

SCHOOL MATERIALS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions regarding student access to pornographic or indecent materials within the public education system.

Highlighted Provisions:

This bill:

▶ requires local education agencies (LEAs) to:

• engage in certain review processes when a parent communicates an allegation that an instructional material is prohibited by state law; and

• publicly vote on and explain a determination to reinstate or preserve student access to challenged instructional material;

▶ establishes the precedential effect of LEA and state board determinations;

▶ requires the State Board of Education (state board) to:

• review LEA determinations regarding certain sensitive material; and

• make rules, including to establish an age-appropriateness rating system for instructional materials;

▶ establishes a private right of action for judicial review of LEA and state board determinations regarding challenged instructional material;

▶ amends a state board reporting requirement; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377



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~~] any 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) "Public school" means:

52 (i) a district school;

53 (ii) a charter school; or

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

55 (f) (i) "School setting" means, for a public school:

56 (A) in a classroom;

57 (B) in a school library; or

58 (C) on school property.

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

- 62 (A) an assembly;
- 63 (B) a guest lecture;
- 64 (C) a live presentation; or
- 65 (D) an event.

66 (g) (i) "Sensitive material" means an instructional material that is pornographic or
 67 indecent material as that term is defined in Section [76-10-1235](#), and is therefore pervasively
 68 vulgar.

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

- 70 (A) that an LEA selects under Section [53G-10-402](#);
- 71 (B) for a concurrent enrollment course for which the provider of the material and the
 72 LEA have a reasonable belief that the material does not contain sensitive material and for
 73 which a parent receives notice of the material and gives the parent's consent;

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

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

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

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

78 (b) A public school may not:

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

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

83 (3) An LEA shall:

84 (a) upon receipt of a notice from a parent of a school-age child that an instructional
 85 material constitutes sensitive material under this section:

86 (i) immediately remove the material from the library, classroom, or other location
 87 where students may access the material until the LEA completes the LEA's review;

88 (ii) review the allegations and the relevant material;

89 (iii) (A) if the LEA determines that the material does not constitute sensitive material

90 and seeks to preserve student access to the material, make a written and publicly accessible
91 determination, in accordance with a public vote of the local governing board, regarding the
92 LEA's determination, including the LEA's reasoning and an explanation of why the material is
93 age appropriate and has serious scientific, artistic, or literary value; and

94 (B) if the LEA determines that the material constitutes sensitive material using the
95 standards described in Section [76-10-1227](#) for a description or depiction of illicit sex or
96 immorality, refer the material to the state board for review under Subsection (4); and

97 (iv) notify the individual who challenged the material regarding the outcome of the
98 review, including any referral to the state board in accordance with this section;

99 (b) complete the review and make the determination described in Subsection (3)(a) no
100 later than 120 days after the day on which the LEA receives the notice triggering the LEA's
101 review; and

102 (c) include parents who are reflective of the members of the school's community when
103 [determining if an instructional material is sensitive material] making the determinations
104 described in Subsection (3)(a).

105 (4) Upon receipt of an LEA's determination that an instructional material constitutes
106 sensitive material under this section using the standards described in Section [76-10-1227](#) for a
107 description or depiction of illicit sex or immorality, the state board shall:

108 (a) review the relevant material; and

109 (b) (i) if the state board ratifies the LEA's determination, notify all LEAs to remove the
110 sensitive material from student access; or

111 (ii) if the state board does not ratify the LEA's determination, make a written and
112 publicly accessible determination, in accordance with a public vote of the state board, as to
113 why the material does not constitute sensitive material under this section, including the state
114 board's reasoning.

115 (5) (a) Notwithstanding Subsection (3), an LEA may choose to not engage in a review
116 of an instructional material against which the same individual has triggered three reviews under
117 Subsection (3) during the present or preceding school year for material that the LEA
118 determined, through the review process, to not constitute sensitive material.

119 (b) (i) A determination by a local governing board described in Subsection (3) governs
120 the availability of the given instructional material in each library, classroom, or other location

121 where students may access the material within the public education system throughout the
122 LEA.

123 (ii) A determination by the state board described in Subsection (4) governs the
124 availability of the given instructional material in each library, classroom, or other location
125 where students may access the material within the public education system throughout the
126 state.

127 (6) (a) An LEA shall ensure that before a student within the LEA has any library,
128 classroom, or other access to any instructional material that meets the state board's serious
129 concern rating standard described in Subsection (7)(b)(i), the LEA:

130 (i) provides written notice to the parent of each student who may have access to the
131 material regarding the student's potential access to the material; and

132 (ii) has express written consent from the parent of any student who accesses the
133 material.

134 ~~[(4)]~~ (7) The state board shall:

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

138 (b) before the 2023-2024 school year, make rules in accordance with Title 63G,
139 Chapter 3, Utah Administrative Rulemaking Act, to:

140 (i) establish a rating system for age-appropriate instructional materials that:

141 (A) includes at least language, criminal activity, self-harm, drug use, suicidal ideation,
142 and sexual content, including sexuality and gender identity;

143 (B) identifies the rating and age at which the characteristics described in this
144 Subsection (7)(b)(i) are of serious concern to the well-being of students; and

145 (ii) prevent the acquisition of sensitive material by LEAs and schools; and

146 ~~[(b)]~~ (c) report to the Education Interim Committee and the Government Operations
147 Interim Committee, at or before the November ~~[2022]~~ interim meeting each year, on
148 implementation and compliance with this section, including:

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

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

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

154 (A) action taken in response to a complaint described in this Subsection (4)(b)(iii); and

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

157 (8) (a) No less than 30 days after providing the relevant LEA or the state board a notice
158 of claim and an opportunity to cure, a parent who triggers a review under Subsection (3) or (4)
159 may bring an action in a court of competent jurisdiction against the relevant LEA or the state
160 board to seek judicial review of a determination to reinstate or preserve student access to an
161 instructional material that the parent alleges to constitute sensitive material under this section.

162 (b) If a parent prevails in an action described in this Subsection (8):

163 (i) the parent is entitled to an award in an amount equal to the greater of actual
164 damages or \$500 per violation and an award of reasonable attorney fees and court costs; and

165 (ii) the defendant shall pay a fine of \$500 per violation to be deposited into the Crime
166 Victim Reparations Fund created in Section [51-9-404](#).

167 (c) If a court determines that a parent's action before the court under this Subsection (8)
168 is meritless or abusive, the defendant shall pay a fine of \$500 to be deposited into the Crime
169 Victim Reparations Fund created in Section [51-9-404](#).

170 Section 2. **Effective date.**

171 This bill takes effect on July 1, 2023.