

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;

- 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**
- 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;**
- 19 **(k) opt the child out of any personal analysis, evaluation, survey, or data collection by a school**
- 20 **district that would capture data for inclusion in the statewide data system except data that is necessary and**
- 21 **essential for establishing a student's education record;**
- 22 **(l) have the child excused from school attendance for religious purposes; and**
- 23 **(m) participate in parent-teacher associations and school organizations that are sanctioned by the**
- 24 **board of trustees of a school district.**
- 25 **(3) Except for law enforcement, an employee of a government entity may not encourage or coerce**
- 26 **a child to withhold information from the child's parent and may not withhold from a child's parent information**
- 27 **that is relevant to the physical, emotional, or mental health of a child.**
- 28 **(2)(4) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or**

1 modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

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

8 ~~(4)~~(6) As used in this section, the following definitions apply:

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

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

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

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

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

25 (i) withholding benefits;

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

27 (iii) exclusion from a government program."

28

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

- 4 (i) procure, solicit to perform, arrange to perform, or perform surgical procedures on a child;
- 5 (ii) procure, solicit to perform, arrange to perform, or perform a physical examination on a child;
- 6 (iii) prescribe or dispense a prescription drug to a child;
- 7 (iv) procure, solicit to perform, arrange to perform, or perform a mental health evaluation in a
8 clinical or nonclinical setting on a child; or
- 9 (v) procure, solicit to perform, arrange to perform, or perform a mental health treatment on a child.

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

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

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

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

21
22 **NEW SECTION. Section 3. Construction.** (1) Unless a right has been legally waived or legally
23 terminated, a parent has inalienable rights that are more comprehensive than those listed in 40-6-701, [section
24 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,
25 41-1-403, 41-1-405, and this section are in addition to the protections provided by the constitutions of the
26 United States and the state of Montana and by federal and state law.

27 (2) Sections 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section must be
28 construed in favor of a broad protection of the fundamental right of parents to direct the upbringing, education,

1 health care, and mental health of their child.

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

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

8

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

10 **"41-1-402. Validity of consent of minor for health services.** (1) This part does not limit the right of
11 an emancipated minor to consent to the provision of health services or to control access to protected health
12 care information under applicable law.

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

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

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

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

27 (d) ~~a minor who~~ the minor needs emergency care, including transfusions, ~~without which the~~
28 minor's health will be jeopardized necessary to prevent imminent death or irreparable physical harm to the

1 minor. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon as
2 practical except under the circumstances mentioned in this subsection (2).

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

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

6

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

8 **"41-1-403. Release of information by health professional.** (1) Except with regard to an
9 emancipated minor, a health professional ~~may~~shall inform the parent, custodian, or guardian of a minor in the
10 circumstances enumerated in 41-1-402 of any treatment given or needed when:

- 11 (a) in the judgment of the health professional, severe complications are present or anticipated;
- 12 (b) major surgery or prolonged hospitalization is needed;
- 13 (c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and
14 health of the minor patient, younger siblings, or the public;
- 15 (d) informing them would benefit the minor's physical and mental health and family harmony; or
- 16 (e) the health professional or health care facility providing treatment desires a third-party
17 commitment to pay for services rendered or to be rendered.

18 (2) Notification or disclosure to the parent, parents, or legal guardian by the health professional
19 may not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged
20 communication, or any other legal basis of liability. If the minor is found not to be pregnant or not afflicted with a
21 sexually transmitted disease or not suffering from drug abuse or substance abuse, including alcohol, then
22 information with respect to any appointment, examination, test, or other health procedure may not be given to
23 the parent, parents, or legal guardian, if they have not already been informed as permitted in this part, without
24 the consent of the minor."

25

26 **Section 6.** Section 41-1-405, MCA, is amended to read:

27 **"41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to
28 render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation,

1 to any injured person or any person regardless of age who is in need of immediate health care when, in good
 2 faith and with a reasonable belief supported by fact, the professional believes that the giving of aid is the only
 3 alternative to probable death or ~~serious irreparable physical or mental~~ damage.

4 ~~(2) A health professional may render nonemergency services to minors for conditions that will~~
 5 ~~endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent,~~
 6 ~~parents, or legal guardian.~~

7 ~~(3)~~(2) Consent may not be required of a minor who does not possess the mental capacity or who has
 8 a physical disability that renders the minor incapable of giving consent and who, after a diligent search, has no
 9 known relatives or legal guardians, if a physician determines that the health service ~~should be given~~ is the only
 10 alternative to probable death or irreparable physical damage.

11 ~~(4)~~(3) Self-consent of minors does not apply to sterilization or abortion, except as provided in Title 50,
 12 chapter 20, part 5."

13

14 **Section 7.** Section 41-1-407, MCA, is amended to read:

15 **"41-1-407. Immunity and responsibility of ~~psychologist, physician,~~ or health care facility.** (1) A
 16 physician, surgeon, dentist, or health or mental health care facility may not be compelled against the entity's
 17 best judgment to treat a minor on the minor's own consent.

18 (2) This section may not be construed to relieve any physician, surgeon, dentist, or health or
 19 mental health care facility from liability for negligence in the diagnosis and treatment rendered a minor.

20 ~~(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who~~
 21 ~~provides the psychiatric or psychological counseling services may not incur civil or criminal liability by reason of~~
 22 ~~having provided the counseling services, but the immunity does not apply to any negligent acts or omissions."~~

23

24 NEW SECTION. Section 8. Repealer. The following section of the Montana Code Annotated is
 25 repealed:

26 41-1-406. Psychiatric or psychological counseling under urgent circumstances.

27

28 NEW SECTION. Section 9. Codification instruction. [Sections 2 and 3] are intended to be codified

1 as an integral part of Title 40, chapter 6, part 7, and the provisions of Title 40, chapter 6, part 7, apply to
2 [sections 2 and 3].

3

4 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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