

## HB0138S07 compared with HB0138S06

~~{deleted text}~~ shows text that was in HB0138S06 but was deleted in HB0138S07.

inserted text shows text that was not in HB0138S06 but was inserted into HB0138S07.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{Representative Melissa G. Ballard}~~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

---

---

#### 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);

## HB0138S07 compared with HB0138S06

- ▶ requires the state board to ~~it~~:
  - engage in a review of materials in certain circumstances ~~involving statewide curriculum or program~~; and
  - direct LEAs to remove certain materials that violate state law;
- ▶ provides for the ~~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:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

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

REPEALS:

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

---

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

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

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

(1) As used in this section:

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

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

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

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

(b) "LEA governing board" means:

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

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

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

## HB0138S07 compared with HB0138S06

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

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

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

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

(A) a content source, including a library of videos or articles, from which an LEA, school, or educator may select a resource; or

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

~~[(e)]~~ (f) "Public school" means:

(i) a district school;

(ii) a charter school; or

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

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

(A) in a classroom;

(B) in a school library; or

(C) on school property.

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

(A) an assembly;

(B) a guest lecture;

(C) a live presentation; or

(D) an event.

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

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

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

(B) for a concurrent enrollment course that contains sensitive material and for which a

## HB0138S07 compared with HB0138S06

parent receives ~~{advance}~~ notice from the course provider of the material and gives the parent's consent;

~~[(B)]~~ (C) for medical courses;

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

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

~~{~~ (h) "Vendor" means an entity with which the state board or an LEA contracts to provide instructional material to students.

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

(b) A public school may not:

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

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

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

(i) that the individual:

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

(B) alleges to be sensitive material; and

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

(b) Upon receipt of a notice described in Subsection ~~(11)3~~(a), an LEA shall make a determination of whether the documentation or evidence described in Subsection (3)(a)(ii) demonstrates a possibility that the material includes or constitutes sensitive material and, if the LEA determines that the documentation or evidence demonstrates a possibility of sensitive material:

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

(ii) if the material constitutes sensitive material:

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

## HB0138S07 compared with HB0138S06

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

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

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

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

(i) if the material that is the subject of the report is part of state curriculum or a program that the state board provides or oversees, **the state board shall complete the review described in Subsection (3)(d); and**

(ii) if the LEA removed the material that is the subject of the report from student access using the standards described in Subsection 76-10-1227(2)(c) for a description or depiction of illicit sex or sexual immorality, the state board shall complete the review described in Subsection (3)(e).

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

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

(ii) if the material constitutes sensitive material:

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

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

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

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

## HB0138S07 compared with HB0138S06

material.

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

(i) the state board shall:

(A) review the LEA's determination; and

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

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

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

(a) first determine whether a challenged instructional material constitutes sensitive material as a description or depiction of illicit sex or immorality that has no serious value for minors as described in Section 76-10-1227; and

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

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

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

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

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

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

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

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

## HB0138S07 compared with HB0138S06

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

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

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

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

(ii) within ~~30~~45 school days after the day on which the state board or LEA governing board ~~provide~~ provides notice of the determination described in Subsection (7)(a)(i), the program vendor fails to eliminate the chapter or section of the instructional material containing the sensitive material or otherwise remove access to the sensitive material.

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

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

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

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

Section 2. **Repealer.**

This bill repeals:

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

Section 3. **Effective date.**

**HB0138S07 compared with HB0138S06**

This bill takes effect on July 1, 2023.