

118TH CONGRESS  
1ST SESSION

# S. 2357

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

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IN THE SENATE OF THE UNITED STATES

JULY 18, 2023

Mr. VANCE introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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) DEFINITIONS.—In this section:

10                     “(1) BIOLOGICAL SEX.—The term ‘biological  
 11 sex’ means the indication of male or female sex by  
 12 reproductive potential or capacity, sex chromosomes,  
 13 naturally occurring sex hormones, gonads, or inter-  
 14 nal or external genitalia present at birth.

15                     “(2) GENDER-AFFIRMING CARE.—

16                             “(A) IN GENERAL.—Except as provided in  
 17 subparagraph (B), the term ‘gender-affirming  
 18 care’ means, with respect to an individual, any  
 19 of the following:

20                                     “(i) Performing any surgery for the  
 21 purpose of changing the body of the indi-  
 22 vidual to correspond to a sex that differs  
 23 from the individual’s biological sex, includ-  
 24 ing—

25   “(I) castration;

- 1 “(II) orchiectomy;
- 2 “(III) scrotoplasty;
- 3 “(IV) vasectomy;
- 4 “(V) hysterectomy;
- 5 “(VI) oophorectomy;
- 6 “(VII) ovariectomy;
- 7 “(VIII) metoidioplasty;
- 8 “(IX) penectomy;
- 9 “(X) phalloplasty;
- 10 “(XI) vaginoplasty;
- 11 “(XII) vaginectomy;
- 12 “(XIII) vulvoplasty;
- 13 “(XIV) reduction
- 14 thyrochondroplasty;
- 15 “(XV) chondrolaryngoplasty; and
- 16 “(XVI) mastectomy.
- 17 “(ii) Any plastic surgery that femi-
- 18 nizes or masculinizes the facial features of
- 19 the individual for the purposes described in
- 20 clause (i).
- 21 “(iii) Any placement of chest implants
- 22 in the individual to create feminine breasts
- 23 for the purposes described in clause (i).
- 24 “(iv) Any placement of fat or artificial
- 25 implants in the gluteal region of the indi-

1           vidual for the purposes described in clause  
2           (i).

3           “(v) Administering, supplying, pre-  
4           scribing, dispensing, distributing, or other-  
5           wise conveying to the individual medica-  
6           tions for the purposes described in clause  
7           (i), including—

8                   “(I) gonadotropin-releasing hor-  
9                   mone (commonly known as ‘GnRH’)  
10                  analogues or other puberty-blocking  
11                  drugs to stop or delay normal pu-  
12                  berty;

13                  “(II) testosterone or other  
14                  androgens to a biological female at  
15                  doses that are supraphysiologic to the  
16                  female sex; and

17                  “(III) estrogen to a biological  
18                  male at doses that are  
19                  supraphysiologic to the male sex.

20           “(B) EXCEPTION.—Subparagraph (A)  
21           shall not apply to conduct with respect to the  
22           following individuals:

23                   “(i) An individual with both ovarian  
24                   and testicular tissue.

1           “(ii) An individual who does not have  
2           normal sex chromosome structure, sex ster-  
3           oid hormone production, or sex steroid hor-  
4           mone action, as determined by a physician  
5           through genetic or biochemical testing.

6           “(iii) An individual experiencing infec-  
7           tion, disease, injury, or disorder caused or  
8           exacerbated by previous gender transition  
9           procedures.

10           “(iv) An individual suffering from a  
11           physical disorder, physical injury, or phys-  
12           ical illness that would, as certified by a  
13           physician, place the individual in imminent  
14           danger of death or impairment of a major  
15           bodily function unless a procedure de-  
16           scribed in that subparagraph is performed.

17           “(3) MINOR.—The term ‘minor’ means any in-  
18           dividual under the age of 18 years.

19           “(b) PROHIBITION ON PERFORMING GENDER-AF-  
20           FIRMING CARE ON MINORS.—

21           “(1) OFFENSE.—It shall be unlawful, in any  
22           circumstance described in subsection (e), to know-  
23           ingly perform any gender-affirming care on a minor.

1           “(2) PENALTY.—Any person who violates para-  
2           graph (1) shall be fined under this title, imprisoned  
3           for not more than 12 years, or both.

4           “(c) PROHIBITION ON PROSECUTION OF PERSON ON  
5           WHOM INTERVENTION IS PERFORMED.—A person on  
6           whom gender-affirming care is performed may not be ar-  
7           rested or prosecuted for an offense under subsection (b).

8           “(d) CIVIL ACTION.—A person on whom gender-af-  
9           firming care is performed in violation of subsection (b)  
10          may bring a civil action in an appropriate district court  
11          of the United States for appropriate relief, including com-  
12          pensatory and punitive damages, against each person who  
13          performed the gender-affirming care.

14          “(e) CIRCUMSTANCES DESCRIBED.—The cir-  
15          cumstances referred to in subsection (b) are that—

16                 “(1) the defendant or victim traveled in inter-  
17                 state or foreign commerce, or traveled using a  
18                 means, channel, facility, or instrumentality of inter-  
19                 state or foreign commerce, in furtherance of or in  
20                 connection with the conduct described in that sub-  
21                 section;

22                 “(2) the defendant used a means, channel, fa-  
23                 cility, or instrumentality of interstate or foreign  
24                 commerce in furtherance of or in connection with  
25                 the conduct described in that subsection;

1           “(3) any payment of any kind was made, di-  
2           rectly or indirectly, in furtherance of or in connec-  
3           tion with the conduct described in that subsection  
4           using any means, channel, facility, or instrumen-  
5           tality of interstate or foreign commerce or in or af-  
6           fecting interstate or foreign commerce;

7           “(4) the defendant transmitted in interstate or  
8           foreign commerce any communication relating to or  
9           in furtherance of the conduct described in that sub-  
10          section—

11                   “(A) using any means, channel, facility, or  
12                   instrumentality of interstate or foreign com-  
13                   merce; or

14                   “(B) in or affecting interstate or foreign  
15                   commerce by any means or in any manner, in-  
16                   cluding by computer, mail, wire, or electro-  
17                   magnetic transmission;

18           “(5) any instrument, item, substance, or other  
19           object that has traveled in interstate or foreign com-  
20           merce was used to perform the conduct described in  
21           that subsection;

22           “(6) the conduct described in that subsection  
23           occurred in—

24                   “(A) the special maritime and territorial  
25                   jurisdiction of the United States; or

1           “(B) a territory or possession of the  
2           United States; or

3           “(7) the conduct described in that subsection  
4           otherwise occurred in or affected interstate or for-  
5           eign commerce.

6           “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
7           tion shall be construed as prohibiting provision of the med-  
8           ical services described in subsection (a)(2)(A) to address  
9           legitimate health issues, such as any male or female repro-  
10          ductive cancers, apart from changing the body of an indi-  
11          vidual to correspond to a sex that differs from the individ-  
12          ual’s biological sex.”; and

13          (2) in the table of sections, by adding at the  
14          end the following:

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

15 **TITLE II—PROHIBITING FEDER-**  
16 **ALLY FUNDED GENDER-AF-**  
17 **FIRMING CARE**

18 **SEC. 201. PROHIBITING TAXPAYER-FUNDED GENDER-AF-**  
19 **FIRMING CARE.**

20          Title 1, United States Code, is amended by adding  
21          at the end the following:

22 **“CHAPTER 4—PROHIBITING TAXPAYER-**  
23 **FUNDED GENDER-AFFIRMING CARE**

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

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



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

“304. Effect on separate coverage.

“305. Effect on use of non-Federal funds for health coverage.

“306. Application to complications arising from gender-affirming care.

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

“308. Gender-affirming care defined.

“309. Effect of chapter.

1 **“§ 301. Prohibition on funding for gender-affirming**  
 2 **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, in-  
 6 cluding funds provided under titles XVIII, XIX, and XXI  
 7 of the Social Security Act, shall be expended for any gen-  
 8 der-affirming care.

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

11 “No funds authorized or appropriated by Federal  
 12 law, and none of the funds in any trust fund to which  
 13 funds are authorized or appropriated by Federal law, shall  
 14 be expended for health benefits coverage that includes cov-  
 15 erage of gender-affirming care.

16 **“§ 303. Limitation on Federal facilities and employ-**  
 17 **ees, Federal land and territories, and**  
 18 **Tribal territories**

19 “Gender-affirming care may not be included in any  
 20 health care service furnished by—

1           “(1) a health care facility owned or operated by  
2           the Federal Government;

3           “(2) a health care facility operated on Federal  
4           land, in a territory, or in a Tribal territory; or

5           “(3) any physician or other individual providing  
6           health care services within the scope of the physi-  
7           cian’s or individual’s employment who is—

8                   “(A) employed by the Federal Government;

9                   or

10                   “(B) employed by a health care facility op-  
11                   erated on Federal land, in a territory, or in a  
12                   Tribal territory.

13   **“§ 304. Effect on separate coverage**

14           “Nothing in this chapter prohibits any individual, en-  
15           tity, or State or locality from purchasing separate cov-  
16           erage for gender-affirming care or health benefits coverage  
17           that includes gender-affirming care, on the condition that  
18           such coverage—

19                   “(1) is paid for entirely using funds—

20                           “(A) not authorized or appropriated by  
21                           Federal law; or

22                           “(B) not received from Federal programs,  
23                           platforms, or infrastructure;

1 “(2) does not cover any practice that would be  
2 subject to penalty under section 2260B of title 18;  
3 and

4 “(3) is not purchased using matching funds re-  
5 quired for a federally subsidized program, including  
6 a State’s or locality’s contribution of Medicaid  
7 matching funds.

8 **“§ 305. Effect on use of non-Federal funds for health**  
9 **coverage**

10 “Nothing in this chapter restricts the ability of any  
11 non-Federal health benefits coverage provider from offer-  
12 ing coverage for gender-affirming care, or the ability of  
13 a State or locality to contract separately with such a pro-  
14 vider for such coverage, on the condition that such cov-  
15 erage—

16 “(1) is paid for entirely using funds—

17 “(A) not authorized or appropriated by  
18 Federal law; or

19 “(B) not received from Federal programs,  
20 platforms, or infrastructure;

21 “(2) does not cover any practice that would be  
22 subject to penalty under section 2260B of title 18;  
23 and

24 “(3) is not purchased using matching funds re-  
25 quired for a federally subsidized program, including

1 a State’s or locality’s contribution of Medicaid  
2 matching funds.

3 **“§ 306. Application to complications arising from gen-**  
4 **der-affirming care**

5 “Nothing in this chapter applies to the treatment of  
6 any infection, injury, disease, or disorder that has been  
7 caused or exacerbated by the performance of a gender-  
8 affirming care, regardless of whether—

9 “(1) the gender-affirming care was performed  
10 in accordance with Federal or State law; or

11 “(2) funding for the gender-affirming care is  
12 permissible under section 307.

13 **“§ 307. Application to individuals born with medi-**  
14 **cally verifiable disorder of sex develop-**  
15 **ment**

16 “The prohibitions and limitations described in sec-  
17 tions 301, 302, and 303 shall not apply to conduct with  
18 respect to an individual described in section  
19 2260B(a)(2)(B) of title 18.

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

21 “For purposes of this chapter, the term ‘gender-af-  
22 firming care’ has the meaning given such term in section  
23 2260B of title 18.

1 **“§ 309. Effect of chapter**

2 “Nothing in this chapter prohibits the provision of  
3 the medical services described in section 2260B(a)(2)(B)  
4 of title 18, to address any male or female reproductive  
5 cancers (other than medical services to change the body  
6 of an individual to correspond to a sex that differs from  
7 the individual’s biological sex).”.

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

9 The table of chapters for title 1, United States Code,  
10 is amended by adding at the end the following:

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

11 **TITLE III—APPLICATION UNDER**  
12 **THE AFFORDABLE CARE ACT**

13 **SEC. 301. CLARIFYING APPLICATION OF PROHIBITION TO**  
14 **PREMIUM CREDITS AND COST-SHARING RE-**  
15 **DUCTIONS UNDER ACA.**

16 (a) IN GENERAL.—

17 (1) DISALLOWANCE OF REFUNDABLE CREDIT  
18 AND COST-SHARING REDUCTIONS FOR COVERAGE  
19 UNDER QUALIFIED HEALTH PLAN WHICH PROVIDES  
20 COVERAGE FOR GENDER-AFFIRMING CARE.—

21 (A) IN GENERAL.—Subparagraph (A) of  
22 section 36B(c)(3) of the Internal Revenue Code  
23 of 1986 is amended by inserting before the pe-  
24 riod at the end the following: “or any health  
25 plan that includes coverage for gender-affirming

1 care (other than any gender-affirming care or  
2 treatment described in section 306 or 307 of  
3 title 1, United States Code)”.

4 (B) OPTION TO PURCHASE OR OFFER SEP-  
5 ARATE COVERAGE OR PLAN.—Paragraph (3) of  
6 section 36B(c) of such Code is amended by  
7 adding at the end the following new subpara-  
8 graph:

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

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

1           “(ii) OPTION TO OFFER COVERAGE OR  
2           PLAN.—Nothing in subparagraph (A) shall  
3           restrict any non-Federal health insurance  
4           issuer offering a health plan from offering  
5           separate coverage for gender-affirming  
6           care described in such subparagraph, or a  
7           plan that includes such gender-affirming  
8           care, so long as premiums for such sepa-  
9           rate coverage or plan are not paid for with  
10          any amount attributable to the credit al-  
11          lowed under this section (or the amount of  
12          any advance payment of the credit under  
13          section 1412 of the Patient Protection and  
14          Affordable Care Act) and such coverage or  
15          plan does not cover any practice that  
16          would be subject to penalty under section  
17          2260B of title 18, United States Code.”.

18           (2) DISALLOWANCE OF SMALL EMPLOYER  
19          HEALTH INSURANCE EXPENSE CREDIT FOR PLAN  
20          WHICH INCLUDES COVERAGE FOR GENDER-AFFIRM-  
21          ING CARE.—Subsection (h) of section 45R of the In-  
22          ternal Revenue Code of 1986 is amended—

23                   (A) by striking “Any term” and inserting  
24                   the following:

25                   “(1) IN GENERAL.—Any term”; and

1 (B) by adding at the end the following new  
2 paragraph:

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

5 “(A) IN GENERAL.—The term ‘qualified  
6 health plan’ does not include any health plan  
7 that includes coverage for gender-affirming care  
8 (other than any gender-affirming care or treat-  
9 ment described in section 306 or 307 of title 1,  
10 United States Code).

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

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



1 penalty under section 2260B of title 18,  
2 United States Code.

3 “(ii) OPTION TO OFFER COVERAGE OR  
4 PLAN.—Nothing in subparagraph (A) shall  
5 restrict any non-Federal health insurance  
6 issuer offering a health plan from offering  
7 separate coverage for gender-affirming  
8 care described in such subparagraph, or a  
9 plan that includes such gender-affirming  
10 care, so long as such separate coverage or  
11 plan is not paid for with any employer con-  
12 tribution eligible for the credit allowed  
13 under this section and such coverage or  
14 plan does not cover any practice that  
15 would be subject to penalty under section  
16 2260B of title 18, United States Code.”.

17 (b) APPLICATION TO MULTI-STATE PLANS.—Section  
18 1334(a) of Public Law 111–148 (42 U.S.C. 18054(a)) is  
19 amended by adding at the end the following:

20 “(8) COVERAGE CONSISTENT WITH FEDERAL  
21 POLICY REGARDING GENDER-AFFIRMING CARE.—In  
22 entering into contracts under this subsection, the  
23 Director shall ensure that no multi-State qualified  
24 health plan offered in an Exchange provides health  
25 benefits coverage for which the expenditure of Fed-

1 eral funds is prohibited under chapter 4 of title 1,  
 2 United States Code.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 subsection (a) shall apply to taxable years ending after  
 5 the date that is one year after the date of enactment of  
 6 this Act, but only with respect to plan years beginning  
 7 after such date, and the amendment made by subsection  
 8 (b) shall apply to plan years beginning after such date.

## 9 **TITLE IV—ADDITIONAL** 10 **PROVISIONS**

### 11 **SEC. 401. PROHIBITION ON INSTITUTIONS OF HIGHER EDU-** 12 **CATION AND ACCREDITING AGENCIES OR AS-** 13 **SOCIATIONS.**

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

18 “(30) The institution will not offer instruction  
 19 in gender-affirming care (as defined in section  
 20 2260B of title 18, United States Code).”.

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

24 (1) by striking “and” at the end of paragraph  
 25 (7);

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

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

4           “(9) such agency or association does not ac-  
5 credit any institution that offers instruction in gen-  
6 der-affirming care (as defined in section 2260B of  
7 title 18, United States Code).”.

8 **SEC. 402. IMMIGRATION CONSEQUENCES WITH RESPECT**  
9 **TO PROVIDING GENDER-AFFIRMING CARE.**

10         (a) **DEFINITION OF GENDER-AFFIRMING CARE.**—

11 Section 101(a) of the Immigration and Nationality Act (8  
12 U.S.C. 1101(a)) is amended by adding at the end the fol-  
13 lowing:

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

17         (b) **CLASSES OF ALIENS INELIGIBLE FOR VISAS OR**

18 **ADMISSION.**—Section 212(a)(1)(A) of the Immigration  
19 and Nationality Act (8 U.S.C. 1182(a)(1)(A)) is amend-  
20 ed—

21           (1) in clause (iii)(II), by striking “or” at the  
22 end;

23           (2) in clause (iv), by striking the comma at the  
24 end and inserting “, or”; and

25           (3) by inserting after clause (iv) the following:

1                   “(v) who is determined to have per-  
2                   formed gender-affirming care on a child  
3                   that has not attained the age of 18 years  
4                   old.”.

5           (c) CLASSES OF DEPORTABLE ALIENS.—Section  
6 237(a) of the Immigration and Nationality Act (8 U.S.C.  
7 1227(a)) is amended by adding at the end the following:

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

○