

# HB0417S01 compared with HB0417

~~{deleted text}~~ shows text that was in HB0417 but was deleted in HB0417S01.

inserted text shows text that was not in HB0417 but was inserted into HB0417S01.

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Representative Ken Ivory proposes the following substitute bill:

## SCHOOL MATERIALS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: ~~{}~~Ken Ivory

Senate Sponsor: ~~{}~~\_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill ~~{amends provisions regarding student access to sensitive material within the public education system}~~concerns school meetings.

#### Highlighted Provisions:

This bill:

~~{~~→ defines terms;

→ requires local education agencies (LEAs) to:

→ • prioritize protecting children and ensuring the least sexualized content when reviewing and selecting instructional material; and

→ • inform parents of certain information regarding instructional material that is available to student access;

‡ ▶ prohibits an LEA governing ~~{boards}~~board from prohibiting the public display or

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recitation of certain material in a meeting of the board if the material is available to student access within the LEA;{

- provides a private right of action against LEAs that provide student access to sensitive material;
- waives governmental immunity for a violation regarding sensitive material;
- amends criminal provisions regarding pornographic or indecent material on school property and indecent public displays;} 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

{ ~~**63G-7-301**, as last amended by Laws of Utah 2023, Chapter 516~~

~~**76-10-1228**, as last amended by Laws of Utah 2021, Chapter 260~~

~~**76-10-1235**, as enacted by Laws of Utah 2007, Chapter 79~~

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*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;

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

~~[(e)] (f) (e)~~ "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 ~~{(f)}~~ is pornographic or indecent material as that term is defined in Section 76-10-1235 ~~{(f)}~~ constitutes objective sensitive material or subjective sensitive material.

- (ii) "Sensitive material" does not include an instructional material:
  - (A) that an LEA selects under Section 53G-10-402;
  - (B) for medical courses;
  - (C) for family and consumer science courses; or
  - (D) for another course the state board exempts in state board rule.

~~{(iii) "Subjective sensitive material" means an instructional material that constitutes~~

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~~pornographic or indecent material, as that term is defined in Section 76-10-1235, under the following factor-balancing standards:~~

~~— (A) material that is harmful to minors under Section 76-10-1201;~~

~~— (B) material that is pornographic under Section 76-10-1203; or~~

~~— (C) material that includes certain fondling or other erotic touching under Subsection 76-10-1227(1)(a)(iv).~~

‡ (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.

~~{ — (c) In evaluating, selecting, or otherwise considering action related to a given instructional material under this section, each public school and each LEA shall:~~

~~— (i) prioritize protecting children from the harmful effects of illicit pornography over other considerations in evaluating instructional material; and~~

~~— (ii) ensure that any material available to students in a school setting is the least sexualized, violent, or vulgar material that communicates the principles the LEA governing board and the parents described in Subsection (3) identify as the principles the material communicates or teaches.~~

‡ (3) An LEA shall include parents who are reflective of the members of the school's community when determining if an instructional material is sensitive material.

(4) 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;

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(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); and  
(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.

~~(5) An LEA shall inform parents of:~~

~~— (a) each instructional material that:~~

~~— (i) is available to student access within a school setting within the LEA; and~~

~~— (ii) constitutes objective or subjective sensitive material; and~~

~~— (b) each instructional material that a student borrows from the student's LEA or school;~~

~~— (6) An individual who is authorized to initiate a sensitive material review under this section may bring a claim against an LEA that fails to remove objective sensitive material from student access in accordance with this section;~~

~~— (7) An LEA governing board may not prohibit or restrict the public display of an image or the public recitation of text in a public meeting of the board if the image or text is an excerpt from instructional material that is available to student access in a school setting within the LEA.~~

~~{ Section 2. Section 63G-7-301 is amended to read:~~

~~— 63G-7-301. **Waivers of immunity.**~~

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

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

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

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

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

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

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

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

~~—— (e) as to any claim for attorney fees or costs under Section 63G-2-209, 63G-2-405, or 63G-2-802;~~

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

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

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

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

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

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

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

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

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- ~~—— (ii) by an employee of a public elementary or secondary school or charter school who:~~
- ~~—— (A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;~~
- ~~—— (B) is criminally charged in connection with the sexual battery; and~~
- ~~—— (C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402; and~~
- ~~—— (k) as to any action brought under Section 78B-6-2303.~~
- ~~—— (3) (a) As used in this Subsection (3):~~
- ~~—— (i) "Code of conduct" means a code of conduct that:~~
- ~~—— (A) is not less stringent than a model code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);~~
- ~~—— (B) is adopted by the applicable local education governing body;~~
- ~~—— (C) regulates behavior of a school employee toward a student; and~~
- ~~—— (D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.~~
- ~~—— (ii) "Local education agency" means:~~
- ~~—— (A) a school district;~~
- ~~—— (B) a charter school; or~~
- ~~—— (C) the Utah Schools for the Deaf and the Blind.~~
- ~~—— (iii) "Local education governing board" means:~~
- ~~—— (A) for a school district, the local school board;~~
- ~~—— (B) for a charter school, the charter school governing board; or~~
- ~~—— (C) for the Utah Schools for the Deaf and the Blind, the state board.~~
- ~~—— (iv) "Public school" means a public elementary or secondary school.~~
- ~~—— (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).~~
- ~~—— (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering~~

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

~~—— (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:~~

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

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

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

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

~~—— (4) (a) As used in this Subsection (4):~~

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

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

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

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

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

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

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

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

~~—— (v) "Subordinate student" means a student:~~

~~—— (A) of a higher education institution; and~~

~~—— (B) whose educational opportunities could be adversely impacted by a special trust employee.~~



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~~—— (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:~~

~~—— (i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:~~

~~—— (A) with a subordinate student who was at least 18 years old at the time of the behavior; and~~

~~—— (B) with the student's consent; or~~

~~—— (ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and~~

~~—— (B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.~~

~~—— (5) Immunity from suit of each local education agency, as that term is defined in Section 53E-1-102, is waived as to any claim related to the local education agency's failure to comply with the prohibition on objective sensitive material as defined in Section 53G-10-103.~~

~~—— Section 3. Section 76-10-1228 is amended to read:~~

~~—— **76-10-1228. Indecent public displays -- Prohibitions -- Penalty.**~~

~~—— (1) Subject to the affirmative defense in Subsection 76-10-1208(3), a person is guilty of a class A misdemeanor who willfully or knowingly:~~

~~—— (a) engages in [the business of] selling, lending, giving away, showing, advertising for sale, or distributing to a minor or has in the person's possession with intent to engage in that [business] conduct or to otherwise offer for sale or [commercial distribution] distribute to a minor any material with:~~

~~—— (i) a description or depiction of illicit sex or sexual immorality; or~~

~~—— (ii) a nude or partially denuded figure; or~~

~~—— (b) publicly displays at newsstands or any other establishment frequented by minors, or where the minors are or may be invited as a part of the general public, any motion picture, or any live, taped, or recorded performance, or any still picture or photograph, or any book, pocket book, pamphlet, or magazine the cover or content of which:~~

~~—— (i) exploits, is devoted to, or is principally made up of one or more descriptions or depictions of illicit sex or sexual immorality; or~~

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- ~~\_\_\_\_\_ (ii) consists of one or more pictures of nude or partially denuded figures.~~
- ~~\_\_\_\_\_ (2) (a) A violation of this section is punishable by:~~
  - ~~\_\_\_\_\_ (i) a minimum mandatory fine of not less than \$500; and~~
  - ~~\_\_\_\_\_ (ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.~~
- ~~\_\_\_\_\_ (b) This section supersedes Section 77-18-105.~~
- ~~\_\_\_\_\_ Section 4. Section 76-10-1235 is amended to read:~~
- ~~\_\_\_\_\_ **76-10-1235. Trafficking pornographic or indecent material on school property.**~~
  - ~~\_\_\_\_\_ (1) As used in this section:~~
    - ~~\_\_\_\_\_ (a) "Pornographic or indecent material" means any material:~~
      - ~~\_\_\_\_\_ (i) defined as harmful to minors in Section 76-10-1201;~~
      - ~~\_\_\_\_\_ (ii) described as pornographic in Section 76-10-1203; or~~
      - ~~\_\_\_\_\_ (iii) described in Section 76-10-1227.~~
    - ~~\_\_\_\_\_ (b) "School property" means property, including land and improvements, that a school district or charter school owns, leases, or occupies.~~
  - ~~\_\_\_\_\_ (2) Except as provided in Subsection (3), a person is guilty of [accessing] trafficking or purveying pornographic or indecent material on school property when the person willfully or knowingly creates, views, distributes, or otherwise provides or gains access to pornographic or indecent material while present on school property, under circumstances not amounting to an attempted or actual violation of:~~
    - ~~\_\_\_\_\_ (a) distributing pornographic material as specified in Section 76-10-1204;~~
    - ~~\_\_\_\_\_ (b) inducing acceptance of pornographic material as specified in Section 76-10-1205;~~
    - ~~\_\_\_\_\_ (c) dealing in material harmful to a minor as specified in Section 76-10-1206; or~~
    - ~~\_\_\_\_\_ (d) indecent public displays as specified in Section 76-10-1228.~~
  - ~~\_\_\_\_\_ (3) This section does not apply to school or law enforcement personnel when the access to pornographic or indecent material on school property is limited to:~~
    - ~~\_\_\_\_\_ (a) investigation of a violation of this section; or~~
    - ~~\_\_\_\_\_ (b) enforcement of this section.~~
  - ~~\_\_\_\_\_ (4) Each separate offense under this section is:~~
    - ~~\_\_\_\_\_ (a) a class A misdemeanor if the person is 18 years of age or older; and~~
    - ~~\_\_\_\_\_ (b) a class B misdemeanor if the person is under 18 years of age.~~

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~~(5) This section does not prohibit disciplinary action for actions that violate this section.~~

† Section ~~{5}~~2. **Effective date.**

This bill takes effect on July 1, 2024.