

1 HOUSE BILL NO. 676
2 INTRODUCED BY K. SEEKINS-CROWE, J. READ, T. MCGILLVRAY, M. LANG, M. NOLAND, D. BARTEL, B.
3 BEARD, B. LER, B. PHALEN, F. NAVE, J. CARLSON, K. ZOLNIKOV, J. SCHILLINGER, M. MALONE, M.
4 BINKLEY, M. YAKAWICH, J. ETCHART, N. HASTINGS

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING FUNDAMENTAL
7 PARENTAL RIGHTS; SPECIFYING THAT FUNDAMENTAL PARENTAL RIGHTS ARE EXCLUSIVELY
8 RESERVED TO THE PARENT OF A CHILD WITHOUT OBSTRUCTION OR INTERFERENCE FROM A
9 GOVERNMENT ENTITY; PROVIDING PARENTAL RIGHTS AND RESPONSIBILITIES; PROHIBITING
10 MEDICAL CARE FOR A CHILD WITHOUT PARENTAL CONSENT SUBJECT TO EXCEPTIONS; AMENDING
11 SECTIONS 40-6-701, 41-1-402, 41-1-403, 41-1-405, AND 41-1-407, MCA; REPEALING SECTION 41-1-406,
12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 40-6-701, MCA, is amended to read:

17 **"40-6-701. Interference with fundamental parental rights restricted -- cause of action.** (1) A
18 governmental-government entity may not interfere with the fundamental right of parents to direct the upbringing,
19 education, health care, and mental health of their children unless the governmental-government entity
20 demonstrates that the interference:

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

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

- 27 (a) direct the education of the child, including the right to choose public, private, religious, or home

Amendment - 2nd Reading/2nd House-tan - Requested by: Keith Regier - (S) Committee of Whole

- 2023

68th Legislature 2023

Drafter: Laura Sankey Keip, 406-444-4410

HB0676.002.001

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

3 (e) "Substantial burden" means an action that directly or indirectly constrains, inhibits, curtails, or
4 denies the right of a parent to direct the upbringing, education, health care, and mental health of the parent's
5 child. The term includes but is not limited to:

6 (i) withholding benefits;

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

8 (iii) exclusion from a government program."

9
10 **NEW SECTION. Section 2. Medical care for children.** (1) (a) Except as otherwise provided by Title
11 41, chapter 1, part 4, or court order, a person, corporation, association, organization, state-supported institution,
12 or individual employee of a corporation, association, organization, or state-supported institution may not:

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

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

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

16 (iv) procure, solicit to perform, arrange to perform, or perform a mental health evaluation in a
17 clinical or nonclinical setting on a child; or

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

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

22 (2) A- Unless a parent's decisionmaking rights have been limited by court order, a hospital, as
23 defined in 50-5-101, is prohibited from allowing a surgical procedure to be performed on a child in its facilities
24 unless the hospital has first received consent from a parent of the child.

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

Amendment - 2nd Reading/2nd House-tan - Requested by: Keith Regier - (S) Committee of Whole

- 2023

68th Legislature 2023

Drafter: Laura Sankey Keip, 406-444-4410

HB0676.002.001

1 effort.

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

4
5 **NEW SECTION. Section 3. Construction.** (1) Unless a right has been legally waived or legally
6 terminated, a parent has inalienable rights that are more comprehensive than those listed in 40-6-701, [section
7 2], 41-1-402, 41-1-403, 41-1-405, and this section. The protections afforded by 40-6-701, [section 2], 41-1-402,
8 41-1-403, 41-1-405, and this section are in addition to the protections provided by the constitutions of the
9 United States and the state of Montana and by federal and state law.

10 (2) Sections 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section must be
11 construed in favor of a broad protection of the fundamental right of parents to direct the upbringing, education,
12 health care, and mental health of their child.

13 (3) Sections 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section may not be
14 construed to authorize any government entity to burden the fundamental right of parents to direct the
15 upbringing, education, health care, and mental health of their child.

16 (4) If a child has no affirmative right of access to a particular medical or mental health procedure or
17 service, then nothing in 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section may be construed
18 to grant the child's parent an affirmative right of access to the procedure or service on the child's behalf.

19

20 **Section 4.** Section 41-1-402, MCA, is amended to read:

21 **"41-1-402. Validity of consent of minor for health services.** (1) This part does not limit the right of
22 an emancipated minor to consent to the provision of health services or to control access to protected health
23 care information under applicable law.

24 (2) The consent to the provision of health services and to control access to protected health care
25 information by a health care facility or to the performance of health services by a health professional may be
26 given by a minor ~~who professes or is found to meet~~ when the health professional, in good faith and with a
27 reasonable belief supported by fact, determines that the minor meets any of the following descriptions:

Amendment - 2nd Reading/2nd House-tan - Requested by: Keith Regier - (S) Committee of Whole

- 2023

68th Legislature 2023

Drafter: Laura Sankey Keip, 406-444-4410

HB0676.002.001

1 (a) ~~a minor who~~ the minor professes to be or to have been married or to have had a child or to
2 have graduated from high school;

3 (b) ~~a minor who~~ the minor professes to be or is found to be separated from the minor's parent,
4 parents, or legal guardian for whatever reason and is providing self-support by whatever means;

5 (c) ~~a minor who~~ the minor professes or is found to be pregnant or afflicted with any reportable
6 communicable disease, including a sexually transmitted disease, or drug and substance abuse, including
7 alcohol. This self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified
8 in this subsection (2)(c). The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and
9 substance abuse also obliges the health professional, if the health professional accepts the responsibility for
10 treatment, to counsel the minor or to refer the minor to another health professional for counseling.

11 (d) ~~a minor who~~ the minor needs emergency care, including transfusions, ~~without which the~~
12 ~~minor's health will be jeopardized~~ necessary to prevent ~~imminent death or irreparable physical serious injury or~~
13 harm to the minor. If emergency care is rendered, the parent, parents, or legal guardian must be informed as
14 soon as practical except under the circumstances mentioned in this subsection (2).

15 (3) A minor who has had a child may give effective consent to health service for the child.

16 (4) A minor may give consent for health care for the minor's spouse if the spouse is unable to give
17 consent by reason of physical or mental incapacity."

18

19 **Section 5.** Section 41-1-403, MCA, is amended to read:

20 **"41-1-403. Release of information by health professional.** (1) Except with regard to an
21 emancipated minor, a health professional ~~may~~shall inform the parent, custodian, or guardian of a minor in the
22 circumstances enumerated in 41-1-402 of any treatment given or needed when:

23 (a) in the judgment of the health professional, severe complications are present or anticipated;

24 (b) major surgery or prolonged hospitalization is needed;

25 (c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and
26 health of the minor patient, younger siblings, or the public;

27 (d) informing them would benefit the minor's physical and mental health and family harmony; or