

1 AN ACT relating to civil remedies and declaring an emergency.

2 WHEREAS, the American Psychological Association, the American Psychiatric
3 Association, the American Academy of Pediatrics, the American Medical Association,
4 the American Counseling Association, the American Academy of Child and Adolescent
5 Psychiatry, the American School Counselor Association, the National Association of
6 Social Workers, and every other mainstream mental health and medical organization in
7 the United States have determined that efforts to change an individual's sexual orientation
8 or gender identity are harmful and ineffective; and

9 WHEREAS, in 2009, the American Psychological Association Task Force on
10 Appropriate Therapeutic Responses to Sexual Orientation conducted a systematic review
11 of peer-reviewed research and concluded that sexual orientation change efforts are
12 unlikely to be successful and involve some risk of harm, including depression,
13 suicidality, and anxiety. In 2021, the American Psychological Association adopted a
14 resolution concluding that gender identity change efforts are harmful and ineffective and
15 calling for their elimination; and

16 WHEREAS, the scientific and clinical consensus establishes that sexual orientation
17 or gender identity change efforts pose serious risks of harm to patients, including
18 depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality,
19 substance abuse, stress, self-blame, decreased self-esteem, feelings of anger and betrayal,
20 loss of religious faith, alienation from family, problems in sexual and emotional intimacy,
21 sexual dysfunction, high-risk sexual behaviors, feelings of being dehumanized, and a
22 sense of having wasted time and resources; and

23 WHEREAS, the psychological harms caused by sexual orientation or gender
24 identity change efforts often do not manifest until years or decades after the conduct
25 occurred. Survivors frequently do not recognize their experience as conversion therapy,
26 initially fail to recognize such treatment as harmful, fail to connect their psychological
27 injuries to the treatment until much later in life, or are deterred from coming forward by

1 shame instilled by the treatment itself; and

2 WHEREAS, the dynamics of the therapeutic relationship, including the trust placed
3 in mental health providers, the age and vulnerability of patients, the authority exercised
4 by providers, and the shame and internalized stigma resulting from such treatment, create
5 barriers to timely disclosure and recognition of harm similar to those recognized by this
6 Commonwealth in the context of childhood sexual abuse; and

7 WHEREAS, the existing statute of limitations for professional negligence does not
8 adequately account for the delayed recognition of psychological injury that is
9 characteristic of harm caused by sexual orientation or gender identity change efforts; and

10 WHEREAS, psychological harm results from efforts to direct a patient toward a
11 predetermined outcome as to the patient's sexual orientation or gender identity, regardless
12 of the nature of that predetermined outcome; and

13 WHEREAS, in cases involving latent injuries where there is scientific consensus
14 regarding harmfulness, courts have recognized that plaintiffs may establish causation by
15 demonstrating that exposure to the harmful conduct was, in reasonable medical
16 probability, a substantial factor contributing to the risk of developing the injury or illness,
17 without requiring proof of the precise mechanism by which the harm occurred. This
18 causation framework is appropriate for claims arising from sexual orientation or gender
19 identity change efforts, given the scientific consensus regarding the harmfulness of such
20 efforts and the latent nature of the resulting psychological injuries; and

21 WHEREAS, the Kentucky General Assembly intends to provide support to
22 individuals who have suffered harm as a result of sexual orientation or gender identity
23 change efforts by licensed mental health providers with adequate time to seek civil
24 remedies for the harms they have suffered;

25 NOW, THEREFORE,

26 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

27 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO

1 READ AS FOLLOWS:

2 As used in Sections 1 to 4 of this Act:

3 (I) "Mental health professional" means any of the following:

4 (a) A physician licensed under KRS Chapter 311 or a medical officer of the
5 government of the United States engaged in conducting mental health
6 services;

7 (b) A psychiatrist licensed under KRS Chapter 311 or a medical officer of the
8 government of the United States engaged in conducting mental health
9 services;

10 (c) A psychologist, psychological practitioner, certified psychologist, or
11 psychological associate licensed under KRS Chapter 319;

12 (d) A psychiatric advanced practice registered nurse, or a certified nurse
13 practitioner or clinical nurse specialist with a psychiatric or mental health
14 population focus who is licensed under KRS Chapter 314 to engage in
15 advanced practice nursing;

16 (e) A licensed clinical social worker or a certified social worker licensed under
17 KRS Chapter 335;

18 (f) A marriage and family therapist licensed under KRS Chapter 335 or a
19 marriage and family therapy associate holding a permit under KRS Chapter
20 335;

21 (g) A licensed professional clinical counselor or a licensed professional
22 counselor associate credentialed under KRS Chapter 335;

23 (h) A licensed pastoral counselor licensed under KRS Chapter 335;

24 (i) A licensed professional art therapist certified under KRS Chapter 309;

25 (j) A physician assistant licensed under KRS Chapter 311 engaged in providing
26 mental health services; and

27 (k) A licensed clinical alcohol and drug counselor, licensed clinical alcohol and

1 drug counselor associate, or certified alcohol and drug counselor licensed
2 or certified under KRS Chapter 309; and

3 (2) "Sexual orientation or gender identity change efforts":

4 (a) Means any practices by a mental health professional that seek to direct a
5 patient toward a predetermined sexual orientation or gender identity
6 outcome, including efforts to direct a patient toward a particular:

7 1. Sexual orientation by eliminating, reducing, or discouraging sexual or
8 romantic attractions or feelings toward individuals of a particular sex;

9 2. Sexual orientation by creating, promoting, or encouraging sexual or
10 romantic attractions or feelings toward individuals of a particular sex;

11 or

12 3. Gender identity by eliminating, reducing, discouraging, or promoting
13 any particular gender identity or gender expression; and

14 (b) Does not include:

15 1. Counseling or therapy that provides assistance to a person undergoing
16 gender transition;

17 2. Nondirective psychotherapies that facilitate a person's coping, identity
18 exploration, and self-understanding without seeking to achieve any
19 particular outcome regarding sexual orientation or gender identity;

20 3. Counseling or therapy that is neutral with respect to sexual
21 orientation and gender identity and that does not seek to direct a
22 person toward a predetermined outcome; or

23 4. Age-appropriate interventions to address unlawful conduct or unsafe
24 practices that do not seek to direct a person toward any particular
25 sexual orientation or gender identity.

26 ➔ SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
27 READ AS FOLLOWS:

1 (1) A civil action may be maintained under this section for damages arising from
2 sexual orientation or gender identity change efforts against any:
3 (a) Mental health professional;
4 (b) Person or entity that employed, supervised, or otherwise exercised authority
5 over a mental health professional in which the person or entity:
6 1. Knew or had reason to know that the mental health professional
7 engaged in or was likely to engage in sexual orientation or gender
8 identity change efforts; and
9 2. Failed to take reasonable steps to prevent the mental health
10 professional from engaging in sexual orientation or gender identity
11 change efforts; or
12 (c) Person or entity for the negligent hiring, supervision, or retention of a
13 mental health professional who engaged in sexual orientation or gender
14 identity change efforts.

15 (2) The action may be filed in the Circuit Court for the county where the alleged
16 harm occurred or the county where the plaintiff resides.

17 (3) An individual found liable under this section shall be jointly and severally liable
18 with each other person, if any, found liable under this section for the damages
19 arising from the same harm.

20 (4) In an action under this section, the plaintiff may recover damages including but
21 not limited to:

22 (a) Economic damages, including medical expenses, mental health treatment
23 costs, lost earnings, and other pecuniary losses;
24 (b) Noneconomic damages, including pain and suffering, emotional distress,
25 and loss of enjoyment of life;
26 (c) Punitive or exemplary damages, where the defendant's conduct was willful,
27 wanton, oppressive, fraudulent, or malicious; and

1 (d) Reasonable attorney's fees and costs.

2 (5) (a) A cause of action under this section shall survive the death of the person
3 who was subjected to sexual orientation or gender identity change efforts
4 and may be maintained by the person's personal representative or estate.

5 (b) The person's personal representative or estate may recover all damages
6 available under subsection (4) of this section, including punitive or
7 exemplary damages where the requirements of subsection (4)(c) of this
8 section are met.

9 → SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
10 READ AS FOLLOWS:

11 (1) In an action under Section 2 of this Act, causation may be established as follows:

12 (a) 1. General causation may be established by expert testimony, scientific
13 literature, or other evidence demonstrating that sexual orientation or
14 gender identity change efforts are capable of causing the type of
15 psychological injury or illness suffered by the plaintiff.

16 2. Expert testimony may address:

17 a. The scientific and clinical consensus regarding the harmfulness
18 of sexual orientation or gender identity change efforts;

19 b. The types of psychological injuries commonly caused by sexual
20 orientation or gender identity change efforts;

21 c. The typical latency period between sexual orientation or gender
22 identity change efforts and the manifestation or recognition of
23 psychological harm; and

24 d. The reasons why survivors of sexual orientation or gender
25 identity change efforts commonly experience delayed recognition
26 of harm, including repression, shame, and the dynamics of the
27 therapeutic relationship;

(b) 1. Once general causation is established as described in paragraph (a) of this subsection, the plaintiff may establish specific causation by demonstrating that the sexual orientation or gender identity change efforts were, in reasonable medical probability, a substantial factor in causing the plaintiff's psychological injury or illness.

2. The existence of other potential contributing factors does not preclude a finding of causation if the trier of fact determines that the sexual orientation or gender identity change efforts substantially contributed to the harm.

3. The plaintiff shall not be required to prove that the sexual orientation or gender identity change efforts were the sole cause of the harm, to the exclusion of all other potential contributing factors; and

(c) The plaintiff shall not be required to prove the precise mechanism by which the harm occurred in order to establish causation.

15 (2) In determining whether sexual orientation or gender identity change efforts were
16 a substantial factor in causing the plaintiff's injury, the trier of fact may
17 consider:

(a) The nature, duration, and intensity of the efforts;

(b) The age and vulnerability of the plaintiff;

(c) The relationship between the plaintiff and the mental health professional;

(d) The temporal relationship between the efforts and the onset or exacerbation of symptoms; and

(e) Any other relevant factors.

24 ➔ SECTION 4. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) Sections 1 to 4 of this Act shall not be construed to limit or restrict any other
27 statutory or common law cause of action or remedy available to any person

1 *injured by sexual orientation or gender identity change efforts.*

2 *(2) It is the intent of the General Assembly that Sections 1 to 4 of this Act shall be*
3 *interpreted broadly to effectuate its remedial purpose of providing civil remedies*
4 *to persons harmed by sexual orientation or gender identity change efforts.*

5 *(3) Sections 1 to 4 of this Act apply to any action commenced on or after the effective*
6 *date of this Act, provided that the action was not barred by the applicable statute*
7 *of limitations in effect prior to the effective date of this Act.*

8 ➔ SECTION 5. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO
9 READ AS FOLLOWS:

10 *(1) Notwithstanding any other law to the contrary, the time for commencement of a*
11 *civil action for recovery of damages suffered as a result of sexual orientation or*
12 *gender identity change efforts as described in Sections 1 to 4 of this Act is the*
13 *later of the following:*

14 *(a) Within twenty-two (22) years of the date the plaintiff attains the age of*
15 *majority, if the plaintiff was under eighteen (18) years of age at the time of*
16 *the conduct;*

17 *(b) Within ten (10) years of the date of the last treatment session in which*
18 *sexual orientation or gender identity change efforts occurred, if the plaintiff*
19 *was eighteen (18) years of age or older at the time of the conduct; or*

20 *(c) Within five (5) years of the date the plaintiff discovers or reasonably should*
21 *have discovered that psychological injury or illness occurring after the*
22 *conduct was caused by sexual orientation or gender identity change efforts.*

23 *(2) For purposes of applying the discovery provisions of this section:*

24 *(a) The plaintiff shall be deemed to have discovered that psychological injury or*
25 *illness was caused by sexual orientation or gender identity change efforts*
26 *when the plaintiff first knew or reasonably should have known that the*
27 *psychological injury or illness was caused, in whole or in part, by sexual*

orientation or gender identity change efforts;

(b) The plaintiff need not have knowledge of the full extent of the injury, the specific diagnosis, or that the conduct was wrongful or actionable;

(c) Knowledge that the plaintiff received treatment from a mental health professional, by itself, does not constitute discovery; and

(d) The discovery period commences only when the plaintiff knew or reasonably should have known that psychological injury or illness generally was caused by sexual orientation or gender identity change efforts.
Evidence that the plaintiff was aware of one (1) psychological symptom or condition potentially caused by those efforts, or had made a connection between the efforts and any specific symptom, does not establish discovery of other injuries or the full scope of harm.

(3) This section shall not be construed to limit the application of any other provision of law that extends the time for commencement of an action as described in Section 2 of this Act.

16 (4) (a) Notwithstanding KRS 411.140, if the person who was subjected to sexual
17 orientation or gender identity change efforts dies before the expiration of
18 the applicable statute of limitations period under subsection (1) of this
19 section, the personal representative or estate shall have the later of:

1. The time remaining under subsection (1) of this section; or

2. One (1) year from the date of qualification of the personal representative.

(b) For purposes of applying the discovery provisions of this section, discovery by the personal representative or estate of the causal connection between the decedent's death or psychological injury or illness and sexual orientation or gender identity change efforts shall be treated as discovery by the plaintiff.

1 ➔Section 6. KRS 413.140 is amended to read as follows:

2 (1) The following actions shall be commenced within one (1) year after the cause of
3 action accrued:

4 (a) An action for an injury to the person of the plaintiff, or of her husband, his
5 wife, child, ward, apprentice, or servant;

6 (b) An action for injuries to persons, cattle, or other livestock by railroads or
7 other corporations, with the exception of hospitals licensed pursuant to KRS
8 Chapter 216;

9 (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal
10 conversation, or breach of promise of marriage;

11 (d) An action for libel or slander;

12 (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant
13 to KRS Chapter 216, for negligence or malpractice, except as provided in
14 Sections 4 and 5 of this Act;

15 (f) A civil action, arising out of any act or omission in rendering, or failing to
16 render, professional services for others, whether brought in tort or contract,
17 against a real estate appraiser holding a certificate or license issued under
18 KRS Chapter 324A or a real estate broker or sales associate holding a license
19 issued under KRS Chapter 324;

20 (g) An action for the escape of a prisoner, arrested or imprisoned on civil process;

21 (h) An action for the recovery of usury paid for the loan or forbearance of money
22 or other thing, against the loaner or forbearer or assignee of either;

23 (i) An action for the recovery of stolen property, by the owner thereof against
24 any person having the same in his possession;

25 (j) An action for the recovery of damages or the value of stolen property, against
26 the thief or any accessory;

27 (k) An action arising out of a detention facility disciplinary proceeding, whether

1 the cause of action shall be deemed to accrue on the date an appeal of the
2 disciplinary proceeding is decided by the institutional warden.

3 (8) In respect to the action referred to in subsection (1)(m) and (n) of this section, the
4 cause of action shall be deemed to accrue after the performance or inducement or
5 attempt to perform or induce the abortion.

6 ➔Section 7. If any provision of this Act or the application thereof to any person
7 or circumstance is held invalid, the invalidity shall not affect other provisions or
8 applications of the Act that can be given effect without the invalid provision or
9 application, and to this end the provisions of this Act are severable.

10 ➔Section 8. Whereas Kentucky has a paramount interest in protecting its
11 population from the harmful effects of sexual orientation or gender identity change
12 efforts, an emergency is declared to exist, and this Act takes effect upon its passage and
13 approval by the Governor or upon its otherwise becoming a law.