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HOUSE BILL NO. 676

INTRODUCED BY K. SEEKINS-CROWE, J. READ, T. MCGILLVRAY, M. LANG, M. NOLAND, D. BARTEL, B. BEARD, B. LER, B. PHALEN, F. NAVE, J. CARLSON, K. ZOLNIKOV, J. SCHILLINGER, M. MALONE, M. BINKLEY, M. YAKAWICH, J. ETCHART, N. HASTINGS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING FUNDAMENTAL PARENTAL RIGHTS; SPECIFYING THAT FUNDAMENTAL PARENTAL RIGHTS ARE EXCLUSIVELY RESERVED TO THE PARENT OF A CHILD WITHOUT OBSTRUCTION OR INTERFERENCE FROM A GOVERNMENT ENTITY; PROVIDING PARENTAL RIGHTS AND RESPONSIBILITIES; PROHIBITING MEDICAL CARE FOR A CHILD WITHOUT PARENTAL CONSENT SUBJECT TO EXCEPTIONS; AMENDING SECTIONS 40-6-701, 41-1-402, 41-1-403, 41-1-405, AND 41-1-407, MCA; REPEALING SECTION 41-1-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 40-6-701, MCA, is amended to read:

"40-6-701. Interference with fundamental parental rights restricted -- cause of action. (1) A ~~governmental~~government entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children unless the ~~governmental~~government entity demonstrates that the interference:

- (a) furthers a compelling governmental interest; and
- (b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest.

(2) All fundamental parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following:

- (a) direct the education of the child, including the right to choose public, private, religious, or home schools and the right to make reasonable choices with public schools for the education of the child;

Amendment - 1st Reading/2nd House-blue - (S) Judiciary

- 2023

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Drafter: Julianne Burkhardt, 406-444-4025

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- 1 **(b) access and review all written and electronic education records relating to the child that are**
- 2 **controlled by or in the possession of a school;**
- 3 **(c) direct the upbringing of the child;**
- 4 **(d) direct the moral or religious training of the child;**
- 5 **(e) make and consent to all physical and mental health care decisions for the child;**
- 6 **(f) access and review all health and medical records of the child;**
- 7 **(g) consent before a biometric scan of the child is made, shared, or stored;**
- 8 **(h) consent before a record of the child's blood or DNA is created, stored, or shared, unless**
- 9 **authorized pursuant to a court order;**
- 10 **(i) consent before a government entity makes an audio or video recording of the child, unless the**
- 11 **audio or video recording is made during or as part of:**
- 12 **(i) a court proceeding;**
- 13 **(ii) a law enforcement investigation;**
- 14 **(iii) a forensic interview in a criminal or child abuse and neglect investigation;**
- 15 **(iv) the security or surveillance of buildings ~~or~~, grounds, ~~or~~ transportation of students; or**
- 16 **(v) a photo identification card;**
- 17 **(j) be notified promptly if an employee of a government entity suspects that abuse, neglect, or a**
- 18 **criminal offense has been committed against the child ~~unless the parent is suspected to have caused the~~**
- 19 **abuse;**
- 20 **(k) opt the child out of any personal analysis, evaluation, survey, or data collection by a school**
- 21 **district that would capture data for inclusion in the statewide data system except data that is necessary and**
- 22 **essential for establishing a student's education record;**
- 23 **(l) have the child excused from school attendance for religious purposes; ~~and~~**
- 24 **(m) participate in parent-teacher associations and school organizations that are sanctioned by the**
- 25 **board of trustees of a school district; ~~and~~**
- 26 **(n) be notified promptly if, and provide consent before, the child would share a room or sleeping**
- 27 **quarters with an individual of the opposite sex on a school-sponsored trip. A child whose parent does not**
- 28 **provide consent must be permitted to attend the trip and must be provided with reasonable accommodations**

Amendment - 1st Reading/2nd House-blue - (S) Judiciary

- 2023

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

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1 that do not require the child to share a room or sleeping quarters with an individual of the opposite sex.

2 (3) Except for law enforcement, an employee of a government entity may not encourage or coerce
3 a child to withhold information from the child's parent and may not withhold from a child's parent information
4 that is relevant to the physical, emotional, or mental health of a child.

5 (2)(4) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or
6 modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

7 (3)(5) When a parent's fundamental rights protected by this section [section 2], [section 3], 41-1-402,
8 41-1-403, 41-1-405, and this section are violated, a parent may assert that violation as a claim or defense in a
9 an administrative or judicial proceeding and may obtain appropriate relief against the governmental entity
10 without regard to whether the proceeding is brought by or in the name of a government entity, a private person,
11 or any other party. The prevailing party in an action filed pursuant to this section [section 2], [section 3], 41-1-
12 402, 41-1-403, 41-1-405, and this section is entitled to reasonable attorney fees and costs.

13 (4)(6) As used in this section, the following definitions apply:

14 (a) "Child" means an individual under 18 years of age.

15 (b) "Education record" means attendance records, test scores of school-administered tests and
16 statewide assessments, grades, school-sponsored or extracurricular activity or club participation, email
17 accounts, online or virtual accounts or data, disciplinary records, counseling records, psychological records,
18 applications for admission, health and immunization information including any medical records maintained by a
19 health clinic or medical facility operated or controlled by the school district or located on the district property,
20 teacher and counselor evaluations, and reports of behavioral patterns.

21 (c) "governmental entity" has the meaning provided in 2-9-101. "Government entity" means the
22 state, its political subdivisions, or any department, agency, commission, board, authority, institution, or office of
23 the state, including a municipality, county, consolidated municipal-county government, school district, or other
24 special district.

25 (d) "Parent" means a biological parent of a child, an adoptive parent of a child, or an individual who
26 has been granted the exclusive right and authority over the welfare of a child under state law.

27 (e) "Substantial burden" means an action that directly or indirectly constrains, inhibits, curtails, or
28 denies the right of a parent to direct the upbringing, education, health care, and mental health of the parent's

1 child. The term includes but is not limited to:

2 (i) withholding benefits;

3 (ii) assessing criminal, civil, or administrative penalties; or

4 (iii) exclusion from a government program."

5
6 **NEW SECTION. Section 2. Medical care for children.** (1) (a) Except as otherwise provided by Title
7 41, chapter 1, part 4, or court order, a person, corporation, association, organization, state-supported institution,
8 or individual employee of a corporation, association, organization, or state-supported institution may not:

9 (i) procure, solicit to perform, arrange to perform, or perform surgical procedures on a child;

10 (ii) procure, solicit to perform, arrange to perform, or perform a physical examination on a child;

11 (iii) prescribe or dispense a prescription drug to a child;

12 (iv) procure, solicit to perform, arrange to perform, or perform a mental health evaluation in a

13 clinical or nonclinical setting on a child; or

14 (v) procure, solicit to perform, arrange to perform, or perform a mental health treatment on a child.

15 (b) The prohibitions in subsection (1)(a) do not apply if the parent of the child has provided
16 consent for the medical care to be provided. If the parental consent is given through telemedicine, the health
17 professional shall verify the identity of the parent at the site where the consent is given.

18 (2) A hospital, as defined in 50-5-101, is prohibited from allowing a surgical procedure to be
19 performed on a child in its facilities unless the hospital has first received consent from a parent of the child.

20 (3) The provisions of this section do not apply when a physician determines that an emergency
21 exists and that it is necessary to perform an activity described in subsection (1)(a) to prevent death or imminent,
22 irreparable physical injury to a child or when a parent cannot be located or contacted after a reasonably diligent
23 effort.

24 (4) The provisions of this section do not apply to an abortion, which is governed by the provisions
25 of Title 50, chapter 20.

26
27 **NEW SECTION. Section 3. Construction.** (1) Unless a right has been legally waived or legally
28 terminated, a parent has inalienable rights that are more comprehensive than those listed in 40-6-701, [section