

118TH CONGRESS
1ST SESSION

H. R. 1399

To amend chapter 110 of title 18, United States Code, to prohibit gender-affirming care on minors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2023

Ms. GREENE of Georgia (for herself, Mrs. MILLER of Illinois, Mr. GOSAR, Mr. GOODEN of Texas, Mr. GROTHMAN, Mr. DUNCAN, Mrs. LUNA, Mrs. HARSHBARGER, Mr. NORMAN, Mr. NEHLS, Mr. GOOD of Virginia, Mr. HERN, Mr. ROSENDALE, Mr. BABIN, Mr. LAMBORN, Mr. HIGGINS of Louisiana, Mr. STEUBE, Ms. HAGEMAN, Mrs. LESKO, and Mr. BIGGS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Energy and Commerce, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend chapter 110 of title 18, United States Code, to prohibit gender-affirming care on minors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect Children’s In-
5 nocence Act”.

1 **TITLE I—GENDER-AFFIRMING**
2 **CARE ON MINORS PROHIBITED**

3 **SEC. 101. GENDER-AFFIRMING CARE ON MINORS PROHIB-**
4 **ITED.**

5 Chapter 110 of title 18, United States Code, is
6 amended—

7 (1) by adding at the end the following:

8 **“§ 2260B. Gender-affirming care on minors**

9 “(a) IN GENERAL.—Whoever, in any circumstance
10 described in subsection (e), knowingly performs any gen-
11 der-affirming care on a minor is guilty of a class C felony.

12 “(b) PROHIBITION ON PROSECUTION OF PERSON ON
13 WHOM INTERVENTION IS PERFORMED.—No person on
14 whom the gender-affirming care under subsection (a) is
15 performed may be arrested or prosecuted for an offense
16 under this section.

17 “(c) CIVIL ACTION.—A person on whom gender-af-
18 firming care is performed under this section may bring
19 a civil action for appropriate relief, including compen-
20 satory and punitive damages, against each person who
21 performed the gender-affirming care.

22 “(d) DEFINITIONS.—In this section:

23 “(1) GENDER-AFFIRMING CARE.—

24 “(A) IN GENERAL.—For purposes of this
25 chapter, except as provided in subparagraph

1 (B), the term ‘gender-affirming care’ means,
2 with respect to an individual, any of the fol-
3 lowing:

4 “(i) Performing any surgery for the
5 purpose of changing the body of such indi-
6 vidual to correspond to a sex that differs
7 from their biological sex, including—

8 “(I) castration;

9 “(II) orchiectomy;

10 “(III) scrotoplasty;

11 “(IV) vasectomy;

12 “(V) hysterectomy;

13 “(VI) oophorectomy;

14 “(VII) ovariectomy;

15 “(VIII) metoidioplasty;

16 “(IX) penectomy;

17 “(X) phalloplasty;

18 “(XI) vaginoplasty;

19 “(XII) vaginectomy;

20 “(XIII) vulvoplasty;

21 “(XIV) reduction

22 thyrochondroplasty;

23 “(XV) chondrolaryngoplasty; and

24 “(XVI) mastectomy.

1 “(ii) Any plastic surgery that femi-
2 nizes or masculinizes the facial features for
3 the purposes described in clause (i).

4 “(iii) Any placement of chest implants
5 to create feminine breasts for the purposes
6 described in clause (i).

7 “(iv) Any placement of fat or artificial
8 implants in the gluteal region for the pur-
9 poses described in clause (i).

10 “(v) Administering, supplying, pre-
11 scribing, dispensing, distributing, or other-
12 wise conveying to an individual medications
13 for the purposes described in clause (i), in-
14 cluding—

15 “(I) gonadotropin-releasing hor-
16 mone (GnRH) analogues or other pu-
17 berty-blocking drugs to stop or delay
18 normal puberty;

19 “(II) testosterone or other
20 androgens to biological females at
21 doses that are supraphysiologic to the
22 female sex; and

23 “(III) estrogen to biological
24 males at doses that are
25 supraphysiologic to the male sex.

1 “(B) EXCEPTION.—Subparagraph (A)
2 shall not apply to the following individuals:

3 “(i) An individual with both ovarian
4 and testicular tissue.

5 “(ii) An individual with respect to
6 whom a physician has determined through
7 genetic or biochemical testing that the in-
8 dividual does not have normal sex chro-
9 mosome structure, sex steroid hormone
10 production, or sex steroid hormone action.

11 “(iii) An individual experiencing infec-
12 tion, disease, injury, or disorder caused or
13 exacerbated by previous gender transition
14 procedures.

15 “(iv) An individual suffering from a
16 physical disorder, physical injury, or phys-
17 ical illness that would, as certified by a
18 physician, place the individual in imminent
19 danger of death or impairment of a major
20 bodily function unless the procedure is per-
21 formed.

22 “(2) BIOLOGICAL SEX.—The term ‘biological
23 sex’ means the indication of male or female sex by
24 reproductive potential or capacity, sex chromosomes,

1 naturally occurring sex hormones, gonads, or inter-
2 nal or external genitalia present at birth.

3 “(3) MINOR.—The term ‘minor’ means any per-
4 son under the age of eighteen years.

5 “(e) CIRCUMSTANCES DESCRIBED.—For purposes of
6 subsection (a), the circumstances described in this sub-
7 section are that—

8 “(1) the defendant or victim traveled in inter-
9 state or foreign commerce, or traveled using a
10 means, channel, facility, or instrumentality of inter-
11 state or foreign commerce, in furtherance of or in
12 connection with the conduct described in subsection
13 (a);

14 “(2) the defendant used a means, channel, fa-
15 cility, or instrumentality of interstate or foreign
16 commerce in furtherance of or in connection with
17 the conduct described in subsection (a);

18 “(3) any payment of any kind was made, di-
19 rectly or indirectly, in furtherance of or in connec-
20 tion with the conduct described in subsection (a)
21 using any means, channel, facility, or instrumen-
22 tality of interstate or foreign commerce or in or af-
23 fecting interstate or foreign commerce;

24 “(4) the defendant transmitted in interstate or
25 foreign commerce any communication relating to or

1 in furtherance of the conduct described in subsection
2 (a) using any means, channel, facility, or instrumen-
3 tality of interstate or foreign commerce or in or af-
4 fecting interstate or foreign commerce by any means
5 or in manner, including by computer, mail, wire, or
6 electromagnetic transmission;

7 “(5) any instrument, item, substance, or other
8 object that has traveled in interstate or foreign com-
9 merce was used to perform the conduct described in
10 subsection (a);

11 “(6) the conduct described in subsection (a) oc-
12 curred within the special maritime and territorial ju-
13 risdiction of the United States, or any territory or
14 possession of the United States; or

15 “(7) the conduct described in subsection (a)
16 otherwise occurred in or affected interstate or for-
17 eign commerce.

18 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed as prohibiting provision of the med-
20 ical services described in subsection (d)(1)(A) to address
21 legitimate health issues, such as any male or female repro-
22 ductive cancers, apart from changing the body to cor-
23 respond to a sex that differs from one’s biological sex.”;
24 and

1 (2) by amending the table of sections for such
2 chapter by adding at the end the following:

“2260B. Gender-affirming care on minors.”.

3 **TITLE II—PROHIBITING FEDER-**
4 **ALLY FUNDED GENDER-AF-**
5 **FIRMING CARE**

6 **SEC. 201. PROHIBITING TAXPAYER-FUNDED GENDER-AF-**
7 **FIRMING CARE.**

8 Title 1, United States Code, is amended by adding
9 at the end the following new chapter:

10 **“CHAPTER 4—PROHIBITING TAXPAYER-**
11 **FUNDED GENDER-AFFIRMING CARE**

“301. Prohibition on funding for gender-affirming care.

“302. Prohibition on funding for health benefits plans that cover gender-affirming care.

“303. Limitation on Federal facilities and employees, Federal lands and territories, and Tribal territories.

“304. Construction relating to separate coverage.

“305. Construction relating to the use of non-Federal funds for health coverage.

“306. Construction relating to complications arising from gender-affirming care.

“307. Treatment of individuals born with medically verifiable disorder of sex development.

“308. Gender-affirming care defined.

“309. Rule of construction.

12 **“§ 301. Prohibition on funding for gender-affirming**
13 **care**

14 “No funds authorized or appropriated by Federal
15 law, and none of the funds in any trust fund to which
16 funds are authorized or appropriated by Federal law, in-
17 cluding funds provided under titles XVIII, XIX, and XXI
18 of the Social Security Act, shall be expended for any gen-
19 der-affirming care.

1 **“§ 302. Prohibition on funding for health benefits**
2 **plans that cover gender-affirming care**

3 “No funds authorized or appropriated by Federal
4 law, and none of the funds in any trust fund to which
5 funds are authorized or appropriated by Federal law, shall
6 be expended for health benefits coverage that includes cov-
7 erage of gender-affirming care.

8 **“§ 303. Limitation on Federal facilities and employ-**
9 **ees, Federal lands and territories, and**
10 **Tribal territories**

11 “No health care service furnished—

12 “(1) by or in a health care facility owned or op-
13 erated by the Federal Government, Federal land or
14 territory, or a Tribal territory; or

15 “(2) by any physician or other individual em-
16 ployed by the Federal Government, Federal land or
17 territory, or a Tribal territory to provide health care
18 services within the scope of the physician’s or indi-
19 vidual’s employment,

20 may include gender-affirming care.

21 **“§ 304. Construction relating to separate coverage**

22 “Nothing in this chapter shall be construed as pro-
23 hibiting any individual, entity, or State or locality from
24 purchasing separate coverage for gender-affirming care or
25 health benefits coverage that includes gender-affirming
26 care so long as such coverage is paid for entirely using

1 only funds not authorized or appropriated by Federal law,
2 federal programs, platforms, or infrastructure, such cov-
3 erage does not cover any practice that would be subject
4 to penalty under section 2260B of title 18, United States
5 Code, and such coverage shall not be purchased using
6 matching funds required for a federally subsidized pro-
7 gram, including a State’s or locality’s contribution of Med-
8 icaid matching funds.

9 **“§ 305. Construction relating to the use of non-Fed-**
10 **eral funds for health coverage**

11 “Nothing in this chapter shall be construed as re-
12 stricting the ability of any non-Federal health benefits cov-
13 erage provider from offering coverage for gender-affirming
14 care, or the ability of a State or locality to contract sepa-
15 rately with such a provider for such coverage, so long as
16 only funds not authorized or appropriated by Federal law
17 are used, such coverage does not cover any practice that
18 would be subject to penalty under section 2260B of title
19 18, United States Code, and such coverage shall not be
20 purchased using matching funds required for a federally
21 subsidized program, including a State’s or locality’s con-
22 tribution of Medicaid matching funds.

1 **“§ 306. Construction relating to complications arising**
2 **from gender-affirming care**

3 “Nothing in this chapter shall be construed to apply
4 to the treatment of any infection, injury, disease, or dis-
5 order that has been caused by or exacerbated by the per-
6 formance of a gender-affirming care. This rule of con-
7 struction shall be applicable without regard to whether the
8 gender-affirming care was performed in accord with Fed-
9 eral or State law, and without regard to whether funding
10 for the gender-affirming care is permissible under section
11 307.

12 **“§ 307. Treatment of individuals born with medically**
13 **verifiable disorder of sex development**

14 “The limitations established in sections 301, 302,
15 and 303 shall not apply with respect to an individual de-
16 scribed in section 2260B(d)(1)(B) of title 18, United
17 States Code.

18 **“§ 308. Gender-affirming care defined**

19 “For purposes of this chapter, the term ‘gender-af-
20 firming care’ has the meaning given such term in section
21 2260B(d)(1) of title 18, United States Code.

22 **“§ 309. Rule of construction**

23 “Nothing in this chapter shall be construed as pro-
24 hibiting provision of the medical services described in sec-
25 tion 2260B(d)(1)(A) of title 18, United States Code, to
26 address any male or female reproductive cancers, apart

1 from changing the body to correspond to a sex that differs
 2 from one’s biological sex.”.

3 **SEC. 202. AMENDMENT TO TABLE OF CHAPTERS.**

4 The table of chapters for title 1, United States Code,
 5 is amended by adding at the end the following new item:

“4. **Prohibiting taxpayer-funded gender-affirming care ... 301**”.

6 **TITLE III—APPLICATION UNDER**
 7 **THE AFFORDABLE CARE ACT**

8 **SEC. 301. CLARIFYING APPLICATION OF PROHIBITION TO**
 9 **PREMIUM CREDITS AND COST-SHARING RE-**
 10 **DUCTIONS UNDER ACA.**

11 (a) IN GENERAL.—

12 (1) DISALLOWANCE OF REFUNDABLE CREDIT
 13 AND COST-SHARING REDUCTIONS FOR COVERAGE
 14 UNDER QUALIFIED HEALTH PLAN WHICH PROVIDES
 15 COVERAGE FOR GENDER-AFFIRMING CARE.—

16 (A) IN GENERAL.—Subparagraph (A) of
 17 section 36B(c)(3) of the Internal Revenue Code
 18 of 1986 is amended by inserting before the pe-
 19 riod at the end the following: “or any health
 20 plan that includes coverage for gender-affirming
 21 care (other than any gender-affirming care or
 22 treatment described in section 306 or 307 of
 23 title 1, United States Code)”.

24 (B) OPTION TO PURCHASE OR OFFER SEP-
 25 ARATE COVERAGE OR PLAN.—Paragraph (3) of

1 section 36B(e) of such Code is amended by
2 adding at the end the following new subpara-
3 graph:

4 “(C) SEPARATE COVERAGE OR PLAN FOR
5 GENDER-AFFIRMING CARE ALLOWED.—

6 “(i) OPTION TO PURCHASE SEPARATE
7 COVERAGE OR PLAN.—Nothing in subpara-
8 graph (A) shall be construed as prohibiting
9 any individual from purchasing separate
10 coverage for gender-affirming care de-
11 scribed in such subparagraph, or a health
12 plan that includes such gender-affirming
13 care, so long as no credit is allowed under
14 this section with respect to the premiums
15 for such coverage or plan and such cov-
16 erage or plan does not cover any practice
17 that would be subject to penalty under sec-
18 tion 2260B of title 18, United States
19 Code.

20 “(ii) OPTION TO OFFER COVERAGE OR
21 PLAN.—Nothing in subparagraph (A) shall
22 restrict any non-Federal health insurance
23 issuer offering a health plan from offering
24 separate coverage for gender-affirming
25 care described in such subparagraph, or a

1 plan that includes such gender-affirming
2 care, so long as premiums for such sepa-
3 rate coverage or plan are not paid for with
4 any amount attributable to the credit al-
5 lowed under this section (or the amount of
6 any advance payment of the credit under
7 section 1412 of the Patient Protection and
8 Affordable Care Act) and such coverage or
9 plan does not cover any practice that
10 would be subject to penalty under section
11 2260B of title 18, United States Code.”.

12 (2) DISALLOWANCE OF SMALL EMPLOYER
13 HEALTH INSURANCE EXPENSE CREDIT FOR PLAN
14 WHICH INCLUDES COVERAGE FOR GENDER-AFFIRM-
15 ING CARE.—Subsection (h) of section 45R of the In-
16 ternal Revenue Code of 1986 is amended—

17 (A) by striking “Any term” and inserting
18 the following:

19 “(1) IN GENERAL.—Any term”; and

20 (B) by adding at the end the following new
21 paragraph:

22 “(2) EXCLUSION OF HEALTH PLANS INCLUDING
23 COVERAGE FOR GENDER-AFFIRMING CARE.—

24 “(A) IN GENERAL.—The term ‘qualified
25 health plan’ does not include any health plan

1 that includes coverage for gender-affirming care
2 (other than any gender-affirming care or treat-
3 ment described in section 306 or 307 of title 1,
4 United States Code).

5 “(B) SEPARATE COVERAGE OR PLAN FOR
6 GENDER-AFFIRMING CARE ALLOWED.—

7 “(i) OPTION TO PURCHASE SEPARATE
8 COVERAGE OR PLAN.—Nothing in subpara-
9 graph (A) shall be construed as prohibiting
10 any employer from purchasing for its em-
11 ployees separate coverage for gender-af-
12 firming care described in such subpara-
13 graph, or a health plan that includes such
14 gender-affirming care, so long as no credit
15 is allowed under this section with respect
16 to the employer contributions for such cov-
17 erage or plan and such coverage does not
18 cover any practice that would be subject to
19 penalty under section 2260B of title 18,
20 United States Code.

21 “(ii) OPTION TO OFFER COVERAGE OR
22 PLAN.—Nothing in subparagraph (A) shall
23 restrict any non-Federal health insurance
24 issuer offering a health plan from offering
25 separate coverage for gender-affirming

1 care described in such subparagraph, or a
2 plan that includes such gender-affirming
3 care, so long as such separate coverage or
4 plan is not paid for with any employer con-
5 tribution eligible for the credit allowed
6 under this section and such coverage or
7 plan does not cover any practice that
8 would be subject to penalty under section
9 2260B of title 18, United States Code.”.

10 (b) APPLICATION TO MULTI-STATE PLANS.—Section
11 1334(a) of Public Law 111–148 (42 U.S.C. 18054(a)) is
12 amended by adding at the end the following new para-
13 graph:

14 “(8) COVERAGE CONSISTENT WITH FEDERAL
15 POLICY REGARDING GENDER-AFFIRMING CARE.—In
16 entering into contracts under this subsection, the
17 Director shall ensure that no multi-State qualified
18 health plan offered in an Exchange provides health
19 benefits coverage for which the expenditure of Fed-
20 eral funds is prohibited under chapter 4 of title 1,
21 United States Code.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall apply to taxable years ending after
24 the date that is one year after the date of enactment of
25 this Act, but only with respect to plan years beginning

1 after such date, and the amendment made by subsection
2 (b) shall apply to plan years beginning after such date.

3 **TITLE IV—ADDITIONAL**
4 **PROVISIONS**

5 **SEC. 401. PROHIBITION ON INSTITUTIONS OF HIGHER EDU-**
6 **CATION AND ACCREDITING AGENCIES OR AS-**
7 **SOCIATIONS.**

8 (a) PROHIBITION ON INSTITUTIONS OF HIGHER
9 EDUCATION.—Section 487(a) of the Higher Education
10 Act of 1965 (20 U.S.C. 1094(a)) is amended by adding
11 at the end the following:

12 “(30) The institution will not offer instruction
13 in gender-affirming care (as defined in section
14 2260B(d) of title 18, United States Code).”.

15 (b) PROHIBITION ON ACCREDITING AGENCIES OR AS-
16 SOCIATIONS.—Section 496(a) of the Higher Education
17 Act of 1965 (20 U.S.C. 1099b(a)) is amended—

18 (1) by striking “and” at the end of paragraph
19 (7);

20 (2) by striking the period at the end of para-
21 graph (8) and inserting “; and”; and

22 (3) by adding at the end the following:

23 “(9) such agency or association does not ac-
24 credit any institution that offers instruction in gen-

1 der-affirming care (as defined in section 2260B(d)
2 of title 18, United States Code).”.

3 **SEC. 402. IMMIGRATION CONSEQUENCES WITH RESPECT**
4 **TO PROVIDING GENDER-AFFIRMING CARE.**

5 (a) DEFINITIONS.—Section 101(a) of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1101(a)) is amended
7 by adding at the end the following:

8 “(53) The term ‘gender-affirming care’ shall
9 have the meaning given such term in section
10 2260B(d) of title 18, United States Code.”.

11 (b) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR
12 ADMISSION.—Section 212(a)(1)(A) of the Immigration
13 and Nationality Act (8 U.S.C. 1182(a)(1)(A)) is amend-
14 ed—

15 (1) in clause (iii)(II), strike “or” at the end;

16 (2) in clause (iv), strike the comma at the end
17 and insert “, or”; and

18 (3) by adding at the end the following:

19 “(v) who is determined to have per-
20 formed gender-affirming care on a child
21 that has not attained the age of 18 years
22 old.”.

23 (c) CLASSES OF DEPORTABLE ALIENS.—Section
24 237(a) of the Immigration and Nationality Act (8 U.S.C.
25 1227(a)) is amended by adding at the end the following:

1 “(8) GENDER-AFFIRMING CARE.—Any alien
2 who has performed gender-affirming care on a child
3 that has not attained the age of 18 years old is de-
4 portable.”.

○