MISSISSIPPI LEGISLATURE

By: Senator(s) Hill

REGULAR SESSION 2021

To: Public Health and Welfare; Accountability, Efficiency, Transparency

SENATE BILL NO. 2171

AN ACT TO CREATE THE TRANSGENDER 21 ACT; TO PROHIBIT THE STATE, ITS AGENTS, AND POLITICAL SUBDIVISION FROM INFRINGING ON A PARENT'S RIGHT TO WITHHOLD CONSENT FOR ANY TREATMENT, ACTIVITY OR MENTAL HEALTHCARE SERVICES THAT ARE DESIGNED AND INTENDED TO FORM THEIR CHILD'S CONCEPTIONS OF SEX AND GENDER OR TO TREAT GENDER DYSPHORIA OR GENDER NONCONFORMITY; TO PROHIBIT CERTAIN MEDICAL PROCEDURES FROM BEING PERFORMED UPON A MINOR; TO PROVIDE A PENALTY FOR ANY MEDICAL PROFESSION WHO PERFORMS CERTAIN MEDICAL PROCEDURES UPON A MINOR; TO PROVIDE A GOOD-FAITH EXCEPTION FOR A MINOR BORN WITH A MEDICALLY VERIFIABLE GENETIC DISORDER OF SEXUAL DEVELOPMENT; TO PROHIBIT ANY STATE AGENCY, POLITICAL SUBDIVISION OR LICENSING ORGANIZATION FROM FORBIDDING, PENALIZING OR TAKING ADVERSE ACTION AGAINST AN INDIVIDUAL WHO GIVES OR RECEIVES COUNSEL, ADVICE, GUIDANCE OR OTHER SPEECH OR COMMUNICATION CONSISTENT WITH CONSCIENCE OR RELIGIOUS BELIEF; TO PROVIDE THAT NO INDIVIDUAL SHALL BE DISCRIMINATED AGAINST FOR PROVIDING INFORMATION ABOUT A VIOLATION OF THIS ACT TO CERTAIN AUTHORITIES; TO PROVIDE A PRIVATE CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT; TO PREEMPT POLITICAL SUBDIVISIONS FROM PROMULGATING RULES OR REGULATIONS THAT LIMITS THE PROFESSIONAL CONDUCT AND JUDGMENT OF A MENTAL HEALTHCARE PROFESSIONAL OR COUNSELOR; TO PROVIDE THAT THE PROVISIONS OF THIS ACT ARE SEVERABLE; AND FOR RELATED PURPOSES.

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

SECTION 1. Short title. This act shall be known and may be cited as the "Transgender 21 Act."

SECTION 2. Legislative findings and intent. (1) The Legislature finds:

S. B. No. 2171 21/SS26/R493 ~ OFFICIAL ~ G1/2
PAGE 1 (scn\lr)
(a) That the decision to pursue a course of hormonal and surgical interventions to address a discordance between an individual's sex and sense of identity should not be presented to or determined for minors who are incapable of comprehending the negative implications and life-altering difficulties attending to these interventions; and

(b) That minors are unable to fully appreciate the risks and life implications, including permanent sterility that result from the use of puberty blockers, cross-sex hormones, and surgical procedures.

(2) Therefore, it is the intent of the Mississippi Legislature, through this act and any regulations and policies promulgated under it, to protect minors from the administration of puberty blockers, cross-sex hormones, surgical procedures and other interventions properly made by an adult exercising informed consent.

SECTION 3. Definitions. For the purpose of this act:

(a) "Medical professional" means any physician, surgeon, physician assistant, nurse, clinical nurse specialist, nurse practitioner, anesthetist, psychiatrist, or medical assistant licensed under Mississippi law.

(b) "Mental healthcare professional or counselor" means any licensed medical, mental health, or human services professional licensed under Mississippi law, including any psychologist, social worker, psychiatric nurse, allied mental
health and human services professional, licensed marriage and family therapist, licensed rehabilitation counselor, licensed mental health counselor, licensed educational psychologist, or any of their respective interns or trainees, or any other person designated or licensed as a mental health or human service professional, or behavioral science professional under Mississippi law who provides mental healthcare services or counseling.

(c) "Government agent" means any agent, employee, volunteer, or contractor of a public child services agency, private child-placing agency, court, or school district.

(d) "Minor" means any child below the age of twenty-one (21).

(e) "Political subdivision" means any division of local government, county, city, assessment district, municipal corporation, special purpose district, board, department, commission or any division of local government delegated the right to exercise part of the sovereign power of that subdivision.

(f) "Sex" means the biological state of being female or male, based on sex organs, chromosomes, and endogenous hormone profiles.

SECTION 4. Protection of parental rights. (1) Parents, guardians, or custodians, in exercising the fundamental right to care for their child, may withhold consent for any treatment, activity, or mental healthcare services that are designed and intended to form their child's conceptions of sex and gender or to
treat gender dysphoria or gender nonconformity. The state, its
agents, and political subdivisions shall not infringe upon or
impede the exercise of this right.

(2) No government agent, nor any employee of this state, any
political subdivision of this state, or any other governmental
entity, except for law enforcement personnel, shall encourage or
coerce a minor to withhold information from the minor's parent.
Nor shall any such employee withhold from a minor's parents
information that is relevant to the physical or mental health of
their child and of a sort that parents interested in and
responsible for the well-being of a minor reasonably would demand
and should be apprised of. Such conduct shall be grounds for
discipline of the employee, in addition to any other remedies
provided to a parent under this act.

(3) If a government agent has knowledge that a minor under
its care or supervision has exhibited symptoms of gender
dysphoria, gender nonconformity, or otherwise demonstrates a
desire to be treated in a manner incongruent with the minor's sex,
the government agent or entity with knowledge of that circumstance
shall immediately notify, in writing, each of the minor's parents,
guardians, or custodians. The notice shall describe all of the
relevant circumstances with reasonable specificity.

SECTION 5. Prohibited practices. (1) Notwithstanding any
other provision of law, it shall be unlawful for any individual to
engage in any of the following practices upon a minor, or cause
them to be performed, to facilitate the minor's desire to present
or appear in a manner that is inconsistent with the minor's sex:
  (a) Performing surgeries that sterilize, including
  castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty,
  orchietomy, penectomy, phalloplasty, and vaginoplasty;
  (b) Performing a mastectomy;
  (c) Administering or supplying the following
medications that induce transient or permanent infertility:
  (i) Puberty-blocking medication to stop or delay
  normal puberty;
  (ii) Supraphysiologic doses of testosterone or
  other androgens to members of the female sex; or
  (iii) Supraphysiologic doses of estrogen or
  synthetic compounds with estrogenic activity to members of the
  male sex; or
  (d) Removing any otherwise healthy or nondiseased body
  part or tissue.
(2) A medical professional who engages in any of the
practices identified in subsection (1)(a) of this section or
causes them to be performed shall be considered to have engaged in
unprofessional conduct and shall be subject to revocation of
licensure and other appropriate discipline by the medical
professional's licensing or certifying board. The medical
professional shall also be subject to a civil fine of up to One
Thousand Dollars ($1,000.00) per occurrence.
(3) This section does not apply to the good-faith medical decision of a parent or guardian of a minor born with a medically verifiable genetic disorder of sexual development, including:

(a) A minor with external biological sex characteristics that are ambiguous and irresolvable, such as a minor born having 46 XX chromosomes with virilization, 46 XY chromosomes with undervirilization, or having both ovarian and testicular tissue; or

(b) When a physician has otherwise diagnosed a disorder of sexual development, in which the physician has determined through genetic testing that the minor does not have the normal sex chromosome structure for a male or female.

SECTION 6. Counseling. A state office, agency, political subdivision of the state, local government, or any organization with authority to license or discipline the members of a profession may not prohibit, impose any penalty or take any adverse action against any individual who gives or receives counsel, advice, guidance or any other speech or communication consistent with conscience or religious belief whether or not the counsel, advice, guidance, speech or communication is described as therapy or provided for a fee.

SECTION 7. Whistleblower protection. (1) No person shall be discriminated against in any manner because the person:

(a) Provided, caused to be provided, or is about to provide or cause to be provided to his or her employer, the
Attorney General of Mississippi, the Mississippi Department of Health, the Mississippi State Board of Medical Licensure, any state agency charged with protecting health care rights of conscience, the United States Department of Health and Human Services, Office of Civil Rights, or any other federal agency information relating to any violation of, or any act or omission the individual reasonably believes to be a violation of any provision of this act;

(b) Testified or is about to testify in a proceeding concerning such violation; or

(c) Assisted or participated, or is about to assist or participate, in such a proceeding.

(2) Unless the disclosure is specifically prohibited by law, no person shall be discriminated against in any manner because the individual disclosed information that the individual believes evinces, pursuant to this act:

(a) A violation of any law, rule, or regulation;

(b) A violation of any standard of care or other ethical guidelines for the provision of any healthcare service; or

(c) Gross mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety.

SECTION 8. Judicial relief. (1) Any person harmed by a violation of Section 4 of this act may bring a claim to obtain injunctive relief, compensatory and special damages, and any other
relief available under law against the clinic, healthcare system, medical professional or other person responsible for the violation.

(2) Any person harmed by a violation of Section 5, 6 or 7 of this act may bring a claim to obtain injunctive relief, compensatory and special damages, and any other relief available under law against a government agent, state office, agency, any political subdivision of the state, any local government or any other person or entity responsible for the violation.

(3) A person shall be required to bring suit for violation of this section not later than two (2) years after the day the cause of action accrues. Minors injured by practices prohibited under Section 3 of this act may bring an action during their minority through a parent or next friend, and may bring an action in their own name upon reaching the age of twenty-one (21) years at any time from that point until twenty (20) years after.

(4) Standing to assert a claim or defense under this section shall be governed by the general rules of standing.

(5) Persons who prevail on a claim brought pursuant to this section shall be entitled to monetary damages, including for all psychological, emotional, and physical harm suffered, reasonable attorney fees and costs, and any other appropriate relief.

**SECTION 9. Preemption.** (1) Political subdivisions of this state are preempted from enacting, adopting, maintaining, or enforcing any order, ordinance, rule, regulation, policy, or other
similar measure that prohibits, restricts, limits, controls, directs, or otherwise interferes with the professional conduct and judgment of a mental healthcare professional or counselor, including speech, undertaken within the course of treatment and communication with clients, patients, other persons, or the public, including, but not limited to, therapies, counseling, referrals and education.

(2) The Attorney General or a mental healthcare professional or counselor may bring an action for an injunction to prevent or restrain violations of this section. A mental healthcare professional may recover reasonable costs and attorney's fees incurred in obtaining an injunction under this section.

(3) Sovereign and governmental immunity to suit and from liability is waived and abolished to the extent of the liability created by this section.

SECTION 10. Severability. Any provision of this act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be severable and shall not affect the application of the remainder of the act, the application of such provision to other persons not similarly situated or the application of such provision to other, dissimilar circumstances.
SECTION 11. This act shall take effect and be in force from and after July 1, 2021.