

ACT 13

S.B. NO. 270

A Bill for an Act Relating to Minors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the American Psychological Association convened a task force on appropriate therapeutic responses to sexual orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts. The task force concluded that sexual orientation change efforts are unlikely to be successful and involve risk of harm to lesbian, gay, and bisexual individuals, including depression, suicidality, loss of sexual feeling, anxiety, shame, negative self-image, and other negative feelings and behaviors. The legislature further finds that children and adolescents who participate in these types of sexual orientation change efforts, which

often use fear-based techniques, are given inaccurate scientific information regarding sexual orientation and gender identity and are also at risk of increased self-stigma and psychological distress.

The legislature additionally finds that sexual orientation change efforts are opposed by the country's leading medical and mental health professional organizations, including the American Psychological Association, American Medical Association, American Academy of Pediatrics, American Psychiatric Association, National Association of Social Workers, American College of Obstetricians and Gynecologists, and American Academy of Child and Adolescent Psychiatry.

The purpose of this Act is to:

- (1) Protect the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, against exposure to serious harms caused by sexual orientation change efforts by regulating the conduct of specific state-licensed persons who provide professional counseling to minors under the age of eighteen and prohibiting these professionals from engaging in, attempting to engage in, or advertising the offering of sexual orientation change efforts on persons under eighteen years of age; and
- (2) Establish the sexual orientation counseling task force to address the concerns of minors seeking counseling on sexual orientation, gender identity, gender expressions, and related behaviors.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 25 to be appropriately designated and to read as follows:

**“CHAPTER
SEXUAL ORIENTATION CHANGE EFFORTS**

§ -1 Sexual orientation change efforts prohibited; advertising prohibited. (a) No person who is licensed to provide professional counseling shall:

- (1) Engage in or attempt to engage in sexual orientation change efforts on a person under eighteen years of age; or
- (2) Advertise the offering of sexual orientation change efforts on a person under eighteen years of age.

(b) Any person who is licensed to provide professional counseling who engages in or attempts to engage in the offering of sexual orientation change efforts on a person under eighteen years of age shall be subject to disciplinary action by the appropriate professional licensing authority.

(c) For purposes of this section:

“Advertise” means a communication made by or on behalf of a person who is licensed to provide professional counseling, made for the purpose of inducing or promoting a professional counseling relationship in which sexual orientation change efforts will be undertaken on a person under the age of eighteen. “Advertise” includes oral, written, graphic, or pictorial statements or representations, including those made through any electronic or print medium.

“Person who is licensed to provide professional counseling” means a person who performs counseling as part of the person's professional training, including a physician, especially one practicing psychiatry, licensed pursuant to chapter 453; psychologist licensed pursuant to chapter 465; nurse licensed pursuant to chapter 457; social worker licensed pursuant to chapter 467E; licensed mental health counselor licensed pursuant to chapter 453D; or licensed marriage and family therapist licensed pursuant to chapter 451J.

“Sexual orientation change efforts” means the practice of attempting to change a person’s sexual orientation, including but not limited to efforts to change gender identity or gender expressions and behaviors; or to reduce or eliminate sexual or romantic attractions or feelings toward a person of the same gender.

“Sexual orientation change efforts” shall not include counseling supporting a person seeking to transition from one gender to another or counseling that:

- (1) Provides acceptance, support, and understanding of a person or facilitates a person’s coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and
- (2) Does not seek to change sexual orientation, gender identity, or gender expression.”

SECTION 3. (a) There is established within the department of health, the sexual orientation counseling task force. The task force shall address the concerns of minors seeking counseling on sexual orientation, gender identity, gender expressions, and related behaviors. The task force shall submit a report with findings and recommendations, including proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2019. The report shall address and include:

- (1) Current counseling practices in Hawaii and nationwide for minors, including counseling on sexual orientation, gender identity, gender expression, and related behaviors;
- (2) Studies by nationally accredited institutions or government agencies regarding the availability of counseling for minors on issues regarding sexual orientation, gender identity, gender expression, and related behaviors;
- (3) An analysis of the availability of minor-initiated counseling on sexual orientation, gender identity, gender expression, and related behaviors; and
- (4) Proposed legislation to provide accessible and appropriate counseling to minors on issues regarding sexual orientation, gender identity, gender expression, and related behaviors.

(b) The director of health, or the director’s designee, shall be the chair of the sexual orientation counseling task force. The task force shall include:

- (1) Three members to be selected by the governor; provided that two members shall be from the mental health industry;
- (2) Two members to be selected by the president of the senate;
- (3) Two members to be selected by the speaker of the house of representatives;
- (4) Two members to be selected by the director of health;
- (5) Two members to be selected by the superintendent of education; and
- (6) One member to be selected by the attorney general.

(c) The members of the task force shall serve without compensation, but shall be reimbursed by the department of health for necessary expenses, including travel expenses, incurred for service on the task force. No member of the task force shall be made subject to section 84-17, Hawaii Revised Statutes, solely because of that member’s participation on the task force. The task force shall be exempt from chapter 92, Hawaii Revised Statutes.

(d) The sexual orientation counseling task force shall dissolve on June 30, 2019.

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SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect on July 1, 2018.

(Approved May 25, 2018.)