

1-1 By: Patterson, et al. (Senate Sponsor - Paxton) H.B. No. 900
 1-2 (In the Senate - Received from the House April 24, 2023;
 1-3 May 2, 2023, read first time and referred to Committee on
 1-4 Education; May 18, 2023, reported favorably by the following vote:
 1-5 Yeas 10, Nays 3; May 18, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14		X		
1-15		X		
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20		X		

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the regulation of library materials sold to or included
 1-24 in public school libraries.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. This Act shall be known as the Restricting
 1-27 Explicit and Adult-Designated Educational Resources (READER) Act.

1-28 SECTION 2. Section 33.021, Education Code, is amended to
 1-29 read as follows:

1-30 Sec. 33.021. LIBRARY STANDARDS. (a) In this section,
 1-31 "sexually explicit material" means any communication, language, or
 1-32 material, including a written description, illustration,
 1-33 photographic image, video image, or audio file, other than library
 1-34 material directly related to the curriculum required under Section
 1-35 28.002(a), that describes, depicts, or portrays sexual conduct, as
 1-36 defined by Section 43.25, Penal Code, in a way that is patently
 1-37 offensive, as defined by Section 43.21, Penal Code.

1-38 (b) The Texas State Library and Archives Commission, in
 1-39 consultation with the State Board of Education, shall adopt
 1-40 voluntary standards for school library services, other than
 1-41 collection development, that a ~~school district~~ school district shall consider
 1-42 ~~[the standards]~~ in developing, implementing, or expanding library
 1-43 services.

1-44 (c) The Texas State Library and Archives Commission, with
 1-45 approval by majority vote of the State Board of Education, shall
 1-46 adopt standards for school library collection development that a
 1-47 school district shall adhere to in developing or implementing the
 1-48 district's library collection development policies.

1-49 (d) The standards adopted under Subsection (c) must:

1-50 (1) be reviewed and updated at least once every five
 1-51 years; and

1-52 (2) include a collection development policy that:

1-53 (A) prohibits the possession, acquisition, and
 1-54 purchase of:

1-55 (i) harmful material, as defined by Section
 1-56 43.24, Penal Code;

1-57 (ii) library material rated sexually
 1-58 explicit material by the selling library material vendor; or

1-59 (iii) library material that is pervasively
 1-60 vulgar or educationally unsuitable as referenced in *Pico v. Board*
 1-61 *of Education*, 457 U.S. 853 (1982);

2-1 (B) recognizes that obscene content is not
 2-2 protected by the First Amendment to the United States Constitution;
 2-3 (C) is required for all library materials
 2-4 available for use or display, including material contained in
 2-5 school libraries, classroom libraries, and online catalogs;
 2-6 (D) recognizes that parents are the primary
 2-7 decision makers regarding a student's access to library material;
 2-8 (E) encourages schools to provide library
 2-9 catalog transparency;
 2-10 (F) recommends schools communicate effectively
 2-11 with parents regarding collection development; and
 2-12 (G) prohibits the removal of material based
 2-13 solely on the:

- 2-14 (i) ideas contained in the material; or
- 2-15 (ii) personal background of:
 - 2-16 (a) the author of the material; or
 - 2-17 (b) characters in the material.

2-18 SECTION 3. Subtitle F, Title 2, Education Code, is amended
 2-19 by adding Chapter 35 to read as follows:

2-20 CHAPTER 35. REGULATION OF CERTAIN LIBRARY MATERIAL

2-21 Sec. 35.001. DEFINITIONS. In this chapter:

2-22 (1) "Library material vendor" includes any entity that
 2-23 sells library material to a public primary or secondary school in
 2-24 this state.

2-25 (2) "Sexually explicit material" has the meaning
 2-26 assigned by Section 33.021.

2-27 (3) "Sexually relevant material" means any
 2-28 communication, language, or material, including a written
 2-29 description, illustration, photographic image, video image, or
 2-30 audio file, other than library material directly related to the
 2-31 curriculum required under Section 28.002(a), that describes,
 2-32 depicts, or portrays sexual conduct, as defined by Section 43.25,
 2-33 Penal Code.

2-34 Sec. 35.002. RATINGS REQUIRED. (a) A library material
 2-35 vendor may not sell library materials to a school district or
 2-36 open-enrollment charter school unless the vendor has issued
 2-37 appropriate ratings regarding sexually explicit material and
 2-38 sexually relevant material previously sold to a district or school.

2-39 (b) A library material vendor may not sell library material
 2-40 rated sexually explicit material and shall issue a recall for all
 2-41 copies of library material sold to a district or school that is:

- 2-42 (1) rated sexually explicit material; and
- 2-43 (2) in active use by the district or school.

2-44 (c) Not later than April 1, 2024, each library material
 2-45 vendor shall develop and submit to the agency a list of library
 2-46 material rated as sexually explicit material or sexually relevant
 2-47 material sold by the vendor to a school district or open-enrollment
 2-48 charter school before that date and still in active use by the
 2-49 district or school.

2-50 (d) Not later than September 1 of each year, each library
 2-51 material vendor shall submit to the agency an updated list of
 2-52 library material rated as sexually explicit material or sexually
 2-53 relevant material sold by the vendor to a school district or
 2-54 open-enrollment charter school during the preceding year and still
 2-55 in active use by the district or school.

2-56 (e) The agency shall post each list submitted under
 2-57 Subsection (c) or (d) in a conspicuous place on the agency's
 2-58 Internet website as soon as practicable.

2-59 Sec. 35.0021. RATING GUIDELINES. (a) For purposes of
 2-60 determining whether a library material is sexually explicit as
 2-61 required by Section 35.002, a library material vendor must perform
 2-62 a contextual analysis of the material to determine whether the
 2-63 material describes, depicts, or portrays sexual conduct in a way
 2-64 that is patently offensive.

2-65 (b) In performing the contextual analysis of a library
 2-66 material, a library material vendor must consider the following
 2-67 three principal factors with respect to the material:

- 2-68 (1) the explicitness or graphic nature of a
 2-69 description or depiction of sexual conduct contained in the

3-1 material;

3-2 (2) whether the material consists predominantly of or
 3-3 contains multiple repetitions of depictions of sexual or excretory
 3-4 organs or activities; and

3-5 (3) whether a reasonable person would find that the
 3-6 material intentionally panders to, titillates, or shocks the
 3-7 reader.

3-8 (c) In examining the three factors listed under Subsection
 3-9 (b), a vendor must weigh and balance each factor and conclude
 3-10 whether the library material is patently offensive, recognizing
 3-11 that because each instance of a description, depiction, or
 3-12 portrayal of sexual conduct contained in a material may present a
 3-13 unique mix of factors.

3-14 (d) To determine whether a description, depiction, or
 3-15 portrayal of sexual conduct contained in a material is patently
 3-16 offensive, a library material vendor must consider the full context
 3-17 in which the description, depiction, or portrayal of sexual conduct
 3-18 appears, to the extent possible, recognizing that contextual
 3-19 determinations are necessarily highly fact-specific and require
 3-20 the consideration of contextual characteristics that may
 3-21 exacerbate or mitigate the offensiveness of the material.

3-22 Sec. 35.003. AGENCY REVIEW. (a) The agency may review
 3-23 library material sold by a library material vendor that is not rated
 3-24 or incorrectly rated by the vendor as sexually explicit material,
 3-25 sexually relevant material, or no rating in accordance with Section
 3-26 35.002(a). If the agency determines that the library material is
 3-27 required to be rated as sexually explicit material or sexually
 3-28 relevant material or to receive no rating at all under that
 3-29 subsection, the agency shall provide written notice to the vendor.
 3-30 The notice must include information regarding the vendor's duty
 3-31 under this section and provide the corrected rating required for
 3-32 the library material.

3-33 (b) Not later than the 60th day after the date on which a
 3-34 library material vendor receives notice regarding library material
 3-35 under Subsection (a), the vendor shall:

3-36 (1) rate the library material according to the
 3-37 agency's corrected rating; and

3-38 (2) notify the agency of the action taken under
 3-39 Subdivision (1).

3-40 (c) The agency shall post and maintain in a conspicuous
 3-41 place on the agency's Internet website a list of library material
 3-42 vendors who fail to comply with Subsection (b).

3-43 (d) A school district or open-enrollment charter school may
 3-44 not purchase library material from a library material vendor on the
 3-45 list described by Subsection (c).

3-46 (e) A library material vendor placed on the list described
 3-47 by Subsection (c) may petition the agency for removal from the list.
 3-48 The agency may remove a vendor from the list only if the agency is
 3-49 satisfied that the vendor has taken appropriate action under
 3-50 Subsection (b).

3-51 Sec. 35.004. LIABILITY. A school district or
 3-52 open-enrollment charter school or a teacher, librarian, or other
 3-53 staff member employed by a district or school is not liable for any
 3-54 claim or damage resulting from a library material vendor's
 3-55 violation of this chapter.

3-56 Sec. 35.005. PARENTAL CONSENT REQUIRED FOR USE OF CERTAIN
 3-57 LIBRARY MATERIALS. A school district or open-enrollment charter
 3-58 school may not allow a student enrolled in the district or school to
 3-59 reserve, check out, or otherwise use outside the school library
 3-60 library material the library material vendor has rated as sexually
 3-61 relevant material under Section 35.002(a) unless the district or
 3-62 school first obtains written consent from the student's parent or
 3-63 person standing in parental relation.

3-64 Sec. 35.006. REVIEW AND REPORTING OF CERTAIN LIBRARY
 3-65 MATERIALS. (a) Not later than January 1 of every odd-numbered
 3-66 year, each school district and open-enrollment charter school
 3-67 shall:

3-68 (1) review the content of each library material in the
 3-69 catalog of a district or school library that is rated as sexually

4-1 relevant material under Section 35.002(a) by the library material
4-2 vendor;

4-3 (2) determine in accordance with the district's or
4-4 school's policies regarding the approval, review, and
4-5 reconsideration of school library materials whether to retain each
4-6 library material reviewed under Subdivision (1) in the school
4-7 library catalog; and

4-8 (3) either:
4-9 (A) post in a conspicuous place on the Internet
4-10 website maintained by the district or school a report; or

4-11 (B) provide physical copies of the report at the
4-12 central administrative building for the district or school.

4-13 (b) The report required under Subsection (a)(3) must
4-14 include:

4-15 (1) the title of each library material reviewed under
4-16 Subsection (a)(1);

4-17 (2) the district's or school's decision regarding the
4-18 library material under Subsection (a)(2); and

4-19 (3) the school or campus where the library material is
4-20 currently located.

4-21 Sec. 35.007. RULES. The commissioner may adopt rules as
4-22 necessary to administer this chapter.

4-23 Sec. 35.008. ASSISTANCE OF AGENCY. The agency may provide
4-24 assistance to school districts and open-enrollment charter schools
4-25 in complying with this chapter.

4-26 SECTION 4. Not later than January 1, 2024, the Texas State
4-27 Library and Archives Commission shall adopt the standards for
4-28 school library collection development as required under Section
4-29 33.021(c), Education Code, as added by this Act.

4-30 SECTION 5. (a) Not later than April 1, 2024, each library
4-31 material vendor, as defined by Section 35.001, Education Code, as
4-32 added by this Act, shall submit the initial list required under
4-33 Section 35.002(c), Education Code, as added by this Act.

4-34 (b) Not later than September 1, 2024, each library material
4-35 vendor, as defined by Section 35.001, Education Code, as added by
4-36 this Act, shall submit the initial updated list required under
4-37 Section 35.002(d), Education Code, as added by this Act.

4-38 (c) Not later than January 1, 2025, each school district and
4-39 open-enrollment charter school shall conduct the initial content
4-40 review and submit the initial report required under Section
4-41 35.006(a), Education Code, as added by this Act.

4-42 SECTION 6. The changes in law made by this Act to the
4-43 Education Code apply beginning with the 2023-2024 school year.

4-44 SECTION 7. This Act takes effect immediately if it receives
4-45 a vote of two-thirds of all the members elected to each house, as
4-46 provided by Section 39, Article III, Texas Constitution. If this
4-47 Act does not receive the vote necessary for immediate effect, this
4-48 Act takes effect September 1, 2023.

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