

## CHAPTER 2021-81

### Committee Substitute for House Bill No. 311

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

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1008.23, Florida Statutes, is amended to read:

1008.23 Confidentiality of assessment instruments.—

(1) All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to ss. ~~1002.69, 1003.52, 1003.56, 1007.25, 1007.35, 1008.22, and 1008.25, and 1012.56~~ shall be confidential and exempt from s. ~~119.07(1) and s. 24(a), Art. I of the State Constitution~~ the provisions of s. ~~119.07(1) and from s. 1001.52~~. Provisions governing access, maintenance, and destruction of such instruments and related materials shall be prescribed by rules of the State Board of Education.

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

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

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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

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

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

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

(5) Based on the foregoing, the Legislature finds that the harm that may result from the release of such examination and assessment instruments outweighs any public benefit that may be derived from the disclosure of the information.

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

Approved by the Governor June 11, 2021.

Filed in Office Secretary of State June 11, 2021.