_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PARENTAL RIGHTS REGARDING DATA COLLECTION FOR CHILDREN; PROVIDING OPT-OUT AND OPT-IN OPTIONS FOR PARENTS REGARDING EVALUATIONS, SURVEYS, AND DATA COLLECTION; REQUIRING THAT NOTIFICATIONS BE SENT TO PARENTS REGARDING ANY PHYSICAL AND MENTAL HEALTH SCREENINGS OR SURVEYS; AND AMENDING SECTION 40-6-701, MCA."

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

Section 1. Section 40-6-701, MCA, is amended to read:

"**40-6-701. Interference with fundamental parental rights restricted -- cause of action.** (1) A government entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children unless the government entity demonstrates that the interference:

(a) furthers a compelling governmental interest; and

(b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest.

(2) All fundamental parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following:

(a) direct the education of the child, including the right to choose public, private, religious, or home schools and the right to make reasonable choices with public schools for the education of the child;

(b) access and review all written and electronic education records relating to the child that are controlled by or in the possession of a school;

(c) direct the upbringing of the child;

(d) direct the moral or religious training of the child;

(e) make and consent to all physical and mental health care decisions for the child;

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

(g) consent before a biometric scan of the child is made, shared, or stored;

(h) consent before a record of the child's blood or DNA is created, stored, or shared, unless authorized pursuant to a court order;

(i) consent before a government entity makes an audio or video recording of the child, unless the audio or video recording is made during or as part of:

(i) a court proceeding;

(ii) a law enforcement investigation;

(iii) a forensic interview in a criminal or child abuse and neglect investigation;

(iv) the security or surveillance of buildings, grounds, or transportation of students; or

(v) a photo identification card;

(j) be notified promptly if an employee of a government entity suspects that abuse, neglect, or a criminal offense has been committed against the child unless the parent is suspected to have caused the abuse;

(k) except for information that is necessary and essential for establishing a student's education record:

(i) opt the child out of any personal analysis, evaluation, survey, or data collection by a school district that does not require personally identifiable information; and ~~would capture data for inclusion in the statewide data system except data that is necessary and essential for establishing a student's education record;~~

(ii) opt the child in to any personal analysis, evaluation, survey, or data collection by a school district that requires personally identifiable information;

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

(m) participate in parent-teacher associations and school organizations that are sanctioned by the board of trustees of a school district; and

(n) be notified promptly if, and provide consent before, the child would share a room or sleeping quarters with an individual of the opposite sex on a school-sponsored trip. A child whose parent does not provide consent must be permitted to attend the trip and must be provided with reasonable accommodations

that do not require the child to share a room or sleeping quarters with an individual of the opposite sex.

(3) A parent must be notified of the right to opt out of any physical and mental health surveys and screenings of their child. A parent must be notified of any issues or concerns resulting from a physical and mental health survey or screening of their child.

~~(3)~~ (4) Except for law enforcement, an employee of a government entity may not encourage or coerce a child to withhold information from the child's parent and may not withhold from a child's parent information that is relevant to the physical, emotional, or mental health of a child.

~~(4)~~ (5) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

~~(5)~~ (6) When a parent's fundamental rights protected by 40-6-702, 40-6-707, 41-1-402, 41-1-403, 41-1-405, and this section are violated, a parent may assert that violation as a claim or defense in an administrative or judicial proceeding and may obtain appropriate relief without regard to whether the proceeding is brought by or in the name of a government entity, a private person, or any other party. The prevailing party in an action filed pursuant to 40-6-702, 40-6-707, 41-1-402, 41-1-403, 41-1-405, and this section is entitled to reasonable attorney fees and costs.

~~(6)~~ (7) As used in this section, the following definitions apply:

(a) "Child" means an individual under 18 years of age.

(b) "Education record" means attendance records, test scores of school-administered tests and statewide assessments, grades, school-sponsored or extracurricular activity or club participation, email accounts, online or virtual accounts or data, disciplinary records, counseling records, psychological records, applications for admission, health and immunization information including any medical records maintained by a health clinic or medical facility operated or controlled by the school district or located on the district property, teacher and counselor evaluations, and reports of behavioral patterns.

(c) "Government entity" means the state, its political subdivisions, or any department, agency, commission, board, authority, institution, or office of the state, including a municipality, county, consolidated municipal-county government, school district, or other special district.

(d) "Parent" means a biological parent of a child, an adoptive parent of a child, or an individual who

1 has been granted the exclusive right and authority over the welfare of a child under state law.

2 (e) "Substantial burden" means an action that directly or indirectly constrains, inhibits, curtails, or

3 denies the right of a parent to direct the upbringing, education, health care, and mental health of the parent's

4 child. The term includes but is not limited to:

5 (i) withholding benefits;

6 (ii) assessing criminal, civil, or administrative penalties; or

7 (iii) exclusion from a government program."

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