



# HOUSE OF REPRESENTATIVES

## HB 2088

*schools; assessments; surveys; informed consent*  
Prime Sponsor: Representative Finchem, et al., LD 11

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**X** Committee on Education

Caucus and COW

House Engrossed

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### **OVERVIEW**

HB 2088 prohibits public schools from administering specified assessments or surveys to students without notifying and obtaining written informed consent from parents and prescribes penalties for violations.

### **PROVISIONS**

1. Requires all schools, school districts and charter schools to provide written notice and obtain written informed consent from parents, or the student if the student is over 18, before administering any assessment or survey soliciting:
  - a. Any pupil psychological data including:
    - i. An assessment of noncognitive skills or attributes, psychological resources, mindsets, learning strategies, effortful control, dispositions, social skills, attitudes, interpersonal or intrapersonal resources or other social, emotional or psychological parameters
    - ii. Data collected through affective computing, facial expressions, brain wave patterns, skin conductance, galvanic skin response, heartrate variability, pulse, blood volume, posture or eye-tracking
    - iii. Data collected through real-time analysis and adaptive tailoring of successive questions in the process of testing, including adaptive testing and pedagogical agents.
    - iv. Data collected through predictive modeling to be used to detect behaviors, beliefs or value systems or to forecast student outcomes
  - b. Personal information about the student, the student's family or the student's household including:
    - i. Critical appraisals of another person the student has a close relationship with
    - ii. Gun or ammunition ownership
    - iii. Illegal, antisocial, self-incriminating or demeaning behavior
    - iv. Income or other financial information
    - v. Legally recognized privileged or analogous relationships
    - vi. Medical history or information
    - vii. Mental health history or information
    - viii. Political affiliations, opinions or beliefs
    - ix. Biometric information
    - x. Quality of home interpersonal relationships
    - xi. Religious practices, affiliations or beliefs
    - xii. Self-sufficiency
    - xiii. Sexual behavior or attitudes
    - xiv. Voting history

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2. Limits a parent's written informed consent to the specific assessment or survey in the official written notice from the school district or charter school.
3. Requires consent only from the student, if the student is over 18.
4. Prohibits school districts, charter schools, schools, teachers or other school employees from assessing or surveying students or collecting student data on specified items without obtaining written informed consent from the parent.
5. States that schools, school districts, charter schools, teachers or school employees are not permitted or denied the ability to assess or survey students or collect student data.
6. Requires all applicable assessments and surveys to be approved and authorized by the school, school district or charter school.
7. Determines a school, school district or charter school to be liable for violations and subject to penalties and permits injured persons to commence civil action in superior court.
8. Prohibits teachers or school employees from administering applicable surveys or assessments without written authorization from the school, school district or charter school.
9. Determines teachers to be personally liable for violations and subject to penalties.
10. Determines teachers or other employees who administer an applicable assessment or survey through a substitute teacher, paraprofessional or other school employee without written authorization from the school, school district or charter school to be responsible for violations and permits injured persons to commence civil action in superior court.
11. Applies requirements to all applicable assessments and surveys regardless of the stated purpose or quantity of questions that solicit applicable data, including assessments or surveys that question beliefs or practices in sex, morality or religion, sex education, sexuality, written digital or verbal assessments or any other method of assessment or data collection and national, state or multistate assessments or surveys.
12. Exempts private schools, mental health screenings, assignments that do not become part of a student's record and classroom instruction and discussion on subjects within the purview of the course, excluding topics prohibited without parental notification and consent, if the student's statements do not become a part of the student's educational record.
13. States that teachers or school employees are not permitted or denied the authority to discuss applicable information with students or give assignments relating to applicable matters.
14. Prohibits penalties from being imposed on a student or a parent that does not participate in applicable assessments or surveys.
15. Prohibits participation in an applicable assessment or survey from being required to:
  - a. Demonstrate that a student has met competency requirements for any grade level, course or subject
  - b. Qualify for placement into any grade level, course or subject including college or university placement tests
  - c. Promote a student to the next grade
  - d. Receive credit for any course or as part of a letter grade
  - e. Graduate from high school
  - f. Obtain a high school equivalency diploma

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- g. Participate in any course, program or activity offered to students who participate in the applicable assessment or survey
16. Allows a parent to elect in writing for their student to participate in applicable assessments or surveys.
  17. Permits a parent to not respond to a written notice provided by the school district or charter school and determines those parents to have not consented to the assessment or survey.
  18. Requires schools, school districts and charter schools to provide an alternative educational activity for students whose parents do not consent to participation in an applicable assessment or survey.
  19. Requires students participating in alternative educational activities to be counted towards attendance and Average Daily Membership and prohibits those students from being counted absent.
  20. Prohibits applicable assessment or survey responses from being included:
    - a. As part of a school academic performance indicator or similar rating system
    - b. In the Education Learning and Accountability System or similar system
    - c. In the Student Accountability Information System or similar system
    - d. In any school rating system
  21. Prohibits penalties or rewards for teachers, administrators, school employees, schools, school districts or charter schools based on the student participation rate in applicable assessments or surveys.
  22. Requires parents, on request, to be provided free of charge, the conducted assessment or survey including the questions asked, student's answers, directions given to the student and other supplementary materials used to administer and evaluate the student's assessment or survey.
  23. Requires applicable assessments to be available for parental review after the results have been posted or within 120 days after the administration of the assessment or survey, whichever occurs first.
  24. Directs schools, school districts and charter schools to comply with parental requests within 45 days after the request is submitted.
  25. Directs the Superintendent of Public Instruction to implement procedures to carry out the parental request procedures.
  26. Requires written notice by school districts and charter schools to be printed in at least 10 point font and:
    - a. Include the name of the school, school district or charter school that approved the assessment or survey, the name of the assessment or survey, the dates of administration, the method of collecting data, a statement of whether the collected data will be electronically transmitted from the computer or the location of administration, the approximate time the assessment will be administered for, the type of data collected, the reasons for data collection and a statement that the parent's written informed consent is limited to the specific assessment or survey referenced in the notice.
    - b. Require on the right side of the paper the parent's initials to affirmatively acknowledge:
      - i. Participation is voluntary and written parental consent required before the student participates in the assessment or survey

- ii. Students who do not participate will be provided an alternative educational activity
  - iii. Penalties will not be imposed against students or parents who do not participate
  - iv. Parents may request and be provided free of charge any data collected from the student
  - v. The procedure by which the parent may request and be provided the data collected from the student
  - vi. Whether the student's personally identifiable data will be aggregated by the removal of the student's personally identifiable information
  - vii. The names of the federal and state agencies, institutions and third parties that have access to collected data, whether the parties will keep the data private or share it with other parties and whether the parties will destroy the data when the student is no longer serviced by the school, school district or charter school or when the student reaches 18
- c. Require and clearly provide space for the student's and parent's names, the parent's signature and the date of the signature.
  - d. Be invalid without all required information on the notice.
  - e. Be retained in physical or electronic form by the school district or charter schools for two years following the date of the assessment or survey.
27. Determines any school, school district or charter school that fails to comply with any requirements to be liable for the following damages to the injured party for individual action:
- a. For the first violation, at least \$500 plus the costs of the action and reasonable attorney fees
  - b. For the second violation involving the same student, at least \$2,500 plus the costs of the action and reasonable attorney fees
  - c. For a third or subsequent violation involving the same student, at least \$10,000 plus the costs of the action and reasonable attorney fees
28. Permits the court or jury to award punitive damages in addition to prescribed penalties.
29. Determines each violation to be considered a separate violation if it involves a different assessment or survey or a different version or administration of the same assessment or survey.
30. Permits the injured party to commence civil action in superior court or request the Attorney General (AG) to commence civil action on their behalf.
31. Requires the AG to respond within 30 days of a request to commence civil action.
- a. Permits an injured party to proceed with civil action if the AG denies the request for representation.
32. Requires the proceeds from monetary awards to be paid to the injured party.
33. Requires damages to be assessed and paid in the case of an admission of guilt or a settlement before a formal conviction of a first or second violation.
34. Determines teachers or other employees who fail to comply with requirements to be liable for the following amounts in an individual action:
- a. For the first violation, \$100 plus the costs of the action and reasonable attorney fees
  - b. For the second violation, \$250 plus the costs of the action and reasonable attorney fees
35. Requires, on conviction of a second violation, by a teacher or school employee, the clerk of superior court to notify the Arizona State Board of Education (SBE).

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- a. Directs SBE to declare the teacher or employee guilty of unprofessional conduct and permanently revoke the teacher's certificate.
  - b. Requires the teacher or employee to be terminated from employment and prohibited from future state employment.
36. Permits the court or jury to award punitive damages in addition to prescribed penalties.
  37. Determines conviction of a violation involving one or more incidents to be considered a second violation if the subsequent incidents occur after the teacher or employee has been found guilty of a first violation or damages have been awarded.
  38. Permits the injured party to commence civil action in superior court or request the AG to commence civil action on their behalf.
  39. Requires the AG to respond within 30 days of a request to commence civil action.
    - a. Permits an injured party to proceed with civil action if the AG denies the request for representation.
  40. Requires the proceeds from judicial awards to go to the injured party.
  41. Requires damages and penalties to be assessed and paid in the case of an admission of guilt or a settlement before a formal conviction of a first or second violation.
  42. Prohibits any statute, rule, regulation, legal opinion or case law from precluding criminal prosecution of a teacher or employee who is guilty of violating requirements.
  43. Determines that the requirements do not preclude multiple individual actions, concurrently or otherwise, against the same teacher or employee.
  44. Defines terms.
  45. Permits this act to be cited as the "Pupil and Teacher Protection Act."

### **CURRENT LAW**

[A.R.S. § 15-102](#) requires governing boards, in consultation with parents, teachers and administrators, to develop and adopt policies regarding parental involvement in school. Included in those policies are requirements to adopt procedures to allow parents who object to learning material or activities due to harmful material to withdraw their children from the activity, procedures for parents to learn about and review the course of study and supplemental educational materials and procedures for parents to learn about their rights and responsibilities under the laws of the state.