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S.37

Introduced by Senators Lyons, Hardy, Clarkson, Ram Hinsdale, Baruth, Bray,
Campion, Chittenden, Cummings, Gulick, Harrison, Hashim,
Kitchel, McCormack, Perchlik, Sears, Vyhovsky, Watson,
White and Wrenner

Referred to Committee on

Date:

Subject: Health care; Office of Professional Regulation; Board of Medical
Practice; reproductive health care services; gender-affirming health
care services; medical malpractice insurance; health insurance;
professional regulation; health care providers; pregnancy centers;
emergency contraception; protected health information

Statement of purpose of bill as introduced: This bill proposes to prohibit a
medical malpractice insurer from adjusting a health care provider's risk
classification or premium charges in certain circumstances and require that a
health insurance plan covers gender-affirming health care services and
abortion-related services. This bill would also prohibit a health care provider
from being subject to professional disciplinary action for providing or assisting
in the provision of legally protected health care services and would establish a
new unfair and deceptive act regarding pregnancy centers. This bill would
require the Department of Health to submit a report regarding access to

1 abortion or birth care or gender-affirming health care services and require the
2 Board of Medical Practice, in consultation with the Office of Professional
3 Regulation, to submit a report regarding the State’s participation in interstate
4 compacts and the provisions of the act. This bill would establish a new
5 subchapter in Title 26 regarding the dispensing of emergency contraception
6 and require Vermont’s public institutions of higher education to adopt gender-
7 affirming health care and medication abortion readiness plans for their
8 students. This bill would also limit the circumstances under which covered
9 entities may disclose information regarding legally protected health care
10 activity.

11 An act relating to access to legally protected health care activity and
12 regulation of health care providers

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 * * * Definitions * * *

15 Sec. 1. 1 V.S.A. § 150 is added to read:

16 § 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

17 (a) “Gender-affirming health care services” means all supplies, care, and
18 services of a medical, behavioral health, mental health, surgical, psychiatric,
19 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature

1 relating to the treatment of gender dysphoria. “Gender-affirming health care
2 services” does not include conversion therapy as defined by 18 V.S.A. § 8351.

3 (b)(1) “Legally protected health care activity” means:

4 (A) the exercise and enjoyment, or attempted exercise and
5 enjoyment, by any person of rights to reproductive health care services or
6 gender-affirming health care services secured by this State or the provision of
7 insurance coverage for such services; or

8 (B) any act or omission undertaken to aid or encourage, or attempt to
9 aid or encourage, any person in the exercise and enjoyment, or attempted
10 exercise and enjoyment, of rights to reproductive health care services or
11 gender-affirming health care services secured by this State or to provide
12 insurance coverage for such services, provided that the provision of such a
13 health care service by a person duly licensed under the laws of this State and
14 physically present in this State and the provision of insurance coverage for
15 such services shall be legally protected if the service is permitted under the
16 laws of this State, regardless of the patient’s location.

17 (2) “Legally protected health care activity” does not include any service
18 rendered below an applicable professional standard of care or that would
19 violate antidiscrimination laws of this State.

20 (c) “Reproductive health care services” means all supplies, care, and
21 services of a medical, behavioral health, mental health, surgical, psychiatric,

1 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature
2 relating to pregnancy, contraception, assisted reproduction, pregnancy loss
3 management, or the termination of a pregnancy.

4 * * * Medical Malpractice * * *

5 Sec. 2. 8 V.S.A. chapter 129 is amended to read:

6 CHAPTER 129. INSURANCE TRADE PRACTICES

7 * * *

8 § 4722. DEFINITIONS

9 * * *

10 (4)(A) “Abusive litigation” means litigation or other legal action to
11 deter, prevent, sanction, or punish any person engaging in legally protected
12 health care activity by:

13 (i) filing or prosecuting any action in any other state where
14 liability, in whole or part, directly or indirectly, is based on legally protected
15 health care activity that occurred in this State, including any action in which
16 liability is based on any theory of vicarious, joint, or several liability derived
17 therefrom; or

18 (ii) attempting to enforce any order or judgment issued in
19 connection with any such action by any party to the action or any person acting
20 on behalf of a party to the action.

1 (F) Discriminating against a health care provider, as defined by
2 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider’s
3 risk classification or premium charges on the basis that:

4 (i) the health care provider provides or assists in the provision of
5 legally protected health care activity in this State that is unlawful in another
6 state;

7 (ii) another state’s laws create potential or actual liability for that
8 activity; or

9 (iii) abusive litigation against a provider concerning legally
10 protected health care activity resulted in a judgement against the provider.

11 * * *

12 * * * Insurance Coverage * * *

13 Sec. 3. 8 V.S.A. § 4088m is added to read:

14 § 4088m. COVERAGE FOR GENDER-AFFIRMING HEALTH CARE

15 SERVICES

16 (a) Definitions. As used in this section:

17 (1) “Gender-affirming health care services” has the same meaning as in
18 1 V.S.A. § 150.

19 (2) “Health insurance plan” means Medicaid and any other public health
20 care assistance program, any individual or group health insurance policy, any
21 hospital or medical service corporation or health maintenance organization

1 subscriber contract, or any other health benefit plan offered, issued, or renewed
2 for any person in this State by a health insurer as defined by 18 V.S.A. § 9402.
3 For purposes of this section, health insurance plan shall include any health
4 benefit plan offered or administered by the State or any subdivision or
5 instrumentality of the State. The term shall not include benefit plans providing
6 coverage for a specific disease or other limited benefit coverage, except that it
7 shall include any accident and sickness health plan.

8 (b) Coverage. A health insurance plan shall provide coverage for gender-
9 affirming health care services.

10 (c) Cost sharing. The coverage required by this section shall not be subject
11 to any co-payment, deductible, coinsurance, or other cost-sharing requirement
12 or additional charge.

13 Sec. 4. 8 V.S.A. § 4099e is added to read:

14 § 4099e. COVERAGE FOR ABORTION AND ABORTION-RELATED
15 SERVICES

16 (a) Definitions. As used in this section:

17 (1) “Abortion” means any medical treatment intended to induce the
18 termination of, or to terminate, a clinically diagnosable pregnancy except for
19 the purpose of producing a live birth.

20 (2) “Health insurance plan” means Medicaid and any other public health
21 care assistance program, any individual or group health insurance policy, any

1 hospital or medical service corporation or health maintenance organization
2 subscriber contract, or any other health benefit plan offered, issued, or renewed
3 for any person in this State by a health insurer as defined by 18 V.S.A. § 9402.
4 For purposes of this section, health insurance plan shall include any health
5 benefit plan offered or administered by the State or any subdivision or
6 instrumentality of the State. The term shall not include benefit plans providing
7 coverage for a specific disease or other limited benefit coverage, except that it
8 shall include any accident and sickness health plan.

9 (b) Coverage. A health insurance plan shall provide coverage for abortion
10 and abortion-related care.

11 (c) Cost sharing. The coverage required by this section shall not be subject
12 to any co-payment, deductible, coinsurance, or other cost-sharing requirement
13 or additional charge.

14 Sec. 5. STATE PLAN AMENDMENT

15 The Agency of Human Services shall seek a state plan amendment from the
16 Centers for Medicare and Medicaid Services or federal authorities if needed to
17 allow Vermont's Medicaid program to provide coverage consistent with this
18 act.

19 * * * Professional Regulation * * *

20 Sec. 6. 3 V.S.A. § 129a is amended to read:

21 § 129a. UNPROFESSIONAL CONDUCT

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(f)(1) Health care providers. Notwithstanding subsection (e) of this section or any other law to the contrary, no health care provider shall be subject to professional disciplinary action by a board or the Director solely for providing or assisting in the provision of legally protected health care activity.

(2) A board or the Director shall not take adverse action on an application for certification, registration, or licensure of a qualified health care provider based on a criminal or civil action or disciplinary action by a licensing board of another state that arises from the provision of or assistance in legally protected health care activity.

(3) Definitions. As used in this subsection:

(A) “Health care provider” has the same meaning as in 18 V.S.A. § 9496.

(B) “Legally protected health care activity” has the same meaning as in 1 V.S.A. § 150.

Sec. 7. 26 V.S.A. § 1354 is amended to read:

§ 1354. UNPROFESSIONAL CONDUCT

* * *

(d)(1) Health care providers. Notwithstanding any other law to the contrary, no health care provider shall be subject to professional disciplinary

1 action by the Board solely for providing or assisting in the provision of legally
2 protected health care activity.

3 (2) The Board shall not take adverse action on an application for
4 certification, registration, or licensure of a qualified health care provider based
5 on a criminal or civil action or disciplinary action by a licensing board of
6 another state that arises from the provision of or assistance in legally protected
7 health care activity.

8 (3) Definitions. As used in this subsection:

9 (A) "Health care provider" has the same meaning as in 18 V.S.A.
10 § 9496.

11 (B) "Legally protected health care activity" has the same meaning as
12 in 1 V.S.A. § 150.

13 * * * Pregnancy Centers * * *

14 Sec. 8. 9 V.S.A. chapter 63, subchapter 11 is added to read:

15 Subchapter 11. Pregnancy Services Center Fraud

16 § 2491. DEFINITIONS

17 As used in this subchapter:

18 (1) "Abortion" means any medical treatment intended to induce the
19 termination of, or to terminate, a clinically diagnosable pregnancy except for
20 the purpose of producing a live birth.

1 (2) “Client” means an individual who is inquiring about or seeking
2 services at a pregnancy services center.

3 (3) “Emergency contraception” means any drug approved by the U.S.
4 Food and Drug Administration as a contraceptive method for use after sexual
5 intercourse, whether provided over the counter or by prescription.

6 (4) “Health information” means any oral or written information in any
7 form or medium that relates to health insurance or the past, present, or future
8 physical or mental health or condition of a client.

9 (5) “Limited-services pregnancy center” means a pregnancy services
10 center that does not directly provide, or provide referrals to clients, for
11 abortions or emergency contraception.

12 (6) “Pregnancy services center” means a facility, including a mobile
13 facility, where the primary purpose is to provide services to individuals who
14 are or may be pregnant and that either offers obstetric ultrasounds, obstetric
15 sonograms, or prenatal care to pregnant individuals or has the appearance of a
16 medical facility. A pregnancy services center has the appearance of a medical
17 facility if two or more of the following factors are present:

18 (A) The center offers pregnancy testing or pregnancy diagnosis, or
19 both.

20 (B) The center has staff or volunteers who wear medical attire or
21 uniforms.

1 (C) The center contains one or more examination tables.

2 (D) The center contains a private or semiprivate room or area
3 containing medical supplies or medical instruments.

4 (E) The center has staff or volunteers who collect health information
5 from clients.

6 (F) The center is located on the same premises as a State-licensed
7 medical facility or provider or shares facility space with a State-licensed
8 medical provider.

9 (7) “Premises” means land and improvements or appurtenances or any
10 part thereof.

11 § 2492. UNFAIR AND DECEPTIVE ACT

12 (a) It is an unfair and deceptive act and practice in commerce and a
13 violation of section 2453 of this title for any limited-services pregnancy center
14 to disseminate or cause to be disseminated to the public any advertising about
15 the services or proposed services performed at that center if the management of
16 the center knows or, by the exercise of reasonable care, ought to know it is
17 untrue or clearly designed to mislead the public about the nature of services
18 provided. Advertising includes representations made directly to consumers;
19 marketing practices; communication in any print medium, such as newspapers,
20 magazines, mailers, or handouts; and any broadcast medium, such as television

1 or radio, telephone marketing, or advertising over the Internet such as through
2 websites and web ads.

3 (b) The Attorney General or State's Attorney has the same authority to
4 make rules, conduct civil investigations, and bring civil actions with respect to
5 violations of subsection (a) of this section as provided under subchapter 1 of
6 this chapter.

7 * * * Reports * * *

8 Sec. 9. DEPARTMENT OF HEALTH; ACCESS TO REPRODUCTIVE
9 HEALTH AND GENDER-AFFIRMING CARE SERVICES;
10 REPORT

11 On or before January 15, 2024, the Department of Health and the Green
12 Mountain Care Board shall, following consultation with relevant stakeholders,
13 submit a report to the House Committee on Health Care and the Senate
14 Committee on Health and Welfare identifying areas of the State in which
15 people do not have access to abortion or birth care or gender-affirming health
16 care services within a 50-mile radius, including recommendations to facilitate
17 access to those services in the identified areas.

18 Sec. 10. BOARD OF MEDICAL PRACTICE; OFFICE OF PROFESSIONAL
19 REGULATION; INTERSTATE COMPACTS; REPORT

20 On or before November 1, 2024, the Board of Medical Practice, in
21 consultation with the Office of Professional Regulation, shall submit a report

1 to the House Committee on Health Care and the Senate Committee on Health
2 and Welfare with findings and recommendations for legislative action to
3 address any concerns regarding the State’s participation in interstate licensure
4 compacts as a result of the provisions of this act, specifically the State’s
5 participation in the Nurse Licensure Compact pursuant to 26 V.S.A. chapter
6 28, subchapter 5 and the Interstate Medical Licensure Compact pursuant to 26
7 V.S.A. chapter 23, subchapter 3A.

8 * * * Emergency Contraception * * *

9 Sec. 11. 26 V.S.A. chapter 36, subchapter 7 is added to read:

10 Subchapter 7. Emergency Contraception

11 § 2077. DEFINITIONS

12 As used in this subchapter:

13 (1) “Emergency contraception” means any drug approved by the U.S.
14 Food and Drug Administration as a contraceptive method for use after sexual
15 intercourse, whether provided over the counter or by prescription.

16 (2) “Physician” means a physician licensed under chapter 23 or 33 of
17 this title.

18 § 2078. EMERGENCY CONTRACEPTION; STATEWIDE STANDING

19 ORDER

20 (a) The Department of Health shall ensure the issuance of a statewide
21 standing order to authorize the dispensing of emergency contraception by a

1 licensed pharmacist. The statewide standing order shall include written,
2 standardized procedures or protocols for the dispensing of emergency
3 contraception by a licensed pharmacist.

4 (b) Notwithstanding any provision of law to the contrary, the
5 Commissioner of Health, or a physician designated by the Commissioner, shall
6 issue a statewide standing order that may be used by a licensed pharmacist to
7 dispense emergency contraception in accordance with this subchapter.

8 (c)(1) Notwithstanding any provision of law to the contrary, a licensed
9 pharmacist may dispense emergency contraception in accordance with the
10 statewide standing order issued pursuant to subsection (b) of this section.

11 (2) Prior to dispensing emergency contraception pursuant to this
12 subchapter, a pharmacist may complete a training program approved by the
13 Commissioner of Health, which training shall include proper documentation,
14 quality assurance, and referral to additional services, including appropriate
15 recommendation that the patient follow up with a medical practitioner.

16 (d) A pharmacist dispensing emergency contraception pursuant to this
17 subchapter shall report annually to the Department of Health, at the time and in
18 a manner established by the Department, the number of times the pharmacist
19 dispensed emergency contraception during the preceding calendar year.

20 Reports made pursuant to this subsection shall not identify any individual

1 patient. The reports shall be kept confidential and are not public records and
2 are not subject to the Public Records Act.

3 (e)(1) Except for an act of gross negligence or intentional misconduct, a
4 pharmacist who, acting in good faith, dispenses emergency contraception shall
5 not be subject to civil or criminal liability or professional disciplinary action
6 related to the use or administration of emergency contraception.

7 (2) Except for an act of gross negligence or intentional misconduct, the
8 Commissioner or a physician who issues the statewide standing order pursuant
9 to subsection (b) of this section shall not be subject to civil or criminal liability
10 or professional disciplinary action for issuing the order or related to the use or
11 administration of emergency contraception.

12 (f) The Department of Health and the Board of Pharmacy may adopt rules
13 in accordance with 3 V.S.A. chapter 25 as needed to carry out the provisions of
14 this subchapter.

15 § 2079. EMERGENCY CONTRACEPTION; VENDING MACHINES

16 (a) A retail or institutional drug outlet licensed under this chapter may
17 make over-the-counter emergency contraception and other nonprescription
18 drugs or articles for the prevention of pregnancy or conception available
19 through a vending machine or similar device.

20 (b) The Board shall adopt rules in accordance with 3 V.S.A. chapter 25 to
21 regulate the location, operation, utilization, and oversight of the vending

1 machines and similar devices described in subsection (a) of this section in a
2 manner that balances consumer access with appropriate safeguards for theft
3 prevention and safety.

4 * * * Higher Education; Health Care Services * * *

5 Sec. 12. 16 V.S.A. chapter 78 is added to read:

6 CHAPTER 78. ACCESS TO REPRODUCTIVE AND GENDER-

7 AFFIRMING HEALTH CARE SERVICES

8 § 2501. DEFINITIONS

9 As used in this chapter:

10 (1) “Gender-affirming health care readiness” means each institution’s
11 preparedness to provide gender-affirming health care services to students or
12 assist students in obtaining gender-affirming health care services, including
13 having in place equipment, protocols, patient educational materials,
14 informational websites, and training for staff; provided, however, that gender-
15 affirming health care readiness may include the provision of gender-affirming
16 health care services.

17 (2) “Gender-affirming health care services” has the same meaning as in
18 1 V.S.A. § 150.

19 (3) “Institution” means the University of Vermont or a college in the
20 Vermont State College system.

1 (4) “Medication abortion” means an abortion provided by medication
2 techniques.

3 (5) “Medication abortion readiness” means each institution’s
4 preparedness to provide medication abortions to students or assist students in
5 obtaining medication abortions, including having in place equipment,
6 protocols, patient educational materials, informational websites, and training
7 for staff; provided, however, that medication abortion readiness may include
8 the provision of medication abortions.

9 § 2502. GENDER-AFFIRMING HEALTH CARE AND MEDICATION
10 ABORTION SERVICES READINESS PLANS

11 (a) Each institution shall develop gender-affirming health care and
12 medication abortion readiness plans for its students.

13 (b)(1) The Department of Health shall issue guidance to all institutions
14 regarding the required contents of gender-affirming health care and medication
15 abortion readiness plans in accordance with the relative capabilities of each
16 institution to provide services, including directly providing gender-affirming
17 health care services or medication abortions, or both, in a health center;
18 providing referrals for gender-affirming health care services or medication
19 abortions, or both, not provided in a health center; providing information to
20 students about obtaining gender-affirming health care services or medication
21 abortions, or both, available off-campus; and providing clinical and supportive

1 care in a health center for medication abortions using medication lawfully
2 dispensed through a retail or mail-order pharmacy.

3 (2) In developing the guidance, the Department shall consider factors
4 including:

5 (A) whether the institution has an operational health center on
6 campus;

7 (B) the institution's proximity to a hospital, clinic, or other facility
8 that provides gender-affirming health care services or medication abortions, as
9 applicable;

10 (C) the availability, convenience, and cost of public transportation
11 between the institution and the closest facility that provides gender-affirming
12 health care services or medication abortions, or both; and

13 (D) whether the institution employs health care providers on campus.

14 (c) The Department of Health shall review gender-affirming health care
15 and medication abortion readiness plans annually, taking into consideration
16 any changes to the capacity of each institution to provide services to students
17 since the preceding approval of the plans.

18 (d) Each institution shall submit to the Department of Health annually any
19 amendments or revisions to its gender-affirming health care and medication
20 abortion readiness plans.

1 (e) On or before January 31 of each year, the Department of Health shall
2 determine whether the plans are adequate in proportion to each institution’s
3 capacity. The Department shall provide further guidance to institutions with
4 plans deemed inadequate that includes remedial measures for the institution to
5 develop an adequate plan.

6 Sec. 13. GENDER-AFFIRMING HEALTH CARE AND MEDICATION

7 ABORTION SERVICES READINESS; IMPLEMENTATION

8 Each institution shall submit its first gender-affirming health care and
9 medication abortion services readiness plans required under 16 V.S.A.
10 § 2502(a) to the Department of Health on or before November 30, 2024, and
11 the Department shall review the plans for suitability on or before January 31,
12 2025.

13 * * * Prohibition on Disclosure of Protected Health Information * * *

14 Sec. 14. 18 V.S.A. § 1881 is amended to read:

15 § 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION

16 PROHIBITED

17 (a) As used in this section:

18 (1) “Covered entity” ~~shall have~~ has the same meaning as in 45 C.F.R. §
19 160.103.

20 (2) “Legally protected health care activity” has the same meaning as in 1
21 V.S.A. § 150.

1 (3) “Protected health information” ~~shall have~~ has the same meaning as
2 in 45 C.F.R. § 160.103.

3 (b) ~~A~~ Except as provided in subsection (c) of this section, a covered entity
4 shall not disclose protected health information unless the disclosure is
5 permitted under the Health Insurance Portability and Accountability Act of
6 1996 (HIPAA).

7 (c)(1) Except as provided in subsection (d) of this section, unless the
8 patient or the patient’s conservator, guardian, or other authorized legal
9 representative explicitly consents in writing to the disclosure, a covered entity
10 shall not disclose any of the following in any civil or criminal action; in any
11 proceeding preliminary to a civil or criminal action; or in any probate,
12 legislative, or administrative proceeding, whether in or outside this State:

13 (A) any communication made to the covered entity by, or any
14 information obtained by the covered entity from, a patient or a patient’s
15 conservator, guardian, or other authorized legal representative relating to any
16 legally protected health care activity; or

17 (B) any information obtained by personal examination of a patient
18 relating to any legally protected health care activity.

19 (2) A covered entity shall inform the patient or the patient’s conservator,
20 guardian, or other authorized legal representative of the patient’s right to

1 withhold written consent to disclosure of the communications and information
2 described in subdivisions (1)(A) and (B) of this subsection.

3 (d) Notwithstanding any provision of subsection (c) of this section to the
4 contrary, the written consent of the patient or the patient's conservator,
5 guardian, or other authorized legal representative shall not be required for the
6 disclosure of the communications and information described in subdivisions
7 (c)(1)(A) and (B) of this section:

8 (1) pursuant to federal law, Vermont law, or rules adopted by the
9 Vermont Supreme Court;

10 (2) by a covered entity against whom a claim has been made, or there is
11 a reasonable belief will be made, in a civil or criminal action; in a proceeding
12 preliminary to a civil or criminal action; or in a probate, legislative, or
13 administrative proceeding to the covered entity's attorney or professional
14 liability insurer or the insurer's agent for use in the defense of the action or
15 proceeding;

16 (3) to the Commissioner of Health for records of a patient of a covered
17 entity in connection with an investigation of a complaint, if the records are
18 related to the complaint; or

19 (4) if child abuse; abuse of a vulnerable adult, as defined in 33 V.S.A.
20 § 6902; abuse of an individual with a developmental disability, as defined in

1 section 8722 of this title; or abuse of an individual with an intellectual
2 disability, as defined in 1 V.S.A. § 146, is known or is in good faith suspected.

3 (e) Nothing in this section shall be construed to impede the lawful sharing
4 of medical records as permitted by federal law, Vermont law, or rules adopted
5 by the Vermont Supreme Court, except in the case of a subpoena commanding
6 the production, copying, or inspection of medical records relating to legally
7 protected health care activity.

8 * * * Effective Dates * * *

9 Sec. 15. EFFECTIVE DATES

10 (a) This section, Sec. 1 (definitions), Sec. 2 (medical malpractice), Secs. 6–
11 7 (unprofessional conduct), Sec. 8 (pregnancy services centers), Sec. 9–10
12 (reports), Sec. 12–13 (gender-affirming health care and medication abortion
13 readiness plans), and Sec. 14 (prohibition on disclosure of protected health
14 information) shall take effect on passage.

15 (b) Secs. 3–4 (insurance coverage) shall take effect on January 1, 2024 and
16 shall apply to all health insurance plans issued on and after January 1, 2024 on
17 such date as a health insurer offers, issues, or renews the health insurance plan,
18 but in no event later than January 1, 2025.

19 (c) Sec. 5 (state plan amendment) shall take effect on January 1, 2024,
20 except that the Agency of Human Services shall submit its request for approval
21 of Medicaid coverage of the services prescribed in Sec. 4 of this act to the

1 Centers for Medicare and Medicaid Services on or before July 1, 2023, and the
2 Medicaid coverage shall begin on the later of the date of approval or January 1,
3 2024.

4 (d) Sec. 11 (emergency contraception) shall take effect on September 1,
5 2023, except that the Department of Health shall issue the standing order,
6 which shall take effect on September 1, 2023, on or before that date.