

By: VanDeaver

H.B. No. 3668

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to eliminating certain state-required assessment  
3 instruments and certain end-of-course assessment instruments not  
4 required by federal law, removal of high-stakes on children and  
5 temporary suspension of accountability determinations including  
6 criterion for promotion or graduation of a public school student.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 39.023(a), Education Code, as effective  
9 until September 1, 2021 and as effective September 1, 2021, is  
10 amended to read as follows:

11 (a) The agency shall adopt or develop appropriate  
12 criterion-referenced assessment instruments designed to assess  
13 essential knowledge and skills in reading, ~~[writing,~~ mathematics,  
14 ~~[social studies,~~ and science. Except as provided by Subsection  
15 (a-2), all students, other than students assessed under Subsection  
16 (b) or (1) or exempted under Section 39.027, shall be assessed in:

17 (1) mathematics, annually in grades three through  
18 eight;

19 (2) reading, annually in grades three through eight;

20 (3) ~~[writing, including spelling and grammar, in~~  
21 ~~grades four and seven,~~

22 ~~[(4) social studies, in grade eight,~~

23 ~~[(5)] science, in grades five and eight; and~~

24 ~~[(6)] any other subject and grade required by federal~~

1 ~~law.~~

2 SECTION 2. Section 39.023, Education Code, is amended by  
3 amending Subsections (c) and adding Subsection (q) to read as  
4 follows:

5 (c) The agency shall also adopt end-of-course assessment  
6 instruments for secondary-level courses in reading, mathematics,  
7 and science only as necessary to comply with the Every Student  
8 Succeeds Act (20 U.S.C. Section 6301 et seq.) to be administered  
9 only as necessary to meet the minimum requirements of that Act  
10 ~~[Algebra I, biology, English I, English II, and United States~~  
11 ~~history. The Algebra I end-of-course assessment instrument must be~~  
12 ~~administered with the aid of technology, but may include one or more~~  
13 ~~parts that prohibit the use of technology. The English I and~~  
14 ~~English II end-of-course assessment instruments must each assess~~  
15 ~~essential knowledge and skills in both reading and writing and must~~  
16 ~~provide a single score]. A school district shall comply with State~~  
17 Board of Education rules regarding administration of the assessment  
18 instruments adopted under ~~[listed in]~~ this subsection. If a  
19 student is in a special education program under Subchapter A,  
20 Chapter 29, the student's admission, review, and dismissal  
21 committee shall determine whether any allowable modification is  
22 necessary in administering to the student an assessment instrument  
23 required under this subsection. The State Board of Education shall  
24 administer the assessment instruments. An end-of-course  
25 assessment instrument may be administered in multiple parts over  
26 more than one day. ~~The State Board of Education shall adopt a~~  
27 ~~schedule for the administration of end-of-course assessment~~

1 ~~instruments that complies with the requirements of Subsection~~  
2 ~~(c-3).~~

3 (g) Notwithstanding any provision of this section or other  
4 law, if changes made to the Every Student Succeeds Act (20 U.S.C.  
5 Section 6301 et seq.) reduce the number or frequency of assessment  
6 instruments required to be administered to students, the State  
7 Board of Education shall adopt rules reducing the number or  
8 frequency of assessment instruments administered to students under  
9 state law, and the commissioner shall ensure that students are not  
10 assessed in subject areas or in grades that are no longer required  
11 to meet the minimum requirements of that Act.

12 SECTION 3. Section 39.025(a-1), Education Code, is amended  
13 to read as follows:

14 (a-1) A student enrolled in a college preparatory  
15 mathematics or English language arts course under Section 28.014  
16 who satisfies the Texas Success Initiative (TSI) college readiness  
17 benchmarks prescribed by the Texas Higher Education Coordinating  
18 Board under Section 51.334 on an assessment instrument designated  
19 by the coordinating board under that section administered at the  
20 end of the college preparatory mathematics or English language arts  
21 course satisfies the requirements concerning and is exempt from the  
22 administration of the mathematics or reading [~~Algebra I or the~~  
23 ~~English I and English II~~] end-of-course assessment instrument  
24 [~~instruments~~], as applicable, [~~as prescribed by Section~~  
25 ~~39.023(c),~~] even if the student did not perform satisfactorily on a  
26 previous administration of the applicable end-of-course assessment  
27 instrument. A student who fails to perform satisfactorily on the

1 assessment instrument designated by the coordinating board under  
2 Section 51.334 administered as provided by this subsection may  
3 retake that assessment instrument for purposes of this subsection  
4 or may take the appropriate end-of-course assessment instrument.

5 SECTION 4. Section 39.203(c), Education Code, is amended to  
6 read as follows:

7 (c) In addition to the distinction designations described  
8 by Subsections (a) and (b), a campus that satisfies the criteria  
9 developed under Section 39.204 shall be awarded a distinction  
10 designation by the commissioner for outstanding performance in  
11 academic achievement in reading [~~English language arts~~],  
12 mathematics, or science [~~, or social studies~~].

13 SECTION 5. Subchapter B, Chapter 39, Education Code, is  
14 amended by adding Section 39.0239 to read as follows:

15 Sec. 39.0239. ADMINISTRATION OF ASSESSMENT INSTRUMENTS AND  
16 TEMPORARY SUSPENSION OF CERTAIN ACCOUNTABILITY MEASURES DURING  
17 DISASTER. (a) If a school district is located wholly or partly in  
18 the area of a disaster declared by the president of the United  
19 States under the Robert T. Stafford Disaster Relief and Emergency  
20 Assistance Act (42 U.S.C. Section 5121 et seq.) or by the governor  
21 under Chapter 418, Government Code, during a school year in which  
22 district operations, including in-person attendance, are  
23 disrupted, the commissioner shall apply to the United States  
24 Department of Education for a waiver of the requirement under the  
25 Every Student Succeeds Act (20 U.S.C. Section 6301 et seq.) to  
26 administer assessment instruments during that school year for the  
27 affected district.

1        (b) If the United States Department of Education fails to  
2 grant a waiver requested under Subsection (a), the assessment  
3 instruments shall be administered as required under Section 39.023  
4 during the applicable school year, but, notwithstanding any other  
5 law, the commissioner may not consider the results of the  
6 assessment instruments for purposes of:

7            (1) evaluating school district or campus performance  
8 under this chapter for the affected district for the applicable  
9 school year, including in determining:

10            (A) the performance rating to assign to the  
11 district or the district's campuses under Section 39.054; or

12            (B) whether to impose any intervention or  
13 sanction authorized by Chapter 39A after the applicable school year  
14 on the district or the district's campuses; or

15            (2) determining a student's qualification for  
16 promotion or graduation.

17        SECTION 6. Section 28.021 and Section 28.0211, Education  
18 Code, is amended to read as follows:

19        Sec. 28.021. STUDENT ADVANCEMENT.

20        (c) In determining promotion under Subsection (a), a school  
21 district shall consider:

22            ~~(3) the student's score on an assessment instrument~~  
23 ~~administered under Section 39.023(a), (b), or (1), to the extent~~  
24 ~~applicable, and~~

25            ~~(e) The commissioner shall provide guidelines to districts~~  
26 ~~based on best practices that a district may use when considering~~  
27 ~~factors for promotion.~~

1           Sec. 28.0211. SATISFACTORY PERFORMANCE ON ASSESSMENT  
2 INSTRUMENTS REQUIRED; ACCELERATED INSTRUCTION. ~~(a) Except as~~  
3 ~~provided by Subsection (b) or (c), a student may not be promoted to:~~

4           ~~(1) the sixth grade program to which the student would~~  
5 ~~otherwise be assigned if the student does not perform~~  
6 ~~satisfactorily on the fifth grade mathematics and reading~~  
7 ~~assessment instruments under Section 39.023; or~~

8           ~~(2) the ninth grade program to which the student would~~  
9 ~~otherwise be assigned if the student does not perform~~  
10 ~~satisfactorily on the eighth grade mathematics and reading~~  
11 ~~assessment instruments under Section 39.023.~~

12           (a-2) A student who fails to perform satisfactorily on an  
13 assessment instrument specified under Subsection (a) and who is  
14 promoted to the next grade level must complete accelerated  
15 instruction required under Subsection (a-1) before placement in the  
16 next grade level. ~~A student who fails to complete required~~  
17 ~~accelerated instruction may not be promoted.~~

18           (b) A school district shall provide to a student who  
19 initially fails to perform satisfactorily on an assessment  
20 instrument specified under Subsection (a) at least two additional  
21 opportunities to take the assessment instrument. A school district  
22 may administer an alternate assessment instrument to a student who  
23 has failed an assessment instrument specified under Subsection (a)  
24 on the previous two opportunities. ~~Notwithstanding any other~~  
25 ~~provision of this section, a student may be promoted if the student~~  
26 ~~performs at grade level on an alternate assessment instrument under~~  
27 ~~this subsection that is appropriate for the student's grade level~~

1 ~~and approved by the commissioner.~~

2       (e) ~~A student who, after at least three attempts, fails to~~  
3 ~~perform satisfactorily on an assessment instrument specified under~~  
4 ~~Subsection (a) shall be retained at the same grade level for the~~  
5 ~~next school year in accordance with Subsection (a). The student's~~  
6 ~~parent or guardian may appeal the student's retention by submitting~~  
7 ~~a request to the grade placement committee established under~~  
8 ~~Subsection (c). The school district shall give the parent or~~  
9 ~~guardian written notice of the opportunity to appeal. The grade~~  
10 ~~placement committee may decide in favor of a student's promotion~~  
11 ~~only if the committee concludes, using standards adopted by the~~  
12 ~~board of trustees, that if promoted and given accelerated~~  
13 ~~instruction, the student is likely to perform at grade level. A~~  
14 ~~student may not be promoted on the basis of the grade placement~~  
15 ~~committee's decision unless that decision is unanimous. The~~  
16 ~~commissioner by rule shall establish a time line for making the~~  
17 ~~placement determination. This subsection does not create a~~  
18 ~~property interest in promotion. The decision of the grade placement~~  
19 ~~committee is final and may not be appealed.~~

20       Sec. 39.025. SECONDARY-LEVEL PERFORMANCE REQUIRED.

21       (a) The commissioner shall adopt rules requiring a student  
22 in the foundation high school program under Section 28.025 to be  
23 administered an end-of-course assessment instrument listed in  
24 Section 39.023(c) only for a course in which the student is enrolled  
25 and for which an end-of-course assessment instrument is  
26 administered. ~~A student is required to achieve a scale score that~~  
27 ~~indicates satisfactory performance, as determined by the~~

1 ~~commissioner under Section 39.0241(a), on each end-of-course~~  
2 ~~assessment instrument administered to the student. For each scale~~  
3 ~~score required under this subsection that is not based on a~~  
4 ~~100-point scale scoring system, the commissioner shall provide for~~  
5 ~~conversion, in accordance with commissioner rule, of the scale~~  
6 ~~score to an equivalent score based on a 100-point scale scoring~~  
7 ~~system. A student may not receive a high school diploma until the~~  
8 ~~student has performed satisfactorily on end-of-course assessment~~  
9 ~~instruments in the manner provided under this subsection. This~~  
10 subsection does not require a student to demonstrate readiness to  
11 enroll in an institution of higher education.

12 (a-2) The commissioner shall determine a method by which a  
13 student's satisfactory performance on an advanced placement test,  
14 an international baccalaureate examination, an SAT Subject Test,  
15 the SAT, the ACT, or any nationally recognized norm-referenced  
16 assessment instrument used by institutions of higher education to  
17 award course credit based on satisfactory performance on the  
18 assessment instrument shall be used to satisfy the requirements  
19 concerning an end-of-course assessment instrument in an equivalent  
20 course as prescribed by Subsection (a). The commissioner shall  
21 determine a method by which a student's satisfactory performance on  
22 the PSAT or the ACT-Plan shall be used to satisfy the requirements  
23 concerning an end-of-course assessment instrument in an equivalent  
24 course as prescribed by Subsection (a). ~~A student who fails to~~  
25 ~~perform satisfactorily on a test or other assessment instrument~~  
26 ~~authorized under this subsection, other than the PSAT or the~~  
27 ~~ACT-Plan, may retake that test or other assessment instrument for~~

1 ~~purposes of this subsection or may take the appropriate~~  
2 ~~end-of-course assessment instrument. A student who fails to~~  
3 ~~perform satisfactorily on the PSAT or the ACT-Plan must take the~~  
4 ~~appropriate end-of-course assessment instrument. The commissioner~~  
5 ~~shall adopt rules as necessary for the administration of this~~  
6 ~~subsection.~~

7 ~~(a-3) A student who, after retaking an end-of-course~~  
8 ~~assessment instrument for Algebra I or English II, has failed to~~  
9 ~~perform satisfactorily as required by Subsection (a), but who~~  
10 ~~receives a score of proficient on the Texas Success Initiative~~  
11 ~~(TSI) diagnostic assessment for the corresponding subject for which~~  
12 ~~the student failed to perform satisfactorily on the end-of-course~~  
13 ~~assessment instrument satisfies the requirement concerning the~~  
14 ~~Algebra I or English II end-of-course assessment, as applicable.~~  
15 ~~This subsection expires September 1, 2023.~~

16 (a-4) The admission, review, and dismissal committee of a  
17 student in a special education program under Subchapter A, Chapter  
18 29, shall determine whether, to receive a high school diploma, the  
19 student is required to achieve satisfactory performance on  
20 end-of-course assessment instruments.

21 ~~(a-5) Notwithstanding Subsection (a), a student who has~~  
22 ~~failed to perform satisfactorily on end-of-course assessment~~  
23 ~~instruments in the manner provided under this section may receive a~~  
24 ~~high school diploma if the student has qualified for graduation~~  
25 ~~under Section 28.0258. This subsection expires September 1, 2023.~~

26 (b) ~~Each time an end-of-course assessment instrument~~  
27 ~~adopted under Section 39.023(c) is administered, a student who~~

1 ~~failed to achieve a score requirement under Subsection (a) may~~  
2 ~~retake the assessment instrument. A student is not required to~~  
3 ~~retake a course as a condition of retaking an end-of-course~~  
4 ~~assessment instrument.~~

5 (b-1) A school district shall provide each student who fails  
6 to perform satisfactorily as determined by the commissioner under  
7 Section 39.0241(a) on an end-of-course assessment instrument with  
8 accelerated instruction in the subject assessed by the assessment  
9 instrument.

10 ~~(c) A student who has been denied a high school diploma~~  
11 ~~under this section and who subsequently performs at the level~~  
12 ~~necessary to comply with the requirements of this section shall be~~  
13 ~~issued a high school diploma.~~

14 ~~(c-1) A school district may not administer an assessment~~  
15 ~~instrument required for graduation administered under this section~~  
16 ~~as this section existed.~~

17 ~~(1) before September 1, 1999, or~~

18 ~~(2) before amendment by Chapter 1312 (S.B. 1031), Acts~~  
19 ~~of the 80th Legislature, Regular Session, 2007.~~

20 ~~(c-2) A school district may administer to a student who~~  
21 ~~failed to perform satisfactorily on an assessment instrument~~  
22 ~~described by Subsection (c-1) an alternate assessment instrument~~  
23 ~~designated by the commissioner. The commissioner shall determine~~  
24 ~~the level of performance considered to be satisfactory on an~~  
25 ~~alternate assessment instrument. The district may not administer~~  
26 ~~to the student an assessment instrument or a part of an assessment~~  
27 ~~instrument that assesses a subject that was not assessed in an~~

1 ~~assessment instrument applicable to the student described by~~  
2 ~~Subsection (c-1). The commissioner shall make available to~~  
3 ~~districts information necessary to administer the alternate~~  
4 ~~assessment instrument authorized by this subsection. The~~  
5 ~~commissioner's determination regarding designation of an~~  
6 ~~appropriate alternate assessment instrument under this subsection~~  
7 ~~and the performance required on the assessment instrument is final~~  
8 ~~and may not be appealed.~~

9 ~~(f-1) The commissioner shall establish satisfactory~~  
10 ~~performance levels for the SAT, the ACT, the Texas Success~~  
11 ~~Initiative (TSI) diagnostic assessment, and the current assessment~~  
12 ~~instrument or instruments administered for graduation purposes~~  
13 ~~that are equivalent in rigor to the performance level required to be~~  
14 ~~met under Subsection (a), as that subsection existed before~~  
15 ~~amendment by Chapter 1312 (S.B. No. 1031), Acts of the 80th~~  
16 ~~Legislature, Regular Session, 2007, that qualify a student subject~~  
17 ~~to Subsection (f)(1) to receive a high school diploma.~~  
18 ~~Notwithstanding Subsection (f), the commissioner is not required~~  
19 ~~after September 1, 2017, to maintain and administer assessment~~  
20 ~~instruments administered under Section 39.023(c), as that section~~  
21 ~~existed before amendment by Chapter 1312 (S.B. No. 1031), Acts of~~  
22 ~~the 80th Legislature, Regular Session, 2007.~~

23 ~~(f-2) A school district shall determine which assessment or~~  
24 ~~assessments described by Subsection (f-1) qualify a student subject~~  
25 ~~to Subsection (f)(1) to receive a high school diploma from the~~  
26 ~~district.~~

27 (g) Rules adopted under Subsection (f) must require that

1 each student who will be subject to the requirements of Subsection  
2 (a) is entitled to notice of the specific requirements applicable  
3 to the student. Notice under this subsection must be provided not  
4 later than the date the student enters the eighth grade.

5 SECTION 7. Effective September 1, 2021, Education Code Sec.  
6 [28.0258](#) is repealed.

7 SECTION 8. To the extent of any conflict, this Act prevails  
8 over another Act of the 87th Legislature, Regular Session, 2021,  
9 relating to nonsubstantive additions to and corrections in enacted  
10 codes.

11 SECTION 9. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section [39](#), Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2021.