

MAINE STATE LEGISLATURE

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L.D. 912

Date: 4-11-18

REPORT B

(Filing No. H-746)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to H.P. 640, L.D. 912, Bill, "An Act To Clarify the Scope of Practice of Certain Licensed Professionals Regarding Conversion Therapy"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 10 MRSA c. 231 is enacted to read:

CHAPTER 231

PROVIDING CONVERSION THERAPY TO MINORS

§1500-J. Prohibition; unlawful trade practice

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including, but not limited to, any effort to change gender expression or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not include the following:

(1) Counseling or treatment intended to assist an individual undergoing a gender transition;

(2) Counseling intended to provide acceptance, support and understanding to the individual;

(3) Counseling intended to facilitate the individual's coping, social support or identity exploration and development, including any therapeutic intervention such as talk therapy that is neutral with regard to sexual orientation and that seeks to prevent or address unlawful conduct or unsafe sexual practices, as long as the

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1 counseling does not seek to change the individual's sexual orientation or gender
2 identity; and

3 (4) Talk therapy that is intended to assist an individual who has expressed the
4 individual's own goal of changing the individual's sexual orientation, gender
5 identity or gender expression or to eliminate or reduce sexual or romantic
6 attractions or feelings toward individuals of the same gender.

7 B. "Sexual orientation or gender identity" has the same meaning as "sexual
8 orientation" in Title 5, section 4553, subsection 9-C.

9 **2. Prohibitions.** A person may not advertise, offer or administer conversion therapy
10 to individuals under 18 years of age.

11 **3. Exceptions.** This section does not apply to:

12 A. The activities and services of any priest, rabbi, member of the clergy, including a
13 Christian Science healer, or minister of the gospel of any religious denomination
14 when performing counseling services as part of religious duties and in connection
15 with a specific synagogue or church of any religious denomination; and

16 B. The activities of a school psychologist or guidance counselor certified pursuant to
17 Title 20-A, chapter 502 or an individual licensed, certified or registered under Title
18 32, chapter 31, 36, 48, 56, 81, 83, 117, 119 or 137.

19 **4. Unfair trade practice.** A violation of this section is an unfair trade practice in
20 violation of Title 5, chapter 10.

21 **Sec. 2. 20-A MRS §13020, sub-§2-A** is enacted to read:

22 **2-A. Grounds for revocation or suspension of a school psychologist or guidance**
23 **counselor certificate.** Evidence that a person has administered conversion therapy as
24 defined in Title 10, section 1500-J to a child is grounds for revocation or suspension of
25 that person's certificate issued under this Title as a school psychologist or guidance
26 counselor.

27 **Sec. 3. 20-A MRS §13020, sub-§3,** as enacted by PL 1983, c. 845, §4, is
28 amended to read:

29 **3. Denial of certificate for prior immoral conduct.** Evidence that an applicant for
30 initial certification or renewal has injured the health or welfare of a child through physical
31 or sexual abuse or exploitation is grounds for a denial of a certificate. Evidence that an
32 applicant for initial certification or renewal as a school psychologist or guidance
33 counselor has administered conversion therapy as defined in Title 10, section 1500-J to a
34 child is grounds for a denial of a certificate. Notwithstanding Title 5, chapter 341, every
35 person, who, within 5 years of the application for initial certification or renewal, has been
36 convicted in any state or federal court of a criminal offense involving the physical or
37 sexual abuse or exploitation of a child, may be presumed by the commissioner to lack
38 good moral character for the purposes of this chapter. This presumption ~~shall be~~ is a
39 rebuttable presumption. Notwithstanding Title 5, chapter 341, the commissioner ~~shall be~~ is
40 entitled to consider all records of prior criminal convictions involving child abuse or
41 exploitation in determining an applicant's eligibility for a certificate.

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Sec. 4. 22 MRSA §3174-AAA is enacted to read:

§3174-AAA. Coverage for conversion therapy

The department may not provide MaineCare reimbursement for conversion therapy as defined in Title 10, section 1500-J administered to a minor.

Sec. 5. 32 MRSA §2105-A, sub-§2, ¶I, as amended by PL 2015, c. 488, §11, is further amended to read:

I. Engaging in false, misleading or deceptive advertising; or

Sec. 6. 32 MRSA §2105-A, sub-§2, ¶J, as enacted by PL 2015, c. 488, §12, is amended to read:

J. Failure to comply with the requirements of Title 22, section 7253; or

Sec. 7. 32 MRSA §2105-A, sub-§2, ¶K is enacted to read:

K. A violation of section 2112.

Sec. 8. 32 MRSA §2112 is enacted to read:

§2112. Prohibition on providing conversion therapy to minors

An individual licensed or certified under this chapter may not administer conversion therapy as defined in Title 10, section 1500-J to a minor.

Sec. 9. 32 MRSA §2591-A, sub-§2, ¶N, as amended by PL 2015, c. 488, §15, is further amended to read:

N. Revocation, suspension or restriction of a license to practice medicine or other disciplinary action; denial of an application for a license; or surrender of a license to practice medicine following the institution of disciplinary action by another state or a territory of the United States or a foreign country if the conduct resulting in the disciplinary or other action involving the license would, if committed in this State, constitute grounds for discipline under the laws or rules of this State; or

Sec. 10. 32 MRSA §2591-A, sub-§2, ¶O, as enacted by PL 2015, c. 488, §16, is amended to read:

O. Failure to comply with the requirements of Title 22, section 7253; or

Sec. 11. 32 MRSA §2591-A, sub-§2, ¶P is enacted to read:

P. A violation of section 2600-D.

Sec. 12. 32 MRSA §2600-D is enacted to read:

§2600-D. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not administer conversion therapy as defined in Title 10, section 1500-J to a minor.

Sec. 13. 32 MRSA §3282-A, sub-§2, ¶R, as amended by PL 2015, c. 488, §18, is further amended to read:

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1 R. Failure to timely respond to a complaint notification sent by the board; ~~or~~

2 **Sec. 14. 32 MRSA §3282-A, sub-§2, ¶S**, as enacted by PL 2015, c. 488, §19, is
3 amended to read:

4 S. Failure to comply with the requirements of Title 22, section 7253; ~~or~~

5 **Sec. 15. 32 MRSA §3282-A, sub-§2, ¶T** is enacted to read:

6 T. A violation of section 3300-G.

7 **Sec. 16. 32 MRSA §3300-G** is enacted to read:

8 **§3300-G. Prohibition on providing conversion therapy to minors**

9 An individual licensed, registered or certified under this chapter may not administer
10 conversion therapy as defined in Title 10, section 1500-J to a minor.

11 **Sec. 17. 32 MRSA §3837-A, sub-§1, ¶¶E and F**, as enacted by PL 2007, c.
12 402, Pt. Q, §14, are amended to read:

13 E. Practice by a licensed psychological examiner at a level requiring a psychologist's
14 license or any representation by a psychological examiner that that psychological
15 examiner is a psychologist; ~~or~~

16 F. Negligence in the performance of the licensee's duties; ~~or~~

17 **Sec. 18. 32 MRSA §3837-A, sub-§1, ¶G** is enacted to read:

18 G. A violation of section 3837-B.

19 **Sec. 19. 32 MRSA §3837-B** is enacted to read:

20 **§3837-B. Prohibition on providing conversion therapy to minors**

21 An individual licensed under this chapter may not administer conversion therapy as
22 defined in Title 10, section 1500-J to a minor.

23 **Sec. 20. 32 MRSA §6217-B, sub-§1**, as amended by PL 2007, c. 621, §9, is
24 further amended to read:

25 **1. Active abuse.** Active abuse of alcohol or any other drug that in the judgment of
26 the board is detrimental to the performance or competency of a licensee of the board; ~~or~~

27 **Sec. 21. 32 MRSA §6217-B, sub-§2**, as enacted by PL 2007, c. 402, Pt. U, §12,
28 is amended to read:

29 **2. Mental incompetency.** A legal finding of mental incompetency; ~~or~~

30 **Sec. 22. 32 MRSA §6217-B, sub-§3** is enacted to read:

31 **3. Prohibited conduct.** A violation of section 6223.

32 **Sec. 23. 32 MRSA §6223** is enacted to read:

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§6223. Prohibition on providing conversion therapy to minors

An individual licensed or certified under this chapter may not administer conversion therapy as defined in Title 10, section 1500-J to a minor.

Sec. 24. 32 MRSA §7006 is enacted to read:

§7006. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not administer conversion therapy as defined in Title 10, section 1500-J to a minor.

Sec. 25. 32 MRSA §7059-A, sub-§§1 and 2, as enacted by PL 2007, c. 402, Pt. V, §14, are amended to read:

1. Addiction to the use of alcohol or other drugs. Addiction, as confirmed by medical findings, to the use of alcohol or other drugs, that has resulted in the licensed clinical, licensed master or licensed social worker or certified social worker - independent practice being unable to perform duties or perform those duties in a manner that would not endanger the health or safety of the clients to be served; ~~or~~

2. Mental incompetency. A medical finding of mental incompetency; ~~or~~

Sec. 26. 32 MRSA §7059-A, sub-§3 is enacted to read:

3. Prohibited conduct. A violation of section 7006.

Sec. 27. 32 MRSA §13742-A, sub-§1, ¶¶C and D, as enacted by PL 2007, c. 402, Pt. DD, §19, are amended to read:

C. Engaging in unprofessional conduct by violating any standard of professional behavior, including but not limited to a breach of confidentiality of health care information pursuant to state law, that has been established in the practice for which the licensee is licensed; ~~or~~

D. Engaging in false, misleading or deceptive advertising; ~~or~~

Sec. 28. 32 MRSA §13742-A, sub-§1, ¶E is enacted to read:

E. A violation of section 13798-A.

Sec. 29. 32 MRSA §13798-A is enacted to read:

§13798-A. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not administer conversion therapy as defined in Title 10, section 1500-J to a minor.

Sec. 30. 32 MRSA §13861-A, sub-§1, ¶¶B and C, as enacted by PL 2007, c. 402, Pt. EE, §9, are amended to read:

B. A medical finding of mental incompetency; ~~and~~

C. Having had any professional or occupational license revoked for disciplinary reasons or any application rejected for reasons relating to untrustworthiness, within 3 years of the date of application; ~~and~~

1 **Sec. 31. 32 MRSA §13861-A, sub-§1, ¶D** is enacted to read:

2 D. A violation of section 13866.

3 **Sec. 32. 32 MRSA §13866** is enacted to read:

4 **§13866. Prohibition on providing conversion therapy to minors**

5 An individual licensed or registered under this chapter may not administer conversion
6 therapy as defined in Title 10, section 1500-J to a minor.

7 **Sec. 33. 32 MRSA §17307, sub-§§1 and 2**, as enacted by PL 2007, c. 369, Pt.
8 C, §3 and affected by §5, are amended to read:

9 **1. Unfair and deceptive practices.** Engaging in unfair or deceptive practices as
10 defined by the rules established by the board or violating the code of ethics adopted and
11 published by the board, including selling or causing to be sold a hearing aid to a person
12 who has not been given tests such as pure tone, air and bone audiometry or other hearing
13 assessments as determined by the board. The results of these tests must be permanently
14 filed; or

15 **2. Negligence.** Incompetence, negligence or neglect in the conduct of the practice of
16 dealing in and fitting of hearing aids, including, but not limited to, the improper fitting of
17 a hearing aid, the sale of a hearing aid to a person with normal hearing, making an ear
18 mold impression or fitting an ear mold without prior inspection of the external ear canal,
19 making an ear mold impression or fitting an ear mold after prior inspection revealed the
20 presence of, or impacted, cerumen in the ear canal, the failure to indicate the need for
21 medical or audiological evaluation when the prospective purchaser's history reveals a
22 probable risk of disease or progressive hearing impairment, the failure to make the
23 required medical referrals, the incorrect reporting of hearing test results to a person, the
24 failure to be present to fit the final hearing aid in the ear of the purchaser and the
25 tampering with a satisfactorily performing hearing aid owned by a purchaser or potential
26 purchaser to cause that hearing aid to no longer perform correctly; or

27 **Sec. 34. 32 MRSA §17307, sub-§3** is enacted to read:

28 **3. Prohibited conduct.** A violation of section 17311.

29 **Sec. 35. 32 MRSA §17311** is enacted to read:

30 **§17311. Prohibition on providing conversion therapy to minors**

31 An individual licensed or registered under this chapter may not administer conversion
32 therapy as defined in Title 10, section 1500-J to a minor.'

33 **SUMMARY**

34 This amendment is a minority report of the committee and replaces the bill, which is
35 a concept draft. This amendment does the following.

36 1. It defines "conversion therapy" as any practice or treatment that seeks to change an
37 individual's sexual orientation, gender identity or gender expression or to reduce or
38 eliminate sexual or romantic attractions or feelings toward individuals of the same gender

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1 except for counseling or treatment intended to assist an individual undergoing a gender
2 transition; counseling intended to provide acceptance, support and understanding to the
3 individual; counseling intended to facilitate the individual's coping, social support or
4 identity exploration and development, including any therapeutic intervention that is
5 neutral with regard to sexual orientation and seeks to prevent or address unlawful conduct
6 or unsafe sexual practices, as long as the counseling does not seek to change the
7 individual's sexual orientation or gender identity; and talk therapy that is intended to
8 assist an individual who has expressed the individual's own goal of changing the
9 individual's sexual orientation, gender identity or gender expression or to eliminate or
10 reduce sexual or romantic attractions or feelings toward individuals of the same gender.

11 2. It provides that advertising, offering or administering conversion therapy to
12 individuals under 18 years of age in the State is an unfair trade practice unless the action
13 is performed by a member of clergy who is performing counseling services as part of
14 religious duties and in connection with a specific synagogue or church of any religious
15 denomination or when the action is performed by a licensed or certified professional who
16 is subject to professional discipline for engaging in conversion therapy.

17 3. It prohibits certified school psychologists and guidance counselors; nurses;
18 doctors; physician assistants; psychologists; psychological examiners; alcohol and drug
19 counselors and aides; social workers; pharmacists and pharmacy technicians; professional
20 counselors; marriage and family therapists; pastoral counselors; speech-language
21 pathologists and assistants; and audiologists from administering conversion therapy to
22 individuals under 18 years of age. Administration of conversion therapy to an individual
23 under 18 years of age in violation of this prohibition is grounds for discipline of the
24 professional by the department or board that issued the professional's license or
25 certification, including but not limited to suspension or revocation of the license or
26 certification.

27 4. It prohibits MaineCare reimbursement for conversion therapy administered to an
28 individual who is under 18 years of age.

29 **FISCAL NOTE REQUIRED**

30 (See attached)



128th MAINE LEGISLATURE

LD 912

LR 68(04)

An Act To Clarify the Scope of Practice of Certain Licensed Professionals Regarding Conversion Therapy

Fiscal Note for Bill as Amended by Committee Amendment *BCH-746*
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Additional costs to the regulatory boards either within or affiliated with the Department of Professional and Financial Regulation that are impacted by this legislation can be absorbed within existing budgeted resources.