

ENROLLED

CS/HB 311

2021 Legislature

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 2 An act relating to public records; amending s.
 3 1008.23, F.S.; expanding the examination and
 4 assessment instruments which are confidential and
 5 exempt from public record requirements; providing that
 6 provisions governing access, maintenance, and
 7 destruction of certain instruments and related
 8 materials shall be prescribed by rules of the State
 9 Board of Education and regulations of the Board of
 10 Governors, respectively; providing for future
 11 legislative review and repeal of the exemption;
 12 providing legislative findings; providing a statement
 13 of public necessity; providing an effective date.
 14

15 Be It Enacted by the Legislature of the State of Florida:
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17 Section 1. Section 1008.23, Florida Statutes, is amended
 18 to read:

19 1008.23 Confidentiality of assessment instruments.—

20 (1) All examination and assessment instruments, including
 21 developmental materials and workpapers directly related thereto,
 22 which are prepared, prescribed, or administered pursuant to ss.
 23 1002.69, 1003.52, 1003.56, 1007.25, 1007.35, 1008.22, and
 24 1008.25, and 1012.56 shall be confidential and exempt from s.
 25 119.07(1) and s. 24(a), Art. I of the State Constitution ~~the~~

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CS/HB 311

2021 Legislature

26 | ~~provisions of s. 119.07(1) and from s. 1001.52.~~ Provisions
27 | governing access, maintenance, and destruction of such
28 | instruments and related materials shall be prescribed by rules
29 | of the State Board of Education.

30 | (2)(a) All examination and assessment instruments,
31 | including developmental materials and workpapers directly
32 | related thereto, which are prepared, prescribed, or administered
33 | by a Florida College System institution, a state university, or
34 | the Department of Education shall be confidential and exempt
35 | from s. 119.07(1) and s. 24(a), Art. I of the State
36 | Constitution.

37 | (b) Provisions governing access, maintenance, and
38 | destruction of the instruments and related materials identified
39 | under paragraph (a) shall be prescribed by rules of the State
40 | Board of Education and regulations of the Board of Governors,
41 | respectively.

42 | (3) This section is subject to the Open Government Sunset
43 | Review Act in accordance with s. 119.15 and shall stand repealed
44 | on October 2, 2026, unless reviewed and saved from repeal
45 | through reenactment by the Legislature.

46 | Section 2. (1) The Legislature finds that it is a public
47 | necessity to exempt from s. 119.07(1), Florida Statutes, and s.
48 | 24(a), Article I of the State Constitution examination and
49 | assessment instruments used for statewide kindergarten
50 | screening, youth enrolled in Department of Juvenile Justice

ENROLLED

CS/HB 311

2021 Legislature

51 programs, limited English proficient students, civic literacy
52 assessments, measuring minority and underrepresented student
53 achievement, and certification of educators and those
54 administered by a Florida College System institution, a state
55 university, or the Department of Education.

56 (2) The state has historically protected education records
57 from public disclosure. Section 1002.221, Florida Statutes,
58 makes K-12 education records generally confidential, while s.
59 1008.23, Florida Statutes, as it is currently written, already
60 makes examination and assessment instruments relating to
61 statewide, standardized assessments and student progression
62 confidential.

63 (3) Assessment instruments contain proprietary information
64 that must be protected to maintain the security of such
65 information. In addition, examination and assessment instruments
66 must be protected to prevent cheating, plagiarism, and academic
67 dishonesty in education and to ensure the validity of the
68 results derived from the administration of examinations and
69 assessments.

70 (4) The state's ability to objectively assess educational
71 progress and performance is impaired if examination and
72 assessment instruments can be publicly disseminated before or
73 after being administered. Public dissemination of already-
74 administered examination and assessment instruments may also
75 invade a student's privacy and harm his or her ability to

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2021 Legislature

76 | protect his or her personal information and educational records.

77 | (5) Based on the foregoing, the Legislature finds that the

78 | harm that may result from the release of such examination and

79 | assessment instruments outweighs any public benefit that may be

80 | derived from the disclosure of the information.

81 | Section 3. This act shall take effect July 1, 2021.