

By: Representative Yancey

To: Public Health and Human
Services

HOUSE BILL NO. 1159

1 AN ACT TO EXEMPT ANY OFFICIAL, AGENT OR EMPLOYEE OF THE STATE
2 OR A POLITICAL SUBDIVISION THEREOF FROM ENFORCING OR BEING ORDERED
3 TO ENFORCE ANY FEDERAL DIRECTIVE THAT ALLOWS ANY MEDICAL, HEALTH
4 CARE, BEHAVIORAL, OR MENTAL HEALTH TREATMENT, SERVICE, THERAPY OR
5 COUNSELING TO AN UNEMANCIPATED MINOR OR ANY INSTRUCTION IN HUMAN
6 SEXUALITY WITHOUT PARENTAL NOTIFICATION OR CONSENT; TO PROVIDE A
7 CAUSE OF ACTION BY A PARENT OR LEGAL GUARDIAN AGAINST ANY PERSON,
8 CORPORATION OR OTHER ENTITY, WHO VIOLATES THE MEDICAL AND MENTAL
9 HEALTH RELATED PARENTAL NOTIFICATION AND CONSENT REQUIREMENTS; TO
10 BRING FORWARD SECTIONS 37-13-173 AND 41-41-3, MISSISSIPPI CODE OF
11 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENTS; AND FOR RELATED
12 PURPOSES.

13 WHEREAS, the United States Supreme Court has held that under
14 the Tenth Amendment, "Congress cannot compel the States to enact
15 or enforce a federal regulatory program ... Congress cannot
16 circumvent that prohibition by conscripting the State's officers
17 directly. The Federal Government may neither issue directives
18 requiring the States to address particular problems, nor command
19 the States' officers, or those of their political subdivisions, to
20 administer or enforce a federal regulatory program." (*Printz v.*
21 *U.S.*, 521 U.S. 898, 935 (1997)); and

22 WHEREAS, Chief Justice John Roberts in *NFIB v. Sebelius*, 567
23 U.S. 519 (2012), cites with approval the warning that "it is of



24 fundamental importance to consider whether essential attributes of
25 state sovereignty are compromised by the assertion of federal
26 power"; and

27 WHEREAS, Section 41-41-3, Mississippi Code of 1972, provides
28 that health care cannot be provided to a minor without the consent
29 of a parent, guardian or other authorized person as provided
30 therein; and

31 WHEREAS, Section 37-13-173, Mississippi Code of 1972,
32 provides that each "school providing instruction or any other
33 presentation on human sexuality in the classroom, assembly or
34 other official setting shall be required to provide no less than
35 one (1) week's written notice thereof to the parents of children
36 in such programs of instruction. The written notice must inform
37 the parents of their right to request the inclusion of their child
38 for such instruction or presentation. The notice also must inform
39 the parents of the right, and the appropriate process, to review
40 the curriculum and all materials to be used in the lesson or
41 presentation. Upon the request of any parent, the school shall
42 excuse the parent's child from such instruction or presentation,
43 without detriment to the student"; and

44 WHEREAS, the federal Bipartisan Safer Communities Act, Pub.
45 Law 117-159, Section 11004, 136 Stat. 1313, instructs the
46 Secretary of Health and Human Services to issue guidance that
47 includes best practices for ensuring children have access to
48 comprehensive health care services, including children without a



mental health or substance use disorder diagnosis: NOW,
THEREFORE,

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

SECTION 1. It is the purpose and intention of the
Legislature to protect the rights of the state government and of
the people of this state reserved to them in our federal system of
government under the Ninth and Tenth Amendments to the United
States Constitution, insofar as the rights of parents to govern
and direct medical and health care decisions of their children are
concerned.

SECTION 2. No federal executive order, agency order, rule,
guidance document, memorandum, directive, regulation or
administrative interpretation of a law or statute enrolled by the
United States Congress and signed by the President of the United
States, including, without limitation, any provision of the
Bipartisan Safer Communities Act, Pub. Law 117-159, Section 11004,
136 Stat. 1313, which allows any medical, health care, behavioral
or mental health treatment, service, therapy or counseling without
parental notification or consent in contravention of the
provisions of Sections 37-13-173 and 41-41-3, as applicable, shall
be enforced or ordered to be enforced by any official, agent or
employee of this state or a political subdivision thereof, or any
person acting under color of state law.

SECTION 3. (1) Notwithstanding any federal executive order,
agency order, rule, guidance document, memorandum, directive,



74 regulation or administrative interpretation of a law or statute
75 enrolled by the United States Congress and signed by the President
76 of the United States, including, without limitation, any provision
77 of the Bipartisan Safer Communities Act, Pub. Law 117-159, Section
78 11004, 136 Stat. 1313, any school district, health care
79 institution or health care provider as defined in Section
80 41-41-203, who violates the provisions of Sections 37-13-173 or
81 41-41-3, as applicable, may be subject to a civil suit for damages
82 brought by any parent whose rights, secured by those sections,
83 were violated. Relief available in a civil brought under the
84 authority of this section suit may include, without limitation,
85 actual damages, court costs, reasonable attorney fees as ordered
86 by the court, and punitive damages if the violation satisfies the
87 standards for imposition of punitive damages elsewhere provided by
88 law.

89 (2) An individual may assert a violation of this act as a
90 claim in any judicial or administrative proceeding or as defense
91 in any judicial or administrative proceeding without regard to
92 whether the proceeding is brought by or in the name of the
93 government, any private person or any other party.

94 (3) An action under this act may be commenced, and relief
95 may be granted, in a court of competent jurisdiction in the state
96 without regard to whether the individual commencing the action has
97 sought or exhausted available administrative remedies.



(4) Sovereign immunity shall not be an affirmative defense in any action pursuant to this act.

SECTION 4. Section 37-13-173, Mississippi Code of 1972, is brought forward as follows:

37-13-173. Each school providing instruction or any other presentation on human sexuality in the classroom, assembly or other official setting shall be required to provide no less than one (1) week's written notice thereof to the parents of children in such programs of instruction. The written notice must inform the parents of their right to request the inclusion of their child for such instruction or presentation. The notice also must inform the parents of the right, and the appropriate process, to review the curriculum and all materials to be used in the lesson or presentation. Upon the request of any parent, the school shall excuse the parent's child from such instruction or presentation, without detriment to the student.

SECTION 5. Section 41-41-3, Mississippi Code of 1972, is amended as follows:

41-41-3. (1) It is hereby recognized and established that, in addition to such other persons as may be so authorized and empowered, any one (1) of the following persons who is reasonably available, in descending order of priority, is authorized and empowered to consent on behalf of an unemancipated minor, either orally or otherwise, to any surgical or medical treatment or



procedures not prohibited by law which may be suggested,
recommended, prescribed or directed by a duly licensed physician:

(a) The minor's guardian or custodian.

(b) The minor's parent.

(c) An adult brother or sister of the minor.

(d) The minor's grandparent.

(2) If none of the individuals eligible to act under subsection (1) is reasonably available, an adult who has exhibited special care and concern for the minor and who is reasonably available may act; the adult shall communicate the assumption of authority as promptly as practicable to the individuals specified in subsection (1) who can be readily contacted.

(3) Any female, regardless of age or marital status, is empowered to give consent for herself in connection with pregnancy or childbirth.

SECTION 6. If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections,



146 subsections, sentences, clauses, phrases or words be declared
147 unconstitutional.

148 **SECTION 7.** This act shall take effect and be in force from
149 and after July 1, 2025.

