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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 65

AN ACT TO AMEND TITLES 24 AND 29 OF THE DELAWARE CODE RELATING TO CONVERSION THERAPY.

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

1 Section 1. The General Assembly finds and declares all of the following:

2 (1) The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses
3 to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual
4 orientation change efforts and issued a report in 2009. The task force concluded that sexual orientation change efforts
5 can pose critical health risks to individuals who are lesbian, gay, or bisexual, including confusion, depression, guilt,
6 helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame,
7 decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of
8 anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual
9 dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense
10 of having wasted time and resources.

11 (2) The American Psychological Association issued a resolution on Appropriate Affirmative Responses to
12 Sexual Orientation Distress and Change Efforts in 2009, which states: “[T]he [American Psychological Association]
13 advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray
14 homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and
15 educational services that provide accurate information on sexual orientation and sexuality, increase family and school
16 support, and reduce rejection of sexual minority youth.”

17 (3) The American Psychiatric Association published a position statement in March of 2000 in which it stated
18 the following:

19 “Psychotherapeutic modalities to convert or ‘repair’ homosexuality are based on developmental theories
20 whose scientific validity is questionable. Furthermore, anecdotal reports of ‘cures’ are counterbalanced by anecdotal
21 claims of psychological harm. In the last four decades, ‘reparative’ therapists have not produced any rigorous scientific
22 research to substantiate their claims of cure. Until there is such research available, [the American Psychiatric

23 Association] recommends that ethical practitioners refrain from attempts to change individuals' sexual orientation,
24 keeping in mind the medical dictum to First, do no harm. . .

25 The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior,
26 since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced
27 by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that
28 homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the
29 person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor
30 are alternative approaches to dealing with the effects of societal stigmatization discussed. . .

31 Therefore, [the American Psychiatric Association] opposes any psychiatric treatment, such as 'reparative' or
32 'conversion' therapy, that is based upon the assumption that homosexuality per se is a mental disorder or is based on
33 the a priori assumption that a patient should change his or her sexual homosexual orientation."

34 (4) The American School Counselor Association's 2014 position statement on professional school counselors
35 and lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) youth states: "[T]he professional school counselor
36 works with all students through the stages of identity development and understands this may be more difficult for
37 LGBTQ youth. It is not the role of the professional school counselor to attempt to change a student's sexual orientation
38 or gender identity. Professional school counselors do not support efforts by licensed mental health professionals to
39 change a student's sexual orientation or gender as these practices have been proven ineffective and harmful (APA,
40 2009). School counselors provide support to LGBTQ students to promote academic achievement and personal/social
41 development. Professional school counselors are committed to the affirmation of all youth regardless of sexual
42 orientation, gender identity and gender expression and work to create safe and affirming schools."

43 (5) The American Academy of Pediatrics in 1993 published an article in its journal, Pediatrics, stating:
44 "Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety
45 while having little or no potential for achieving changes in orientation."

46 (6) The American Medical Association Council on Scientific Affairs prepared a report in 1994 in which it
47 stated: "[A]version therapy (a behavioral or medical intervention which punishes unwanted behavior, in this case,
48 homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men
49 and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and
50 understand the societal response to it."

51 (7) The National Association of Social Workers prepared a policy statement in 2000 in which it stated:
52 "[P]roponents of reparative and conversion therapies, such as the most commonly cited group NARTH, claim that their

53 processes are supported by scientific data; however, such scientific support is replete with confounded research
54 methodologies . . . [Reparative and conversion therapies] cannot and will not change sexual orientation. Aligned with
55 the American Psychological Association's (1997) position, NCLGB [National Committee on Lesbian, Gay, and
56 Bisexual Issues, NASW] believes that such treatment potentially can lead to severe emotional damage."

57 (8) The American Counseling Association Governing Council issued a position statement in April of 1999,
58 and in it the council states: "We oppose 'the promotion of "reparative therapy" as a "cure" for individuals who are
59 homosexual."

60 (9) The American Psychoanalytic Association issued a position statement in June 2012 on attempts to change
61 sexual orientation, gender, identity, or gender expression, and in it the association states: "As with any societal
62 prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity, or gender
63 expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism
64 through the internalization of such prejudice.

65 Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an
66 individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental
67 principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging
68 internalized attitudes."

69 (10) The American Academy of Child and Adolescent Psychiatry in 2012 published an article in its journal,
70 Journal of the American Academy of Child and Adolescent Psychiatry, stating: "Clinicians should be aware that there
71 is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful. . .
72 There is no empirical evidence that adult homosexuality can be prevented if gender nonconforming children are
73 influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent
74 homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine
75 self-esteem, connectedness and caring, which are important protective factors against suicidal ideation and attempts. . .
76 Given that there is no evidence that efforts to alter sexual orientation are effective, beneficial, or necessary, and the
77 possibility that they carry the risk of significant harm, such interventions are contraindicated."

78 (11) The Pan American Health Organization, a regional office of the World Health Organization, issued a
79 statement in May of 2012 and in it the organization states: "These supposed conversion therapies constitute a violation
80 of the ethical principles of health care and violate human rights that are protected by international and regional
81 agreements." The organization also noted that reparative therapies "lack medical justification and represent a serious
82 threat to the health and well-being of affected people."

83 (12) The American Association of Sexuality Educators, Counselors, and Therapists issued a statement in 2017
84 stating: “The American Association of Sexuality Educators, Counselors, and Therapists (AASECT) takes the position
85 that having non-heterosexual sexual orientation, that being transgender and that being gender non-conforming, are not
86 mental disorders. We oppose any ‘reparative’ or conversion therapy that seeks to ‘change’ or ‘fix’ a person’s sexual
87 orientation, gender identity or gender expression. AASECT does not believe that non-heterosexual sexual orientation
88 or being transgender or gender non-conforming is something that needs to be ‘fixed’ or ‘changed.’ The rationale
89 behind this position is the following: Reparative therapy (for minors, in particular) is often forced or non-consensual.
90 Reparative therapy has been proven harmful to minors. There is no scientific evidence supporting the success of these
91 interventions. Reparative therapy is grounded in the idea that non-heterosexual orientation, transgender gender identity
92 and gender non-conforming expressions are ‘disordered.’ Reparative therapy has been shown to be a negative predictor
93 of psychotherapeutic benefit.”

94 (13) The American College of Physicians wrote a position paper in 2015 stating: “The College opposes the
95 use of ‘conversion,’ ‘reorientation,’ or ‘reparative’ therapy for the treatment of LGBT persons. . . . Available research
96 does not support the use of reparative therapy as an effective method in the treatment of LGBT persons. Evidence
97 shows that the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or
98 young persons.”

99 (14) Children who experience family rejection based on their sexual orientation face especially serious health
100 risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during
101 adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels
102 of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in
103 unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection.
104 This is documented by Caitlin Ryan et al. in their article entitled Family Rejection as a Predictor of Negative Health
105 Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics 346.

106 (15) Delaware has a compelling interest in protecting the physical and psychological well-being of children,
107 including lesbian, gay, bisexual, and transgender children, and in protecting its children against exposure to serious
108 harms caused by conversion therapy.

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

111 § 1702. Definitions.

112 The following definitions apply to this chapter unless otherwise expressly stated or implied by the ~~context~~.
113 context:

114 (3) “Conversion therapy” means any practice or treatment that seeks to change an individual’s sexual orientation
115 or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of Title 19, including any effort to
116 change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward
117 individuals of the same gender. “Conversion therapy” does not mean any of the following:

118 a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or
119 who is in the process of undergoing gender transition.

120 b. Counseling that provides an individual with acceptance, support, and understanding without seeking to
121 change an individual’s sexual orientation or gender identity.

122 c. Counseling that facilitates an individual’s coping, social support, and identity exploration and
123 development, including counseling in the form of sexual orientation-neutral interventions or gender identity-
124 neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual
125 practices, without seeking to change an individual’s sexual orientation or gender identity.

126 Section 3. Amend § 1731, Title 24 of the Delaware Code by making deletions as shown by strike through and
127 insertions as shown by underline as follows:

128 § 1731. Unprofessional conduct and inability to practice medicine.

129 (a) A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the
130 Board for unprofessional conduct, as defined in subsection (b) of this section, by means of levying a fine, or by the
131 restriction, suspension, or revocation, either permanent or temporary, of that person's certificate to practice medicine, or by
132 other appropriate action, which may include a requirement that a person who is disciplined must complete specified
133 continuing education courses. The Board shall permanently revoke the certificate to practice medicine in this State of a
134 person who is convicted of a felony sexual offense.

135 (b) “Unprofessional conduct” includes ~~but is not limited to~~ any of the following acts or omissions:

136 (22) Wilful failure to report to the Board when required by § 1731A of this title; ~~and~~

137 (23) Wilful failure to comply with § 1769B of this ~~title~~-title;

138 (24) Engaging in conversion therapy with a child; and

139 (25) Referring a child to a provider in another jurisdiction to receive conversion therapy.

140 Section 4. Amend § 1902, Title 24 of the Delaware Code by making deletions as shown by strike through and
141 insertions as shown by underline as follows and by redesignating accordingly:

142 § 1902. Definitions.

143 (g) “Conversion therapy” means any practice or treatment that seeks to change an individual’s sexual orientation
144 or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of Title 19, including any effort to
145 change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward
146 individuals of the same gender. “Conversion therapy” does not mean any of the following:

147 (1) Counseling that provides assistance to an individual who is seeking to undergo a gender transition or who
148 is in the process of undergoing gender transition.

149 (2) Counseling that provides an individual with acceptance, support, and understanding without seeking to
150 change an individual’s sexual orientation or gender identity.

151 (3) Counseling that facilitates an individual’s coping, social support, and identity exploration and
152 development, including counseling in the form of sexual orientation-neutral interventions or gender identity-neutral
153 interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, without
154 seeking to change an individual’s sexual orientation or gender identity.

155 Section 5. Amend § 1922, Title 24 of the Delaware Code by making deletions as shown by strike through and
156 insertions as shown by underline as follows:

157 § 1922. Disciplinary proceedings; appeal.

158 (a) Grounds. — The Board may impose any of the following sanctions (subsection (b) of this section) singly or in
159 combination when it finds a licensee or former licensee is guilty of any offense described herein, except that the license of
160 any licensee who is convicted of a felony sexual offense shall be permanently revoked:

161 (10) Has failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto; or

162 (11) Has failed to report to the Division of Professional Regulation as required by § 1930 of this ~~title~~-title;

163 (12) Has engaged in conversion therapy with a child; or

164 (13) Has referred a child to a provider in another jurisdiction to receive conversion therapy.

165 Section 6. Amend § 3002, Title 24 of the Delaware Code by making deletions as shown by strike through and
166 insertions as shown by underline as follows and by redesignating accordingly:

167 § 3002. Definitions.

168 The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them
169 under this section, except where the context clearly indicates a different meaning:

170 (2) “Conversion therapy” means any practice or treatment that seeks to change an individual’s sexual
171 orientation or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of Title 19, including

172 any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings
173 toward individuals of the same gender. “Conversion therapy” does not mean any of the following:

174 a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or
175 who is in the process of undergoing gender transition.

176 b. Counseling that provides an individual with acceptance, support, and understanding without seeking to
177 change an individual’s sexual orientation or gender identity.

178 c. Counseling that facilitates an individual’s coping, social support, and identity exploration and
179 development, including counseling in the form of sexual orientation-neutral interventions or gender identity-
180 neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual
181 practices, without seeking to change an individual’s sexual orientation or gender identity.

182 Section 7. Amend § 3009, Title 24 of the Delaware Code by making deletions as shown by strike through and
183 insertions as shown by underline as follows:

184 § 3009. Grounds for discipline.

185 (a) A person licensed under this chapter is subject to the disciplinary sanctions set forth in § 3011 of this title if,
186 after a hearing, the Board finds that the licensee has:

187 (11) Engaged in conversion therapy with a child.

188 (12) Referred a child to a provider in another jurisdiction to receive conversion therapy.

189 Section 8. Amend § 3502, Title 24 of the Delaware Code by making deletions as shown by strike through and
190 insertions as shown by underline as follows and by redesignating accordingly:

191 § 3502. Definitions.

192 The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them under
193 this section, except where the context clearly indicates a different meaning:

194 (2) “Conversion therapy” means any practice or treatment that seeks to change an individual’s sexual
195 orientation or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of Title 19, including
196 any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings
197 toward individuals of the same gender. “Conversion therapy” does not mean any of the following:

198 a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or
199 who is in the process of undergoing gender transition.

200 b. Counseling that provides an individual with acceptance, support, and understanding without seeking to
201 change an individual’s sexual orientation or gender identity.

202 c. Counseling that facilitates an individual’s coping, social support, and identity exploration and
203 development, including counseling in the form of sexual orientation-neutral interventions or gender identity-
204 neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual
205 practices, without seeking to change an individual’s sexual orientation or gender identity.

206 Section 9. Amend § 3510, Title 24 of the Delaware Code by making deletions as shown by strike through and
207 insertions as shown by underline as follows:

208 § 3510. Licensing or registration under special conditions; interstate practice of psychology.

209 (d) A person practicing psychology in this State, under this section, may not engage in conversion therapy with a
210 child or refer a child to a provider in another jurisdiction to receive conversion therapy.

211 Section 10. Amend § 3514, Title 24 of the Delaware Code by making deletions as shown by strike through and
212 insertions as shown by underline as follows:

213 § 3514. Grounds for refusal, revocation or suspension of licenses and registrations.

214 (a) A practitioner licensed or registered under this chapter shall be subject to disciplinary actions set forth in §
215 3516 of this title, if, after a hearing, the Board finds that the psychologist or psychological assistant:

216 (11) Failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto; ~~or~~

217 (12) Failed to report to the Division of Professional Regulation as required by § 3518A of this ~~title~~ title;

218 (13) Has engaged in conversion therapy with a child; or

219 (14) Has referred a child to a provider in another jurisdiction to receive conversion therapy.

220 Section 11. Amend § 3902, Title 24 of the Delaware Code by making deletions as shown by strike through and
221 insertions as shown by underline as follows and by redesignating accordingly:

222 § 3902. Definitions.

223 The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in
224 this section, except where the context clearly indicates a different meaning:

225 (3) “Conversion therapy” means any practice or treatment that seeks to change an individual’s sexual
226 orientation or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of Title 19, including
227 any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings
228 toward individuals of the same gender. “Conversion therapy” does not mean any of the following:

229 a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or
230 who is in the process of undergoing gender transition.

231 b. Counseling that provides an individual with acceptance, support, and understanding without seeking to
232 change an individual’s sexual orientation or gender identity.

233 c. Counseling that facilitates an individual’s coping, social support, and identity exploration and
234 development, including counseling in the form of sexual orientation-neutral interventions or gender identity-
235 neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual
236 practices, without seeking to change an individual’s sexual orientation or gender identity.

237 Section 12. Amend § 3915, Title 24 of the Delaware Code by making deletions as shown by strike through and
238 insertions as shown by underline as follows:

239 § 3915. Grounds for discipline; procedure.

240 (a) Practitioners regulated under this chapter shall be subject to those disciplinary actions set forth in § 3916 of this
241 title if, after a hearing, the Board finds that the practitioner has:

242 (9) Failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto;

243 (10) Failed to report to the Division of Professional Regulation as required by § 3919 of this ~~title~~ title;

244 (11) Engaged in conversion therapy with a child;

245 (12) Referred a child to a provider in another jurisdiction to receive conversion therapy.

246 Section 13. Amend § 9003, Title 29 of the Delaware Code by making deletions as shown by strike through and
247 insertions as shown by underline as follows:

248 § 9003. Powers, duties and functions.

249 (a) The Department of Services for Children, Youth and Their Families shall have the following powers, duties
250 and functions:

251 (b)(1) For purposes of this subsection, “conversion therapy” means any practice or treatment that seeks to change
252 an individual’s sexual orientation or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of
253 Title 19, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic
254 attractions or feelings toward individuals of the same gender. For purposes of this subsection, “conversion therapy” does
255 not mean any of the following:

256 a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or
257 who is in the process of undergoing gender transition.

258 b. Counseling that provides an individual with acceptance, support, and understanding without seeking to
259 change an individual’s sexual orientation or gender identity.

260 c. Counseling that facilitates an individual's coping, social support, and identity exploration and
261 development, including counseling in the form of sexual orientation-neutral interventions or gender identity-
262 neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual
263 practices, without seeking to change an individual's sexual orientation or gender identity.

264 (2) The Department may not engage in conversion therapy with a child or recommend that a child receive
265 conversion therapy.

SYNOPSIS

Conversion therapy is a practice or treatment that seeks to change an individual's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy has been rejected by all mainstream medical and mental health organizations, and there is no credible evidence that it is effective. Moreover, this practice poses enormous health risks to LGBTQ youth, including an increased sense of shame, guilt, hopelessness, stress, and anger, thus increasing the risk of anxiety, depression, and self-harm. The harm done by conversion therapy can last well into adulthood.

Therefore, this Act makes it unprofessional conduct or a ground for discipline for individuals granted a certificate to practice medicine under Chapter 17 of Title 24 or licensed under Chapter 19 of Title 24 (regarding nurses), Chapter 30 of Title 24 (regarding mental health and chemical dependency professionals), Chapter 35 of Title 24 (regarding psychologists), and Chapter 39 of Title 24 (regarding clinical social work examiners) to engage in conversion therapy with a child or to refer a child to a practitioner in another jurisdiction to receive conversion therapy. This Act also prevents the Department of Services for Children, Youth and Their Families from engaging in conversion therapy with a child or recommending that a child receive conversion therapy.

Additionally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator McDowell