

Senator Todd D. Weiler proposes the following substitute bill:

SENSITIVE MATERIAL REVIEW AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Todd D. Weiler

6	Cosponsors:	Colin W. Jack	Candice B. Pierucci
7	Cheryl K. Acton	Tim Jimenez	Judy Weeks Rohner
8	Carl R. Albrecht	Dan N. Johnson	Rex P. Shipp
9	Stewart E. Barlow	Michael L. Kohler	Keven J. Stratton
10	Kera Birkeland	Trevor Lee	Mark A. Strong
11	Bridger Bolinder	Karianne Lisonbee	Jordan D. Teuscher
12	Walt Brooks	Steven J. Lund	R. Neil Walter
13	Jefferson S. Burton	Phil Lyman	Raymond P. Ward
14	Kay J. Christofferson	A. Cory Maloy	Christine F. Watkins
15	Tyler Clancy	Jefferson Moss	Stephen L. Whyte
16	Joseph Elison	Michael J. Petersen	Ryan D. Wilcox
17	Stephanie Gricius	Thomas W. Peterson	
	Katy Hall		

18

19 **LONG TITLE**

20 **General Description:**

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

23 **Highlighted Provisions:**



- 24 This bill:
- 25 ▶ defines terms;
 - 26 ▶ requires the prioritization of protecting children from illicit pornography over other
 - 27 considerations in evaluating instructional material;
 - 28 ▶ specifies individuals who may trigger a formal sensitive material review;
 - 29 ▶ establishes certain required processes for the evaluation and review of sensitive
 - 30 material allegations, including distinct requirements for objective sensitive material
 - 31 and subjective sensitive material;
 - 32 ▶ requires certain actions statewide if a certain threshold of local education agencies
 - 33 determine that the instructional material constitutes objective sensitive material;
 - 34 ▶ provides indemnification for claims arising from sensitive materials requirements;
 - 35 ▶ requires the Office of the Legislative Auditor General to audit school district
 - 36 compliance with sensitive materials requirements; and
 - 37 ▶ makes technical and conforming changes.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 This bill provides a special effective date.

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377

45

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

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

48 **53G-10-103. Sensitive instructional materials.**

49 (1) As used in this section:

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

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

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

54 (ii) "Instructional material" includes reading materials, handouts, videos, digital

55 materials, websites, online applications, and live presentations.

56 (iii) "Instructional material" does not mean exclusively library materials.

57 (b) "LEA governing board" means:

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

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

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

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

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

63 (e) "Objective sensitive material" means an instructional material that constitutes
64 pornographic or indecent material, as that term is defined in Section 76-10-1235, under the
65 non-discretionary standards described in Subsection 76-10-1227(1)(a)(i), (ii), or (iii).

66 ~~(e)~~ (f) "Public school" means:

67 (i) a district school;

68 (ii) a charter school; or

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

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

71 (A) in a classroom;

72 (B) in a school library; or

73 (C) on school property.

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

77 (A) an assembly;

78 (B) a guest lecture;

79 (C) a live presentation; or

80 (D) an event.

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

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

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

86 (B) for a concurrent enrollment course that contains sensitive material and for which a
 87 parent receives notice from the course provider of the material before ~~Ŝ~~→ ~~[enrolling]~~ enrollment of
 87a the parent's child ←~~Ŝ~~ and gives the
 88 parent's consent by enrolling ~~Ŝ~~→ the parent's child ←~~Ŝ~~ ;

89 ~~[(B)]~~ (C) for medical courses;
 90 ~~[(C)]~~ (D) for family and consumer science courses; or
 91 ~~[(D)]~~ (E) for another course the state board exempts in state board rule.

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

95 (A) material that is harmful to minors under Section [76-10-1201](#);
 96 (B) material that is pornographic under Section [76-10-1203](#); or
 97 (C) material that includes certain fondling or other erotic touching under Subsection
 98 [76-10-1227](#)(1)(a)(iv).

99 (2) (a) Sensitive materials are prohibited in the school setting.
 100 (b) A public school or an LEA may not:
 101 (i) adopt, use, distribute, provide a student access to, or maintain in the school setting,
 102 sensitive materials; or
 103 (ii) permit a speaker or presenter in the school setting to display or distribute sensitive
 104 materials.

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

109 (d) If an instructional material constitutes objective sensitive material:
 110 (i) a public school or an LEA is not required to engage in a review under a subjective
 111 sensitive material standard; and
 112 (ii) the outcome of a subjective sensitive material evaluation has no bearing on the
 113 non-discretionary objective sensitive material conclusion.

114 (3) (a) Except as provided in Subsection (3)(b), the following individuals may initiate a
 115 sensitive material review under this section:
 116 (i) an employee of the relevant LEA;

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

118 (iii) a parent of a child who is enrolled in the relevant LEA; or

119 (iv) a member of the relevant LEA governing board.

120 (b) (i) As used in this Subsection (3)(b), "unsuccessful challenge" means an allegation
121 that a given instructional material constitutes sensitive material that the LEA concludes to be
122 erroneous, either on direct review or on appeal to the LEA governing board, resulting in the
123 retention of the given instructional material.

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

127 ~~[(3) An LEA shall include]~~

128 (4) Upon receipt of an allegation from an individual described in Subsection (3)(a), an
129 LEA shall:

130 (a) (i) make an initial determination as to whether the allegation presents a plausible
131 claim that the challenged instructional material constitutes sensitive material, including
132 whether the allegation includes excerpts and other evidence to support the allegation; and

133 (ii) if the LEA determines that the allegation presents a plausible claim that the
134 challenged instructional material constitutes sensitive material under Subsection (4)(a)(i),
135 immediately remove the challenged material from any school setting that provides student
136 access to the challenged material until the LEA completes the LEA's full review of the
137 challenged material under this section;

138 (b) (i) engage in a review of the allegations and the challenged instructional material
139 using the objective sensitive material standards; and

140 (ii) if the LEA makes a determination that the challenged instructional material
141 constitutes objective sensitive material, ensure that the material remains inaccessible to
142 students in any school setting;

143 (c) only if the LEA makes a determination that the challenged instructional material
144 does not constitute objective sensitive material:

145 (i) review the allegations and the challenged instructional material under the subjective
146 material standards, ensuring that the review includes parents who are reflective of the members
147 of the school's community when determining if an instructional material is subjective sensitive

148 material[-];

149 (ii) allow student access to the challenged instructional material during the LEA's
150 subjective sensitive material review if the student's parent gives consent regarding the specific
151 challenged instructional material; and

152 (iii) if the LEA makes a determination that the challenged instructional material
153 constitutes subjective sensitive material, ensure that the material is inaccessible to students in
154 any school setting, including the termination of the parent consent option described in
155 Subsection (4)(c)(ii); and

156 (d) communicate to the state board the allegation and the LEA's final determination
157 regarding the allegation and the challenged instructional material.

158 (5) (a) An individual described in Subsection (3)(a) may appeal an LEA's decision
159 regarding a sensitive material review, regardless of whether the LEA removed or retained the
160 challenged instructional material, to the LEA governing board.

161 (b) An LEA governing board shall vote in a public board meeting to decide the
162 outcome of a sensitive material review appeal, clearly identifying:

163 (i) the board's rationale for the decision; and

164 (ii) the board's determination on each component of the statutory and any additional
165 policy standards the board uses to reach the board's conclusions.

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

168 (a) revisiting a previous decision;

169 (b) reviewing a recommendation of LEA personnel or a parent-related committee
170 regarding a challenged instructional material; or

171 (c) reconsidering a challenged instructional material if the LEA governing board
172 receives additional information regarding the material.

173 (7) (a) If the threshold described in Subsection (7)(b) is met, each LEA statewide shall
174 remove the material from student access unless the LEA governing board:

175 (i) places the given instructional material on an LEA governing board agenda within 60
176 days after the day on which the LEA receives a notification from the state board described in
177 Subsection (7)(c); and

178 (ii) at the specified LEA governing board meeting, votes to ~~Š~~ → [remove or] ← Š retain the

179 instructional material.

180 (b) The requirement described in Subsection (7)(a) applies if the following number of
181 LEAs makes a determination that a given instructional material constitutes objective sensitive
182 material:

183 (i) at least three school districts; or

184 (ii) at least two school districts and five charter schools.

185 (c) The state board shall:

186 (i) aggregate allegations and LEA determinations described in Subsection (4)(d); and

187 (ii) no later than 10 school days after the day on which the condition described in
188 Subsection (7)(b) occurs, communicate to all LEAs the application of the requirement

189 described in Subsection (7)(a) to remove the material or place the material on an agenda.

190 (d) This Subsection (7) applies to sensitive materials that LEAs remove from student
191 access, regardless of whether:

192 (i) the sensitive material determinations occur in the same academic year; or

193 (ii) a sensitive material determination occurred before July 1, 2024.

194 ~~[(4)]~~ (8) The state board shall:

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

198 (b) establish a process through which an individual described in Subsection (3)(a) may
199 report to the state board an allegation that an LEA is out of compliance with this section; and

200 ~~[(b)]~~ (c) annually report to the Education Interim Committee ~~[and the Government~~
201 ~~Operations Interim Committee]~~, at or before the November ~~[2022]~~ interim meeting, on
202 implementation and compliance with this section, including:

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

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

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

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

209 (8)(c)(iii); [and]

210 (B) if an LEA retains an instructional material for which the LEA or the state board
211 receives a complaint, the LEA's rationale for retaining the instructional material[-]; and

212 (C) compliance failures that the state board identifies through the reporting process
213 described in Subsection (8)(b) and other investigations or research.

214 (9) The state shall defend, indemnify, and hold harmless a person acting under color of
215 state law to enforce this section for any claims or damages, including court costs and attorney
216 fees, that:

217 (a) a person brings or incurs as a result of this section; and

218 (b) is not covered by the person's insurance policies or any coverage agreement that the
219 State Risk Management Fund issues.

220 (10) Subject to prioritization of the Audit Subcommittee created in Section [36-12-8](#),
221 the Office of the Legislative Auditor General shall:

222 (a) conduct an audit of each school district's compliance with this section, ensuring the
223 completion of all school district audits before November 2028; and

224 (b) annually report to the Education Interim Committee regarding completed sensitive
225 material audits under this Subsection (10).

226 Section 2. **Effective date.**

227 This bill takes effect on July 1, 2024.