



SPONSOR: Rep. Neal & Rep. Morrison & Rep. Heffernan &
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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 230

AN ACT TO AMEND TITLES 10, 13, 24, AND 31 OF THE DELAWARE CODE RELATING TO GENDER-AFFIRMING HEALTH CARE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 1702. Definitions.

4 The following definitions apply to this chapter unless otherwise expressly stated or implied by the context:

5 () “Gender-affirming health care” means medically necessary health care or mental health care that respects
6 the gender identity of the patient, as experienced and defined by the patient, and that may include any of the following:

7 a. Interventions to suppress the development of endogenous secondary sex characteristics.

8 b. Interventions to align the patient’s appearance or physical body with the patient’s gender identity.

9 c. Interventions to alleviate the patient’s symptoms of clinically significant distress resulting from gender
10 dysphoria as defined in the current version of the Diagnostic and Statistical Manual of Mental Disorders.

11 d. Developmentally appropriate exploration and integration of the patient’s gender identity, reduction of
12 the patient’s distress, adaptive coping, and strategies to increase family acceptance of the patient’s gender identity.

13 (15) “Reproductive health services” includes all of the following:

14 a. “Abortion” as defined in § 1782 of this title.

15 b. “Termination of pregnancy” as authorized in § 1790 of this title.

16 c. Emergency contraception that is approved by the Federal Drug Administration and available over-the-
17 counter, with a prescription, or dispensed consistent with the requirements of Chapter 25 of this title.

18 d. Services relating to pregnancy or the termination of pregnancy including medical, surgical, counseling,
19 or referral services.

20 e. Services relating to gender-affirming health care including medical, surgical, counseling, or referral
21 services.

Section 2. Amend § 3928, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3928. Limitations and protections against actions relating to the termination of ~~pregnancy~~; pregnancy and gender-affirming health care.

(a) A law of another state that authorizes a person to bring a civil action against a person that does any of the following is contrary to the public policy of this State:

(1) Terminates or seeks to terminate a pregnancy.

(2) Performs or induces the termination of pregnancy.

(3) Knowingly engages in conduct that aids or abets the performance or inducement of the termination of pregnancy.

(4) Attempts or intends to engage in the conduct described in paragraphs (a)(1) through (3) of this section.

(5) Provides medical, surgical, counseling, or referral services relating to gender-affirming health care as defined by § 1702 of Title 24.

(6) Attempts or intends to engage in the conduct described in paragraph (a)(5) of this section.

(b) The State shall not do any of the following:

(1) Apply any law described in subsection (a) of this section to any case or controversy heard in any court.

(2) Issue a summons in a case where prosecution is pending, or where a grand jury investigation has commenced, or is about to commence, for a criminal violation of a law described in subsection (a) of this section unless the acts forming the basis of the prosecution or investigation would constitute a crime in this State.

(3) Issue or enforce a subpoena for information or testimony issued by another state or government relating to a civil action described in subsection (a) of this section.

Section 3. Amend § 1920, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1920. Initial child custody jurisdiction.

(a) Except as otherwise provided in § 1923 of this title, a court of this State has jurisdiction to make an initial child custody determination only if:

(1) This State is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) A court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under § 1926 or § 1927 of this title; and

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under § 1926 or § 1927 of this title; or

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3) of this subsection.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

(c) Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

(d) The presence of a child in this State for the purpose of obtaining gender-affirming health care as defined under §1702 of Title 24, is sufficient to meet the requirements of paragraphs (a)(2)a. or (a)(2)b. of this section.

Section 4. Amend Chapter 19, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1923. Temporary emergency jurisdiction.

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and ~~the~~ any of the following apply:

(1) The child has been abandoned or it abandoned.

(2) It is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(3) The child's parent has been unable to obtain gender-affirming health care for the child. For purposes of this paragraph, "Gender-affirming health care" means as defined in § 1702 of Title 24.

§ 1926. Inconvenient forum.

(e) In a case where the provision of gender-affirming health care for a child is at issue, a court of this State shall not determine that this State is an inconvenient forum if the law or policy of the other state that may take jurisdiction limits the ability of a parent to obtain gender-affirming health care for the parent's child. "Gender-affirming health care" means as defined in § 1702 of Title 24.

§ 1942. Recognition and enforcement.

(a) A court of this State shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under subchapter II of this chapter.

(b) A court order for the removal of a child issued in another state because the child's parent or guardian assisted the child in receiving gender-affirming care, as defined in §1702 of Title 24, in this State may not be enforced in this State.

Section 5. Amend Chapter 3, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 382A. Application of laws; gender-affirming health care.

A law of another state that authorizes a state agency to remove a child from the child's parent or guardian because the parent or guardian allowed the child to receive gender-affirming health care, as defined in §1702 of Title 24, is against the public policy of this state and may not be enforced or applied in a case pending in a court in this State. A court order for the removal of a child issued in another state because the child's parent or guardian assisted the child in receiving gender-affirming care in this State may not be enforced in this State.

SYNOPSIS

This Act updates House Bill 455 from the 151st General Assembly by providing the same legal protections afforded providers of contraceptive and abortion services to providers of gender-affirming health care.

In summary, this Act does the following:

(1) Clarifies that medical professionals who provide gender-affirming health care cannot be disciplined for such services even if such services are illegal or considered to be unprofessional conduct or the unauthorized practice of medicine in another state, so long as such services are lawful in this State;

(2) Prohibits health care providers from disclosing communications and records concerning gender-affirming health care without the patient's authorization, with some exceptions;

(3) Protects health care providers from out-of-state civil actions relating to gender-affirming health care treatment that is legal in Delaware, including the issuance of a summons or the enforcement of subpoenas relating to such cases;

(4) Creates a cause of action for recoupation of out-of-state judgments relating to gender-affirming services that are lawful in Delaware; and

(5) Prohibits insurance companies from taking any adverse action against health care professionals who provide gender-affirming health care services.

This Act further gives jurisdiction to the Family Courts to determine custody disputes when a child is in the State to receive gender-affirming health care, and the provision of gender-affirming health-care is at issue in the custody dispute. It also prohibits the state from enforcing an out-of-state court order that removes a child from a parent because the parent allows the child to receive gender-affirming health care