

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: CS/SB 1726

INTRODUCER: Education Committee and Senator Gruters

SUBJECT: Parental Rights

DATE: April 4, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Sikes	ED	Fav/CS
2.			JU	
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 1726 establishes the “Parents’ Bill of Rights” and declares that it is a fundamental right of parents to direct the upbringing, education, and care of their children. To safeguard parental rights, the bill:

- Reserves certain rights to a parent of a minor child and prohibits any person or entity from infringing upon those rights without demonstrating that the infringement is reasonable and necessary to achieve a compelling state interest, is narrowly tailored to achieve the interest, and is not otherwise served by a less restrictive means.
- Requires each school district to adopt a policy to promote parental notification and involvement in the public school system and provides requirements for the policy.
- Establishes parental consent requirements for health care purposes and provides for disciplinary action against health care practitioners who violate parental consent requirements.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2019.

**II. Present Situation:**

Parents and guardians have a fundamental right to direct the upbringing and education of children under their control.<sup>1</sup> No state or federal entity may abridge a parent’s fundamental right to direct the upbringing and education of his or her child without demonstrating that the

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<sup>1</sup> See *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

proposed action is reasonable and necessary to achieve a compelling state interest, narrowly tailored to achieve the interest, and the least restrictive means available to achieve the interest.<sup>2</sup>

### **Mandatory Attendance**

All children who turn 6 years by February 1 of any school year and have not attained the age of 16 years are required to attend school regularly during the entire school term.<sup>3</sup> Parents have the option to comply with school attendance laws by enrolling the student in a public school; a parochial, religious, or denominational school; a private school; a home education program; or a private tutoring program.<sup>4</sup> The district school superintendent may authorize certificates of exemptions from school attendance requirements in certain situations.<sup>5</sup> A student who holds a valid certificate of exemption is exempt from attending school. A certificate of exemption expires at the end of the school year.<sup>6</sup>

A parent of a K-12 student is afforded numerous statutory rights.<sup>7</sup> Each school district is required to:

- Provide a parent with specific information about his or her child's educational progress, comprehensive information about opportunities for involvement in the child's education, and a framework for building and strengthening partnerships among parents and school district personnel.<sup>8</sup>
- Afford a parent the opportunity to enroll his or her child in instruction for exceptional students or challenge a district school board's determination of the child's eligibility for a gifted or special education program.<sup>9</sup>
- Establish a policy enabling a parent to object to and contest specific instructional materials.<sup>10</sup>
- Notify a parent and obtain his or her consent before a public school student may be transported in a privately owned motor vehicle to a school function or referred to contraceptive services at school facilities.<sup>11</sup>

No educational agency or institution may collect, obtain, or retain information on the political affiliation, voting history, religious affiliation, or biometric information of a student or a parent or sibling of the student.<sup>12</sup> In addition, a parent may exempt his or her child from:<sup>13</sup>

- A health examination on religious grounds.
- School immunization requirements on religious or certain health grounds.<sup>14</sup>
- Performing surgery or dissection in a biological science class.

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<sup>2</sup> *Id.*

<sup>3</sup> Section 1003.21, F.S.

<sup>4</sup> Section 1002.20(2)(b), F.S.

<sup>5</sup> Section 1003.21, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 1002.20, F.S.

<sup>8</sup> Section 1002.23, F.S.

<sup>9</sup> Section 1003.57, F.S.

<sup>10</sup> Section 1006.28(1)(a)2.-3., F.S.

<sup>11</sup> Sections 1002.20(3)(e) and (22)(c), F.S.

<sup>12</sup> Section 1002.222(1)(a), F.S.

<sup>13</sup> Section 1002.20, F.S.

<sup>14</sup> Section 1002.20(3)(b), F.S.

- Receiving instruction on reproductive health or any disease, including HIV/AIDS.<sup>15</sup>
- Reciting the pledge of allegiance.
- Reciting the Declaration of Independence.<sup>16</sup>

### **Access to Records and Information**

The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies are protected.<sup>17</sup> Specifically, a parent of a K-12 student has the right to:<sup>18</sup>

- Receive accurate and timely information regarding the student's academic progress and must be informed of ways a parent can help a student succeed in school.
- Access the student's education records, including the right to inspect and review those records.
- Challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.
- Privacy with respect to the student's records and reports.
- Receive annual notice of the parent's rights with respect to education records.
- Receive report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, the student's conduct, and the student's attendance.<sup>19</sup>
- Receive reports at regular intervals of the academic progress and other needed information regarding the student.
- Receive timely notification of any verified report of a substance abuse violation by the student.
- Access information relating to the school district's policies for promotion or retention, including high school graduation requirements.<sup>20</sup>
- Access information relating to student eligibility to participate in extra-curricular activities.<sup>21</sup>
- Access information relating to the state public education system, standards, and requirements.<sup>22</sup>
- Access, review, object to, and challenge instructional and supplemental education materials.<sup>23</sup>

### **Parental Consent for Health Care**

Any medical decision made to address a student's needs is a matter between the student, the student's parent, and a competent health care professional chosen by the parent.<sup>24</sup> The right to consent to medical treatment for a child resides with a parent.<sup>25</sup> District school boards may adopt

<sup>15</sup> Section 1002.20(3)(d), F.S.

<sup>16</sup> Section 1003.421(4), F.S.

<sup>17</sup> Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g; and s. 1002.22, F.S.

<sup>18</sup> Sections 1002.20, 1002.22(2), and 1006.28, F.S.

<sup>19</sup> Section 1002.20(14), F.S.

<sup>20</sup> Section 1008.25, F.S.

<sup>21</sup> Section 1006.195, F.S.

<sup>22</sup> Section 1002.23, F.S.

<sup>23</sup> Sections 1002.20(19) and 1006.28, F.S.

<sup>24</sup> Section 1006.0625, F.S.

<sup>25</sup> *O'Keefe v. Orea*, 731 So. 2d 680, 686 (Fla. 1st DCA 1998).

policies to ensure an appropriate response in emergency situations and the provision of first aid and emergency medical care.<sup>26</sup> A parent has the right to be notified and give consent for proposed medical procedures on his or her child, unless, within a reasonable degree of medical certainty, delay in the provision of emergency medical care would endanger the health or physical well-being of the child, and the emergency medical care or treatment is administered in a licensed hospital or college health service.<sup>27</sup>

### III. Effect of Proposed Changes:

CS/SB 1726 establishes the “Parents’ Bill of Rights” and declares that it is a fundamental right of parents to direct the upbringing, education, and care of their children. To safeguard parental rights, the bill:

- Reserves certain rights to a parent of a minor child and prohibits any person or entity from infringing upon those rights without demonstrating that the infringement is reasonable and necessary to achieve a compelling state interest, is narrowly tailored to achieve the interest, and is not otherwise served by a less restrictive means.
- Requires each school district to adopt a policy to promote parental notification and involvement in the public school system and provides requirements for the policy.
- Establishes parental consent requirements for health care purposes and provides for disciplinary action against health care practitioners who violate parental consent requirements.

#### Parents’ Bill of Rights

The Parents’ Bill of Rights provides legislative intent and findings. Specifically, the bill states that:

- Important information relating to a child, including the child’s health and education, should not be inadvertently or purposefully withheld from his or her parent while in the custody of the school district.
- It is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their children.
- It is a fundamental right of parents to direct the upbringing, education, and care of their children.

The bill defines the term “parent” as a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian. The bill prohibits the state or any other institution from infringing on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating that the infringement is reasonable and necessary to achieve a compelling state interest, is narrowly tailored, and is not otherwise served by a less restrictive means. The bill provides that a parent’s rights with regard to his or her minor child include, but are not limited to, the right to:

- Direct the education and care of the child.
- Direct the upbringing and the moral or religious training of the child.

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<sup>26</sup> Section 1001.43, F.S.

<sup>27</sup> Section 743.0645, F.S.

- Enroll the child in a public, private, or religious school, a home education program, or other available option.
- Access and review all school records relating to the child.
- Make health care decisions for the child.
- Access and review all medical records of the child, unless prohibited by law, or the parent is the subject of an investigation of a crime committed against the minor child, and a law enforcement agency or official requests that the information not be released.
- Consent in writing before a biometric scan of the child is made, shared, or stored.
- Consent in writing before any record of the minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.
- Consent in writing before the state or any of its political subdivisions makes a video or voice recording of the minor child unless such recording is made during or as part of a court proceeding, is made by law enforcement or during a law enforcement investigation, is made as part of a forensic interview in a criminal or Department of Children and Families (DCF) investigation or is to be used solely for the following purposes:
  - A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles;
  - A legitimate academic or extracurricular activity;
  - Regular classroom instructions;
  - Security or surveillance of buildings or grounds; or
  - A photo identification card.
- Be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against the child, unless the incident has first been reported to law enforcement or the DCF, and notifying the parent would impede the investigation.

The bill clarifies that a parent of a minor child has inalienable rights that are more comprehensive than those listed in the bill, and, unless required by law, the rights of a parent of a minor child may not be limited or denied. The bill expressly does not:

- Authorize a parent of a minor child to engage in conduct that is unlawful.
- Authorize a parent to abuse or neglect the child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.
- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in an official capacity within the reasonable and prudent scope of authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

### **District School Board Requirements**

The bill requires each district school board, in consultation with parents, teachers, and administrators, to develop and adopt a policy to promote parental involvement in the public school system. The policy must include:

- A plan for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.

- A procedure for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to classroom materials and activities and withdraw his or her child from the activity, class, or program in which the materials or activities are used. The objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials or activities are harmful.
- Procedures for a parent to withdraw his or her child from any portion of the school district's comprehensive health education that relates to sex education, instruction in acquired immune deficiency syndrome education, or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. The procedures must provide for a parent to be notified in advance of the course content so that the parent may withdraw the child from those portions of the course.
- Procedures for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.
- Procedures for a parent to learn about parental rights and responsibilities under general law, including the right of a parent of a K-12 student to:
  - Opt the student out of any portion of the school district's comprehensive health education that relates to sex education instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality.
  - School choice options, including open enrollment.
  - Exempt the student from immunizations.
  - Review statewide, standardized assessment results.
  - Enroll the student in gifted or special education programs.
  - Inspect school district instructional materials.
  - Access to information relating to the school district's policies for promotion or retention, including high school graduation requirements.
  - Receive a school report card and be informed of the student's attendance requirements.
  - Access information relating to the state public education system, state standards, report card requirements, attendance requirements, and instructional materials requirements.
  - Participate in parent-teacher associations and organizations that are sanctioned by a district school board or the Department of Education.
  - Opt out of any district-level data collection relating to the student not required by law.

The bill authorizes a district school board to provide the required information electronically or on its website. The bill authorizes a parent to make a written request for the required information from the district school superintendent and requires the district school superintendent to provide the information within 10 days. A parent may appeal to the district school board if the district school superintendent denies a parent's request for information or fails to respond to the parent's request within 10 days. The bill requires a district school board to place a parent's appeal on the agenda for its next public meeting in which the deadline for filing the agenda has not passed.

The bill authorizes disciplinary action against any government employee who encourages or coerces, or attempts to encourage or coerce, a minor child to withhold information from his or her parent. The bill does not apply to law enforcement personnel and DCF personnel acting within their official capacities.

**Parental Consent for Health Care**

The bill prohibits a health care practitioner or other person or entity from soliciting, arranging, or performing surgical procedures, physical examinations, mental health evaluations, mental health treatments, or prescribing any prescription drugs to a minor child without the written consent of his or her parent. The bill also prohibits a licensed hospital from allowing a surgical procedure to be performed on a minor child in its facilities without first receiving the written consent of his or her parent. The bill does not prohibit the provision of health care services to a minor child when:

- An emergency condition exists that requires immediate medical attention to prevent a serious injury or save the minor child from death.
- A minor child's parent cannot be located or contacted after a reasonably diligent effort.
- The issue relates to an abortion, which is governed by ch. 390, F.S.

The bill provides that a health care practitioner or other person who solicits, arranges, or performs surgical procedures, physical examinations, mental health evaluations, mental health treatments, or prescribes any prescription drugs to a minor child without the written consent of his or her parent is subject to disciplinary action as provided in general law and commits a misdemeanor of the first degree, punishable by a maximum fine of \$1,000 and imprisonment of one year.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill has no impact on state revenues or expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 1014.01, 1014.06, 1014.02, 1014.03, 1014.04, and 1014.05.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education on April 10, 2019.**

CS/SB 1726 provides references to existing legal provisions within the PK-20 Florida Education Code that relate to the parental rights indicated in the bill.

Specifically, the committee substitute clarifies that the right of a parent to:

- Access and review all school records relating to the minor child is pursuant to s. 1002.20(13), F.S.
- Exempt his or her student from immunizations is in accordance with s. 1002.20(3)(b), F.S.
- Enroll his or her student in a gifted or special education program is in accordance with s. 1003.57, F.S.
- Inspect school district instructional materials is in accordance with s. 1006.28(2)(a)1., F.S.
- Access information relating to the school district's policies for promotion or retention is in accordance with s. 1008.25, F.S.
- Receive a school report card and be informed of his or her child's attendance requirements is in accordance with s. 1002.20(14), F.S.
- Access information relating to the state public education system, requirements, and standards is in accordance with s. 1002.23, F.S., the Family and School Partnership for Student Achievement Act.
- Participate in parent-teacher associations and organizations that are sanctioned by a district school board or the Department of Education is in accordance with s. 1002.23(4), F.S.



- Opt out of any district-level data collection relating to his or her minor child not required by law is in accordance with s. 1002.222(1)(a), F.S.

The committee substitute specifies that each district school board adopt a policy that includes:

- A plan for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline, is pursuant to s. 1002.23, F.S., the Family and School Partnership for Student Achievement Act.
- Procedure for a parent to learn about his or her child's course of study is pursuant to s. 1002.20(19)(b), F.S.
- Procedure for a parent to object to classroom materials and activities and withdraw his or her student from the activity is supported by s. 1006.28(2)(a)2.
- Procedure for a parent to withdraw his or her student from education on sexuality is supported by s. 1002.20(3)(d), F.S.
- Procedures for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school is pursuant to s. 1006.195(1)(a), F.S.

**B. Amendments:**

None.