

By: Senator(s) Hill

To: Public Health and Welfare

SENATE BILL NO. 2880

1 AN ACT TO PROVIDE THAT NO FEDERAL EXECUTIVE ORDER, AGENCY  
 2 ORDER, RULE, GUIDANCE DOCUMENT, MEMORANDUM, DIRECTIVE, REGULATION  
 3 OR ADMINISTRATIVE INTERPRETATION OF A LAW OR STATUTE ENROLLED BY  
 4 THE UNITED STATES CONGRESS AND SIGNED BY THE PRESIDENT OF THE  
 5 UNITED STATES, INCLUDING, WITHOUT LIMITATION, ANY PROVISION OF THE  
 6 BIPARTISAN SAFER COMMUNITIES ACT, WHICH ALLOWS ANY MEDICAL,  
 7 HEALTHCARE, BEHAVIORAL, OR MENTAL HEALTH TREATMENT, SERVICE,  
 8 THERAPY OR COUNSELING WITHOUT PARENTAL NOTIFICATION OR CONSENT IN  
 9 CONTRAVENTION OF THE PROVISIONS OF MISSISSIPPI CODE SECTIONS  
 10 37-13-173 AND 41-41-3, AS APPLICABLE, SHALL BE ENFORCED OR ORDERED  
 11 TO BE ENFORCED BY ANY OFFICIAL, AGENT OR EMPLOYEE OF THIS STATE OR  
 12 A POLITICAL SUBDIVISION THEREOF, TO PROVIDE FOR THE LEGISLATIVE  
 13 INTENT OF THE ACT; TO ESTABLISH A PRIVATE RIGHT OF ACTION FOR  
 14 VIOLATION OF THE ACT; TO BRING FORWARD SECTIONS 37-13-173 AND  
 15 41-41-3, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE  
 16 AMENDMENT; AND FOR RELATED PURPOSES.

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

18 **SECTION 1. Legislative findings.** The Legislature of the  
 19 State of Mississippi finds the following:

20 Whereas, the United States Supreme Court has held that under  
 21 the Tenth Amendment, "Congress cannot compel the States to enact  
 22 or enforce a federal regulatory program...Congress cannot  
 23 circumvent that prohibition by conscripting the State's officers  
 24 directly. The Federal Government may neither issue directives  
 25 requiring the States to address particular problems, nor command



26 the States' officers, or those of their political subdivisions, to  
27 administer or enforce a federal regulatory program." Printz v.  
28 U.S., 521 U.S. 898, 935 (1997); and,

29       Whereas Chief Justice John Roberts in NFIB v. Sebelius, 567  
30 U.S. 519 (2012) cites with approval the warning that "it is of  
31 fundamental importance to consider whether essential attributes of  
32 state sovereignty are compromised by the assertion of federal  
33 power"; and,

34       Whereas, Section 41-41-3 provides that health care cannot be  
35 provided to a minor without the consent of a parent, guardian or  
36 other authorized person as provided therein; and,

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



50           Whereas, the federal Bipartisan Safer Communities Act, PL  
51 117-159, June 25, 2022, 136 Stat 1313, instructs the Secretary of  
52 Health and Human Services to issue guidance "that includes best  
53 practices for ensuring children have access to comprehensive  
54 health care services, including children without a mental health  
55 or substance use disorder diagnosis"; and,

56           Therefore, it is the purpose and intention of the Legislature  
57 to protect the rights of the state government and of the people of  
58 this state reserved to them in our federal system of government  
59 under the Ninth and Tenth Amendments to the United States  
60 Constitution insofar as the rights of parents to govern and direct  
61 medical and healthcare decisions of their children are concerned.

62           **SECTION 2. Anti-commandeering protection.** No federal  
63 executive order, agency order, rule, guidance document,  
64 memorandum, directive, regulation or administrative interpretation  
65 of a law or statute enrolled by the United States Congress and  
66 signed by the President of the United States, including, without  
67 limitation, any provision of the Bipartisan Safer Communities Act,  
68 PL 117-159, June 25, 2022, 136 Stat 1313, which allows any  
69 medical, healthcare, behavioral, or mental health treatment,  
70 service, therapy or counseling without parental notification or  
71 consent in contravention of the provisions of Sections 37-13-173  
72 and 41-41-3, as applicable, shall be enforced or ordered to be  
73 enforced by any official, agent or employee of this state or a



74 political subdivision thereof, or any person acting under color of  
75 state law.

76 **SECTION 3. Private right of action for violation of medical**  
77 **and mental health, parental notification and consent requirements.**

78 (1) Notwithstanding any federal executive order, agency  
79 order, rule, guidance document, memorandum, directive, regulation  
80 or administrative interpretation of a law or statute enrolled by  
81 the United States Congress and signed by the President of the  
82 United States, including, without limitation, any provision of the  
83 Bipartisan Safer Communities Act, PL 117-159, June 25, 2022, 136  
84 Stat 1313, any school district, health-care institution or  
85 health-care provider as defined in Section 41-41-203 who violates  
86 the provisions of Sections 37-13-173 or 41-41-3, as applicable,  
87 may be subject to a civil suit for damages brought by any parent  
88 whose rights secured by those sections were violated. Relief  
89 available in such a civil suit may include, without limitation,  
90 actual damages, court costs, reasonable attorney's fees as ordered  
91 by the court, and punitive damages if the violation satisfies the  
92 standards for imposition of punitive damages elsewhere provided by  
93 law.

94 (2) An individual may assert a violation of this act as a  
95 claim in any judicial or administrative proceeding or as defense  
96 in any judicial or administrative proceeding without regard to  
97 whether the proceeding is brought by or in the name of the  
98 government, any private person or any other party.



99 (3) An action under this act may be commenced, and relief  
100 may be granted, in a court of the state without regard to whether  
101 the individual commencing the action has sought or exhausted  
102 available administrative remedies.

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

105 **SECTION 4. Severability.** If any one or more provisions,  
106 sections, subsections, sentences, clauses, phrases or words of  
107 this act or the application thereof to any person or circumstance  
108 is found to be unconstitutional, the same is hereby declared to be  
109 severable and the balance of this act shall remain effective  
110 notwithstanding such unconstitutionality. The Legislature hereby  
111 declares that it would have passed this act, and each provision,  
112 section, subsection, sentence, clause, phrase or word thereof,  
113 irrespective of the fact that any one or more provisions,  
114 sections, subsections, sentences, clauses, phrases or words be  
115 declared unconstitutional.

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

118 37-13-173. Each school providing instruction or any other  
119 presentation on human sexuality in the classroom, assembly or  
120 other official setting shall be required to provide no less than  
121 one (1) week's written notice thereof to the parents of children  
122 in such programs of instruction. The written notice must inform  
123 the parents of their right to request the inclusion of their child



124 for such instruction or presentation. The notice also must inform  
125 the parents of the right, and the appropriate process, to review  
126 the curriculum and all materials to be used in the lesson or  
127 presentation. Upon the request of any parent, the school shall  
128 excuse the parent's child from such instruction or presentation,  
129 without detriment to the student.

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

132 41-41-3. (1) It is hereby recognized and established that,  
133 in addition to such other persons as may be so authorized and  
134 empowered, any one (1) of the following persons who is reasonably  
135 available, in descending order of priority, is authorized and  
136 empowered to consent on behalf of an unemancipated minor, either  
137 orally or otherwise, to any surgical or medical treatment or  
138 procedures not prohibited by law which may be suggested,  
139 recommended, prescribed or directed by a duly licensed physician:

- 140 (a) The minor's guardian or custodian.  
141 (b) The minor's parent.  
142 (c) An adult brother or sister of the minor.  
143 (d) The minor's grandparent.

144 (2) If none of the individuals eligible to act under  
145 subsection (1) is reasonably available, an adult who has exhibited  
146 special care and concern for the minor and who is reasonably  
147 available may act; the adult shall communicate the assumption of



148 authority as promptly as practicable to the individuals specified  
149 in subsection (1) who can be readily contacted.

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

153 **SECTION 7.** This act shall take effect and be in force from  
154 and after July 1, 2024.

