

Amendment No. 1 to SB2749

White
Signature of Sponsor

AMEND Senate Bill No. 2749

House Bill No. 2936*

by deleting all language after the enacting clause and substituting:

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

36-8-101. This chapter is known and may be cited as the "Families' Rights and Responsibilities Act."

36-8-102. As used in this chapter:

(1) "Biometric data":

(A) Means data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, voiceprint, eye retina or iris, or other unique biological pattern or characteristic, that is used to identify a specific individual;

(B) Does not include a physical or digital photograph, a video or audio recording, or data generated from the recording, or information collected, used, or stored for healthcare treatment, payment, or operations under the Health Insurance Portability and Accountability Act of 1996 (HIPPA) (42 U.S.C. § 1320d et seq.); and

(C) Does not include a physical or digital photograph, a video or audio recording, or data generated from the recording, or information collected, used, or stored for law enforcement purposes;

(2) "Child" means an unemancipated, unmarried individual who has not attained eighteen (18) years of age;

(3) "Decision-making authority" means the power granted by the state to a nonparent to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel;

(4) "Government entity" means any branch, department, agency, commission, or instrumentality of state government, any official or other person acting under color of state law, or any political subdivision of the state; and

(5) "Parent" means a biological, legal, or adoptive parent or an individual who has been granted decision-making authority over the child under state law.

36-8-103.

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

(b) A government entity shall not substantially burden the fundamental rights of a parent as provided under this section unless the government entity demonstrates that the burden, as applied to the parent and the child, is required by a compelling governmental interest of the highest order and is the least restrictive means of furthering that compelling governmental interest.

(c) All parental rights are exclusively reserved to a parent of a child without obstruction by or interference from a government entity, including the following rights and responsibilities:

(1) To direct the upbringing of the child;

(2) To direct the moral or religious training of the child;

(3) To make all physical and mental healthcare decisions for the child and consent to all physical and mental health care on the child's behalf, as provided in § 63-1-173;

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

(5) 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;

(6) To access and review all educational records of the child maintained by the school, including those maintained in accordance with § 49-1-704 of the Data Accessibility, Transparency and Accountability Act and the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g);

(7) To have the child excused from school attendance for religious purposes;

(8) To participate in parent-teacher associations and school organizations that are sanctioned by the board of education of a local education agency;

(9) To be notified promptly if an employee of the state reasonably believes that abuse, neglect, or any criminal offense has been committed against the child by someone other than the parent, unless doing so would interfere with a criminal investigation or department of children's services investigation, or unless an employee of the state, a political subdivision of the state, a local education agency, a public charter school, or any other governmental entity is required by law to withhold such information;

(10) To consent before the collection, storing, or sharing of any individual biometric data, data relative to analysis of facial expressions, electroencephalogram brain wave patterns, skin conductance, galvanic skin response, heart-rate variability, pulse, blood volume, posture, and eye-tracking, as specified in §§ 49-1-706 and 49-2-211;

(11) To consent before any record of the child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, unless authorized by law or pursuant to a court order; and

(12) To consent before any government 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 interaction;

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

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

(E) A photo identification card; or

(F) A public event where the child has no reasonable expectation of privacy.

(d)

(1) This section does not authorize or allow any individual to abuse, neglect, or endanger a child as defined by § 39-15-401.

(2) This section does not apply when:

(A) A parent of the minor has given blanket consent authorizing the person or entity to perform an activity listed in subsection (c);

(B) A government entity or any other person reasonably relies in good faith on an individual's representations that the individual is the parent of a minor or has otherwise been granted authority to make decisions regarding a minor's care under state law;

(C) A person, including a law enforcement officer, participates or assists in rendering emergency care pursuant to § 63-6-218;

(D) An employee of a local education agency acts to control bleeding using a bleeding control kit pursuant to § 49-2-137; or

(E) Services are provided to or information is received or maintained about a minor enrolled in an institution of higher education or

a minor participating in a program for which the minor's parent has consented to the child's participation by an employee of the institution of higher education or other school official.

(e) A public employee, other than law enforcement personnel, shall not encourage or coerce a child to withhold information from the child's parent unless required by law to withhold such information. A public employee shall not withhold from a child's parent information that is relevant to the physical, emotional, or mental health of the child unless required by law to withhold such information.

(f)

(1) A parent whose rights have been burdened by a government entity in violation of this section may assert that violation of this section as a claim or defense in any judicial or administrative proceeding, without regard to whether the proceeding is brought by or in the name of the state, a private person, or another party.

(2) A parent who prevails in a proceeding to enforce this section against a government entity may recover the following from a court of competent jurisdiction:

(A) Declaratory relief;

(B) Injunctive relief; and

(C) Compensatory damages, including reasonable costs and attorney's fees.

36-8-104.

This chapter must be construed using the following rules:

(1) The protections of the fundamental right of parents to the care, custody, and control 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;

(2) This chapter must be construed in favor of a broad protection of the fundamental right of parents to the custody, care, and control of their children, including the right to direct the upbringing, education, health care, and mental health of their child;

(3) If a child has no affirmative right of access to a particular surgical, medical, or mental health procedure or service, then this act does not grant that child's parent an affirmative right of access to that procedure or service on that child's behalf; and

(4) State law enacted after July 1, 2024, is subject to this chapter unless the law explicitly excludes such application by reference to this chapter.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following new section:

63-1-173.

(a) As used in this section:

(1) "Government entity" means the state, any branch, department, agency, commission, or instrumentality of state government, any official or other person acting under color of state law, or any political subdivision of the state;

(2) "Healthcare provider" means a healthcare professional, healthcare establishment, or healthcare facility licensed, registered, certified, or permitted pursuant to this title, title 33, or title 68 or regulated under the authority of either the department of health or an agency, board, council, or committee attached to the department of health or by the department of mental health and substance abuse services, and that is authorized to provide health or medical care or mental health services in this state;

(3) "Medical decision-making authority" means the power granted by the state to a nonparent to make important decisions regarding a child's health care;

(4) "Minor":

(A) Means an individual who has not attained eighteen (18) years of age; and

(B) Does not include an individual who:

(i) Is emancipated pursuant to title 29, chapter 31;

(ii) Needs emergency treatment pursuant to § 63-6-222;

(iii) Is or was previously a member of the armed forces of the United States or a member of a reserve or national guard unit;
or

(iv) Is the parent of a minor child and has full custody of that minor child;

(5) "Parent" means a biological, legal, or adoptive parent or an individual who has been granted medical decision-making authority over the child under state law; and

(6) "Person" means an individual, corporation, or any other legal or commercial entity, whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state.

(b) Except as otherwise provided by statutory law, case law, or court order, a government entity, a healthcare provider, or any other person shall not knowingly take any of the following actions with regard to a minor without first obtaining the consent of a parent of the minor:

(1) Treat, profess to diagnose, operate on, or prescribe for any physical ailment, physical injury, or deformity;

(2) Prescribe, dispense, deliver, or administer any drug or medication;

(3) Render psychological services specified in §§ 63-11-202 and 63-11-203; or

(4) Render counseling services specified in § 63-22-122.

(c) This section does not apply when:

(1) A parent of the minor has given blanket consent authorizing the person or entity to perform an activity listed in subsection (b);

(2) A government entity, healthcare provider, or any other person reasonably relies in good faith on an individual's representations that the individual is the parent of a minor or has otherwise been granted authority to make decisions regarding a minor's health care under state law;

(3) A licensed physician performs emergency medical or surgical treatment pursuant to § 63-6-222;

(4) Licensed personnel render appropriate emergency medical care and provide emergency medical services pursuant to § 68-140-309;

(5) A person, including a law enforcement officer, participates or assists in rendering emergency care pursuant to § 63-6-218;

(6) An employee of a local education agency acts to control bleeding using a bleeding control kit pursuant to § 49-2-137; or

(7) Services are provided to a minor enrolled in an institution of higher education by a licensed provider employed by the institution of higher education.

(d) A violation of this practice is an unlawful practice and is grounds for the offending healthcare provider's licensing authority to suspend, revoke, or refuse to renew the healthcare provider's license or take other disciplinary action allowed by law.

(e) If the licensing authority of a healthcare provider receives information of a violation or potential violation of this section by the healthcare provider, then the licensing authority shall conduct an immediate investigation and take appropriate disciplinary action.

(f) A parent may bring a civil cause of action to recover compensatory damages, reasonable attorney's fees, court costs, expenses, and other appropriate relief against an entity or healthcare provider alleged to have violated this section.

(g) If a court in any civil action brought pursuant to this section finds that a healthcare provider knowingly violated this section, then the court shall notify the appropriate regulatory authority and the attorney general and reporter by mailing a certified copy of the court's order to the regulatory authority and the attorney general and reporter. Notification pursuant to this subsection (g) must be made upon the judgment of the court being made final.

(h)

(1) A civil action commenced against a healthcare provider under this section must be brought within the period required by § 29-26-116.

(2) A civil action commenced against another entity under this section must be brought within one (1) year from the date of discovery of the violation of this section.

(i) This section is declared to be remedial in nature, and this section must be liberally construed to effectuate its purposes.

SECTION 3. This act takes effect July 1, 2024, the public welfare requiring it, and applies to acts committed on or after that date.