

**Senator Lincoln Fillmore** proposes the following substitute bill:

**SENSITIVE MATERIAL REQUIREMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Melissa G. Ballard**

Senate Sponsor: Lincoln Fillmore

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**LONG TITLE**

**General Description:**

This bill amends requirements and prohibitions regarding sensitive material within the public school system.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires a local education agency (LEA) to:
  - complete the LEA's review of instructional material that is alleged to violate state law; and
  - report instructional material that violates state law to the State Board of Education (state board);
- ▶ requires the state board to:
  - engage in a review of materials in certain circumstances; and
  - direct LEAs to remove certain materials that violate state law;
- ▶ provides for the termination of contracts with program vendors for instructional material if the material includes sensitive material; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**



26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377

32 REPEALS:

33 **53G-10-101**, as enacted by Laws of Utah 2018, Chapter 3



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

36 Section 1. Section **53G-10-103** is amended to read:

37 **53G-10-103. Sensitive instructional materials.**

38 (1) As used in this section:

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

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

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

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

45 (b) "LEA governing board" means:

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

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

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

49 (c) "Material" means the same as that term is defined in Section **76-10-1201**.

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

51 (e) (i) "Program vendor" means an entity that enters into a negotiated contract with the  
52 state board or an LEA for the primary purpose of providing instructional materials to students  
53 as a comprehensive program.

54 (ii) "Program vendor" does not include an entity that contracts or interacts with the  
55 state board or an LEA by providing:

56 (A) a content source, including a library of videos or articles, from which an LEA,

57 school, or educator may select a resource; or

58 (B) a program that is primarily for use as an instructional tool and that also may allow  
 59 an LEA, school, or educator to select instructional material resources.

60 [~~☐~~] (f) "Public school" means:

61 (i) a district school;

62 (ii) a charter school; or

63 (iii) the Utah Schools for the Deaf and the Blind.

64 [~~☐~~] (g) (i) "School setting" means, for a public school:

65 (A) in a classroom;

66 (B) in a school library; or

67 (C) on school property.

68 (ii) "School setting" includes the following activities that an organization or individual  
 69 or organization outside of a public school conducts, if a public school or an LEA sponsors or  
 70 requires the activity:

71 (A) an assembly;

72 (B) a guest lecture;

73 (C) a live presentation; or

74 (D) an event.

75 [~~☐~~] (h) (i) "Sensitive material" means an instructional material that is pornographic or  
 76 indecent material as that term is defined in Section [76-10-1235](#).

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

78 (A) that an LEA selects under Section [53G-10-402](#);

79 (B) for a concurrent enrollment course that contains sensitive material and for which a  
 80 parent receives notice from the course provider of the material and gives the parent's consent;

81 [~~☐~~] (C) for medical courses;

82 [~~☐~~] (D) for family and consumer science courses; or

83 [~~☐~~] (E) for another course the state board exempts in state board rule.

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

85 (b) A public school may not:

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

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

90 (3) (a) A student, a student's parent, or an LEA employee may notify the relevant LEA  
91 regarding any content in instructional material:

92 (i) that the individual:

93 (A) encounters through the LEA's curriculum or otherwise through the LEA; and

94 (B) alleges to be sensitive material; and

95 (ii) for which the individual provides documentation or evidence of the alleged  
96 sensitive material.

97 (b) Upon receipt of a notice described in Subsection (3)(a), an LEA shall make a  
98 determination of whether the documentation or evidence described in Subsection (3)(a)(ii)  
99 demonstrates a possibility that the material includes or constitutes sensitive material and, if the  
100 LEA determines that the documentation or evidence demonstrates a possibility of sensitive  
101 material:

102 (i) remove the instructional material from student access until the LEA completes the  
103 LEA's sensitive material review process in accordance with the LEA's policies and this section;

104 (ii) if the material constitutes sensitive material:

105 (A) eliminate the chapter or section of the instructional material containing the  
106 sensitive material from the LEA's curriculum or take other measures to mitigate the  
107 accessibility and impact of the sensitive material;

108 (B) provide notice to any relevant program vendor that the material violates state law;  
109 and

110 (C) report to the state board regarding the material; and

111 (iii) communicate to the individual who made the notice that triggered the LEA's  
112 review, either directly or through the relevant principal, the outcome of the LEA's review,  
113 including an explanation of the LEA's determination that the material does not constitute  
114 sensitive material if the LEA chooses to maintain the availability of the material.

115 (c) No later than 60 school days after the day on which the state board receives an LEA  
116 report described in Subsection (3)(b):

117 (i) if the material that is the subject of the report is part of state curriculum or a  
118 program that the state board provides or oversees, the state board shall complete the review

119 described in Subsection (3)(d); and

120 (ii) if the LEA removed the material that is the subject of the report from student access

121 using the standards described in Subsection 76-10-1227(2)(c) for a description or depiction of

122 illicit sex or sexual immorality, the state board shall complete the review described in

123 Subsection (3)(e).

124 (d) Under the circumstances described in Subsection (3)(c)(i), the state board shall:

125 (i) complete a sensitive material review process in accordance with the state board's  
126 policies and this section;

127 (ii) if the material constitutes sensitive material:

128 (A) eliminate the chapter or section of the instructional material containing the  
129 sensitive material from the curriculum or program or take other measures to mitigate the  
130 accessibility and impact of the sensitive material;

131 (B) provide notice to any relevant program vendor that the material violates state law;  
132 and

133 (C) provide notice to LEAs regarding the sensitive material and the state board's  
134 actions under this Subsection (3)(d); and

135 (iii) communicate to the individual who made the notice that triggered the underlying  
136 LEA review, either directly or through the relevant LEA, the outcome of the state board's  
137 review, including an explanation of the state board's determination that the material does not  
138 constitute sensitive material if the state board chooses to maintain the availability of the  
139 material.

140 (e) Under the circumstances described in Subsection (3)(c)(ii):

141 (i) the state board shall:

142 (A) review the LEA's determination; and

143 (B) if the state board ratifies the LEA's determination, notify all LEAs to remove the  
144 sensitive material from student access; and

145 (ii) the LEA's determination remains unaffected in application within the LEA if the  
146 state board does not ratify the LEA's determination under Subsection (3)(e)(i).

147 ~~[(3)]~~ (4) An LEA shall:

148 (a) first determine whether a challenged instructional material constitutes sensitive  
149 material as a description or depiction of illicit sex or immorality that has no serious value for

150 minors as described in Section 76-10-1227; and

151 (b) if the material does not constitute a violation described in Subsection (4)(a), include  
152 parents who are reflective of the members of the school's community [~~when determining~~] to  
153 determine if an instructional material is sensitive material using the standards described in  
154 Section 76-10-1201 for material harmful to minors or Section 76-10-1203 for material that is  
155 pornographic.

156 ~~[(4)]~~ (5) The state board shall:

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

160 (b) report to the Education Interim Committee and the Government Operations Interim  
161 Committee, at or before the November 2022 interim meeting, on implementation and  
162 compliance with this section, including:

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

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

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

168 (A) action taken in response to a complaint described in this Subsection ~~[(4)(b)(iii)]~~  
169 (5)(b)(iii); and

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

172 (6) The state board may make rules, in accordance with Title 63G, Chapter 3, Utah  
173 Administrative Rulemaking Act, to establish procedures for the reporting of sensitive material  
174 violations under Subsections (3)(b) through (e).

175 (7) (a) The state board or an LEA may, without any penalty or any further financial  
176 obligation, rescind or otherwise terminate a contract for a program vendor to provide  
177 instructional material into which the LEA or the state board enters on or after July 1, 2023, if:

178 (i) the state board or LEA governing board determines that the version of the  
179 instructional material that is the subject of the notice described in Subsection (3)(a) is or  
180 contains sensitive material; and

181 (ii) within 45 school days after the day on which the state board or LEA governing  
182 board provides notice of the determination described in Subsection (7)(a)(i), the program  
183 vendor fails to eliminate the chapter or section of the instructional material containing the  
184 sensitive material or otherwise remove access to the sensitive material.

185 (b) In any contract for a program vendor to provide instructional material for which the  
186 parties negotiate terms and into which the state board or an LEA enters after July 1, 2023, the  
187 state board or relevant LEA shall ensure that the contract contains:

188 (i) notice provisions regarding the requirements and prohibitions regarding sensitive  
189 material in this section; and

190 (ii) provisions requiring the program vendor to notify the contracting LEA or state  
191 board of any update, modification, or addition to the instructional material the program vendor  
192 provides that may contain or constitute sensitive material, including links to other material or  
193 websites from within the instructional material.

194 (c) An LEA or the state board may remove a chapter, section of instructional material,  
195 or the entire instructional material that is found, through the processes described in this section,  
196 to contain sensitive material from the relevant curriculum.

197 **Section 2. Repealer.**

198 This bill repeals:

199 Section **53G-10-101**, Title.

200 **Section 3. Effective date.**

201 This bill takes effect on July 1, 2023.