**South Carolina General Assembly**

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**H. 3638**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. M.M. Smith

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Currently residing in the House Committee on **Medical, Military, Public and Municipal Affairs**

Summary: Parental rights

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/12/2024 House Prefiled

 12/12/2024 House Referred to Committee on **Medical, Military, Public and Municipal Affairs**

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**VERSIONS OF THIS BILL**

[12/12/2024](https://www.scstatehouse.gov/sess126_2025-2026/prever/3638_20241212.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 63‑5‑340, RELATING TO RIGHTS OF MINORS SIXTEEN YEARS OR OLDER TO CONSENT TO HEALTH SERVICES ESSENTIAL TO THEIR LIFE OR HEALTH, SO AS TO PROVIDE PARENTS HAVE THE FUNDAMENTAL RIGHT TO DIRECT THE UPBRINGING, EDUCATION, AND CARE OF THEIR MINOR CHILDREN, TO PROVIDE THESE RIGHTS EXTEND TO HEALTHCARE DECISIONS CONCERNING THE MINORS AND ACCESS TO THEIR MEDICAL RECORDS, AND TO PROVIDE THE STATE MAY NOT SUBSTANTIALLY BURDEN THESE RIGHTS EXCEPT IN CERTAIN CIRCUMSTANCES; BY AMENDING SECTION 63‑5‑350, RELATING TO HEALTH SERVICES THAT MAY BE RENDERED TO MINORS WITHOUT PARENTAL CONSENT, SO AS TO PROVIDE THAT HEALTHCARE PROVIDERS MUST OBTAIN PARENTAL CONSENT BEFORE PROCURING, PROVIDING, OR RENDERING HEALTHCARE FOR A MINOR EXCEPT IN CERTAIN CIRCUMSTANCES, TO PROHIBIT THE ENCOURAGEMENT OR COERCION OF MINORS TO WITHHOLD INFORMATION FROM A PARENT ABOUT THE HEALTH OF THE CHILD, TO PROVIDE PARENTS MAY ASSERT PROVISIONS OF THIS ACT AS CLAIMS OR DEFENSES IN CERTAIN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS SUBJECT TO A STATUTE OF LIMITATIONS, TO PROVIDE REMEDIES, TO PROVIDE THE ATTORNEY GENERAL MAY BRING ACTIONS TO ENFORCE PROVISIONS OF THIS ACT, AND TO DEFINE NECESSARY TERMS, AMONG OTHER THINGS; AND BY REPEALING SECTION 63‑5‑370 RELATING TO CONSENT NOT SUBJECT TO DISAFFIRMANCE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 63‑5‑340 of the S.C. Code is amended to read:

 Section 63‑5‑340. Any minor who has reached the age of sixteen years may consent to any health services from a person authorized by law to render the particular health service for himself and the consent of no other person shall be necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.(A) A parent of a minor has the fundamental right to direct the upbringing, education, and care, including healthcare, of the minor, which includes:

 (1) the authority to make all healthcare decisions and consent to all healthcare on behalf of the minor; and

 (2) all rights to access the minor’s medical records pursuant to Chapter 115, Title 44.

 (B) The State may not substantially burden the fundamental right of a parent to direct the upbringing, education, and care of that parent’s minor child unless the State demonstrates that application of the burden to the parent is in furtherance of a compelling state interest and is the least restrictive means of furthering that compelling state interest.

SECTION 2. Section 63‑5‑350 of the S.C. Code is amended to read:

 Section 63‑5‑350. Health services of any kind may be rendered to minors of any age without the consent of a parent or legal guardian when, in the judgment of a person authorized by law to render a particular health service, such services are deemed necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.(A) As used in this section:

 (1) “Decision‑making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s healthcare.

 (2) “First aid” means the one‑time treatment of scratches, cuts not requiring stitches, minor burns, splinters, and contusions.

 (3) “Healthcare,” “healthcare provider,” and “healthcare professional,” have the same meaning as in Section 44‑66‑20(1), (2), and (3), respectively.

 (4) “Medical Records” means a record, either tangible or electronic, of a patient’s medical information such as, but not limited to, medical history, care or treatments received, test results, diagnoses, and medications taken.

 (5) “Minor” or “Child” means an unemancipated individual who has not attained eighteen years of age.

 (6) “Parent” means:

 (a) biological parent, entity, adoptive parent, or person with legal custody, excluding an individual whose parental relationship to the child has been legally terminated; or

 (b) an individual who has been delegated decision‑making authority of a child by court order or by a person identified in subitem (a).

 (6) “Person” includes, but is not limited to, an individual, association, corporation, the State, a state agency, a municipality located in this State, or any employee, agent, or representative of any such entity.

 (7) “Prehospital care” has the same meaning as in Section 44‑61‑310(10).

 (B) Except as otherwise provided by law, this section, or court order, a person or healthcare provider must obtain the consent of a parent of a minor before procuring, providing a referral for, or rendering healthcare to the minor.

 (C) Subsection (B) does not apply when:

 (1) a parent of the minor has provided prior consent authorizing the person or entity to perform an activity listed in subsection (B);

 (2) it has been reasonably determined by a healthcare provider that an emergency exists and either of the following conditions is true:

 (a) it is necessary to perform an activity listed in subsection (B) in order to prevent death or imminent, irreparable physical injury to the minor, or

 (b) a parent of the child cannot be located or contacted after a good faith effort;

 (3) a healthcare provider or healthcare professional renders prehospital care to a minor;

 (4) a person renders emergency care at the scene of an accident or emergency pursuant to Section 15‑1‑310;

 (5) a healthcare provider, for the purpose of providing appropriate prenatal care, delivery, neonatal or postnatal care, renders healthcare to a child who has attained fourteen years of age; or

 (6) a person renders first aid to a minor.

 (D) This section does not authorize or allow a parent to abuse or neglect a child as defined in Section 63‑7‑20(6). This section does not apply to a parental action or decision that would end life. The provisions of this section do not apply to Chapter 41, Title 44. This section does not prohibit a court from issuing an order that is otherwise permitted by law.

 (E) No person, except for authorized law enforcement officers or agents, may encourage or coerce a minor to withhold information from the minor’s parent, nor may any person withhold from a minor’s parent information that is relevant to the physical, emotional, or mental health of the minor.

 (F) A parent may assert a violation of this section or Section 63‑5‑340 as a claim or defense in a judicial or administrative proceeding and obtain compensatory damages, injunctive relief, declaratory relief, attorneys’ fees, court costs, and any other appropriate relief.

 (1) A parent is required to bring a claim for a violation of this section no later than three years after the day the cause of action accrues.

 (2) An award of noneconomic damages may not exceed one hundred thousand dollars for each claimant unless the jury or court determines that the defendant was grossly negligent, wilful, wanton, or reckless, and such conduct was the proximate cause of the claimant’s noneconomic damages, or if the defendant has engaged in fraud or misrepresentation related to the claim, or if the defendant altered or destroyed medical records with the purpose of avoiding a claim or liability to the claimant.

 (3) The provisions of this section do not limit the amount of compensation for economic damages suffered by a claimant.

 (G) The Attorney General may bring an action to enforce compliance with this section. Nothing in this section may be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the State, or any agency, officer, or employee of the State to institute or intervene in any proceeding.

SECTION 3. Section 63‑5‑370 of the S.C. Code is repealed.

SECTION 4. This act takes effect upon approval by the Governor.

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