

2001 ASSEMBLY BILL 109

February 8, 2001 – Introduced by Representatives PETTIS, KRAWCZYK, ZIEGELBAUER, GRONEMUS, WADE, AINSWORTH, OWENS, URBAN, HAHN, GROTHMAN, ALBERS, WILLIAMS, F. LASEE, MCCORMICK and VRAKAS, cosponsored by Senators DARLING, FARROW and LAZICH. Referred to Committee on Children and Families.

1 **AN ACT to create** 118.135 of the statutes; **relating to:** surveys and
2 questionnaires of pupils and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires school boards to make available to their pupils' parents or guardians all instructional material that will be used in connection with any written or recorded survey or questionnaire of pupils. The bill also prohibits any official, employee, or agent of a school board from conducting any written or recorded survey or questionnaire of pupils that may reveal information with respect to a pupil or the pupil's family about political affiliations, mental or psychological problems, sexual behavior or attitudes, illegal or antisocial behavior, critical appraisals of individuals with whom the family has close family relationships, privileged relationships, income, or religious beliefs or practices, without the pupil's consent if he or she is an adult or emancipated minor, or without the consent of the pupil's parent or guardian if the pupil is an unemancipated minor.

The bill requires consent for each survey or questionnaire that is conducted. A request for consent, along with a copy of the survey or questionnaire, must be mailed at least ten days before conducting the survey or questionnaire. Consent is considered to have been given if the pupil or the pupil's parent or guardian fails to respond to the request before the date of the survey or questionnaire.

The bill directs each school board to notify annually the pupils enrolled in the school district and their parents or guardians of the above provisions. The bill provides a forfeiture (civil penalty) for those school board officers, employees, or agents who require pupils to participate in a survey or questionnaire that may reveal

ASSEMBLY BILL 109

the information specified above without the required consent, and also provides an enforcement mechanism.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 118.135 of the statutes is created to read:

2 **118.135 Surveys and questionnaires of pupils. (1)** INSTRUCTIONAL
3 MATERIALS AVAILABLE; CONSENT REQUIRED. (a) Each school board shall make available
4 for inspection by the parents and guardians of pupils enrolled in the school district
5 all instructional material, including teacher’s manuals, films, tapes, and other
6 supplementary material, that will be used in connection with any written or recorded
7 survey or questionnaire of pupils.

8 (b) No official, employee, or agent of a school board may conduct any written
9 or recorded survey or questionnaire of pupils that may reveal information about any
10 of the following with respect to a pupil or the pupil’s family without the consent of
11 the pupil, if the pupil is an adult or an emancipated minor, or without the consent
12 of the pupil’s parent or guardian, if the pupil is an unemancipated minor, unless the
13 primary purpose of the survey or questionnaire is academic:

14 1. Political affiliations.

15 2. Mental or psychological problems that may embarrass the pupil or the pupil’s
16 family.

17 3. Sexual behavior or attitudes.

18 4. Illegal, antisocial, self-incriminating, or demeaning behavior.

19 5. Critical appraisals of individuals with whom the pupil has close family
20 relationships.

ASSEMBLY BILL 109

1 6. Legally recognized privileged or analogous relationships, including
2 relationships with lawyers, physicians, or members of the clergy.

3 7. Income, unless the information is required by law to determine eligibility for
4 participation in a program or for receiving financial assistance.

5 8. Religious beliefs or practices.

6 (c) An official, employee, or agent of a school board shall obtain consent under
7 par. (b) for each survey or questionnaire conducted. The official, employee, or agent
8 shall mail a copy of the survey or questionnaire along with a request for consent at
9 least 10 days before conducting the survey or questionnaire. Consent shall be
10 considered to have been given under par. (b) if the pupil or the pupil's parent or
11 guardian fails to respond to the request before the date of the survey or
12 questionnaire.

13 (d) No official, employee, or agent of a school board may require a pupil to
14 participate in a survey or questionnaire that may reveal information about any of the
15 subjects specified in par. (b) if the pupil requests to discuss the content of the survey
16 or questionnaire with his or her parent or guardian before completing the survey or
17 questionnaire. The prohibition under this paragraph applies only the first time that
18 the pupil is requested to participate in the survey or questionnaire.

19 **(2) NOTICE.** Annually each school board shall notify the pupils enrolled in the
20 school district and their parents or guardians of the provisions of sub. (1).

21 **(3) PENALTY.** Any person who knowingly violates sub. (1) (b) shall forfeit not less
22 than \$25 nor more than \$300 for each violation. Each survey or questionnaire of each
23 pupil constitutes a separate violation.

24 **(4) ENFORCEMENT.** (a) Forfeitures under this section shall be enforced by action
25 on behalf of the state by the attorney general or, upon the verified complaint of any

ASSEMBLY BILL 109

1 person, by the district attorney of any county where a violation occurs. In actions
2 brought by the attorney general, the court shall award any forfeiture recovered
3 together with reasonable costs to the state; and in actions brought by the district
4 attorney, the court shall award any forfeiture recovered together with reasonable
5 costs to the county.

6 (b) In addition and supplementary to the penalty provided in sub. (3), the
7 attorney general or the district attorney may commence an action, separately or in
8 conjunction with an action brought under sub. (3), to obtain such other legal or
9 equitable relief, including mandamus, injunction, or declaratory judgment, as may
10 be appropriate under the circumstances.

11 (c) If the district attorney refuses or otherwise fails to commence an action to
12 enforce this section within 20 days after receiving a verified complaint, the person
13 making the complaint may bring an action under pars. (a) and (b) on his or her
14 relation in the name, and on behalf, of the state. In such an action, the court may
15 award actual and necessary costs of prosecution, including reasonable attorney fees,
16 to the relator if he or she prevails, but any forfeiture recovered shall be paid to the
17 state.

18 (END)