

HOUSE BILL 1380

By Ragan

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 14; Title 53; Title 63 and Title 68, relative to
prohibiting minor consent to vaccination.

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

SECTION 1. This act is known and may be cited as the "Mature Minor Doctrine Clarification Act."

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

(a) The general assembly finds and declares the following:

(1) The National Childhood Vaccine Injury Act of 1986 (42 U.S.C. § 300aa–26) requires that prior to the administration of a vaccine listed in the Vaccine Injury Table to a minor, healthcare providers must provide a CDC Vaccine Safety Sheet to the legal representatives of the minor;

(2) The Tennessee Supreme Court's decision in *Cardwell v. Bechtol*, 724 S.W.2d 739 (1987), found that the mature minor exception, guided by the "Rule of Sevens," is part of Tennessee common law, but only in the context of tort law and jury considerations, and not the general rule requiring parental consent for the medical treatment of minors;

(3) The *Cardwell* Court stated that, "Adoption of the mature minor exception to the common law rule is by no means a general license to treat minors without parental consent and its application is dependent on the facts of each case. It must be seen in the context of the tort in question.";

(4) Despite its holding in the case, the *Cardwell* Court declined to alter the general rule, which is "requiring parental consent for the medical treatment of minors";

(5) In its opinion in the case of *Parham v. J.R.*, 442 U.S. 584 (1979), the United States Supreme Court wrote, "Simply because the decision of a parent is not agreeable to a child, or because it involves risks, does not automatically transfer the power to make that decision from the parents to some agency or officer of the state. The same characterizations can be made for a tonsillectomy, appendectomy, or other medical procedure. Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments."; and

(6) In the case of *Troxel v. Granville*, 530 U.S. 57 (2000), Justice O'Connor wrote for the United States Supreme Court that, "The Fourteenth Amendment's Due Process Clause has a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests,' *Washington v. Glucksberg*, 521 U.S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody, and control of their children".

(b) As used in this section:

(1) "Department" means the department of health;

(2) "Healthcare provider" means a healthcare professional, establishment, or facility licensed, registered, certified, or permitted pursuant to this title or title 68 and regulated under the authority of either the department of

health or an agency, board, council, or committee attached to the department of health and that is authorized to administer vaccinations in this state;

(3) "Minor":

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

(B) Does not include an individual who:

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

(ii) 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

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

(4) "Vaccination" means a process, procedure, medication, drug, or other substance that is intended for use in humans to:

(A) Prevent or reduce the risk of a medical condition, illness, or disease; or

(B) Stimulate the body's immune response against disease.

(c)

(1) A healthcare provider shall not provide a vaccination to a minor unless the healthcare provider first receives written informed consent from a parent or legal guardian of the minor. The healthcare provider shall document receipt of, and include in the minor's medical record proof of, such prior informed consent.

(2) An employee or agent of this state shall not provide, request, or facilitate the vaccination of a minor child who is in the custody of this state unless:

(A) A parent or legal guardian of the minor has provided prior written, informed consent to the vaccination; or

(B) The parental rights of each of the minor's parents or legal guardians have been terminated by a court, and all opportunities for appeal have been exhausted.

(3) A healthcare provider shall report each vaccination of a minor to the registry created by the department of health pursuant to subsection (d).

(4)

(A) A violation of this section 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.

(B) 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.

(d)

(1) The department shall establish a registry database for the reporting of vaccinations of minors by healthcare providers in this state. Identifiable patient information in the database is confidential and is not subject to disclosure by court order or subpoena, or in response to a public records request.

(2) The department shall publish a report, updated no less than annually, on its public website containing deidentified, aggregated statistical data on vaccinations of minors in this state.

(3) The registry created pursuant to subdivision (d)(1) is subject to audit by the comptroller of the treasury.

(e) Each board, commission, committee, agency, or other governmental entity created pursuant to this title or title 68 that has regulatory authority for a healthcare provider is authorized to promulgate rules to effectuate this section. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(f) To the extent that this section conflicts with another law, this section controls.

SECTION 3. Tennessee Code Annotated, Section 14-4-103, is amended by deleting subsection (b) and deleting "Except as provided in subsection (b), a healthcare provider" in subsection (a) and substituting instead "A healthcare provider".

SECTION 4. 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 5. This act takes effect upon becoming a law, the public welfare requiring it.