

HOUSE BILL NO. 564

INTRODUCED BY D. DUNN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MEDICAL EXEMPTION TO STUDENT IMMUNIZATION REQUIREMENTS; CLARIFYING PRIVACY PROCEDURES FOR HANDLING STUDENT IMMUNIZATION RECORDS; AND AMENDING SECTIONS 20-5-405 AND 20-5-408, MCA."

WHEREAS, the Legislature intends that the medical exemption to required immunizations should be available to any person who qualifies, including Montanans living in rural communities without access to a licensed physician who receive primary care from a physician assistant or advanced practice registered nurse; and

WHEREAS, the Legislature also intends that the governing authority of a school, as defined in 20-5-402, MCA, be the only body authorized to collect, review, and retain filed statements claiming a medical exemption to required immunizations; and

WHEREAS, the Legislature finds that the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, protects the privacy of student education records by prohibiting the disclosure of student records, except as authorized pursuant to FERPA; and

WHEREAS, the Legislature finds that it is increasingly common for Montana schools to share student health and immunization records, including records on students who have claimed a medical exemption to required immunizations, with the Department of Public Health and Human Services; and

WHEREAS, in order to ensure that Montana schools are acting in compliance with FERPA and avoid litigation related to potential violations, the Legislature finds that it is necessary to clarify its intent that:

- (1) the privacy of student health records be protected;
- (2) the Department's role with regard to medical exemptions to immunization requirements be limited in scope to the extent specified in statute; and
- (3) any responsibilities imposed on a Montana school with regard to reporting on student immunizations must not be construed in a manner that would compel the school to violate FERPA.

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



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2           **Section 1.** Section 20-5-405, MCA, is amended to read:

3           "**20-5-405. ~~Medical or religious exemption~~ Exemptions.** (1) There is a religious exemption to the  
4 required immunizations. When a parent, guardian, or adult who has the responsibility for the care and custody  
5 of a minor enrolled or seeking to attend enroll in school or the person enrolled or seeking to attend enroll in  
6 school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each  
7 school year, a notarized affidavit on a form prescribed by the department stating that immunization is contrary  
8 to the religious tenets and practices of the signer, immunization of the person seeking to attend the school may  
9 not be required prior to attendance at the school. The statement must be maintained as part of the person's  
10 immunization records. A person who falsely claims a religious exemption is subject to the penalty for false  
11 swearing provided in 45-7-202.

12           (2) There is a medical exemption to the required immunizations. When a parent, guardian, or adult who  
13 has the responsibility for the care and custody of a minor enrolled or seeking to attend enroll in school or the  
14 person enrolled or seeking to attend enroll in school, if an adult, files with the governing authority a written  
15 medical exemption statement signed by a physician licensed to practice medicine in any jurisdiction of the United  
16 States or Canada or a physician assistant or advanced practice registered nurse licensed to practice in the state  
17 of Montana stating that the physical condition of the person enrolled or seeking to attend enroll in school or  
18 medical circumstances relating to the person indicate that some or all of the required immunizations are not  
19 considered safe and indicating the specific nature and probable duration of the medical condition or  
20 circumstances that contraindicate immunization, the person is exempt from the requirements of this part to the  
21 extent indicated by the ~~physician's~~ medical exemption statement. The medical exemption statement must be  
22 maintained as part of the person's immunization records and may not be photocopied or otherwise duplicated  
23 for use by a third party, including the department.

24           (3) The department may not prescribe a medical exemption form that imposes requirements that are  
25 more burdensome or otherwise in excess of the requirements described in this section. A form issued by the  
26 department that contains requirements not expressly described in this section is void to the extent that it purports  
27 to impose requirements not included in this section, and a medical exemption may not be denied by the governing  
28 authority of a school on the basis that the void portions of the medical exemption form are not filled out. The  
29 department is not authorized to review a completed medical practitioner's statement or medical exemption form  
30 for the purpose of granting or denying a medical exemption.

1           ~~(3)~~(4) Whenever there is good cause to believe that a person for whom an exemption has been filed  
2 under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school  
3 attendance be exposed to the disease, the person may be excluded from the school by the local health officer  
4 or the department until the excluding authority is satisfied that the person no longer risks contracting or  
5 transmitting that disease."

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7           **Section 2.** Section 20-5-408, MCA, is amended to read:

8           **"20-5-408. Enforcement.** (1) The governing authority of any school other than a postsecondary school  
9 shall prohibit from further attendance any pupil allowed to attend conditionally who has failed to obtain the  
10 immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been  
11 immunized as required by the department or unless that pupil has been exempted under 20-5-405.

12           (2) Each Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
13 1232g, as amended, and its implementing regulations at 34 CFR, part 99, each governing authority shall file a  
14 written report on the immunization status of all pupils under its jurisdiction with the department and the local  
15 health department at times and on forms prescribed by the department.

16           (3) The local and state health departments shall have access to all information relating to immunization  
17 of any pupil in any school, but may not make or receive photocopies or electronic copies of individual  
18 immunization records."

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20           NEW SECTION. **Section 3. Notification to tribal governments.** The secretary of state shall send a  
21 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
22 Chippewa tribe.

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