

1 **SENSITIVE MATERIAL REVIEW AMENDMENTS**

2 2024 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill amends provisions regarding the evaluation of instructional material to
8 identify and remove pornographic or indecent material.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ defines terms;
- 12 ▶ requires the prioritization of protecting children from illicit pornography over other
- 13 considerations in evaluating instructional material;
- 14 ▶ specifies individuals who may trigger a formal sensitive material review;
- 15 ▶ establishes certain required processes for the evaluation and review of sensitive
- 16 material allegations, including distinct requirements for objective sensitive material
- 17 and subjective sensitive material;
- 18 ▶ requires the removal of certain instructional material statewide if a certain threshold
- 19 of local education agencies have determined that the instructional material
- 20 constitutes objective sensitive material; and
- 21 ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides a special effective date.

26 This bill provides revisor instructions.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377

30

31 *Be it enacted by the Legislature of the state of Utah:*

32 *The following section is affected by a revisor instruction at the end of this bill.*

- 33 Section 1. Section **53G-10-103** is amended to read:
- 34 **53G-10-103. Sensitive instructional materials.**
- 35 (1) As used in this section:
- 36 (a) (i) "Instructional material" means a material, regardless of format, used:
- 37 (A) as or in place of textbooks to deliver curriculum within the state curriculum
- 38 framework for courses of study by students; or
- 39 (B) to support a student's learning in [~~the~~] any school setting.
- 40 (ii) "Instructional material" includes reading materials, handouts, videos, digital
- 41 materials, websites, online applications, and live presentations.
- 42 (iii) "Instructional material" does not mean exclusively library materials.
- 43 (b) "LEA governing board" means:
- 44 (i) for a school district, the local school board;
- 45 (ii) for a charter school, the charter school governing board; or
- 46 (iii) for the Utah Schools for the Deaf and the Blind, the state board.
- 47 (c) "Material" means the same as that term is defined in Section 76-10-1201.
- 48 (d) "Minor" means any person less than 18 years old.
- 49 (e) "Objective sensitive material" means an instructional material that constitutes
- 50 pornographic or indecent material, as that term is defined in Section 76-10-1235, under the
- 51 non-discretionary standards described in Subsection 76-10-1227(1)(a)(i), (ii), or (iii).
- 52 [~~(e)~~] (f) "Public school" means:
- 53 (i) a district school;
- 54 (ii) a charter school; or
- 55 (iii) the Utah Schools for the Deaf and the Blind.
- 56 [~~(f)~~] (g) (i) "School setting" means, for a public school:
- 57 (A) in a classroom;
- 58 (B) in a school library; or
- 59 (C) on school property.
- 60 (ii) "School setting" includes the following activities that an organization or individual
- 61 or organization outside of a public school conducts, if a public school or an LEA sponsors or
- 62 requires the activity:
- 63 (A) an assembly;

64 (B) a guest lecture;

65 (C) a live presentation; or

66 (D) an event.

67 ~~[(g)]~~ (h) (i) "Sensitive material" means an instructional material that ~~[is pornographic~~
68 ~~or indecent material as that term is defined in Section 76-10-1235]~~ constitutes objective
69 sensitive material or subjective sensitive material.

70 (ii) "Sensitive material" does not include an instructional material:

71 (A) that an LEA selects under Section 53G-10-402;

72 (B) for medical courses;

73 (C) for family and consumer science courses; or

74 (D) for another course the state board exempts in state board rule.

75 (iii) "Subjective sensitive material" means an instructional material that constitutes
76 pornographic or indecent material, as that term is defined in Section 76-10-1235, under the
77 following factor-balancing standards:

78 (A) material that is harmful to minors under Section 76-10-1201;

79 (B) material that is pornographic under Section 76-10-1203; or

80 (C) material that includes certain fondling or other erotic touching under Subsection
81 76-10-1227(1)(a)(iv).

82 (2) (a) Sensitive materials are prohibited in the school setting.

83 (b) A public school or an LEA may not:

84 (i) adopt, use, distribute, provide a student access to, or maintain in the school setting,
85 sensitive materials; or

86 (ii) permit a speaker or presenter in the school setting to display or distribute sensitive
87 materials.

88 (c) In evaluating, selecting, or otherwise considering action related to a given
89 instructional material under this section, each public school and each LEA shall prioritize
90 protecting children from the harmful effects of illicit pornography over other considerations in
91 evaluating instructional material.

92 (d) If an instructional material constitutes objective sensitive material:

93 (i) a public school or an LEA is not required to engage in a review under a subjective
94 sensitive material standard; and

95 (ii) the outcome of a subjective sensitive material evaluation has no bearing on the
96 non-discretionary objective sensitive material conclusion.

97 (3) (a) Except as provided in Subsection (3)(b), the following individuals may initiate a
98 sensitive material review under this section:

99 (i) an employee of the relevant LEA;

100 (ii) a student who is enrolled in the relevant LEA;

101 (iii) a parent of a child who resides within the boundaries of the relevant LEA and will
102 be school-age within the next academic year; or

103 (iv) an elected official who represents an area that includes all or part of the relevant
104 LEA.

105 (b) (i) As used in this Subsection (3)(b), "unsuccessful challenge" means an allegation
106 that a given instructional material constitutes sensitive material but that results in the LEA
107 governing board voting to retain the given instructional material.

108 (ii) Notwithstanding Subsection (3)(a), after an individual makes three unsuccessful
109 challenges during a given academic year, the individual may not trigger a sensitive material
110 review under this section during the remainder of that academic year.

111 (c) Upon receipt of an allegation from an individual described in Subsection (3)(a), the
112 LEA shall:

113 (i) make an initial determination as to whether the allegation presents a plausible claim
114 that the material constitutes sensitive material, including whether the allegation includes
115 excerpts and other evidence to support the allegation;

116 (ii) if the LEA determines that the allegation presents a plausible claim that the
117 material constitutes sensitive material under Subsection (3)(c)(i), immediately remove the
118 material from any school setting that provides student access to the material until the LEA
119 completes the LEA's full review of the material;

120 (iii) in the case of an allegation of only subjective sensitive material and not objective
121 sensitive material, allow student access to the material during the LEA's review if the student's
122 parent gives consent regarding the specific material;

123 (iv) review the allegations and the relevant material in accordance with this section,
124 including the involvement of parents in the case of subjective sensitive material in accordance
125 with Subsection (4); and

126 (v) communicate to the state board the allegation and LEA's final determination
127 regarding the allegation and the relevant material.

128 [(3)] (4) (a) An LEA shall:

129 (i) take direct action to remove objective sensitive material, regardless of whether the
130 LEA includes parents in determining the action; and

131 (ii) include parents who are reflective of the members of the school's community only
132 when determining if an instructional material is subjective sensitive material.

133 (b) An individual may appeal an LEA's decision regarding an objective sensitive
134 material review, regardless of whether the LEA removed or retained the material, to the LEA
135 governing board.

136 (5) (a) An LEA may not make a final decision to remove instructional material from
137 student access based on the appropriateness of the content using a subjective sensitive material
138 standard unless the LEA governing board:

139 (i) votes in a public board meeting to remove the instructional material from student
140 access; and

141 (ii) states the board's rationale in removing the instructional material, including
142 addressing each component of the statutory and any additional policy standards the board uses
143 to reach the conclusion to remove the instructional material.

144 (b) If an LEA has removed instructional material as subjective sensitive material
145 without a vote of the LEA governing board as described in Subsection (5)(a) before the
146 effective date of this bill, the LEA governing board shall vote to reinstate the instructional
147 material or ratify the removal of the instructional material, including stating the board's
148 rationale as described in Subsection (5)(a)(ii), at the next meeting of the LEA governing board
149 after the effective date of this bill.

150 (6) An LEA governing board may not enact rules or policies that prevent the LEA
151 governing board from:

152 (a) revisiting a previous decision;

153 (b) reviewing a recommendation regarding a given instructional material, or

154 (c) reconsidering a given instructional material if the LEA governing board receives
155 additional information regarding the material.

156 (7) (a) If more than four school districts or more than nine charter schools remove a

157 material as objective sensitive material, each LEA statewide shall remove the relevant material
158 from student access within the LEA.

159 (b) The state board shall:

160 (i) aggregate allegations and LEA determinations described in Subsection (3)(c)(v);

161 and

162 (ii) no later than 10 school days after the day on which the condition described in
163 Subsection (7)(a) occurs, communicate to all LEAs the application of the requirement to
164 remove a given instructional material from student access under Subsection (7)(a).

165 [(4)] (8) The state board shall:

166 (a) in consultation with the Office of the Attorney General, provide guidance and
167 training to support public schools in identifying instructional materials that meet the definition
168 of sensitive materials under this section; and

169 (b) annually report to the Education Interim Committee and the Government
170 Operations Interim Committee, at or before the November [2022] interim meeting, on
171 implementation and compliance with this section, including:

172 (i) any policy the state board or an LEA adopts to implement or comply with this
173 section;

174 (ii) any rule the state board makes to implement or comply with this section; and

175 (iii) any complaints an LEA or the state board receives regarding a violation of this
176 section, including:

177 (A) action taken in response to a complaint described in this Subsection [(4)(b)(iii)]

178 (8)(b)(iii); and

179 (B) if an LEA retains an instructional material for which the LEA or the state board
180 receives a complaint, the LEA's rationale for retaining the instructional material.

181 **Section 2. Effective date.**

182 This bill takes effect on July 1, 2024.

183 **Section 3. Revisor instructions.**

184 The Legislature intends to replace references to "the effective date of this bill" in
185 Subsection 53G-10-103(5)(b) with the bill's actual effective date.