, under normal development, has XY chromosomes and produces or would produce small, mobile gametes, or sperm, during his life cycle and has a

1 reproductive and endocrine system oriented around the production of those gametes. An individual who would  
2 otherwise fall within this definition, but for a biological or genetic condition, is male for the purposes of this  
3 section.

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

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

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12 **Section 2.** Section 27-2-205, MCA, is amended to read:

13 **"27-2-205. Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a  
14 physician or surgeon, physician assistant, dentist, dental hygienist, registered nurse, advanced practice  
15 registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical  
16 therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory  
17 technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical  
18 professional corporation, based upon alleged professional negligence or for rendering professional services  
19 without consent or for an act, error, or omission, must, except as provided in ~~subsection~~ subsections (2) and  
20 (3), be commenced within 2 years after the date of injury or within 2 years after the plaintiff discovers or through  
21 the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may  
22 an action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any  
23 period during which there has been a failure to disclose any act, error, or omission upon which an action is  
24 based and that is known to the defendant or through the use of reasonable diligence subsequent to the act,  
25 error, or omission would have been known to the defendant.

26 (2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was  
27 under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run  
28 when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for

commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian.

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

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

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

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

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

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

NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 2025.

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