

HB 822: Limits on Sex and Social Transitioning



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(5.26)

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Disclaimer

- The statute may be politically divisive.
- My comments should not be construed as commentary on or advocacy for the politics or policy reflected in the statute, either for or against.
- My comments address the requirements and potential problems with implementation from the perspective of an attorney who represents healthcare providers who are attempting to comply and may face significant consequences for alleged or actual violations.
- I was not involved in the legislation so have limited insight as the sponsors' intent or the process.

Preliminaries

- Written materials
 - HB 822, available at <https://legislature.idaho.gov/sessioninfo/2026/legislation/H0822/>
 - Stanger, *HB 822: New Idaho Law on Pediatric Sexual and Social Transitioning*, available at <https://www.hollandhart.com/hb-822-new-idaho-law-on-pediatric-sexual-and-social-transitioning>
- If you have questions, you can submit them using the chat feature or email me at kcstanger@hollandhart.com.

Background



Idaho Parental Rights Act

IC 32-1010 to -1015

-1010: Parents' fundamental rights

“(2) The interests and role of parents in the care, custody and control of their children are... among the unalienable rights retained by the people under the ninth amendment to the constitution of the United States.”

“(3) The interests of the parents include the high duty and right to nurture and direct their children's destiny, including their upbringing and education.”

-1011: Care, custody and control of children.

-1012: Direct the education of children.

-1013: Interference with fundamental parental rights restricted.

Confirms private cause of action for violations.

-1014: Emergency order not justification to interfere with parental rights.

-1015: Medical decisionmaking.

-1016: Pediatric Secretive Transitions Parental Rights Act

HB 822

Statement of Purpose

“In 2023, the Idaho legislature passed H 71 banning pediatric gender mutilation. This legislation [HB 822], the ‘Pediatric Secretive Transitions Parental Rights Act,’ seeks to expand upon those protections and reinforce the fundamental right of parents and guardians to oversee the medical and social upbringing of their children. The bill prohibits ‘covered entities’—including healthcare providers, educational institutions, and childcare providers—from facilitating a minor's medical sex transition or ‘social transition’ without informing and obtaining the informed consent of the child's parent or guardian. Specifically, it prevents these entities from withholding information regarding a child's interest in sex transition procedures and requires schools to notify parents within 72 hours if a student requests to use different names, pronouns, or sex-separated facilities. The act establishes a civil cause of action for aggrieved parents to recover compensatory damages and authorizes the Attorney General to investigate violations, seek writs of mandamus, and levy civil penalties.”

(<https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2026/legislation/H0822SOP.pdf>)

IC 32-1016

Purpose

- “It is undoubtedly a parental purview and prerogative to have knowledge of, and the authority to deny, a child's efforts at sex transition procedures or social transitions.” (IC 32-1016(2)(c))

Therefore...

- “It is the intent of the legislature to prohibit any health care provider or educational institution from facilitating a pediatric sex transition or social transition without informing and obtaining informed consent from a minor child's parents or guardians.” (IC 32-1016(3))
- **Effective July 1, 2026.**

Applicability



“Covered Entity”

1. **“Primary or secondary educational institution.”**

– *Apparently not individual teachers or school employees.*

2. **“Child care provider.”**

– *Not defined.*

– *Does it include only licensed entities, or does it include family members, babysitters, others?*

3. **“Medical, behavioral, or mental health care provider.”**

(IC 32-1016(4))

– *Not defined in IC 32-1016.*

– *Under IC 32-1015,*

• *“Health care provider” means:*

(i) *A physician, health care practitioner, or other individual licensed, accredited, or certified to perform health care services or provide counseling consistent with state law, or any agent or third-party representative thereof; or*

(ii) *A health care facility or its agent.”*

(IC 32-1015(1)(b))

“Child”

- “[A]n individual who is less than eighteen (18) years of age and who is not married or legally emancipated.”

(IC 32-1016(4)(b))

- *What does “legally emancipated” mean?*
 - *Court declares them emancipated.*
 - *Serving in the armed services?*
 - *Self-supporting?*
- *Note: 32-1016(6) applies to “minor student” instead of “child”.*

“Sex Transition Procedures”

- Those defined in IC 18-1506C, i.e.,
 - “(a) Performing surgeries that sterilize or mutilate, or artificially construct tissue with the appearance of genitalia that differs from the child’s biological sex, including castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, clitoroplasty, vaginoplasty, vulvoplasty, ovariectomy, or reconstruction of the fixed part of the urethra with or without metoidioplasty, phalloplasty, scrotoplasty, or the implantation of erection or testicular prostheses;
 - “(b) Performing a mastectomy;
 - “(c) Administering or supplying the following medications that induce profound morphologic changes in the genitals of a child or induce transient or permanent infertility:
 - (i) Puberty-blocking medication to stop or delay normal puberty;
 - (ii) Supraphysiological doses of testosterone to a female; or
 - (iii) Supraphysiological doses of estrogen to a male; or
 - “(d) Removing any otherwise healthy or nondiseased body part or tissue.”

(IC 32-1016(4)(d) and 18-1506C(3))

“Sex”

- IC 32-1016 does not define “sex”.
- But IC 18-1506C incorporates the definition of “sex” at IC 73-114(n), *i.e.*, “‘Sex’ means an individual’s biological sex, either male or female.”

“Social Transitioning”

- “[T]he process by which an individual goes from identifying with and living as a gender that corresponds to the individual's sex to identifying with and living as a gender different from the individual's sex and may involve social, legal, or physical changes, including adopting a name, pronouns, appearance, or dress that does not correspond to the individual's sex.”

(IC 32-1016(4)(e))

- *Problem:*

- *What is meant by “social ... changes”?*
- *Whether a “name, ... appearance, or dress” corresponds to an individual’s sex is highly subjective and may depend on a person’s experience and cultural background.*

E.g., do these names correspond to the minor's sex?

"Female" names	Common nicknames	"Male" names	Common nicknames
Charlene, Charlotte	Charlie	Alexander	Sandy, Sasha
Alexandra	Alex	Joseph	Joey
Samantha	Sam	Lawrence	Laurie
Danielle	Danny	Nicholas	Nicky, Niki
Francesca, Frances	Frankie	Victor	Tori


E.g., does this person's dress correspond to his sex?



E.g., do these persons' appearance correspond to their sex?



Social Transitioning

- *For purposes of determining liability:*
 - *Who determines if the “social, legal, or physical changes” constitute “social transitioning”?*
 - *Who determines whether the minor’s preferred “name, ... appearance, or dress ... correspond[s] to the individual's sex”?*
 - *Does the covered entity’s knowledge or intent matter?*
- 
- The covered entity?
 - The parent?
 - The court?
 - The jury?
 - The Attorney General?
 - A licensing agency?
 - Other?

Practical Application to Providers

- In practice, IC 32-1016 likely would not affect most healthcare providers on a regular basis.
- However, it may come up for...
 - Anyone actively involved in treatments or therapies that could be construed as “sex transitioning.”
 - Psychiatrists, psychologists, therapists, counselors, and social workers working with minors.
 - Pediatricians and family practice physicians in whom minors may confide or to whom minor may ask questions.
 - OB/GYNs and reproductive health providers.
 - School-based providers.
 - Others?

Requirements



Do Not Withhold Info from Parents



- “A covered entity shall not withhold information from a child's parent or guardian related to the child's expressed interest in or desire for sex transition procedures.”

(IC 32-1015(5))

- *Does this require covered entities to proactively disclose information to the parents or merely respond to a request from the parents?*
 - *Compare 32-1015(6) (must provide info if requested by parents)*
 - *Compare 32-1016(6) (must notify parents of minor's request to facilitate or participate in social transition)*

Do Not Withhold Info from Parents

- *Compare IC 32-1015(6)):*

“(6) No health care provider or governmental entity shall deny a minor child's parent access to health information that is:

(a) In such health care provider's or governmental entity's control; and

(b) Requested by the minor child's parent.

“(7) Subsection (6) of this section shall not apply if:

(a) The parent's access to the requested health information is prohibited by a court order;

(b) The health information is a record that relates to physical abuse, abandonment, or neglect by the parent, as provided in section 33-6001(3), Idaho Code; or

(c) The parent is a subject of an investigation related to a crime committed against the child, and a law enforcement officer requests that the information not be released to the parent.”

- *Do the exceptions in IC 32-1015(7) apply?*

- *Do the HIPAA exceptions to parental access apply?*

Notify Parents of Request for Social Transitioning



- “A covered entity shall notify a minor student's parent within seventy-two (72) hours of receiving any request by the minor student to participate in or facilitate the social transition of the minor student, including any request by the minor student to:
 - “(a) Be referred to by pronouns or titles that do not correspond to the minor student's biological sex;
 - “(b) Be referred to using names other than the minor student's legal name, or a nickname or derivative thereof, either in school records or otherwise;
 - “(c) Use restrooms, locker rooms, changing rooms, or overnight lodging designated for the opposite biological sex; or
 - “(d) Participate on an athletic team or any other sex-separated school activity designated for the opposite sex.”

(IC 32-1016(6))

Notify Parents of Request for Social Transitioning

- *Does the notice requirement in IC 32-1016(6) apply to healthcare providers?*
- Statement of Purpose for HB 822:
 - The statute “requires **schools** to notify parents within 72 hours if a student requests to use different names, pronouns, or sex-separated facilities....”

(<https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2026/legislation/H0822SOP.pdf>).

Notify Parents of Request for Social Transitioning

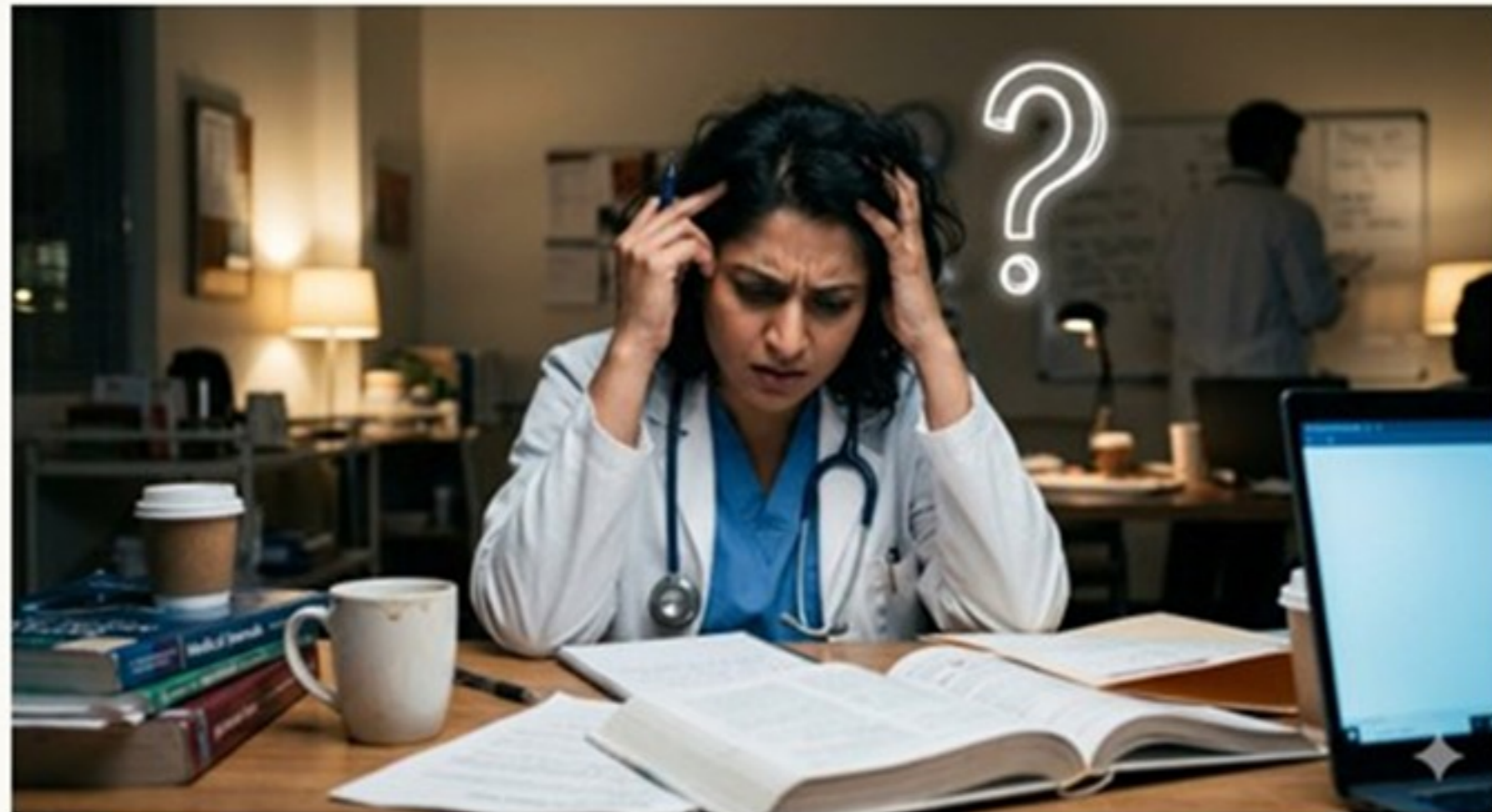
- Does IC 32-1016(6) apply to healthcare providers?
 - “A **covered entity** shall notify a minor **student's** parent within seventy-two (72) hours of receiving any request by the minor **student** to participate in or facilitate the social transition of the minor **student**, including any request by the minor **student** to:
 - (a) Be referred to by pronouns or titles that do not correspond to the minor **student's** biological sex;
 - (b) Be referred to using names other than the minor **student's** legal name, or a nickname or derivative thereof, either in **school records** or otherwise;
 - (c) Use restrooms, **locker rooms**, changing rooms, or **overnight lodging designated for the opposite biological sex; or**
 - (d) **Participate on an athletic team or any other sex-separated school activity designated for the opposite sex.”**

(IC 32-1016(6))

Notify Parents of Request for Social Transitioning

WHY IT MIGHT APPLY TO PROVIDERS

- “Covered entity” includes healthcare providers.



WHY IT MIGHT NOT APPLY TO PROVIDERS

- Statement of purpose for HB 822 states that “schools” must notify parents.
- References minor “students”; not “child”, “minor” or “minor patients”
- References school activities and school records.

Notify Parents of Request for Social Transitioning

- “A covered entity shall notify a minor student's parent within seventy-two (72) hours of **receiving any request** by the minor student **to participate in or facilitate the social transition** of the minor student....”

(IC 32-1016(6))

- “‘Social Transition’ means the process by which an individual goes from identifying with and living as a gender that corresponds to the individual's sex to **identifying with and living as a gender different from the individual's sex and may involve social, legal, or physical changes, including adopting a name, pronouns, appearance, or dress that does not correspond to the individual's sex.**”

(IC 32-1016(4)(e))

Notify Parents of Request for Social Transitioning

- “A covered entity shall notify a minor student's parent within seventy-two (72) hours of receiving any request by the minor student to participate in or facilitate the social transition of the minor student, **including any request by the minor student to:**
 - “(a) Be referred to by pronouns or titles that do not correspond to the minor student's biological sex;
 - “(b) Be referred to using names other than the minor student's legal name, or a nickname or derivative thereof, either in school records or otherwise;
 - “(c) Use restrooms, locker rooms, changing rooms, or overnight lodging designated for the opposite biological sex; or
 - “(d) Participate on an athletic team or any other sex-separated school activity designated for the opposite sex.”

(IC 32-1016(6))

- *Examples are likely not exclusive.*

Do you notify parents in these cases?

“Female” names	Common nicknames	“Male” names	Common nicknames
Charlene, Charlotte	Charlie	Alexander	Sandy, Sasha
Alexandra	Alex	Joseph	Joey
Samantha	Sam	Lawrence	Laurie
Danielle	Danny	Nicholas	Nicky, Niki
Francesca, Frances	Frankie	Victor	Tori

Do you notify parents in this case?



Do you notify parents in these cases?



Notify Parents of Request for Social Transitioning

- *Does the statute apply retroactively, i.e., must you notify parents of requests to facilitate or participate in social transitioning if such requests occurred before July 1, 2026?*
- *I don't think so.*
 - *The statute states,*
“A covered entity shall notify a minor student's parent within seventy-two (72) hours of receiving any request...”
 - *That suggests to me that it was not intended to be retroactive.*

Do Not Aid and Abet Sex Transition Procedures



- “A covered entity shall not aid or abet a child's efforts to obtain sex transition procedures.”
(IC 32-1016(8))
- *Expands potential liability for violations of IC 18-1506C by:*
 - *Confirming liability for aiding and abetting.*
 - *Creating private cause of action.*
 - *Applying lower burden for civil actions, i.e., “preponderance of the evidence” instead of “beyond a reasonable doubt.”*
- *But what constitutes “aiding and abetting”?*

Do Not Aid and Abet Social Transitioning



- “A covered entity shall not aid or abet a child's efforts to socially transition without first obtaining written consent from the child's parent.”
(IC 32-1016(7))
- “‘Social Transition’ means the process by which an individual goes from identifying with and living as a gender that corresponds to the individual's sex to identifying with and living as a gender different from the individual's sex and may involve social, legal, or physical changes, **including adopting a name, pronouns, appearance, or dress that does not correspond to the individual's sex.**”
(IC 32-1016(4)(e))
- *But what constitutes “aiding and abetting”?*

“Aid and Abet”: Criminal Context

In the criminal context, a person aids and abets if he/she:

- “intentionally **aids, assists, facilitates, promotes, encourages, counsels, solicits, invites, helps** or hires another to commit a crime with intent to promote or assist in its commission....
- “Mere presence at, acquiescence in, or silent consent to, the planning or commission of a crime is not [in the absence of a duty to act] sufficient to make one an accomplice.”

(ICJI 311)

- “Mere knowledge of a crime and assent to or acquiescence in its commission does not give rise to accomplice liability, and the failure to disclose the occurrence of a crime to authorities is not sufficient to constitute aiding and abetting.”

(ICJI 311, Commentary)

“Aid and Abet”: 32-1016 Context

- “A covered entity shall not **aid or abet** a child's efforts to socially transition without first obtaining written consent from the child's parent.”
(IC 32-1016(7))

- Must report request by a minor to **participate in or facilitate** social transitioning, including:
 - Referring to minor by pronouns or titles that do not correspond to the minor student's biological sex;
 - Using names other than the minor student's legal name, or a nickname or derivative thereof, either in school records or otherwise;
 - Using restrooms, locker rooms, changing rooms, or overnight lodging designated for the opposite biological sex; or
 - Participating in athletic team or any other sex-separated school activity designated for the opposite sex.
(IC 32-1016(6))

Are these “aiding and abetting”?

- Referring the patient to a healthcare provider out of state who can perform sex transition procedures?
- Sending the minor’s records to such a provider?
- Providing literature that is supportive of, encourages, or validates social transitioning?
- Providing literature discussing social transitioning, pro or con?
- Informing the patient of events or groups that support social transitioning?
- Donating money or support to organizations that promote social transitioning of minors?
- Displaying a gay pride flag?
- Disclosing that a provider is transgender?

“Aid and Abet”: 32-1016 Context

- *Is intent to aid and abet required for a violation?*
 - “A covered entity shall not aid or abet a child's efforts to socially transition without first obtaining written consent from the child's parent.” (IC 32-1016(7))
 - “A covered entity shall not aid or abet a child's efforts to obtain sex transition procedures.” (IC 32-1016(8))

Consent for Aiding and Abetting Social Transitioning

- “It is the intent of the legislature to prohibit any health care provider or educational institution from facilitating a pediatric sex transition or social transition without informing and obtaining **informed consent** from a minor child's parents or guardians.”

(IC 32-1016(3))

- “A covered entity shall not aid or abet a child's efforts to socially transition without first obtaining **written consent** from the child's parent.”

(IC 32-1016(7))

- *Written informed consent generally required to aid and abet social transitioning.*

Informed Consent

- General rule: must obtain informed consent
 - “Consent ... for the furnishing of health care services shall be valid in all respects if the person giving or refusing the consent is sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon such a person receiving such services, as to permit the giving or withholding of such consent to be a reasonably informed decision.
 - “Any such consent shall be deemed valid and so informed if the health care provider to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances.”

(IC 39-4506)

Blanket Consent

- “A health care provider may authorize or furnish a health care service without obtaining the informed consent of the minor child's parent, if:
 - “(a)(i) A parent of the minor child has given blanket consent authorizing the health care provider to furnish the health care service; provided that:
 1. Such consent must be in writing on a form provided by the health care provider. The form shall be titled "Blanket Consent Form for Health Care Services for Minor." The title must be in bold, 30-point font. On the first page, the form shall state in bold, 24-point font: "Providing blanket consent is optional and may, instead, be given on a case-by-case basis. Blanket consent may be withdrawn by a parent at any time.";
 2. No parent shall be required or pressured to sign a blanket consent form as a condition of the minor child enrolling in public school or participating in any school-sponsored activity; and
 3. A parent may revoke consent to furnish any further health care service to a minor child at any time.
 - “(ii) A blanket consent written by a parent or guardian for the child shall be valid if signed by the parent or guardian even though it does not meet the requirements of paragraph (a)(i) of this subsection.”

(IC 32-1015(4))

Informed Consent v. Blanket Consent

INFORMED CONSENT REQUIRED

- “Informed consent” required per 32-1016(3).
 - *But this is in the purpose section.*
- “Written consent” required per 32-1016(7))
 - *Does not reference informed consent.*
 - *Does not refer to blanket consent in 32-1015(4).*

BLANKET CONSENT PERMISSIBLE

- Informed consent not required if parents give effective blanket consent per 32-1015(4)(a)).
 - *Does not reference or except consent for social transitioning under 32-1016.*

Informed Consent v. Blanket Consent

- Safer to obtain written, informed consent from parent(s) or guardian if intend to aid and abet social transitioning.
 - Be fairly specific as to circumstances and permissible actions to avoid disputes.
- If rely on blanket consent:
 - Do so at your own risk.
 - Ensure blanket consent satisfies requirements in 32-1015(4).
 - Specifically reference “social transitioning as defined in I.C. 32-1016.”
 - Be careful about significant change in circumstance that may affect scope of blanket consent.
- Consider having parents waive right to notice under 32-1016(6).
 - Not clear if parents can waive the right, but doing so would be consistent with respecting parents’ rights under 32-1016.

Funds for Social Transitioning

- “Nothing in this section shall be construed to authorize or permit the use of public funds, public property, or the time or services of public employees to aid or abet a child's efforts to socially transition.”

(IC 32-1016(7))

- *Does this prohibit use of Medicaid or other state funds?*

Penalties



Private Lawsuits

- “An aggrieved person may commence an action at law or equity in a court of competent jurisdiction against a covered entity for violations of this section.”

(IC 32-1016(9))

- “‘Aggrieved person’ means the parent or guardian of a child subjected to sex transition procedures or social transitions.”

(IC 32-1016(4)(a))

Private Lawsuits

- “If an aggrieved person proves that a covered entity violated the provisions of this section, such aggrieved person is entitled to recover:
 - “(a) Declaratory relief;
 - “(b) Injunctive relief;
 - “(c) Compensatory damages; and
 - “(d) Reasonable costs and attorney's fees as allowed by statute or court rule.”

(IC 32-1016(10))

- *Problems*
 - *Unclear if improper intent is required.*
 - *Covered entity must incur defense costs even if ultimately prevail.*
 - *May not be covered by insurance.*
 - *It appears only the plaintiff may recover fees.*

Attorney General Lawsuits

- “(12) In addition to any relief granted to aggrieved persons under a civil action, the attorney general may seek, and a court may award, civil penalties of up to one hundred thousand dollars (\$100,000) against a covered entity for violation of this section. Such civil penalties shall be proportionate to the violation as determined by the court based on the facts and circumstances of the violation, including the seriousness of the violation, the state of mind of the violator, and the damages actually caused by the violation of this section....
- “(14) The attorney general may file suit for a writ of mandamus compelling covered entities to comply with the provisions of this section.

(IC 32-1016(12), (14))

Adverse Licensure Actions

- “The attorney general may refer a covered entity that has violated this section to any licensing board that has issued a professional license to the covered entity. A licensing board is authorized to discipline a covered entity that has been referred to it pursuant to this subsection in a manner that it deems appropriate for a violation of this section.”

(IC 32-1016(13))

Possible Challenges



Possible Legal Challenges?

FEDERAL LAW

- Vague / lack of due process (14th Amendment)
- Privacy (14th Amendment)
- Equal protection (14th Amendment)
- Free speech (1st Amendment)
- Excessive fines (8th Amendment)
- Federal preemption
 - FERPA
 - HIPAA
- Others?

STATE LAW

- Inalienable rights / privacy (Art. I § 17)
- Free speech (Art. I § 9)
- Special legislation (Art. III § 19)
- Others?

Possible Challenges?



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Transgender Idahoans Challenge Criminal Restroom Ban in New Federal Lawsuit

Affiliate: [ACLU of Idaho](#)

April 30, 2026 8:53 am



ACLU Affiliate



[ACLU of Idaho](#)

Media Contact

BOISE, Idaho – Six transgender residents of Idaho have [filed a lawsuit in federal court](#) challenging H.B. 752, a new state law prohibiting them from using sex-designated public restrooms in government-owned buildings and private businesses that are open to the public consistent with their gender identity, arguing the law violates their constitutional rights to due process, equal protection, and privacy. The challenge was brought by the American Civil Liberties Union

To Do



To Do by July 1, 2026

- ✓ Watch for challenges and updates.

By July 1, 2026

- ✓ Consider ways in which laws may be implicated in your practice, e.g., situations in which minors may seek or request sex or social transitioning.
- ✓ Establish written policies for addressing sex or social transitioning.
 - Do not aid and abet minor's sex transition procedures.
 - Obtain consent before aiding and abetting minor's social transitioning.
 - Establish responses to minors' requests, e.g., *"We cannot facilitate or participate without parent's consent"*
 - Notify parents of minor's requests for social transitioning within 72 hours.
 - Do not withhold info from parents.
 - *May help mitigate exposure even if employee violates laws.*
- ✓ Train providers and staff concerning requirements and document training.
 - *May help mitigate exposure even if employee violates laws.*

To Do by July 1, 2026

- ✓ Beware asking questions that might trigger the statute or create liability.
 - *Balance ethical and professional duties v. risk of liability.*
- ✓ Document interactions involving sex or social transitioning with—
 - Unemancipated minors.
 - Parents and guardians.
- ✓ Update and utilize forms as appropriate.
 - Consent forms.
 - *Specific informed consent?*
 - *Blanket consent?*
 - Release of information forms.
 - Others?
- ✓ Monitor and retrain as needed.
- ✓ Check the scope of your malpractice insurance.
- ✓ Lobby for clarification or modifications.

Gender Affirming Care for Minors: National Front

- 1/28/25: Pres. Trump issues EO 14187 declaring “United States that it will not fund, sponsor, promote, assist, or support the so-called ‘transition’ of a child from one sex to another...” and directing agencies to enforce potentially relevant laws, including False Claims Act.
- 8/1/25: 16 states challenging EO 14187; argument heard 4/23/26.
- 4/22/25: AG memo re “Preventing the Mutilation of American Children.”
- 12/28/25: “Kennedy Declaration” asserts gender-affirming care for minors failed to meet professional standard of care which may result in exclusion of providers from federal programs.
- 4/18/26: Oregon Federal Court enjoins enforcement of the Kennedy Declaration.
- 5/15/26: DOJ settles lawsuit with Texas Children’s Hospital, alleging violations of False Claims Act and other laws relating to gender affirming care for minors. TCH pays \$10,000,000 plus additional action.
- Other

Questions?



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