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SENATE BILL NO. 337

INTRODUCED BY T. MANZELLA, J. SCHILLINGER, P. FIELDER, J. HINKLE, F. NAVE, B. BROWN, J. FULLER, K. REGIER, J. SMALL, S. HINEBAUCH, B. USHER, M. NOLAND, C. GLIMM, D. EMRICH, B.

PHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS INVOLVING PARENTAL RIGHTS; PROVIDING FOR PARENT INVOLVEMENT IN EDUCATION; PROVIDING THAT PARENTS MAY WITHDRAW THEIR CHILD FROM HARMFUL SCHOOL INSTRUCTION; PROVIDING THAT PARENTS SHALL PROVIDE PRIOR CONSENT IF THEY WANT THEIR CHILD TO RECEIVE SCHOOL INSTRUCTION REGARDING HUMAN SEXUALITY; PROVIDING THAT PARENTS MAY HAVE THEIR CHILD EXCUSED FROM SCHOOL ATTENDANCE FOR RELIGIOUS PURPOSES; ESTABLISHING ADDITIONAL PARENTAL RIGHTS AND RESPONSIBILITIES; PROVIDING THAT, EXCEPT FOR LAW ENFORCEMENT, EMPLOYEES OF GOVERNMENTAL ENTITIES ARE PROHIBITED FROM WITHHOLDING CERTAIN INFORMATION FROM PARENTS; PROVIDING THE SUPERINTENDENT OF PUBLIC INSTRUCTION WITH ENFORCEMENT AUTHORITY; AMENDING SECTIONS 20-5-103, 20-7-120, AND 40-6-701, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Parental involvement in education.** (1) The board of trustees of a

school district, in consultation with parents, teachers, and administrators, shall develop and adopt a policy to promote the involvement of parents of children enrolled in the school district, including:

- (a) a plan for parent participation in the school district, which must be designed to improve parent and teacher cooperation in homework, attendance, and discipline;
- (b) procedures by which a parent may learn about the course of study for the parent's child and review all curriculum;
- (c) procedures by which a parent may object to any specific instruction or presentation on the basis that it is harmful and may withdraw the parent's child from the instruction or presentation. For the

1 purposes of this subsection (1)(c), "harmful" means but is not limited to material or activity that questions a
2 parent's beliefs or practices regarding sex, morality, or religion.

3 (d) procedures by which a parent may learn about the nature and purpose of clubs and
4 extracurricular activities that have been approved by the school and may withdraw the parent's child from any
5 club or extracurricular activity;

6 (e) procedures by which a parent shall provide written consent before the parent's child uses a
7 name or nickname other than the child's legal name or before the parent's child uses a pronoun that does not
8 align with the child's sex. If a parent provides written consent under this subsection (1)(e), a person may not be
9 compelled to use pronouns that do not align with the child's sex.

10 (f) procedures by which a parent may learn about parental rights and responsibilities under the
11 laws of this state.

12 (2) The board of trustees of a school district may adopt a policy providing that parents may receive
13 the information required by this section in electronic form.

14 (3) As used in this section, "curriculum" means all textbooks, reading materials, handouts, videos,
15 presentations, digital materials, websites, online applications, questionnaires, surveys, digital applications for a
16 phone, laptop, or tablet, or other written or electronic materials that have been or will be assigned, distributed,
17 or otherwise presented physically or virtually to students in a class or course.

18
19 **NEW SECTION. Section 2. Construction.** (1) Unless parental rights have been legally waived or
20 legally terminated, parents have inalienable rights that are more comprehensive than those described in 40-6-
21 701 or [section 1]. The protections afforded by 40-6-701 and [section 1] are in addition to the protections
22 provided under federal law, other state laws, the United States constitution, and the Montana constitution.

23 (2) Section 40-6-701 and [section 1] must be construed in favor of a broad protection of the
24 fundamental right of parents to direct the upbringing, education, health care, and mental health of their child.

25 (3) Nothing in 40-6-701 or [section 1] may be construed to authorize a governmental entity to
26 burden the fundamental right of parents to direct the upbringing, education, health care, and mental health of
27 their child.

28 (4) If a child has no affirmative right of access to a particular medical or mental health procedure or

1 service, then nothing in 40-6-701 or [section 1] may be construed to grant the child's parent an affirmative right
2 of access to the procedure or service on the child's behalf.

3

4 **Section 3.** Section 20-5-103, MCA, is amended to read:

5 **"20-5-103. Compulsory attendance and excuses.** (1) Except as provided in subsection (2), ~~any a~~
6 parent, guardian, or other person who is responsible for the care of ~~any a~~ child who is 7 years of age or older
7 prior to the first day of school in any school fiscal year shall ~~cause~~ensure the child to ~~attend~~attends the school
8 in which the child is enrolled for the school term and each school day in the term prescribed by the trustees of
9 the district until the later of the following dates:

10 (a) the child's 16th birthday; or

11 (b) ~~the date of completion of the work of the~~ the child completes 8th grade.

12 (2) The provisions of subsection (1) do not apply in the following cases:

13 (a) The child has been excused under one of the conditions specified in 20-5-102.

14 (b) The child is absent because of illness, bereavement, or other reason prescribed by the policies
15 of the trustees.

16 (c) The child has been suspended or expelled under the provisions of 20-5-202.

17 (d) The child is excused pursuant to 20-7-120.

18 (e) The child is excused pursuant to 40-6-701(2)(l) or [section 1(1)(c)]."

19

20 **Section 4.** Section 20-7-120, MCA, is amended to read:

21 **"20-7-120. Excused absences from curriculum requirements -- notice -- prohibited activities.**

22 (1) A parent, guardian, or other person who is responsible for the care of a child ~~may refuse to allow the child to~~
23 ~~attend or withdraw the child from~~ shall provide prior written consent if the parent, guardian, or other responsible
24 person would like for the child to attend a course of instruction, a class period, an assembly, an organized
25 school function, or instruction provided by the district through its staff or guests invited at the request of the
26 district regarding human sexuality instruction. ~~The withdrawal or~~ A refusal to attend is an excused absence
27 pursuant to 20-5-103.

28 (2) Any school implementing or maintaining a curriculum, providing materials, or holding an event

Amendment - 1st Reading-white - Requested by: Theresa Manzella - (S) Judiciary

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Drafter: Alexis Sandru, 406-444-4026

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1 or assembly at which the district provides human sexuality instruction, whether introduced by school educators,
2 administrators, or officials or by guests invited at the request of the school, shall adopt a policy ensuring
3 parental or guardian notification no less than 48 hours prior to holding an event or assembly or introducing
4 materials for instructional use.

5 (3) A school district shall annually notify the parent or guardian of each student scheduled to be
6 enrolled in human sexuality instruction in the district or school in advance of the instruction of:

7 (a) the basic content of the district's or school's human sexuality instruction intended to be taught
8 to the student; and

9 (b) the parent's or guardian's right to withdraw requirement that a parent or guardian shall provide
10 written consent if the parent or guardian would like for the student from to receive the district's or school's
11 human sexuality instruction.

12 (4) A school district shall make all curriculum materials used in the district's or school's human
13 sexuality instruction available for public inspection prior to the use of the materials in actual instruction.

14 (5) A school district or its personnel or agents may not permit a person, entity, or any affiliate or
15 agent of the person or entity to offer, sponsor, or furnish in any manner any course materials or instruction
16 relating to human sexuality or sexually transmitted diseases to its students or personnel if the person, entity, or
17 any affiliate or agent of the person or entity is a provider of abortion services.

18 (6) For purposes of this section, "human sexuality instruction" means teaching or otherwise
19 providing information about human sexuality, including intimate relationships, human sexual anatomy, sexual
20 reproduction, sexually transmitted infections, sexual acts, sexual orientation, gender identity, abstinence,
21 contraception, or reproductive rights and responsibilities."
22

23 **Section 5.** Section 40-6-701, MCA, is amended to read:

24 **"40-6-701. Interference with fundamental parental rights restricted -- cause of action.** (1) A
25 governmental entity may not interfere with the fundamental right of parents to direct the upbringing, education,
26 health care, and mental health of their children unless the governmental entity demonstrates that the
27 interference:

28 (a) furthers a compelling governmental interest; and

1 (b) is narrowly tailored and is the least restrictive means available for the furthering of the
2 compelling governmental interest.

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

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

8 (b) access and review all written and electronic educational records relating to the child that are
9 controlled by or in the possession of a school;

10 (c) direct the upbringing of the child;

11 (d) direct the moral or religious training of the child;

12 (e) make and consent in writing to all physical and mental health care decisions for the child;

13 (f) access and review all health and medical records of the child;

14 (g) consent in writing before a biometric scan of the child is made, shared, or stored;

15 (h) consent in writing before any record of the child's blood or DNA is created, stored, or shared,
16 unless authorized pursuant to a court order;

17 (i) consent in writing before a governmental entity makes an audio or video recording of the child,
18 unless the audio or video recording is made during or as part of:

19 (i) a court proceeding;

20 (ii) a law enforcement investigation;

21 (iii) a forensic interview in a criminal or child abuse and neglect investigation;

22 (iv) the security or surveillance of buildings or grounds; or

23 (v) a photo identification card;

24 (j) be notified promptly if an employee of a governmental entity suspects that abuse or neglect or
25 any criminal offense has been committed against the child;

26 (k) opt the child out of any personal analysis, evaluation, survey, or data collected by a school
27 district that would capture data for inclusion in the state longitudinal student data system, except what is
28 necessary and essential for establishing a student's educational record;

1 (l) have the child excused from school attendance for religious purposes; and
 2 (m) participate in parent-teacher associations and school organizations that are sanctioned by the
 3 board of trustees of a school district.

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

7 ~~(2)~~(4) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or
 8 modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

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

14 ~~(4)~~(6) The superintendent of public instruction has the authority to receive a complaint involving a
 15 violation of [section 1] and this section and shall take action to enforce compliance with [section 1] and this
 16 section.

17 (7) As used in this section, the following definitions apply:

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

24 (b) ~~"governmental~~Governmental entity" has the meaning provided in 2-9-101."
 25

26 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 and 2] are intended to be codified
 27 as an integral part of Title 40, chapter 6, part 7, and the provisions of Title 40, chapter 6, part 7, apply to
 28 [sections 1 and 2].

1

2 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2023.

3

- END -

AMEND