

Introduced by

Representatives Prichard, Dyk, M. Ruby, Tveit, VanWinkle

Senators Boehm, Dwyer, Paulson, Vedaa

1 A BILL for an Act to create and enact chapter 23-52 of the North Dakota Century Code, relating  
2 to prohibiting medical gender transitioning procedures on a minor; to provide a penalty; and to  
3 declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 23-52 of the North Dakota Century Code is created and enacted as  
6 follows:

7 **23-52-01. Definitions.**

8 As used in this chapter:

- 9 1. "Congenital defect" means a physical or chemical abnormality present in a minor  
10 which is inconsistent with the normal development of an individual of the minor's sex,  
11 including abnormalities caused by a medically verifiable disorder of sex development.  
12 The term does not include gender dysphoria, gender identity disorder, gender  
13 incongruence, or any mental condition, disorder, disability, or abnormality.
- 14 2. "Health care provider" means a licensed physician, physician assistant, nurse, or a  
15 certified medical assistant.
- 16 3. "Medical procedure" includes surgically removing, modifying, altering, or entering  
17 tissues, cavities, or organs of an individual.
- 18 4. "Medication" means any drug prescribed, administered, or supplied to an individual  
19 which has the purpose of aligning the individual's sex with the individual's gender  
20 identity when the gender identity is inconsistent with the individual's sex. The term  
21 includes:
- 22 a. Puberty-blocking medication to stop normal puberty;  
23 b. Supraphysiologic doses of testosterone to females; or  
24 c. Supraphysiologic doses of estrogen to males.

- 1       5. "Minor" means an individual under the age of eighteen. The term includes an  
2       emancipated individual.
- 3       6. "Parent" means a biological, legal, or adoptive parent of a minor or a legal guardian of  
4       a minor.
- 5       7. "Sex" means the biological state of being female or male, based on an individual's  
6       nonambiguous sex organs, chromosomes, and endogenous hormone profiles at birth.

7       **23-52-02. Gender transitioning procedure on a minor prohibited - Exceptions.**

- 8       1. A health care provider may not perform or offer to perform a medical procedure on a  
9       minor, or administer or offer to administer medication to a minor, if the performance of  
10      the medical procedure or administration of the medication is for the purpose of:
- 11      a. Enabling a minor to identify with, or live as, a purported identity inconsistent with  
12      the minor's sex; or
- 13      b. Treating purported discomfort or distress from a discordance between the minor's  
14      sex and asserted identity.
- 15      2. It is not a violation of subsection 1 if a health care provider performs or offers to  
16      perform a medical procedure on or administers, or offers to administer medication to a  
17      minor if:
- 18      a. The performance of the medical procedure or the administration of the  
19      medication is to treat a minor's congenital defect, disease, or physical injury; or
- 20      b. The performance of the medical procedure or medication protocol began before  
21      the effective date of this Act.
- 22      3. For purposes of subdivision b of subsection 2, the minor's treating physician shall  
23      certify in writing that, in the physician's good-faith medical judgment, based on the  
24      facts known to the physician at the time, ending the medical procedure or medication  
25      would be harmful to the minor. The certification must include the findings supporting  
26      the certification and must be made a part of the minor's medical record.
- 27      4. Subdivision b of subsection 2 does not allow a health care provider to perform a  
28      medical procedure or administer medication that is different from the medical  
29      procedure performed or medication administered before the effective date of this Act  
30      when the primary purpose of the different medical procedure or medication is to:

- 1           a. Enable the minor to identify with, or live as, a purported identity inconsistent with  
2           the minor's sex; or
- 3           b. Treat purported discomfort or distress from a discordance between the minor's  
4           sex and asserted identity.
- 5           5. Subdivision b of subsection 2, does not abrogate a minor's right to bring a cause of  
6           action against a health care provider or the minor's parent under section 23-52-03.
- 7           6. It is not a defense to legal liability incurred as the result of a violation of this section  
8           that the minor, or a parent of the minor, consented to the conduct that constituted the  
9           violation.
- 10          7. This section supersedes any common law rule regarding a minor's ability to consent to  
11          a medical procedure performed or medication administered for the purpose of:
- 12          a. Enabling the minor to identify with, or live as, a purported identity inconsistent  
13          with the minor's sex; or
- 14          b. Treating purported discomfort or distress from a discordance between the minor's  
15          sex and asserted identity.
- 16          8. As used in this section, "disease" does not include gender dysphoria, gender identity  
17          disorder, gender incongruence, or any mental condition, disorder, disability, or  
18          abnormality.

19          **23-52-03. Private right of action.**

- 20          1. Except as otherwise provided in subsection 3, a minor, or the parent of a minor, injured  
21          as a result of a violation of section 23-52-02, may bring a civil cause of action to  
22          recover compensatory damages, punitive damages, and reasonable attorney's fees,  
23          court costs, and expenses.
- 24          2. A minor injured as a result of a violation of section 23-52-02 may bring a civil cause of  
25          action against the:
- 26          a. Health care provider alleged to have violated section 23-52-02;
- 27          b. Medical facility employing the health care provider; and
- 28          c. Minor's parent if the parent of the minor consented to the conduct that constituted  
29          the violation on behalf of the minor. This subdivision supersedes any common  
30          law immunity granted to a parent.

- 1       3. The parent of a minor injured as a result of a violation of section 23-52-02 may bring a  
2       civil cause of action against a health care provider or the medical facility employing the  
3       health care provider alleged to have violated section 23-52-02. The parent of a minor  
4       injured as a result of a violation of section 23-52-02 may not bring a civil cause of  
5       action against a health care provider or the medical facility employing the health care  
6       provider if the parent consented to the conduct that constituted the violation on behalf  
7       of the minor.
- 8       4. The parent or next of kin of a minor may bring a wrongful death action, under chapter  
9       32-21, against a health care provider or the medical facility employing the health care  
10       provider alleged to have violated section 23-52-02, if the injured minor is deceased  
11       and:
- 12       a. The minor's death is the result of the physical or emotional harm inflicted upon  
13       the minor by the violation; and
- 14       b. The parent of the minor did not consent to the conduct that constituted the  
15       violation on behalf of the minor.
- 16       5. If a court in a civil action brought under this section finds a health care provider or the  
17       administration of a medical facility employing the health care provider knowingly  
18       violated section 23-52-02, the court shall notify the appropriate regulatory authority,  
19       the appropriate state's attorney, and the attorney general by mailing a certified copy of  
20       the court's order to the regulatory authority, the appropriate state's attorney, and the  
21       attorney general. The notification must be mailed when the final judgment is entered.
- 22       6. Compensatory damages under this section may include:
- 23       a. Reasonable economic losses caused by the emotional, mental, or physical  
24       effects of the violation, including:
- 25               (1) The cost of counseling, hospitalization, and any other medical expenses  
26               associated with treating the harm caused by the violation;
- 27               (2) Any out-of-pocket costs of the minor paid to the health care provider for the  
28               prohibited medical procedure or medication; and
- 29               (3) Loss of income caused by the violation; and
- 30       b. Noneconomic damages caused by the violation, including psychological and  
31       emotional anguish.

- 1        7. Notwithstanding chapter 28-01, an action commenced under this section must be  
2        brought:  
3        a. Within thirty years from the date the minor reaches eighteen years of age; or  
4        b. Within ten years of the minor's death if the minor is deceased.

5        **23-52-04. Public right of action.**

- 6        1. The attorney general shall establish a process by which violations of section 23-52-02  
7        may be reported.  
8        2. Within twenty years of the violation, the attorney general or appropriate state's  
9        attorney may investigate any alleged violation of section 23-52-02. If there is probable  
10       cause to believe that a violation has occurred, the attorney general or appropriate  
11       state's attorney may bring an action against a health care provider that knowingly  
12       violates section 23-52-02 to enjoin further violations, to disgorge any profits received  
13       due to the medical procedure or medication, and to recover a civil penalty of:  
14       a. Twenty-five thousand dollars per violation if the violation involved the surgical  
15       removal, modification, alteration, or entering of tissues, cavities, or organs of an  
16       individual; and  
17       b. Twenty thousand dollars per violation if the violation involved prescribing,  
18       administering, dispensing, or otherwise supplying any drug or device to an  
19       individual.  
20       3. A civil penalty collected under this section must be paid into the state general fund.  
21       4. The attorney general or appropriate state's attorney is entitled to reasonable attorney's  
22       fees, court costs, and expenses if the attorney general or state's attorney prevails in  
23       an action brought under this section.  
24       5. Jurisdiction for an action brought under this section is the district court in the judicial  
25       district serving Burleigh County or in the judicial district where the violation occurred.

26       **23-52-05. Health care provider licensing sanctions.**

- 27       A violation of section 23-52-02 constitutes a potential threat to public health, safety, and  
28       welfare and requires emergency action by an alleged violator's appropriate regulatory authority.  
29       Upon receiving notification pursuant to subsection 5 of section 23-52-03, or upon otherwise  
30       becoming aware of an alleged violation of section 23-52-02, the appropriate regulatory authority  
31       shall proceed with appropriate disciplinary action.

1        **23-52-06. Minor immunity.**

2        A minor upon whom a medical procedure is performed or to whom medication is  
3 administered may not be held liable for violating section 23-52-02.

4        **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.