CHAPTER 29--H.F.No. 146

An act relating to children; preventing the use of subpoenas to gather information for out-of-state laws interfering in the use of gender-affirming health care; amending child custody and child welfare provisions related to out-of-state laws interfering in the use of gender-affirming health care; amending provisions related to warrants, arrests, and extraditions related to out-of-state laws on gender-affirming health care; amending Minnesota Statutes 2022, sections 518D.201; 518D.204; 518D.207; 629.02; 629.05; 629.06; 629.13; 629.14; proposing coding for new law in Minnesota Statutes, chapters 260; 543.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[260.925] APPLICATION OF LAWS; GENDER-AFFIRMING HEALTH CARE.**

A law of another state that authorizes a state agency to remove a child from the child's parent or guardian because the parent or guardian allowed the child to receive gender-affirming health care, as defined in section 543.23, paragraph (b), is against the public policy of this state and must not be enforced or applied in a case pending in a court in this state. A court order for the removal of a child issued in another state because the child's parent or guardian assisted the child in receiving gender-affirming care in this state must not be enforced in this state.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2022, section 518D.201, is amended to read:

518D.201 INITIAL CHILD CUSTODY JURISDICTION.

(a) Except as otherwise provided in section 518D.204, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under clause (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 518D.207 or 518D.208, and:

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under clause (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 518D.207 or 518D.208; or

(4) no court of any other state would have jurisdiction under the criteria specified in clause (1), (2), or (3).

(b) Paragraph (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

(d) The presence of a child in this state for the purpose of obtaining gender-affirming health care as defined in section 543.23, paragraph (b), is sufficient to meet the requirements of paragraph (a), clause (2), item (i).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2022, section 518D.204, is amended to read:

518D.204 TEMPORARY EMERGENCY JURISDICTION.

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and:

(1) the child has been abandoned ~~or~~;

(2) it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse; or

(3) the child has been unable to obtain gender-affirming health care as defined in section 543.23, paragraph (b).

(b) If there is no previous child custody determination that is entitled to be enforced under this chapter, and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 518D.201 to 518D.203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 518D.201 to 518D.203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 518D.201 to 518D.203, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 518D.201 to 518D.203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 518D.201 to 518D.203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 518D.201 to 518D.203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 518D.201 to 518D.203, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. Minnesota Statutes 2022, section 518D.207, is amended to read:

518D.207 INCONVENIENT FORUM.

(a) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside this state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for marriage dissolution or another proceeding while still retaining jurisdiction over the marriage dissolution or other proceeding.

(e) In a case where the provision of gender-affirming health care for a child is at issue, a court of this state shall not determine that this state is an inconvenient forum if the law or policy of the other state that may take jurisdiction limits the ability of a parent to obtain gender-affirming health care as defined in section 543.23, paragraph (b), for the parent's child.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. **[543.23] UNENFORCEABLE SUBPOENAS.**

(a) No subpoena shall be issued and no foreign subpoena shall be recognized in this state in a criminal or civil matter if the subpoena is related to a violation of another state's laws when the other state's laws are

designed to interfere with an individual's right to receive gender-affirming health care. Failure to comply with a subpoena seeking information related to a person or entity allowing or assisting a child or an adult to receive gender-affirming health care when the information is being requested to enforce another state's laws that allow a civil or criminal action to be brought against a person for allowing or providing gender-affirming health care must not be the basis for contempt under section 588.01.

(b) "Gender-affirming health care" means medically necessary health care or mental health care that respects the gender identity of the patient, as experienced and defined by the patient, and that may include but is not limited to:

(1) interventions to suppress the development of endogenous secondary sex characteristics;

(2) interventions to align the patient's appearance or physical body with the patient's gender identity;

(3) interventions to alleviate the patient's symptoms of clinically significant distress resulting from gender dysphoria as defined in the current version of the Diagnostic and Statistical Manual of Mental Disorders; and

(4) developmentally appropriate exploration and integration of the patient's gender identity, reduction of the patient's distress, adaptive coping, and strategies to increase family acceptance of the patient's gender identity.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 6. Minnesota Statutes 2022, section 629.02, is amended to read:

629.02 DUTIES OF GOVERNOR IN EXTRADITION MATTERS.

Subject to the provisions of sections 629.01 to 629.29, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and if found in this state. Nothing in this section shall limit any person's right to move freely between states or to enjoy the privileges and immunities of this state and no person shall be arrested or delivered up to the executive authority of any other state of the United States for acts committed in this state or services received in this state involving gender-affirming health care as defined in section 543.23, paragraph (b).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2022, section 629.05, is amended to read:

629.05 EXTRADITION BY AGREEMENT.

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against that person in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or the person's term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state who is charged in the manner provided in section 629.23 with having violated the

laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily, except that no person shall be surrendered for acts committed in this state or services received in this state involving gender-affirming health care as defined in section 543.23, paragraph (b).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. Minnesota Statutes 2022, section 629.06, is amended to read:

629.06 EXTRADITION OF PERSONS COMMITTING CRIME.

(a) Except as provided in paragraph (b), the governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 629.03 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state, whose executive authority is making the demand, and the provisions of sections 629.01 to 629.29 not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

(b) Nothing in this section shall limit any person's right to move freely between states or to enjoy the privileges and immunities of this state and no person shall be surrendered to the executive authority of any other state for acts involving gender-affirming health care as defined in section 543.23, paragraph (b).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 9. Minnesota Statutes 2022, section 629.13, is amended to read:

629.13 WHO MAY BE APPREHENDED.

When any person within this state is charged on the oath of any credible person before any judge of this state with the commission of any crime in any other state other than a crime arising from acts committed in this state or services received in this state involving gender-affirming health care as defined in section 543.23, paragraph (b), and, except in cases arising under section 629.06, with having fled from justice, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation, or parole, or when complaint has been made before any judge in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the other state and that the accused has been charged in that state with the commission of the crime and, except in cases arising under section 629.06, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation, or parole, and is believed to be in this state, the judge shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named in it, wherever the accused may be found in this state, and to bring the accused before the same or any other judge or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 10. Minnesota Statutes 2022, section 629.14, is amended to read:

629.14 ARREST WITHOUT WARRANT.

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime

punishable by death or imprisonment for a term exceeding one year, except that no person shall be arrested if the accused stands charged in the courts of any other state for acts committed in this state or services received in this state involving gender-affirming health care as defined in section 543.23, paragraph (b). When arrested the accused must be taken before a judge with all practicable speed and complaint must be made against the accused under oath setting forth the ground for the arrest as in section 629.13. Thereafter the answer shall be heard as if the accused had been arrested on a warrant.

EFFECTIVE DATE. This section is effective the day following final enactment.

Presented to the governor April 26, 2023