

**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
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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		

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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 subject to a vote of the state board to overturn the statewide action in certain  
35 circumstances;
  - 36 ▶ provides indemnification for claims arising from sensitive materials requirements;
  - 37 ▶ requires the Office of the Legislative Auditor General to audit school district  
38 compliance with sensitive materials requirements; and
  - 39 ▶ makes technical and conforming changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill provides a special effective date.

44 **Utah Code Sections Affected:**

45 AMENDS:

46 **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377



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

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

50 **53G-10-103. Sensitive instructional materials.**

51 (1) As used in this section:

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

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

- 55 (B) to support a student's learning in ~~[the]~~ any school setting.
- 56 (ii) "Instructional material" includes reading materials, handouts, videos, digital  
57 materials, websites, online applications, and live presentations.
- 58 (iii) "Instructional material" does not mean exclusively library materials.
- 59 (b) "LEA governing board" means:
- 60 (i) for a school district, the local school board;
- 61 (ii) for a charter school, the charter school governing board; or
- 62 (iii) for the Utah Schools for the Deaf and the Blind, the state board.
- 63 (c) "Material" means the same as that term is defined in Section [76-10-1201](#).
- 64 (d) "Minor" means any person less than 18 years old.
- 65 (e) "Objective sensitive material" means an instructional material that constitutes  
66 pornographic or indecent material, as that term is defined in Section [76-10-1235](#), under the  
67 non-discretionary standards described in Subsection [76-10-1227\(1\)\(a\)\(i\), \(ii\), or \(iii\)](#).
- 68 ~~[(e)]~~ (f) "Public school" means:
- 69 (i) a district school;
- 70 (ii) a charter school; or
- 71 (iii) the Utah Schools for the Deaf and the Blind.
- 72 ~~[(f)]~~ (g) (i) "School setting" means, for a public school:
- 73 (A) in a classroom;
- 74 (B) in a school library; or
- 75 (C) on school property.
- 76 (ii) "School setting" includes the following activities that an organization or individual  
77 or organization outside of a public school conducts, if a public school or an LEA sponsors or  
78 requires the activity:
- 79 (A) an assembly;
- 80 (B) a guest lecture;
- 81 (C) a live presentation; or
- 82 (D) an event.
- 83 ~~[(g)]~~ (h) (i) "Sensitive material" means an instructional material that ~~[is pornographic~~  
84 ~~or indecent material as that term is defined in Section [76-10-1235](#)]~~ constitutes objective  
85 sensitive material or subjective sensitive material.

- 86 (ii) "Sensitive material" does not include an instructional material:
- 87 (A) that an LEA selects under Section [53G-10-402](#);
- 88 (B) for a concurrent enrollment course that contains sensitive material and for which a
- 89 parent receives notice from the course provider of the material before enrollment of the parent's
- 90 child and gives the parent's consent by enrolling the parent's child;
- 91 [~~B~~] (C) for medical courses;
- 92 [~~C~~] (D) for family and consumer science courses; or
- 93 [~~D~~] (E) for another course the state board exempts in state board rule.
- 94 (iii) "Subjective sensitive material" means an instructional material that constitutes
- 95 pornographic or indecent material, as that term is defined in Section [76-10-1235](#), under the
- 96 following factor-balancing standards:
- 97 (A) material that is harmful to minors under Section [76-10-1201](#);
- 98 (B) material that is pornographic under Section [76-10-1203](#); or
- 99 (C) material that includes certain fondling or other erotic touching under Subsection
- 100 [76-10-1227\(1\)\(a\)\(iv\)](#).
- 101 (2) (a) Sensitive materials are prohibited in the school setting.
- 102 (b) A public school or an LEA may not:
- 103 (i) adopt, use, distribute, provide a student access to, or maintain in the school setting,
- 104 sensitive materials; or
- 105 (ii) permit a speaker or presenter in the school setting to display or distribute sensitive
- 106 materials.
- 107 (c) In evaluating, selecting, or otherwise considering action related to a given
- 108 instructional material under this section, each public school and each LEA shall prioritize
- 109 protecting children from the harmful effects of illicit pornography over other considerations in
- 110 evaluating instructional material.
- 111 (d) If an instructional material constitutes objective sensitive material:
- 112 (i) a public school or an LEA is not required to engage in a review under a subjective
- 113 sensitive material standard; and
- 114 (ii) the outcome of a subjective sensitive material evaluation has no bearing on the
- 115 non-discretionary objective sensitive material conclusion.
- 116 (3) (a) Except as provided in Subsection (3)(b), the following individuals may initiate a

117 sensitive material review under this section:

118 (i) an employee of the relevant LEA;

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

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

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

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

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

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

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

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

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

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

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

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

147 (i) review the allegations and the challenged instructional material under the subjective

148 material standards, ensuring that the review includes parents who are reflective of the members  
149 of the school's community when determining if an instructional material is subjective sensitive  
150 material[-];

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

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

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

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

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

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

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

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

170 (a) revisiting a previous decision;

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

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

175 (7) (a) Except as provided in Subsection (7)(d), if the threshold described in Subsection  
176 (7)(b) is met, each LEA statewide shall remove the relevant instructional material from student  
177 access.

178 (b) The requirement described in Subsection (7)(a) to remove a given material from

179 student access applies if the following number of LEAs makes a determination that a given  
180 instructional material constitutes objective sensitive material:

181 (i) at least three school districts; or

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

183 (c) The state board shall:

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

185 (ii) no later than 10 school days after the day on which the condition described in

186 Subsection (7)(b) occurs, communicate to all LEAs the application of the requirement

187 described in Subsection (7)(a) to remove the material from student access.

188 (d) (i) When the threshold described in Subsection (7)(b) is met for a given

189 instructional material, in addition to making the communication described in Subsection (7)(c),

190 the state board may:

191 (A) place the material on the agenda of a public board meeting within 60 days after the  
192 day on which the state board makes the communication to LEAs under Subsection (7)(c); and

193 (B) at the specified state board meeting, vote to overturn the application of the

194 requirement described in Subsection (7)(a) to remove a given material from student access

195 statewide.

196 (ii) If the state board votes to overturn the application of the statewide removal

197 requirement described in Subsection (7)(a) under Subsection (7)(d)(i):

198 (A) the statewide removal requirement described in Subsection (7)(a) no longer

199 applies;

200 (B) an LEA may choose to return the given material to student access; and

201 (C) nothing affects the findings of an LEA governing board regarding removal of the

202 given material within the board's LEA.

203 (e) This Subsection (7) applies to sensitive materials that LEAs remove from student  
204 access, regardless of whether:

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

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

207 ~~[(4)]~~ (8) The state board shall:

208 (a) in consultation with the Office of the Attorney General, provide guidance and

209 training to support public schools in identifying instructional materials that meet the definition

210 of sensitive materials under this section; ~~[and]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

239 Section 2. **Effective date.**

240 This bill takes effect on July 1, 2024.