

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
MINORITY STATEMENT
LB574

Hearing Date: Wednesday February 08, 2023
Committee On: Health and Human Services
Introducer: Kauth
One Liner: Adopt the Let Them Grow Act

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye:	4	Senators Ballard, Hansen, B., Hardin, Riepe
Nay:	3	Senators Cavanaugh, M., Day, Walz
Absent:		
Present Not Voting:		

Objections to the bill, proposed amendment , or majority statement

Testimony

Proponents:	Representing:
Scott Newgent	Trevoices.org
Mario Presents Estrada	Gays Against Groomers
Luka Hein	Self
Erin Brewer	Self
Cat Cattinson	Detransitioners
Atoa Vaiaso	Self
Tiffani Frost	Self
Greg Brown	Self
Jennifer Bauwens	Family Research Council
Jaime Dodge	Self
Jeanne Greisen	Self
Marion Miner	Nebraska Catholic Conference
Sue Greenwald	Self
Julia Emerson	Self
Jenna Derr	Self
Linda Vermooten	Self
Karen Bowling	Nebraska Family Alliance
David Begley	Self
Jeanette Cooper	Partners for Ethical Care
Russ Barger	Self
Joseph Mulka	Self
Stephanie Johnson	Nebraskans for Founders Values
Paul Ehernberger	Self
Kathy Wilmot	Nebraska Eagle Forum

Doug Kagan	Nebraska Taxpayers for Freedom
Denise Bradshaw	Self
Michelle Bates	Self
Katherine Yohman	Self
Tracee Baker	Self
Thomas Morgan	Self
Dennis Scheis	Self
Elizabeth Davids	Self
Angie Klein	Self
Amber Parker	Self
Tiffany Carter	Self
Brenda McGill	Self
Kathy Adams	Self
Allie French	Self
Sherry Jones	Self
Kami Riley	Self
Marni Hodgen	Self
Angie Eberspacher	Self
Ashley Jarmin	Self
S. Wayne Smith	Self
Ward Greisen	Self
Richard W Riley	Self
Kathy Faucher	Self
Alexander Stephens	Self
Ben Tapper	Self
Ben Stangl	Self
Karen Anderson	Self
Aaron Gilliland	Self
Steve Davies	Self
Scott Thomas	Village in Progress
Brittany Holtmeyer	Self
Ben Wamberg	Self
Sara Fochs	Self

Opponents: Representing:

Josephine Vincent Litwinowicz	Self
Cait Smith	The Trevor Project
Mike Hornacek	Self
Elizabeth Constance	American College of OBGYN
Jean Amoura	Self
Daniel Rosenquist	Nebraska Medical Association
Hannah Coffey	Nebraska Psychological Association
Isabella Manhart	Self
Rachel Ogborn	Self
Alek Duncan	Self
Sarah Maresh	Nebraska Appleseed
Rev Dr E Scott Jones	Nebraska Conference of the United Church of Christ

Ash Homan	Self
Camie Nitzel	Kindred Psychology
Elizabeth Weedon	Self
John McCollister	Self
Sheri Shuler	Self
Alex Dworak	One World Community Health Centers
Ross Manhart	Self
Meghan Sheehan	Self
Alex Hamric	Self
Lauren Maskin	Nebraska Chapter of the American Academy of Pediatrics

Jill Dibbern Manhart	Self
Shannon Godsil	Nebraska Chapter of the American Academy of Pediatrics
Natasha Gallett	Self
Shannon Haines	Self
Spencer Robinson	Self
Ronald D Fussell	Self
Maeve Malice	Self
Sapphire Smith	Self
David Grenier	Self
Mary E Sullivan	Nebraska Chapter of the National Association of Social Workers

Eliann Siebe-Walles	Self
Jeremy K Eriksen	Self
Steph Engelbart	Kindred Psychology
Kadence Ann Tomasch	OutNebraska
Tiffany Weiss	Self
Echo Koehler	Nebraska Nurses Association
Sam Whitt	Self
Jessie McGrath	Self
Evelynn Freeman	Evelynn Freeman Psychotherapy, LLC
Rev Juniper Meadows	2nd Unitarian Church of Omaha

Opponents (no testimony): Representing: (Self)

Ava Schmidt
 Jeff Schmidt
 Brenda Alonso
 Zach Baker
 Skyler Black
 Chueqa Yang
 Skyler Black
 Chueqa Yang
 Daren Coulson
 Bud Mathey
 Darcy Covert
 Victory Klafter
 Jill Heggen
 Jane McGill

Autumn Woolpert
Grace Jaworski
Ridley Goud
Kay Horwath
Grace Vanderroy
Arreta Ahrom
Em Meyer
Amanda Koeber
Carmen Smith
Henry Nelson
Kenna Barnes
Tia Manning
Natalia Tu
Jane Seu
Dana Maaske
Megan Thom
Aurora Sater
John McGill
Miranda Rogers
Wes Staley
Brenda Schimdt
Mary Ensz
Emily Kaemmerer
Karen Williams
Josh Girard
Renee Garcia
Kayleigh Casey
Charles Buckman
Gina May
Sophie Holtz
Freedom S. Thompson
Linda Duckworth
Alexander Crawford
Jessica Sult
Zoe Miller
Jay Irwin
Darcia Cole
Remy Sydike
William Manhart
Rev. Carol Windrum
Krissa Hamric
Jacob Carmichael
Denise Powell
Autumn Smart
Rebecca Rakstad
Lacie Nelson
Zachery Harris
Michelle Duran
Natalie Bussing

Troy Becker
Olivia Ozenbaugh
Sara Bradshaw
Gail Jones
Mimi Arabalo
Kate West
Eric Alexander Rost
Rev. Juniper Meadows
Dr. John Else
Ashley Denton
Katie Anania
Mel Plaut
Jacob Lozier
Willow Rose
Teddy Vern
Elaine Rivera
Hope Mock
Mary Dickinson
Taylor Boghs
Ellen Dexter
Megan Nicholls
Kristin Lowrey
Jo Schroes
Velma Lockman
June Coleman
Rory Crawford
Joseph Thomas Chambers
Danny Bird
Ron Fussell
Tina Fussell
Shelbie Thomas
Joshua Thomas
Melissa Thomas
Selah Thomas
Ashleigh Pitts
Sadie Thomas
Sam Thomas
Jules Wuestewald
Chris Cole
Alexandra Cole
Lindsay Salem
Raina Salazar
Laura Seyl
Noemi Gilbert
Angelita Sada
Natalie Gallett
Karina Hernandez
Christine Jackson
Holly Richie

Mary Allen
Violet Haplstrudner
Caley Morgensen
Tony Anderson
Nicky Clark
Garrett Denton
Ivy Chobanya
Delira McKegt
Deana Berezin
Chris Jorgensen
Jamie Shipman
Cindy Maxwell-Ostdiek
Angie Phillips
David Gresner
Rosa Cancino
Ella Durham
Kaye Becker
Sandra Williams
Anne Boyle
Jack Schiewe
Jennifer Griffin Miller
Karin Waggoner
Nathan Morgan
Sheri Shuler
Jody Kellas
Emily Huyck
Hilary Mass
Mads Roden
Sarah Horwath
Seth Adams
James Pennington
Lydia Cooper
Cameron Koenig-Barker
Andi Curry Grubb
Adelle Burk
Michael Neman
Kevin Gibbs
Ameen Wabba
Galina Wood
Zach Fontanes-Hallidy
Rachel Hoover
Emiliana Blanco
Lindsey Doane
Gentry Doane
Jamie Bonkiewicz
Amanda Wozab
Stephen Wozab
Cecelia Mayer
Amber Neeman

Jessica MacDonald
Ben Johnson
Ashley Johnson
Travis Beder
Joni Watake
Ryan Sallans
Ari Bader
Jessica Rudouch
William Myrick
Adam Vorway
Allison Bowers
Astrid Ramsay
Rashanti Patterson
Kaitlynn
Anterburn
Sidney Bishop
Mergo Petrichor
Rowena Bennett
Peyton Davis-Schmit
Britta Tollefsrud
Steph Engelbart
Courtney Yochim
Michaelyn Everhart
David Burger
Andrew Graff
Heather Hruskoi
John Ostranders
Payton Hurlburt
Ellie Siebe-Walles
Joseph Harmer

Neutral: Representing:

SUMMARY

This is a Minority Committee Statement prepared by the Minority Members voting against advancing LB 574 from Committee. This is filed pursuant to Rule 3, Section 19(b) and is signed by its proponents herein.

LB 574 would prohibit medical professionals from providing or performing gender-affirming care for people who are under the age of nineteen. LB 574 would also prohibit professionals from referring an individual younger than nineteen for gender-affirming care.

LB 574 amends various scopes of approved practice of psychology, medical practice, pediatrics, and referral service for all professionals.

Finally, the bill would prohibit any state funds from going directly or indirectly to any entity, organization, or individual who performs prohibited procedures to an individual younger than nineteen.

SECTION BY SECTION SUMMARY OF THE BILL

LB 574 is an effort to ban so-called “gender-altering” procedures from being prescribed or administered to minors. Like other states’ proposals, the bill prohibits mental health and medical care for children regardless of parental consent or medical or professional recommendation. A section by section summary of the bill follows, which contains a discussion of the objections of the Minority Committee Members.

Section 3

Section 3 of the bill contains legislative findings regarding gender and medical practice. The Minority Members of the Committee object to these findings since they are not consistent with what professionals in medicine and psychology have determined, as well as what professional associations like the Nebraska Medical Association and the American Medical Association and other professional organizations have found to be best practices relating to gender, gender identity, and gender-affirming care. These professionals and associations testified in opposition at the Committee Hearing on the bill to these findings. The Minority Committee Members object to the current form of this section as it does not reflect mainstream medical or scientific consensus. Discussion within the Committee to amend or clarify this section was not accommodated by the Majority.

Section 4

Section 4 of the bill provides for various definitions of biological sex; gender; gender-altering surgery; gender-altering procedures; and related definitions. The Minority Members of the Committee object to these findings since they are not consistent with what professionals in medicine and psychology have determined, as well as what professional associations like the Nebraska Medical Association and the American Medical Association and other professional organizations have found to be best practices relating to gender, gender identity, and gender-affirming care. Many of these professionals and associations testified in opposition at the Committee Hearing on the bill to these findings. The Minority Committee Members object to the current form of this section because it does not reflect mainstream medical or scientific consensus. Discussion within the Committee to amend or clarify this section was not accommodated by the Majority.

Section 5

Section 5 of the bill provides that no health care practitioner shall perform “gender-altering” procedures on a person under age nineteen or refer a person under age nineteen to receive such care. Performance or referral for such care shall be considered unprofessional conduct which can result in loss of professional license or other discipline. The Minority Members of the Committee questioned why referring a patient for care, perhaps even to another state where it is not prohibited, should be regarded as the same as performing such a procedure. Additionally, the term “refer” is not defined and could be verbal or written, informal or formal, and could easily be used to trap a practitioner who is not familiar with this area of practice and merely suggests another professional for consultation. The Minority Committee Members object to the current form of this section. Discussion within the Committee to amend or clarify this section was not accommodated by the Majority.

Section 6

Section 6 of the bill prohibits any state funds from going directly or indirectly to any entity, organization, or individual who performs prohibited procedures to an individual younger than nineteen. The Minority Members of the Committee object to this section as it is legally suspect under federal Medicaid law. This section of the bill would prohibit the use of state funds for gender-affirming care, including Medicaid funds. Federal law directs that states follow federal law when administering Medicaid funds. Medicaid requires that state cover services for youth under age 21, known as the Early and Periodic

Screening, Diagnostic, and Treatment (EPSDT) benefit. Under the EPSDT benefit, states must provide every mandatory service necessary for people under 21 recognized by the federal government. The federal government has recognized that gender-affirming care fits within multiple categories of Medicaid services. Additionally, the federal Medicaid Act requires that there are no discriminatory practices in the state-run programs. The Minority Committee Members object to the current form of this section. Discussion within the Committee to amend or clarify this section was not accommodated by the Majority.

Section 7

Section 7 provides for a cause of action for a person who received “gender-altering” procedures to bring a civil action against a health care practitioner who provided such procedures. The remedy has a statute of limitations for a suit to be “brought within 2 years from discovery of damages”. The Minority Members of the Committee object to this section because the two year statute of limitations is confusing as to when the “discovery of damages” is triggered. Is that the same as the performance of the procedure? If not, what does “discovery” of the damage mean? The Minority Committee Members object to the current form of this section. Discussion within the Committee to amend or clarify this section was not accommodated by the Majority.

No Credentialing Review

The Minority Members of the Committee object to the advancement of this bill without the Committee and the Legislature complying with the Credentialing Review Program. The Credentialing Review Program, known as the “407 Process,” was created to review proposals for changes in scope of practice or for new credentialing on the part of representatives of Nebraska health professions. Proposals to modify scope of practice or credentialing standards are evaluated against public health related criteria to determine whether proposals would benefit the public health and welfare by the bodies that conduct the review. The credentialing review is a three-stage process conducted by the following review bodies, including an ad hoc technical review committee appointed by the Director of the Division of Public Health; review of the State Board of Health and review of the Director of the Division of Public Health. These three review bodies each create their own independent report on each proposal. These reports are submitted to members of the Legislative Health and Human Services Committee to assist them in the review of bills that arise from credentialing review proposals.

LB 574 brings profound changes to the scope of practice and credentialing of various health professions in Nebraska. The Minority Members of the Committee strongly recommended the Committee not advance this bill since the 407 Process is being circumvented by the introduction of the bill and its advancement from the Committee. Discussion within Committee to not advance LB 574 until the Credentialing Review Program could be undertaken was not accommodated by the Majority.

Legal Uncertainty

Finally, LB 574 is very similar to an Arkansas law, HB 1570, which was passed as Act 626 when the Arkansas Assembly overrode Governor Asa Hutchinson’s veto on April 6, 2021. That law has never been in effect. The law was to go into effect on July 28, 2021, but was enjoined on July 21, 2021 by the District Court of Arkansas. On August 25, 2022 a three judge panel of the 8th Circuit Court of Appeals affirmed the temporary order of the district court. On November 16, 2022, the 8th Circuit Court of Appeals en banc refused to modify the August 2022 decision of the three judge panel. While the temporary order from July 2021 blocking the bill remains in effect, trial on the merits of the Arkansas law was held in October 2022 and ended on December 1, 2022. A final decision from the judge who heard the case, United States District Judge James Moody Jr. could come at any moment.

A number of other states have enacted a version of prohibitions similar to the Arkansas law: Alabama, Arizona, South Dakota, Tennessee, and Utah. Some of these states face similar court challenges.

Given the uncertain legal and shifting landscape relating to these sorts of bills, the Minority Members of the Committee

strongly recommended the Committee not advance this bill until the legality and constitutionality of these bans on healthcare can be determined by the courts. Discussion within the Committee to not advance LB 574 for this reason was not accommodated by the Majority.

Cavanaugh, M., 6

Day, 49