

SCHOOL MATERIALS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions regarding student access to sensitive material within the public education system.

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 LEA governing boards from prohibiting the public display or 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.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377

35 **63G-7-301**, as last amended by Laws of Utah 2023, Chapter 516

36 **76-10-1228**, as last amended by Laws of Utah 2021, Chapter 260

37 **76-10-1235**, as enacted by Laws of Utah 2007, Chapter 79



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

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

41 **53G-10-103. Sensitive instructional materials.**

42 (1) As used in this section:

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

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

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

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

49 (b) "LEA governing board" means:

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

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

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

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

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

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

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

- 59 (i) a district school;
- 60 (ii) a charter school; or
- 61 (iii) the Utah Schools for the Deaf and the Blind.
- 62 ~~[(f)]~~ (g) (i) "School setting" means, for a public school:
- 63 (A) in a classroom;
- 64 (B) in a school library; or
- 65 (C) on school property.
- 66 (ii) "School setting" includes the following activities that an organization or individual
- 67 or organization outside of a public school conducts, if a public school or an LEA sponsors or
- 68 requires the activity:
- 69 (A) an assembly;
- 70 (B) a guest lecture;
- 71 (C) a live presentation; or
- 72 (D) an event.
- 73 ~~[(g)]~~ (h) (i) "Sensitive material" means an instructional material that ~~[is pornographic~~
- 74 ~~or indecent material as that term is defined in Section 76-10-1235]~~ constitutes objective
- 75 sensitive material or subjective sensitive material.
- 76 (ii) "Sensitive material" does not include an instructional material:
- 77 (A) that an LEA selects under Section [53G-10-402](#);
- 78 (B) for medical courses;
- 79 (C) for family and consumer science courses; or
- 80 (D) for another course the state board exempts in state board rule.
- 81 (iii) "Subjective sensitive material" means an instructional material that constitutes
- 82 pornographic or indecent material, as that term is defined in Section [76-10-1235](#), under the
- 83 following factor-balancing standards:
- 84 (A) material that is harmful to minors under Section [76-10-1201](#);
- 85 (B) material that is pornographic under Section [76-10-1203](#); or
- 86 (C) material that includes certain fondling or other erotic touching under Subsection
- 87 [76-10-1227\(1\)\(a\)\(iv\)](#).
- 88 (2) (a) Sensitive materials are prohibited in the school setting.
- 89 (b) A public school may not:

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

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

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

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

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

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

104 (4) The state board shall:

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

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

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

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

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

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

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

119 (5) An LEA shall inform parents of:

120 (a) each instructional material that:

- 121 (i) is available to student access within a school setting within the LEA; and
- 122 (ii) constitutes objective or subjective sensitive material; and
- 123 (b) each instructional material that a student borrows from the student's LEA or school.
- 124 (6) An individual who is authorized to initiate a sensitive material review under this
- 125 section may bring a claim against an LEA that fails to remove objective sensitive material from
- 126 student access in accordance with this section.
- 127 (7) An LEA governing board may not prohibit or restrict the public display of an image
- 128 or the public recitation of text in a public meeting of the board if the image or text is an excerpt
- 129 from instructional material that is available to student access in a school setting within the
- 130 LEA.

131 Section 2. Section **63G-7-301** is amended to read:

132 **63G-7-301. Waivers of immunity.**

- 133 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
- 134 obligation.
- 135 (b) Actions arising out of contractual rights or obligations are not subject to the
- 136 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).
- 137 (c) The Division of Water Resources is not liable for failure to deliver water from a
- 138 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
- 139 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
- 140 condition, or safety condition that causes a deficiency in the amount of available water.
- 141 (2) Immunity from suit of each governmental entity is waived:
- 142 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
- 143 personal property;
- 144 (b) as to any action brought to foreclose mortgages or other liens on real or personal
- 145 property, to determine any adverse claim on real or personal property, or to obtain an
- 146 adjudication about any mortgage or other lien that the governmental entity may have or claim
- 147 on real or personal property;
- 148 (c) as to any action based on the negligent destruction, damage, or loss of goods,
- 149 merchandise, or other property while it is in the possession of any governmental entity or
- 150 employee, if the property was seized for the purpose of forfeiture under any provision of state
- 151 law;

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

156 (e) as to any claim for attorney fees or costs under Section 63G-2-209, 63G-2-405, or
157 63G-2-802;

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

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

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

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

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

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

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

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

175 (ii) by an employee of a public elementary or secondary school or charter school who:

176 (A) at the time of the sexual battery, held a position of special trust, as defined in
177 Section 76-5-404.1, with respect to the student;

178 (B) is criminally charged in connection with the sexual battery; and

179 (C) the public elementary or secondary school or charter school knew or in the exercise
180 of reasonable care should have known, at the time of the employee's hiring, to be a sex
181 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
182 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a

- 183 background check under Section 53G-11-402; and
- 184 (k) as to any action brought under Section 78B-6-2303.
- 185 (3) (a) As used in this Subsection (3):
- 186 (i) "Code of conduct" means a code of conduct that:
- 187 (A) is not less stringent than a model code of conduct, created by the State Board of
- 188 Education, establishing a professional standard of care for preventing the conduct described in
- 189 Subsection (3)(a)(i)(D);
- 190 (B) is adopted by the applicable local education governing body;
- 191 (C) regulates behavior of a school employee toward a student; and
- 192 (D) includes a prohibition against any sexual conduct between an employee and a
- 193 student and against the employee and student sharing any sexually explicit or lewd
- 194 communication, image, or photograph.
- 195 (ii) "Local education agency" means:
- 196 (A) a school district;
- 197 (B) a charter school; or
- 198 (C) the Utah Schools for the Deaf and the Blind.
- 199 (iii) "Local education governing board" means:
- 200 (A) for a school district, the local school board;
- 201 (B) for a charter school, the charter school governing board; or
- 202 (C) for the Utah Schools for the Deaf and the Blind, the state board.
- 203 (iv) "Public school" means a public elementary or secondary school.
- 204 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).
- 205 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
- 206 the term "child" in that section to include an individual under age 18.
- 207 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
- 208 claim against a local education agency for an injury resulting from a sexual battery or sexual
- 209 abuse committed against a student of a public school by a paid employee of the public school
- 210 who is criminally charged in connection with the sexual battery or sexual abuse, unless:
- 211 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
- 212 code of conduct; and
- 213 (ii) before the sexual battery or sexual abuse occurred, the public school had:

214 (A) provided training on the code of conduct to the employee; and
215 (B) required the employee to sign a statement acknowledging that the employee has
216 read and understands the code of conduct.

217 (4) (a) As used in this Subsection (4):
218 (i) "Higher education institution" means an institution included within the state system
219 of higher education under Section 53B-1-102.
220 (ii) "Policy governing behavior" means a policy adopted by a higher education
221 institution or the Utah Board of Higher Education that:
222 (A) establishes a professional standard of care for preventing the conduct described in
223 Subsections (4)(a)(ii)(C) and (D);
224 (B) regulates behavior of a special trust employee toward a subordinate student;
225 (C) includes a prohibition against any sexual conduct between a special trust employee
226 and a subordinate student; and
227 (D) includes a prohibition against a special trust employee and subordinate student
228 sharing any sexually explicit or lewd communication, image, or photograph.
229 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.
230 (iv) "Special trust employee" means an employee of a higher education institution who
231 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
232 student.
233 (v) "Subordinate student" means a student:
234 (A) of a higher education institution; and
235 (B) whose educational opportunities could be adversely impacted by a special trust
236 employee.

237 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
238 claim for an injury resulting from a sexual battery committed against a subordinate student by a
239 special trust employee, unless:
240 (i) the institution proves that the special trust employee's behavior that otherwise would
241 constitute a sexual battery was:
242 (A) with a subordinate student who was at least 18 years old at the time of the
243 behavior; and
244 (B) with the student's consent; or

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

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

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

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

253 **76-10-1228. Indecent public displays -- Prohibitions -- Penalty.**

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

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

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

261 (ii) a nude or partially denuded figure; or

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

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

268 (ii) consists of one or more pictures of nude or partially denuded figures.

269 (2) (a) A violation of this section is punishable by:

270 (i) a minimum mandatory fine of not less than \$500; and

271 (ii) incarceration, without suspension of sentence in any way, for a term of not less than
272 30 days.

273 (b) This section supersedes Section 77-18-105.

274 Section 4. Section 76-10-1235 is amended to read:

275 **76-10-1235. Trafficking pornographic or indecent material on school property.**

276 (1) As used in this section:
277 (a) "Pornographic or indecent material" means any material:
278 (i) defined as harmful to minors in Section 76-10-1201;
279 (ii) described as pornographic in Section 76-10-1203; or
280 (iii) described in Section 76-10-1227.
281 (b) "School property" means property, including land and improvements, that a school
282 district or charter school owns, leases, or occupies.
283 (2) Except as provided in Subsection (3), a person is guilty of [~~accessing~~] trafficking or
284 purveying pornographic or indecent material on school property when the person willfully or
285 knowingly creates, views, distributes, or otherwise provides or gains access to pornographic or
286 indecent material while present on school property, under circumstances not amounting to an
287 attempted or actual violation of:
288 (a) distributing pornographic material as specified in Section 76-10-1204;
289 (b) inducing acceptance of pornographic material as specified in Section 76-10-1205;
290 (c) dealing in material harmful to a minor as specified in Section 76-10-1206; or
291 (d) indecent public displays as specified in Section 76-10-1228.
292 (3) This section does not apply to school or law enforcement personnel when the
293 access to pornographic or indecent material on school property is limited to:
294 (a) investigation of a violation of this section; or
295 (b) enforcement of this section.
296 (4) Each separate offense under this section is:
297 (a) a class A misdemeanor if the person is 18 years of age or older; and
298 (b) a class B misdemeanor if the person is under 18 years of age.
299 (5) This section does not prohibit disciplinary action for actions that violate this
300 section.
301 **Section 5. Effective date.**
302 This bill takes effect on July 1, 2024.