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Date: (Filing No. H-)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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

COMMITTEE AMENDMENT “ ” 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; and

(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

COMMITTEE AMENDMENT

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

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

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

7 **3. Exception for clergy.** This section does not apply to the activities and services of
8 any priest, rabbi, member of the clergy, including a Christian Science healer, or minister
9 of the gospel of any religious denomination when performing counseling services as part
10 of religious duties and in connection with a specific synagogue or church of any religious
11 denomination, as long as that priest, rabbi, member of the clergy or minister does not
12 advertise, offer or administer conversion therapy to or for individuals under 18 years of
13 age in exchange for monetary compensation.

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

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

17 **2-A. Grounds for revocation or suspension of a school psychologist or guidance**
18 **counselor certificate.** Evidence that a person has administered conversion therapy as
19 defined in Title 10, section 1500-J to a child is grounds for revocation or suspension of
20 that person's certificate issued under this Title as a school psychologist or guidance
21 counselor.

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

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

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

38 **§3174-AAA. Coverage for conversion therapy**

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

1 **Sec. 5. 24 MRSA §2502, sub-§6**, as enacted by PL 1985, c. 804, §§5 and 22, is
2 amended to read:

3 **6. Action for professional negligence.** "Action for professional negligence" means
4 any action for damages for injury or death against any health care provider, its agents or
5 employees, or health care practitioner, ~~his~~ the practitioner's agents or employees, whether
6 based upon tort or breach of contract or otherwise, arising out of the provision or failure
7 to provide health care services, except that "action for professional negligence" does not
8 include an action brought pursuant to the Maine Unfair Trade Practices Act alleging a
9 violation of Title 10, section 1500-J.

10 **Sec. 6. 32 MRSA §2105-A, sub-§2, ¶I**, as amended by PL 2015, c. 488, §11, is
11 further amended to read:

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

13 **Sec. 7. 32 MRSA §2105-A, sub-§2, ¶J**, as enacted by PL 2015, c. 488, §12, is
14 amended to read:

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

16 **Sec. 8. 32 MRSA §2105-A, sub-§2, ¶K** is enacted to read:

17 K. A violation of section 2112.

18 **Sec. 9. 32 MRSA §2112** is enacted to read:

19 **§2112. Prohibition on providing conversion therapy to minors**

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

22 **Sec. 10. 32 MRSA §2591-A, sub-§2, ¶N**, as amended by PL 2015, c. 488, §15,
23 is further amended to read:

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

30 **Sec. 11. 32 MRSA §2591-A, sub-§2, ¶O**, as enacted by PL 2015, c. 488, §16, is
31 amended to read:

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

33 **Sec. 12. 32 MRSA §2591-A, sub-§2, ¶P** is enacted to read:

34 P. A violation of section 2600-D.

35 **Sec. 13. 32 MRSA §2600-D** is enacted to read:

1 **§2600-D. Prohibition on providing conversion therapy to minors**

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

4 **Sec. 14. 32 MRSA §3282-A, sub-§2, ¶R**, as amended by PL 2015, c. 488, §18,
5 is further amended to read:

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

7 **Sec. 15. 32 MRSA §3282-A, sub-§2, ¶S**, as enacted by PL 2015, c. 488, §19, is
8 amended to read:

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

10 **Sec. 16. 32 MRSA §3282-A, sub-§2, ¶T** is enacted to read:

11 T. A violation of section 3300-G.

12 **Sec. 17. 32 MRSA §3300-G** is enacted to read:

13 **§3300-G. Prohibition on providing conversion therapy to minors**

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

16 **Sec. 18. 32 MRSA §3837-A, sub-§1, ¶¶E and F**, as enacted by PL 2007, c.
17 402, Pt. Q, §14, are amended to read:

18 E. Practice by a licensed psychological examiner at a level requiring a psychologist's
19 license or any representation by a psychological examiner that that psychological
20 examiner is a psychologist; or

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

22 **Sec. 19. 32 MRSA §3837-A, sub-§1, ¶G** is enacted to read:

23 G. A violation of section 3837-B.

24 **Sec. 20. 32 MRSA §3837-B** is enacted to read:

25 **§3837-B. Prohibition on providing conversion therapy to minors**

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

28 **Sec. 21. 32 MRSA §6217-B, sub-§1**, as amended by PL 2007, c. 621, §9, is
29 further amended to read:

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

32 **Sec. 22. 32 MRSA §6217-B, sub-§2**, as enacted by PL 2007, c. 402, Pt. U, §12,
33 is amended to read:

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

35 **Sec. 23. 32 MRSA §6217-B, sub-§3** is enacted to read:

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

2 **Sec. 24. 32 MRSA §6223** is enacted to read:

3 **§6223. Prohibition on providing conversion therapy to minors**

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

6 **Sec. 25. 32 MRSA §7006** is enacted to read:

7 **§7006. Prohibition on providing conversion therapy to minors**

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

10 **Sec. 26. 32 MRSA §7059-A, sub-§§1 and 2**, as enacted by PL 2007, c. 402, Pt.
11 V, §14, are amended to read:

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

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

18 **Sec. 27. 32 MRSA §7059-A, sub-§3** is enacted to read:

19 **3. Prohibited conduct.** A violation of section 7006.

20 **Sec. 28. 32 MRSA §13742-A, sub-§1, ¶¶C and D**, as enacted by PL 2007, c.
21 402, Pt. DD, §19, are amended to read:

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

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

27 **Sec. 29. 32 MRSA §13742-A, sub-§1, ¶E** is enacted to read:

28 E. A violation of section 13798-A.

29 **Sec. 30. 32 MRSA §13798-A** is enacted to read:

30 **§13798-A. Prohibition on providing conversion therapy to minors**

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

33 **Sec. 31. 32 MRSA §13861-A, sub-§1, ¶¶B and C**, as enacted by PL 2007, c.
34 402, Pt. EE, §9, are amended to read:

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

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

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

5 D. A violation of section 13866.

6 **Sec. 33. 32 MRSA §13866** is enacted to read:

7 **§13866. Prohibition on providing conversion therapy to minors**

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

10 **Sec. 34. 32 MRSA §17307, sub-§§1 and 2**, as enacted by PL 2007, c. 369, Pt.
11 C, §3 and affected by §5, are amended to read:

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

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

30 **Sec. 35. 32 MRSA §17307, sub-§3** is enacted to read:

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

32 **Sec. 36. 32 MRSA §17311** is enacted to read:

33 **§17311. Prohibition on providing conversion therapy to minors**

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

36 **Sec. 37. Legislative findings; legislative intent.**

37 **1. Legislative findings.** The Legislature finds that:

38 A. Conversion therapy is a service that purports to change a person's sexual
39 orientation or gender identity based on the false premise that being lesbian, gay,

1 bisexual or transgender is a mental illness or disorder caused by a developmental
2 deficiency or trauma or by unmet emotional needs, which can be cured by conversion
3 therapy addressing those underlying issues. However, the nation's leading health and
4 mental health authorities recognize being lesbian, gay, bisexual or transgender and
5 having same-sex attractions as normal variants of human sexuality and gender;

6 B. There is no competent and reliable scientific evidence supporting claims that
7 conversion therapy can change an individual's sexual orientation; rather, there is
8 substantial competent and reliable scientific evidence that conversion therapy is
9 ineffective and can and often does result in significant health and safety risks to
10 consumers of those services, including a risk of death by suicide, as well as economic
11 losses;

12 C. Mainstream medical and mental health professional organizations, including the
13 American School Counselor Association, the American Psychiatric Association, the
14 American Psychological Association, the American Psychoanalytic Association, the
15 American Counseling Association Governing Council, the American Medical
16 Association, the American Academy of Pediatrics, the American Academy of Family
17 Physicians, the National Association of Social Workers and the Pan American Health
18 Organization have concluded that conversion therapy is both ineffective in changing
19 sexual orientation or gender identity and poses safety and health risks;

20 D. The United Nations Committee against Torture and Human Rights Council have
21 likewise supported an end to conversion therapy; and

22 E. The State has a compelling interest in protecting the physical and psychological
23 well-being of minors, including the State's lesbian, gay, bisexual and transgender
24 youth, from the marketing, selling and administration of conversion therapy and in
25 protecting its minors from the serious health and safety harms that conversion therapy
26 can cause, including the risk of death by suicide, and economic loss.

27 **2. Legislative intent.** It is the intent of the Legislature to protect the public health
28 and safety of the lesbian, gay, bisexual and transgender youth of the State by prohibiting
29 the marketing, selling and administration of therapy designed to change a person's sexual
30 orientation or gender identity, also known as conversion therapy, to individuals under 18
31 years of age in the State.'

32 **SUMMARY**

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

35 1. It defines "conversion therapy" as any practice or treatment that seeks to change an
36 individual's sexual orientation or gender identity, except for counseling or treatment
37 intended to assist an individual undergoing a gender transition; counseling intended to
38 provide acceptance, support and understanding to the individual; and counseling intended
39 to facilitate the individual's coping, social support or identity exploration and
40 development, including any therapeutic intervention that is neutral with regard to sexual
41 orientation, and that seeks to prevent or address unlawful conduct or unsafe sexual
42 practices, as long as the counseling does not seek to change the individual's sexual
43 orientation or gender identity.

1 2. It provides that advertising, offering or administering conversion therapy to
2 individuals under 18 years of age in the State is an unfair trade practice. Court actions
3 involving conversion therapy brought against health care providers under the Maine
4 Unfair Trade Practices Act are not governed by the specialized procedures set forth in the
5 Maine Health Security Act for actions involving professional negligence.

6 3. It prohibits certified school psychologists and guidance counselors, nurses,
7 doctors, physician assistants, psychologists, psychological examiners, alcohol and drug
8 counselors and aides, social workers, pharmacists and pharmacy technicians, professional
9 counselors, marriage and family therapists, pastoral counselors, speech-language
10 pathologists and assistants, and audiologists from administering conversion therapy to
11 individuals under 18 years of age. Administration of conversion therapy to an individual
12 under 18 years of age in violation of this prohibition is grounds for discipline of the
13 professional by the department or board that issued the professional's license or
14 certification, including but not limited to suspension or revocation of the license or
15 certification.

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

18 5. It adds a statement of legislative findings and intent.

19 **FISCAL NOTE REQUIRED**

20 **(See attached)**