

SENATE BILL 620

By Pody

AN ACT to amend Tennessee Code Annotated, Title 36 and Title 49, relative to the "Families' Rights and Responsibilities Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, is amended by adding the following as a new chapter:

36-8-101. Short title.

This chapter is known and may be cited as the "Families' Rights and Responsibilities Act."

36-8-102. Chapter definitions.

For purposes of this chapter:

(1) "Child" means an individual under eighteen (18) years of age;

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

(3) "Substantial burden":

(A) Means an action that directly or indirectly constrains, inhibits, curtails, or denies the right of a parent to direct the upbringing, education, health care, and mental health of that parent's child or compels an action contrary to the right of a parent to direct the upbringing, education, health care, and mental health of that parent's child; and

(B) Includes, but is not limited to, the withholding of benefits, assessment of criminal, civil, or administrative penalties or damages, or exclusion from governmental programs.

36-8-103. Fundamental rights of parents.

(a) The liberty of a parent to direct the upbringing, education, health care, and mental health of that parent's child is a fundamental right.

(b) This state, a political subdivision of this state, or another governmental entity shall not substantially burden the fundamental right of a parent to direct the upbringing, education, health care, and mental health of that parent's child without demonstrating that the burden is required by a compelling governmental interest of the highest order as applied to the parent and the child and is the least restrictive means of furthering that compelling governmental interest.

36-8-104. Parental rights and responsibilities.

(a) All parental rights are exclusively reserved to a parent of a child without obstruction by or interference from this state, a political subdivision of this state, another governmental entity, or any other institution, including, without limitation, the following rights and responsibilities:

- (1) To direct the education of the child, including the right to choose public, private, religious, or home schools, and the right to make reasonable choices within public schools for the education of the child;
- (2) To access and review all school records relating to the child;
- (3) To direct the upbringing of the child;
- (4) To direct the moral or religious training of the child;
- (5) To make and consent in writing to all physical and mental healthcare decisions for the child;

(6) To access and review all medical records of the child;

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

(8) To consent in writing before a record of the child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, unless authorized pursuant to a court order;

(9) To consent in writing before a governmental entity makes a video or voice recording of the child, unless the video or voice recording is made during or as a part of:

(A) A court proceeding;

(B) A law enforcement investigation;

(C) A forensic interview in a criminal or department of children's services investigation;

(D) The security or surveillance of buildings or grounds; or

(E) A photo identification card; and

(10) To be notified promptly if an employee of this state, a political subdivision of this state, another governmental entity, or any other institution suspects that abuse, neglect, or a criminal offense has been committed against the child by someone other than a parent, unless the incident has first been reported to law enforcement and notification of the parent would impede a law enforcement or department of children's services investigation.

(b) This chapter does not:

(1) Authorize or allow a parent to abuse or neglect a child;

(2) Apply to a parental action or decision that would end life; or

(3) Prohibit a court from issuing an order that is otherwise permitted by law.

(c) An employee of this state, a political subdivision of this state, or another governmental entity, except for law enforcement personnel, shall not encourage or coerce a child to withhold information from the child's parent. Such employee shall not withhold from a child's parent information that is relevant to the physical, emotional, or mental health of the child. Engaging in conduct prohibited by this subsection (c) is grounds for discipline of the employee by the employer, in addition to any other remedies provided to a parent under this chapter.

36-8-105. Educational involvement.

(a) As necessary to supplement the statutory rights of parents and students referenced in § 49-1-227, each local board of education and governing body of a public charter school in this state, in consultation with parents, teachers, and administrators, shall develop and adopt a policy to promote the involvement of parents of children enrolled in the schools within the school district, including, but not limited to:

(1) A plan for parent participation in the schools that is designed to improve parent and teacher cooperation in such areas as homework, attendance, and discipline;

(2) Procedures by which a parent may learn about the course of study for that parent's child and review all educational and learning materials, including the source of any supplemental educational materials;

(3) Procedures by which a parent who objects to any specific instruction or presentation on the basis that it is harmful may withdraw that parent's child from the instruction or presentation. Objection to a specific instruction or presentation on the basis that it is harmful includes, but is not limited to, objection

to a material or activity because it questions beliefs or practices regarding sex, morality, or religion;

(4) Procedures to notify a parent in advance and obtain the parent's written consent before the parent's child attends any instruction or presentation containing sexual education or any instruction or presentation that has the goal or purpose of studying, exploring, or informing students about gender roles or stereotypes, gender identity, gender expression, sexual orientation, or romantic or sexual relationships;

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

(6) Procedures by which a parent must provide written consent before their child uses a name or nickname other than their legal name, or before a child uses a pronoun that does not align with the child's sex. However, even if a parent provides written consent, a person shall not be compelled to use pronouns that do not align with the child's sex; and

(7) Procedures by which a parent may learn about parental rights and responsibilities under the laws of this state.

(b) A local board of education or the governing body of a public charter school may adopt a policy to provide to parents the information required by this section in an electronic form.

(c) Notwithstanding title 49, a parent shall submit a written or electronic request for information pursuant to this section to either the school principal or the director of schools. Within ten (10) days of receiving the request for information, the school

principal or the director of schools shall either deliver the requested information to the parent or submit to the parent a written explanation of the reasons for the denial of the requested information. If the request for information is denied or the parent does not receive the requested information within fifteen (15) days after submitting the request for information, then the parent may submit a written request for the information to the local board of education or the governing body of a public charter school, which shall formally consider the request at the next scheduled public meeting of the board or governing body if the request can be properly noticed on the agenda. If the request cannot be properly noticed on the agenda, the local board of education or the governing body of a public charter school shall formally consider the request at the next subsequent public meeting of the board or governing body.

36-8-106. Medical care.

(a) Except as otherwise provided by law or court order, a person, corporation, association, organization, state-supported institution, or individual employed by any of these entities must obtain the consent of a parent of a child before taking any of the following actions:

- (1) Procuring, soliciting to perform, arranging for the performance of, providing a referral for, or performing surgical procedures upon a child;
- (2) Procuring, soliciting to perform, arranging for the performance of, providing a referral for, or performing a physical examination upon a child;
- (3) Prescribing or dispensing any medication or prescription drugs to a child; or
- (4) Procuring, soliciting to perform, arranging for the performance of, providing a referral for, or performing a mental health evaluation in a clinical or nonclinical setting or mental health treatment on a child.

(b) If the parental consent pursuant to subsection (a) is given through telemedicine, then the person or entity obtaining parental consent must verify the identity of the parent at the site where the consent is given.

(c) This section shall not apply when it has been determined by a physician that:

(1) An emergency exists; and

(2) Either of the following conditions is true:

(A) It is necessary to perform an activity listed in subsection (a) in order to prevent death or imminent, irreparable physical injury to the child; or

(B) A parent of the child cannot be located or contacted after a reasonably diligent effort.

(d) This section does not apply to abortions, which are governed by title 39, chapter 15, part 2.

36-8-107. Cause of action.

(a) A parent may bring suit for any violation of this chapter and may raise this chapter as a defense in any judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of the state of Tennessee, a private person, or another party.

(b) Notwithstanding another provision of law to the contrary, an action under this chapter may be commenced, and relief may be granted, without regard to whether the person commencing the action has sought or exhausted available administrative remedies.

(c) A person who successfully asserts a claim or defense under this chapter may recover declaratory relief, injunctive relief, compensatory damages, reasonable attorneys' fees and costs, and any other appropriate relief.

(d) Sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to the extent of liability created by this chapter.

36-8-108. Rules of construction.

(a) Unless those rights have been legally waived or legally terminated, parents have inalienable rights that are more comprehensive than those listed in this chapter. The protections of the fundamental right of parents to direct the upbringing, education, health care, and mental health of their child afforded by this chapter are in addition to the protections provided under federal law, state law, and the state and federal constitutions.

(b) This chapter must be construed in favor of a broad protection of the fundamental right of parents to direct the upbringing, education, health care, and mental health of their child.

(c) This chapter shall not be construed to authorize any government to burden the fundamental right of parents to direct the upbringing, education, health care, and mental health of their child.

(d) If a child does not have an affirmative right of access to a particular medical treatment, then this chapter shall not be construed to grant that child's parent an affirmative right of access to that treatment on that child's behalf.

(e) State statutory law adopted after July 1, 2023, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that

can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. This act takes effect July 1, 2023, the public welfare requiring it.