

Senate Engrossed

unjustified actions; parental rights

**State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023**

SENATE BILL 1005

AN ACT

AMENDING SECTION 14602, ARIZONA REVISED STATUTES; RELATING TO PARENTS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 1-602, Arizona Revised Statutes, is amended to read:

1-602. Parents' bill of rights; governmental interference restricted; burden of proof; definition

A. All parental rights are exclusively reserved to a parent of a minor child without obstruction or interference from this state, any political subdivision of this state, any other governmental entity or any other institution, including:

1. The right to direct the education of the minor child.
2. All rights of parents identified in title 15, including the right to access and review all records relating to the minor child.
3. The right to direct the upbringing of the minor child.
4. The right to direct the moral or religious training of the minor child.
5. The right to make all health care decisions for the minor child, including rights pursuant to sections 15-873, 36-2271 and 36-2272, unless otherwise prohibited by law.
6. The right to request, access and review all written and electronic medical records of the minor child unless otherwise prohibited by law or unless the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement official requests that the information not be released.
7. The right to consent in writing before a biometric scan of the minor child is made pursuant to section 15-109.

8. The right to consent in writing before any record of the minor child's blood or deoxyribonucleic acid is created, stored or shared, except as required by section 36-694, or before any genetic testing is conducted on the minor child pursuant to section 12-2803 unless authorized pursuant to section 13-610 or a court order.

9. The right to consent in writing before this state or any of its political subdivisions makes a video or voice recording of the minor child, unless the video or voice recording is made during or as a part of a court proceeding, by law enforcement officers during or as part of a law enforcement investigation, during or as part of an interview in a criminal or child safety services investigation or to be used solely for any of the following:

- (a) Safety demonstrations, including the maintenance of order and discipline in the common areas of a school or on pupil transportation vehicles.
- (b) A purpose related to a legitimate academic or extracurricular activity.
- (c) A purpose related to regular classroom instruction.
- (d) Security or surveillance of buildings or grounds.
- (e) A photo identification card.

10. The right to be notified promptly if an employee of this state, any political subdivision of this state, any other governmental entity or any other institution suspects that a criminal offense has been committed against the minor child by someone other than a parent, unless the incident has first been reported to law enforcement and notifying the parent would impede a law enforcement or child safety services investigation. This paragraph does not create any new obligation for school districts and charter schools to report misconduct between students at school, such as fighting or aggressive play, that is routinely addressed as a student disciplinary matter by the school.

11. The right to obtain information about a child safety services investigation involving the parent pursuant to section 8-807.

B. This section does not authorize or allow a parent to engage in conduct that is unlawful or to abuse or neglect a child in violation of the laws of this state. This section does not prohibit courts, law enforcement officers or employees of a government agency responsible for child welfare from acting in their official capacity within the scope of their authority. This section does not prohibit a court from issuing an order that is otherwise allowed by law.

C. Any attempt to encourage or coerce a minor child to withhold information from the child's parent is grounds for discipline of an employee of this state, any political subdivision of this state, any other governmental entity or any other institution, except for law enforcement personnel.

D. Unless those rights have been legally waived or legally terminated, parents have inalienable rights that are more comprehensive than those listed in this section. This chapter does not prescribe all rights of parents or preempt or foreclose claims or remedies in support of parental rights that are available under the constitution, statutes or common law of this state. Unless otherwise required by law, the rights of parents of minor children shall not be limited or denied.

E. Except as prescribed in subsections F and G of this section, this state, a political subdivision of this state or any other governmental entity, or any official of this state, a political

subdivision of this state or any other governmental entity acting under color of law, shall not interfere with or usurp the fundamental right of parents to direct the upbringing, education, health care and mental health of their children. A parent may bring suit against a governmental entity or official described in this subsection based on any violation of the statutory rights set forth in this chapter or any other action that interferes with or usurps the fundamental right of parents to direct the upbringing, education, health care and mental health of their children in the superior court in the county in which the violation or other action occurs or in federal court, if authorized by federal law, or before an administrative tribunal of appropriate jurisdiction. A parent may raise a violation of this chapter as a claim or a defense.

F. In any action under subsection E of this section, the governmental entity or official described in subsection E of this section has the burden of proof to demonstrate both of the following:

1. That the interference or usurpation is essential to accomplish a compelling government interest of the highest order, as long recognized in the history and traditions of this state in the operation of its regulatory powers.

2. That the method of interference or usurpation used by the government is narrowly tailored and is not otherwise served by a less restrictive means.

G. A governmental entity or official described in subsection E of this section may interfere with or usurp the fundamental right of parents to direct the upbringing, education, health care and mental health of their children only if the governmental entity or official successfully demonstrates both elements described in subsection F of this section. If the governmental entity or official is unsuccessful, the court shall grant appropriate relief, such as declaratory or injunctive relief, compensatory damages and attorney fees, based on the facts of the case and the law as applied to the facts. **EXCEPT AS PROVIDED BY SECTION 12-349, THE COURT MAY NOT GRANT ATTORNEY FEES, EXPENSES OR DAMAGES TO A GOVERNMENTAL ENTITY OR OFFICIAL FOR A CLAIM OR DEFENSE ASSERTED UNDER SUBSECTION E OF THIS SECTION.**

H. For the purposes of this section, "parent" means the natural or adoptive parent or legal guardian of a minor child.