

**SENSITIVE MATERIALS IN SCHOOLS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill prohibits certain sensitive instructional materials in public schools.

**Highlighted Provisions:**

This bill:

- ▶ defines certain instructional materials as sensitive materials;
- ▶ prohibits sensitive materials in a public school;
- ▶ grants parents the right to file a civil action to enforce certain provisions;
- ▶ defines terms; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53E-4-202**, as last amended by Laws of Utah 2021, Chapters 84 and 345

**53E-4-403**, as last amended by Laws of Utah 2019, Chapter 186

**63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

ENACTS:

**53G-10-103**, Utah Code Annotated 1953



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

Section 1. Section **53E-4-202** is amended to read:

**53E-4-202. Core standards for Utah public schools.**

(1) (a) In establishing minimum standards related to curriculum and instruction requirements under Section **53E-3-501**, the state board shall, in consultation with local school boards, school superintendents, teachers, employers, and parents implement core standards for Utah public schools that will enable students to, among other objectives:

- (i) communicate effectively, both verbally and through written communication;
- (ii) apply mathematics; and
- (iii) access, analyze, and apply information.

(b) Except as provided in this public education code, the state board may recommend but may not require a local school board or charter school governing board to use:

- (i) a particular curriculum or instructional material; or
- (ii) a model curriculum or instructional material.

(2) The state board shall, in establishing the core standards for Utah public schools:

(a) identify the basic knowledge, skills, and competencies each student is expected to acquire or master as the student advances through the public education system; and

(b) align with each other the core standards for Utah public schools and the assessments described in Section **53E-4-303**.

(3) The basic knowledge, skills, and competencies identified pursuant to Subsection (2)(a) shall increase in depth and complexity from year to year and focus on consistent and continual progress within and between grade levels and courses in the basic academic areas of:

(a) English, including explicit phonics, spelling, grammar, reading, writing, vocabulary, speech, and listening; and

(b) mathematics, including basic computational skills.

(4) Before adopting core standards for Utah public schools, the state board shall:

(a) publicize draft core standards for Utah public schools on the state board's website and the Utah Public Notice website created under Section **63A-16-601**;

(b) invite public comment on the draft core standards for Utah public schools for a period of not less than 90 days; and

59 (c) conduct three public hearings that are held in different regions of the state on the  
60 draft core standards for Utah public schools.

61 (5) LEA governing boards shall design their school programs, that are supported by  
62 generally accepted scientific standards of evidence, to focus on the core standards for Utah  
63 public schools with the expectation that each program will enhance or help achieve mastery of  
64 the core standards for Utah public schools.

65 (6) Except as provided in [~~Section~~] Sections 53G-10-103 and 53G-10-402, each school  
66 may select instructional materials and methods of teaching, that are supported by generally  
67 accepted scientific standards of evidence, that the school considers most appropriate to meet  
68 the core standards for Utah public schools.

69 (7) The state may exit any agreement, contract, memorandum of understanding, or  
70 consortium that cedes control of the core standards for Utah public schools to any other entity,  
71 including a federal agency or consortium, for any reason, including:

72 (a) the cost of developing or implementing the core standards for Utah public schools;

73 (b) the proposed core standards for Utah public schools are inconsistent with  
74 community values; or

75 (c) the agreement, contract, memorandum of understanding, or consortium:

76 (i) was entered into in violation of Chapter 3, Part 8, Implementing Federal or National  
77 Education Programs, or Title 63J, Chapter 5, Federal Funds Procedures Act;

78 (ii) conflicts with Utah law;

79 (iii) requires Utah student data to be included in a national or multi-state database;

80 (iv) requires records of teacher performance to be included in a national or multi-state  
81 database; or

82 (v) imposes curriculum, assessment, or data tracking requirements on home school or  
83 private school students.

84 (8) The state board shall submit a report in accordance with Section 53E-1-203 on the  
85 development and implementation of the core standards for Utah public schools, including the  
86 time line established for the review of the core standards for Utah public schools by a standards  
87 review committee and the recommendations of a standards review committee established under  
88 Section 53E-4-203.

89 Section 2. Section **53E-4-403** is amended to read:

90           **53E-4-403. Commission's evaluation of instructional materials --**  
91 **Recommendation by the state board.**

92           (1) Semi-annually after reviewing the evaluations of the commission, the state board  
93 shall recommend instructional materials for use in the public schools.

94           (2) The standard period of time instructional materials shall remain on the list of  
95 recommended instructional materials shall be five years.

96           (3) Unsatisfactory instructional materials may be removed from the list of  
97 recommended instructional materials at any time within the period applicable to the  
98 instructional materials.

99           (4) Except as provided in [~~Section~~] Sections 53G-10-103 and 53G-10-402, each school  
100 shall have discretion to select instructional materials for use by the school. A school may  
101 select:

102           (a) instructional materials recommended by the state board as provided in this section;  
103 or

104           (b) other instructional materials the school considers appropriate to teach the core  
105 standards for Utah public schools.

106           Section 3. Section **53G-10-103** is enacted to read:

107           **53G-10-103. Sensitive instructional materials.**

108           (1) As used in this section:

109           (a) (i) "Instructional material" means a material, regardless of format, used:

110           (A) as or in place of textbooks to deliver curriculum within the state curriculum  
111 framework for courses of study by students; or

112           (B) to support a student's learning in the school setting.

113           (ii) "Instructional material" includes reading materials, handouts, videos, digital  
114 materials, websites, online applications, and live presentations.

115           (b) "LEA governing board" means:

116           (i) for a school district, the local school board;

117           (ii) for a charter school, the charter school governing board; or

118           (iii) for the Utah Schools for the Deaf and the Blind, the state board.

119           (c) "Material" means the same as that term is defined in Section [76-10-1201](#).

120           (d) "Minor" means any person less than 18 years old.

- 121 (e) "Nudity" means the same as that term is defined in Section [76-10-1201](#).
- 122 (f) "Public school" means:
- 123 (i) a district school;
- 124 (ii) a charter school; or
- 125 (iii) the Utah Schools for the Deaf and the Blind.
- 126 (g) (i) "School setting" means, for a public school:
- 127 (A) in a classroom;
- 128 (B) in a school library; or
- 129 (C) on school property.
- 130 (ii) "School setting" includes the following activities that an organization or individual
- 131 or organization outside of a public school conducts, if a public school or an LEA sponsors or
- 132 requires the activity:
- 133 (A) an assembly;
- 134 (B) a guest lecture;
- 135 (C) a live presentation; or
- 136 (D) an event.
- 137 (h) (i) "Sensitive material" means an instructional material that:
- 138 (A) contains a drawing, depiction, or image of:
- 139 (I) actual or simulated sexual conduct; or
- 140 (II) sexually explicit conduct;
- 141 (B) contains a discussion, description, or representation of:
- 142 (I) sexual conduct, including sexual conduct involving a minor; or
- 143 (II) sexually explicit conduct; or
- 144 (C) contains gratuitous use of vulgar, profane, or obscene language.
- 145 (ii) "Sensitive material" does not include instructional materials that an LEA selects
- 146 under Section [53G-10-402](#).
- 147 (i) "Sexual conduct" means the same as that term is defined in Section [76-10-1201](#).
- 148 (j) "Sexually explicit conduct" means the same as that term is defined in Section
- 149 [76-5b-103](#).
- 150 (2) (a) Sensitive materials are prohibited in the school setting.
- 151 (b) A public school may not:

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

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

156 (3) A parent of a student enrolled in the public school may file a civil action against the  
157 LEA to enforce Subsections (2)(a) and (b) if:

158 (a) at least 30 days before filing a civil action as described in this Subsection (3), the  
159 parent provides written notice to the LEA governing board that describes the alleged violation;  
160 and

161 (b) after receiving the notice described in Subsection (3)(a), the public school does not  
162 remove the sensitive material from the school setting.

163 (4) If a parent prevails in a civil action the parent files under Subsection (3), the LEA is  
164 liable to the parent for:

165 (a) damages in the amount of \$10,000 per violation; and

166 (b) reasonable attorney fees.

167 Section 4. Section **63G-7-301** is amended to read:

168 **63G-7-301. Waivers of immunity.**

169 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual  
170 obligation.

171 (b) Actions arising out of contractual rights or obligations are not subject to the  
172 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

173 (c) The Division of Water Resources is not liable for failure to deliver water from a  
174 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development  
175 Act, if the failure to deliver the contractual amount of water is due to drought, other natural  
176 condition, or safety condition that causes a deficiency in the amount of available water.

177 (2) Immunity from suit of each governmental entity is waived:

178 (a) as to any action brought to recover, obtain possession of, or quiet title to real or  
179 personal property;

180 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
181 property, to determine any adverse claim on real or personal property, or to obtain an  
182 adjudication about any mortgage or other lien that the governmental entity may have or claim

183 on real or personal property;

184 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
185 merchandise, or other property while it is in the possession of any governmental entity or  
186 employee, if the property was seized for the purpose of forfeiture under any provision of state  
187 law;

188 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of  
189 Utah Constitution, Article I, Section 22, for the recovery of compensation from the  
190 governmental entity when the governmental entity has taken or damaged private property for  
191 public uses without just compensation;

192 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney  
193 fees under Sections 63G-2-405 and 63G-2-802;

194 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
195 Act;

196 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
197 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
198 Land Use Act;

199 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

200 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
201 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

202 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
203 or other public improvement;

204 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury  
205 proximately caused by a negligent act or omission of an employee committed within the scope  
206 of employment; and

207 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from  
208 a sexual battery, as provided in Section 76-9-702.1, committed:

209 (i) against a student of a public elementary or secondary school, including a charter  
210 school; and

211 (ii) by an employee of a public elementary or secondary school or charter school who:

212 (A) at the time of the sexual battery, held a position of special trust, as defined in  
213 Section 76-5-404.1, with respect to the student;

214 (B) is criminally charged in connection with the sexual battery; and  
215 (C) the public elementary or secondary school or charter school knew or in the exercise  
216 of reasonable care should have known, at the time of the employee's hiring, to be a sex  
217 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex  
218 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a  
219 background check under Section 53G-11-402.

220 (3) (a) As used in this Subsection (3):

221 (i) "Code of conduct" means a code of conduct that:

222 (A) is not less stringent than a model code of conduct, created by the State Board of  
223 Education, establishing a professional standard of care for preventing the conduct described in  
224 Subsection (3)(a)(i)(D);

225 (B) is adopted by the applicable local education governing body;

226 (C) regulates behavior of a school employee toward a student; and

227 (D) includes a prohibition against any sexual conduct between an employee and a  
228 student and against the employee and student sharing any sexually explicit or lewd  
229 communication, image, or photograph.

230 (ii) "Local education agency" means:

231 (A) a school district;

232 (B) a charter school; or

233 (C) the Utah Schools for the Deaf and the Blind.

234 (iii) "Local education governing board" means:

235 (A) for a school district, the local school board;

236 (B) for a charter school, the charter school governing board; or

237 (C) for the Utah Schools for the Deaf and the Blind, the state board.

238 (iv) "Public school" means a public elementary or secondary school.

239 (v) "School setting" means the same as that term is defined in Section 53G-10-103.

240 (vi) "Sensitive material" means the same as that term is defined in Section 53G-10-103.

241 [~~(v)~~] (vii) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

242 [~~(vi)~~] (viii) "Sexual battery" means the offense described in Section 76-9-702.1,

243 considering the term "child" in that section to include an individual under age 18.

244 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a



245 claim against a local education agency for an injury resulting from a sexual battery or sexual  
246 abuse committed against a student of a public school by a paid employee of the public school  
247 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

248 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a  
249 code of conduct; and

250 (ii) before the sexual battery or sexual abuse occurred, the public school had:

251 (A) provided training on the code of conduct to the employee; and

252 (B) required the employee to sign a statement acknowledging that the employee has  
253 read and understands the code of conduct.

254 (c) Immunity from suit is waived as to a claim against a local education agency for a  
255 violation of Subsections 53G-10-103(2)(a) and (b), unless:

256 (i) a public school removes sensitive material from the school setting after the public  
257 school receives the written notice described in Subsection 53G-10-103(3)(a); or

258 (ii) a parent does not provide the written notice described in Subsection  
259 53G-10-103(3)(a).

260 (4) (a) As used in this Subsection (4):

261 (i) "Higher education institution" means an institution included within the state system  
262 of higher education under Section 53B-1-102.

263 (ii) "Policy governing behavior" means a policy adopted by a higher education  
264 institution or the Utah Board of Higher Education that:

265 (A) establishes a professional standard of care for preventing the conduct described in  
266 Subsections (4)(a)(ii)(C) and (D);

267 (B) regulates behavior of a special trust employee toward a subordinate student;

268 (C) includes a prohibition against any sexual conduct between a special trust employee  
269 and a subordinate student; and

270 (D) includes a prohibition against a special trust employee and subordinate student  
271 sharing any sexually explicit or lewd communication, image, or photograph.

272 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

273 (iv) "Special trust employee" means an employee of a higher education institution who  
274 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education  
275 student.

276 (v) "Subordinate student" means a student:  
277 (A) of a higher education institution; and  
278 (B) whose educational opportunities could be adversely impacted by a special trust  
279 employee.  
280 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a  
281 claim for an injury resulting from a sexual battery committed against a subordinate student by a  
282 special trust employee, unless:  
283 (i) the institution proves that the special trust employee's behavior that otherwise would  
284 constitute a sexual battery was:  
285 (A) with a subordinate student who was at least 18 years old at the time of the  
286 behavior; and  
287 (B) with the student's consent; or  
288 (ii) (A) at the time of the sexual battery, the higher education institution was subject to  
289 a policy governing behavior; and  
290 (B) before the sexual battery occurred, the higher education institution had taken steps  
291 to implement and enforce the policy governing behavior.