

By: Representative Yancey

To: Public Health and Human Services

HOUSE BILL NO. 1169

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



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

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

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

59 **SECTION 2.** No federal executive order, agency order, rule,  
60 guidance document, memorandum, directive, regulation or  
61 administrative interpretation of a law or statute enrolled by the  
62 United States Congress and signed by the President of the United  
63 States, including, without limitation, any provision of the  
64 Bipartisan Safer Communities Act, Pub. Law 117-159, Section 11004,  
65 136 Stat. 1313, which allows any medical, health care, behavioral  
66 or mental health treatment, service, therapy or counseling without  
67 parental notification or consent in contravention of the  
68 provisions of Sections 37-13-173 and 41-41-3, as applicable, shall  
69 be enforced or ordered to be enforced by any official, agent or  
70 employee of this state or a political subdivision thereof, or any  
71 person acting under color of state law.

72 **SECTION 3.** (1) Notwithstanding any federal executive order,  
73 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.



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

100 **SECTION 5.** Section 37-13-173, Mississippi Code of 1972, is  
101 brought forward as follows:

102 37-13-173. Each school providing instruction or any other  
103 presentation on human sexuality in the classroom, assembly or  
104 other official setting shall be required to provide no less than  
105 one (1) week's written notice thereof to the parents of children  
106 in such programs of instruction. The written notice must inform  
107 the parents of their right to request the inclusion of their child  
108 for such instruction or presentation. The notice also must inform  
109 the parents of the right, and the appropriate process, to review  
110 the curriculum and all materials to be used in the lesson or  
111 presentation. Upon the request of any parent, the school shall  
112 excuse the parent's child from such instruction or presentation,  
113 without detriment to the student.

114 **SECTION 6.** Section 41-41-3, Mississippi Code of 1972, is  
115 brought forward as follows:

116 41-41-3. (1) It is hereby recognized and established that,  
117 in addition to such other persons as may be so authorized and  
118 empowered, any one (1) of the following persons who is reasonably  
119 available, in descending order of priority, is authorized and  
120 empowered to consent on behalf of an unemancipated minor, either  
121 orally or otherwise, to any surgical or medical treatment or



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

124 (a) The minor's guardian or custodian.

125 (b) The minor's parent.

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

127 (d) The minor's grandparent.

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

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

137 **SECTION 4.** If any one or more provisions, sections,  
138 subsections, sentences, clauses, phrases or words of this act or  
139 the application thereof to any person or circumstance is found to  
140 be unconstitutional, the same is hereby declared to be severable  
141 and the balance of this act shall remain effective notwithstanding  
142 such unconstitutionality. The Legislature hereby declares that it  
143 would have passed this act, and each provision, section,  
144 subsection, sentence, clause, phrase or word thereof, irrespective  
145 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, 2024.

