

By: Eissler

H.B. No. 3419

Substitute the following for H.B. No. 3419:

By: Zedler

C.S.H.B. No. 3419

A BILL TO BE ENTITLED

AN ACT

relating to public school instructional materials.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 7.055(b)(28), Education Code, is amended to read as follows:

(28) The commissioner shall perform duties relating to the funding, adoption, and purchase of instructional materials [~~textbooks~~] under Chapter 31.

SECTION 2. Section 7.056(f), Education Code, is amended to read as follows:

(f) A school district or campus that is required to develop and implement a student achievement improvement plan under Section 39.131 or 39.132 may receive an exemption or waiver under this section from any law or rule other than:

(1) a prohibition on conduct that constitutes a criminal offense;

(2) a requirement imposed by federal law or rule;

(3) a requirement, restriction, or prohibition imposed by state law or rule relating to:

(A) public school accountability as provided by Subchapters B, C, D, and G, Chapter 39; or

(B) educator rights and benefits under Subchapters A, C, D, E, F, G, and I, Chapter 21, or under Subchapter A, Chapter 22; or

1 (4) [~~textbook~~] selection of instructional materials
2 under Chapter 31.

3 SECTION 3. Section 7.102(c)(23), Education Code, is amended
4 to read as follows:

5 (23) The board shall adopt and purchase or license
6 instructional materials [~~textbooks~~] as provided by Chapter 31 and
7 adopt rules required by that chapter.

8 SECTION 4. Sections 7.108(a) and (c), Education Code, are
9 amended to read as follows:

10 (a) A person interested in selling bonds of any type or a
11 person engaged in manufacturing, shipping, selling, or advertising
12 instructional materials [~~textbooks~~] or otherwise connected with
13 the instructional material [~~textbook~~] business commits an offense
14 if the person makes or authorizes a political contribution to or
15 takes part in, directly or indirectly, the campaign of any person
16 seeking election to or serving on the board.

17 (c) In this section:

18 (1) "Instructional material" has the meaning assigned
19 by Section 31.002.

20 (2) "Political contribution" has the meaning assigned
21 by Section 251.001, Election Code.

22 ~~[(2) "Textbook" has the meaning assigned by Section~~
23 ~~31.002.]~~

24 SECTION 5. The heading to Section 7.112, Education Code, is
25 amended to read as follows:

26 Sec. 7.112. REPRESENTATION OF [~~TEXTBOOK~~] PUBLISHER OF
27 INSTRUCTIONAL MATERIALS BY FORMER MEMBER OF BOARD.

1 SECTION 6. Section 7.112(a), Education Code, is amended to
2 read as follows:

3 (a) A former member of the State Board of Education who is
4 employed by or otherwise receives compensation from a [~~textbook~~]
5 publisher of instructional materials may not, before the second
6 anniversary of the date on which the person last served as a member
7 of the State Board of Education:

8 (1) confer with a member of the board of trustees of a
9 school district concerning instructional materials [~~a textbook~~]
10 published by that [~~textbook~~] publisher; or

11 (2) appear at a meeting of the board of trustees on
12 behalf of the [~~textbook~~] publisher.

13 SECTION 7. Section 7.112(c)(2), Education Code, is amended
14 to read as follows:

15 (2) "Instructional material" and "publisher"
16 [~~"Publisher" and "textbook"~~] have the meanings assigned by Section
17 31.002.

18 SECTION 8. Section 11.158(b), Education Code, is amended to
19 read as follows:

20 (b) The board may not charge fees for:

21 (1) instructional materials [~~textbooks~~], workbooks,
22 laboratory supplies, or other supplies necessary for participation
23 in any instructional course except as authorized under this code;

24 (2) field trips required as a part of a basic education
25 program or course;

26 (3) any specific form of dress necessary for any
27 required educational program or diplomas;

1 (4) the payment of instructional costs for necessary
2 school personnel employed in any course or educational program
3 required for graduation;

4 (5) library materials [~~books~~] required to be used for
5 any educational course or program, other than fines for lost,
6 damaged, or overdue materials [~~books~~];

7 (6) admission to any activity the student is required
8 to attend as a prerequisite to graduation;

9 (7) admission to or examination in any required
10 educational course or program; or

11 (8) lockers.

12 SECTION 9. Section 11.164(a), Education Code, is amended to
13 read as follows:

14 (a) The board of trustees of each school district shall
15 limit redundant requests for information and the number and length
16 of written reports that a classroom teacher is required to prepare.
17 A classroom teacher may not be required to prepare any written
18 information other than:

19 (1) any report concerning the health, safety, or
20 welfare of a student;

21 (2) a report of a student's grade on an assignment or
22 examination;

23 (3) a report of a student's academic progress in a
24 class or course;

25 (4) a report of a student's grades at the end of each
26 grade reporting period;

27 (5) a [~~textbook~~] report on instructional materials;

1 (6) a unit or weekly lesson plan that outlines, in a
2 brief and general manner, the information to be presented during
3 each period at the secondary level or in each subject or topic at
4 the elementary level;

5 (7) an attendance report;

6 (8) any report required for accreditation review;

7 (9) any information required by a school district that
8 relates to a complaint, grievance, or actual or potential
9 litigation and that requires the classroom teacher's involvement;
10 or

11 (10) any information specifically required by law,
12 rule, or regulation.

13 SECTION 10. Section 19.007(e), Education Code, is amended
14 to read as follows:

15 (e) The district may participate in the instructional
16 materials [~~textbook~~] program under Chapter 31.

17 SECTION 11. Sections 26.006(a) and (c), Education Code, are
18 amended to read as follows:

19 (a) A parent is entitled to:

20 (1) review all teaching materials, instructional
21 materials [~~textbooks~~], and other teaching aids used in the
22 classroom of the parent's child; and

23 (2) review each test administered to the parent's
24 child after the test is administered.

25 (c) A student's parent is entitled to request that the
26 school district or open-enrollment charter school the student
27 attends allow the student to take home any instructional materials

1 [~~textbook~~] used by the student. Subject to the availability of the
2 instructional materials [~~a textbook~~], the district or school shall
3 honor the request. A student who takes home instructional
4 materials [~~a textbook~~] must return the instructional materials
5 [~~textbook~~] to school at the beginning of the next school day if
6 requested to do so by the student's teacher. In this subsection,
7 "instructional material" [~~"textbook"~~] has the meaning assigned by
8 Section 31.002.

9 SECTION 12. Sections 28.002(c) and (h), Education Code, are
10 amended to read as follows:

11 (c) The State Board of Education, with the direct
12 participation of educators, parents, business and industry
13 representatives, and employers shall by rule identify the essential
14 knowledge and skills of each subject of the required curriculum
15 that all students should be able to demonstrate and that will be
16 used in evaluating instructional materials [~~textbooks~~] under
17 Chapter 31 and addressed on the assessment instruments required
18 under Subchapter B, Chapter 39. As a condition of accreditation,
19 the board shall require each district to provide instruction in the
20 essential knowledge and skills at appropriate grade levels.

21 (h) The State Board of Education and each school district
22 shall foster the continuation of the tradition of teaching United
23 States and Texas history and the free enterprise system in regular
24 subject matter and in reading courses and in the adoption of
25 instructional materials [~~textbooks~~]. A primary purpose of the
26 public school curriculum is to prepare thoughtful, active citizens
27 who understand the importance of patriotism and can function

1 productively in a free enterprise society with appreciation for the
2 basic democratic values of our state and national heritage.

3 SECTION 13. The heading to Chapter 31, Education Code, is
4 amended to read as follows:

5 CHAPTER 31. INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]

6 SECTION 14. Sections 31.001, 31.002, and 31.003, Education
7 Code, are amended to read as follows:

8 Sec. 31.001. FREE INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~].
9 Instructional materials [~~Textbooks~~] selected for use in the public
10 schools shall be furnished without cost to the students attending
11 those schools.

12 Sec. 31.002. DEFINITIONS. In this chapter:

13 (1) "Instructional material" [~~"Electronic textbook"~~]
14 means a medium or a combination of media for conveying information
15 to a student. The term includes a book, supplementary materials, a
16 combination of a book and supplementary materials, computer
17 software, [~~interactive videodisc,~~] magnetic media, DVD, CD-ROM,
18 computer courseware, on-line services, or an electronic medium [~~7~~
19 ~~or other means of conveying information to the student or otherwise~~
20 ~~contributing to the learning process through electronic means~~].

21 (2) "Publisher" means a person who prepares
22 instructional materials for sale or distribution to educational
23 institutions. The term includes an on-line service or a developer
24 or distributor of [~~an~~] electronic instructional materials
25 [~~textbook~~].

26 (3) "State-adopted" means adopted by the State Board
27 of Education under Section 31.022. [~~"Textbook" means a book, a~~

1 ~~system of instructional materials, or a combination of a book and~~
2 ~~supplementary instructional materials that conveys information to~~
3 ~~the student or otherwise contributes to the learning process, or an~~
4 ~~electronic textbook.~~

5 ~~[(4) "Technological equipment" means hardware, a~~
6 ~~device, or equipment necessary for:~~

7 ~~[(A) instructional use in the classroom,~~
8 ~~including to gain access to or enhance the use of an electronic~~
9 ~~textbook; or~~

10 ~~[(B) professional use by a classroom teacher.]~~

11 Sec. 31.003. RULES. The State Board of Education may adopt
12 rules, consistent with this chapter, for the adoption, requisition,
13 distribution, care, use, and disposal of instructional materials
14 ~~[textbooks]~~.

15 SECTION 15. Subchapter B, Chapter 31, Education Code, is
16 amended by amending Sections 31.021, 31.022, and 31.026 through
17 31.030 and adding Sections 31.0211, 31.0212, 31.0213, 31.0214,
18 31.0221, 31.0222, 31.0231, and 31.0232 to read as follows:

19 Sec. 31.021. STATE INSTRUCTIONAL MATERIALS ~~[TEXTBOOK]~~
20 FUND. (a) The state instructional materials ~~[textbook]~~ fund
21 consists of:

22 (1) an amount set aside by the State Board of Education
23 from the available school fund, computed in accordance with this
24 section;

25 (2) all funds accruing from the state's sale of disused
26 instructional materials ~~[textbooks]~~; and

27 (3) all amounts lawfully paid into the fund from any

1 other source.

2 (b) The State Board of Education shall annually set aside
3 out of the available school fund of the state an amount sufficient
4 for the instructional materials allotment to provide [~~board,~~
5 school districts~~]~~ and open-enrollment charter schools with the
6 amount of funding required under Section 31.0213 to purchase and
7 distribute the necessary state-adopted instructional materials
8 [~~textbooks~~] for the use of the students of this state for the
9 following school year. The board shall determine the amount of the
10 available school fund to set aside for the state instructional
11 materials [~~textbook~~] fund based on the amount of the allotment
12 under Section 31.0211 and on student enrollment reports submitted
13 under Section 31.103. [+

14 [~~(1) a report by the commissioner issued on July 1 or,~~
15 ~~if that date is a Saturday or Sunday, on the following Monday,~~
16 ~~stating the amount of unobligated money in the fund;~~

17 [~~(2) the commissioner's estimate, based on textbooks~~
18 ~~selected under Section 31.101 and on attendance reports submitted~~
19 ~~under Section 31.103 by school districts and open-enrollment~~
20 ~~charter schools, of the amount of funds, in addition to funds~~
21 ~~reported under Subdivision (1), that will be necessary for purchase~~
22 ~~and distribution of textbooks for the following school year; and~~

23 [~~(3) any amount the board determines should be set~~
24 ~~aside for emergency purposes caused by unexpected increases in~~
25 ~~attendance.]~~

26 (c) This subsection applies only if the pilot project
27 established under Section 54.2161 is implemented, and expires

1 August 15, 2009. In addition to the amount set aside under
2 Subsection (b), the State Board of Education shall annually set
3 aside out of the available school fund an amount sufficient for each
4 school district with one or more students entitled to free
5 textbooks under the pilot project established under Section 54.2161
6 to pay the costs of those textbooks as required by Section 31.031
7 for the following school year. The board shall determine the amount
8 of the available school fund to set aside for the state
9 instructional materials [~~textbook~~] fund for purposes of this
10 subsection based on the commissioner's estimate of the amount that
11 will be necessary to pay the costs of textbooks as required under
12 Section 31.031.

13 (d) Money transferred to the state instructional materials
14 [~~textbook~~] fund remains in the fund until spent and does not lapse
15 to the state at the end of the fiscal year.

16 (e) All necessary expenses incurred under this chapter
17 shall be paid from the state instructional materials [~~textbook~~]
18 fund on invoices approved by the commissioner.

19 Sec. 31.0211. INSTRUCTIONAL MATERIALS ALLOTMENT FOR
20 DISTRICT OR CHARTER SCHOOL. (a) For the student enrollment
21 reported under Section 31.103 in a school year, a school district or
22 open-enrollment charter school is entitled to an annual allotment
23 of \$75 for each student or a greater amount provided by
24 appropriation, to be transferred from the instructional materials
25 fund to the credit of the school district's instructional materials
26 account as provided by Section 31.0213.

27 (b) In addition to the allotment provided under Subsection

1 (a), if the commissioner determines that a school district or
2 open-enrollment charter school is experiencing high enrollment
3 growth and that the student enrollment is likely to increase by 10
4 percent or more in the school year for which the district or school
5 is receiving the allotment as compared to the preceding school
6 year, the district or school is entitled to an allotment in the
7 amount provided by Subsection (a) for each additional student
8 anticipated to enroll in the district or school. If the anticipated
9 increase in student enrollment does not occur, the amount of funds
10 in the instructional materials account of the school district or
11 open-enrollment charter school shall be reduced by the amount of
12 the additional funds received by the district or school under this
13 subsection for students who do not enroll in the district or school.

14 (c) Funds allotted under this section may be used only to
15 purchase state-adopted instructional materials.

16 (d) This section applies beginning with the 2009-2010
17 school year. This subsection expires September 1, 2010.

18 Sec. 31.0212. INSTRUCTIONAL MATERIALS ALLOTMENT FOR
19 JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS. (a) The
20 commissioner shall determine the amount of an instructional
21 materials allotment for students attending a juvenile justice
22 alternative education program under Section 37.011. The allotment
23 under this section may not exceed \$75 for each student attending a
24 juvenile justice alternative education program.

25 (b) The commissioner shall transfer the instructional
26 materials allotment to the Texas Juvenile Probation Commission for
27 the purchase of instructional materials for students enrolled in a

1 juvenile justice alternative education program.

2 (c) The Texas Juvenile Probation Commission shall require
3 each juvenile justice alternative education program to comply with
4 all applicable rules adopted by the State Board of Education
5 regarding instructional materials.

6 (d) Funds allotted under this section may be used only to
7 purchase state-adopted instructional materials.

8 (e) This section applies beginning with the 2009-2010
9 school year. This subsection expires September 1, 2010.

10 Sec. 31.0213. SCHOOL DISTRICT OR CHARTER SCHOOL
11 INSTRUCTIONAL MATERIALS ACCOUNT. (a) The commissioner shall
12 maintain an instructional materials account for each school
13 district or open-enrollment charter school. Each school year, the
14 commissioner shall deposit in a district's or school's account the
15 amount of the instructional materials allotment under Section
16 31.0211 for the district or school.

17 (b) The commissioner shall pay the cost of instructional
18 materials requisitioned by a school district or open-enrollment
19 charter school using funds from that district's or school's
20 instructional materials account.

21 (c) Money credited to the instructional materials account
22 of a school district or open-enrollment charter school remains in
23 the account until spent and does not lapse to the state at the end of
24 the fiscal year.

25 (d) The commissioner may adopt rules as necessary to
26 implement this section.

27 Sec. 31.0214. STATE BOARD OF EDUCATION EXPENSES. The State

1 Board of Education is responsible for the following expenses:

2 (1) the purchase of Braille, large type, and audio
3 instructional materials;

4 (2) the cost of maintaining a fire and flood
5 contingency fund to purchase replacements of instructional
6 materials lost due to a fire or flood in a school district or at an
7 open-enrollment charter school; and

8 (3) the cost of shipping instructional materials from
9 the state depository, the depository of a publisher, or the used
10 textbook depository to a school district or open-enrollment charter
11 school.

12 Sec. 31.022. INSTRUCTIONAL MATERIAL [~~TEXTBOOK~~] REVIEW AND
13 ADOPTION. (a) The State Board of Education shall adopt a review
14 and adoption cycle for instructional materials [~~textbooks~~] for
15 elementary grade levels, including prekindergarten, and secondary
16 grade levels, for each subject in the required curriculum under
17 Section 28.002.

18 (b) The board shall organize the cycle for subjects in the
19 foundation curriculum so that not more than one-sixth of the
20 instructional materials [~~textbooks~~] for subjects in the foundation
21 curriculum are reviewed each year. The board shall adopt rules to
22 provide for a full and complete investigation of instructional
23 materials [~~textbooks~~] for each subject in the foundation curriculum
24 at least every six years. The adoption of instructional materials
25 [~~textbooks~~] for a subject in the foundation curriculum may be
26 extended beyond the six-year period only if the content of
27 instructional materials [~~textbooks~~] for a subject is sufficiently

1 current.

2 (c) The board shall adopt rules to provide for a full and
3 complete investigation of instructional materials [~~textbooks~~] for
4 each subject in the enrichment curriculum on a cycle the board
5 considers appropriate.

6 (d) At least 24 months before the beginning of the school
7 year for which instructional materials [~~textbooks~~] for a particular
8 subject and grade level will be purchased under the review and
9 adoption cycle adopted by the board, the board shall publish notice
10 of the review and adoption cycle for those instructional materials
11 [~~textbooks~~].

12 (e) The board shall designate a request for production of
13 instructional materials in a subject area and grade level by the
14 school year in which the instructional materials are intended to be
15 made available in classrooms and not by the school year in which the
16 board makes the request for production.

17 Sec. 31.0221. MIDCYCLE REVIEW AND ADOPTION OF INSTRUCTIONAL
18 MATERIALS. (a) The State Board of Education by rule shall allow an
19 instructional material to be submitted, reviewed, and adopted at a
20 time when the subject or grade level is not scheduled for review and
21 adoption in the cycle, at an interval of at least once every two
22 years, or at another time in the discretion of the board to respond
23 to needs that may arise, in conformance with the procedures for
24 adoption of other state-adopted instructional materials. The board
25 shall place each instructional material submitted under this
26 section and adopted on the state-adopted instructional materials
27 list under Section 31.0231.

1 (b) The contract term for an instructional material adopted
2 under this section may not extend beyond the contract term of an
3 instructional material adopted for the same subject area and grade
4 level under Section 31.022. The board may not place an
5 instructional material on the state-adopted instructional
6 materials list in the two years before the effective date of a
7 curriculum revision in a subject area and grade level for which the
8 material is submitted.

9 (c) The rules adopted by the board under this section must
10 require:

11 (1) the publisher of the instructional material to pay
12 a fee to the board to cover the administrative cost of the midcycle
13 review and adoption of the instructional material;

14 (2) the publisher of the instructional material to
15 enter into a contract with the board concerning the instructional
16 material for a term that ends at the same time as any contract
17 entered into by the board for another instructional material for
18 the same subject and grade level; and

19 (3) a commitment from the publisher to provide the
20 instructional material to school districts midcycle in the manner
21 specified by the publisher, which may include:

22 (A) providing the instructional material
23 midcycle to any district in a regional education service center
24 area identified by the publisher; or

25 (B) providing midcycle a certain maximum number
26 of instructional materials specified by the publisher.

27 (d) The fee paid by the publisher of instructional materials

1 under Subsection (c)(1) may be used only for the administrative
2 costs of the midcycle review and adoption.

3 Sec. 31.0222. BUDGET-BALANCED CYCLE. In determining the
4 review and adoption cycle of instructional materials under Section
5 31.022, the State Board of Education shall:

6 (1) consult with the Legislative Budget Board and the
7 governor's office of budget, planning, and policy before approving
8 and publishing any notice or amendment of a cycle;

9 (2) review and consider:

10 (A) historic average funding levels for
11 instructional materials purchased in previous biennia;

12 (B) expected average costs of future
13 instructional material purchases;

14 (C) anticipated student enrollment in future
15 years;

16 (D) scheduled revisions to curriculum; and

17 (E) the impact on the state budget of the
18 adoption of instructional materials in all or some grade levels in a
19 subject area; and

20 (3) limit the cycle to subject areas for which
21 instructional materials can be purchased with the funding
22 anticipated to be available for the instructional materials
23 allotment for the school year in which the instructional materials
24 are to be adopted.

25 Sec. 31.0231. STATE-ADOPTED INSTRUCTIONAL MATERIALS. (a)
26 For each subject and grade level, the State Board of Education shall
27 review submitted instructional materials for factual errors.

1 Except as provided by Subsection (c), the board shall adopt all
2 instructional materials that the board determines are free from
3 factual errors and shall place the materials on the state-adopted
4 instructional materials list.

5 (b) For each state-adopted instructional material, the
6 board must determine the coverage of the essential knowledge and
7 skills for the subject area and grade level of the instructional
8 material. The board must identify:

9 (1) each of the essential knowledge and skills for the
10 subject and grade level covered by the instructional material; and

11 (2) the percentage of the essential knowledge and
12 skills for the subject and grade level covered by the instructional
13 material.

14 (c) The board may not adopt an instructional material that
15 covers less than 25 percent of the essential knowledge and skills
16 for a subject area and grade level.

17 Sec. 31.0232. PUBLICATION OF STATE-ADOPTED INSTRUCTIONAL
18 MATERIALS LIST. Not later than December 1 of the year preceding the
19 school year for which the instructional materials for a particular
20 subject and grade level will be purchased under the cycle adopted by
21 the board under Section 31.022, the board shall provide the list of
22 state-adopted instructional materials to each school district and
23 open-enrollment charter school.

24 Sec. 31.026. CONTRACT; PRICE. (a) The State Board of
25 Education shall execute a contract[+]

26 [(-)] for the purchase or licensing of each
27 state-adopted instructional material [~~adopted textbook other than~~

1 ~~an electronic textbook, and~~

2 ~~[(2) for the purchase or licensing of each adopted~~
3 ~~electronic textbook].~~

4 (b) A contract must require the publisher to provide all of
5 the state-adopted instructional materials [~~the number of~~
6 ~~textbooks~~] required by school districts in this state for the term
7 of the contract, which must coincide with the board's adoption
8 cycle.

9 (c) As applicable, a contract must provide for the purchase
10 or licensing of instructional materials [~~a textbook~~] at a specific
11 price, which may not exceed the lowest price paid by any other state
12 or any school or school district. The price must be fixed for the
13 term of the contract.

14 Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; SAMPLE
15 COPIES. (a) A publisher shall provide each school district and
16 open-enrollment charter school with information that fully
17 describes each of the publisher's state-adopted instructional
18 materials [~~adopted textbooks~~]. On request of a school district, a
19 publisher shall provide a sample copy of a state-adopted
20 instructional material [~~an adopted textbook~~].

21 (b) A publisher shall provide at least two sample copies of
22 each state-adopted instructional material [~~adopted textbook~~] to be
23 maintained at each regional education service center.

24 Sec. 31.028. SPECIAL INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~].

25 (a) The State Board of Education may purchase special
26 instructional materials [~~textbooks~~] for the education of blind and
27 visually impaired students in public schools. In addition, for a

1 teacher who is blind or visually impaired, the board shall provide a
2 teacher's edition in Braille or large type, as requested by the
3 teacher, for each instructional material [~~textbook~~] the teacher
4 uses in the instruction of students. The teacher edition must be
5 available at the same time the student instructional materials
6 [~~textbooks~~] become available.

7 (b) The publisher of an adopted instructional material
8 [~~textbook~~] shall provide the agency with computerized [~~textbook~~]
9 files for the production of Braille instructional materials
10 [~~textbooks~~] or other versions of instructional materials
11 [~~textbooks~~] to be used by students with disabilities, on request of
12 the State Board of Education. A publisher shall arrange the
13 computerized [~~textbook~~] files in a format [~~one of several optional~~
14 ~~formats~~] specified by the State Board of Education.

15 (c) The board may also enter into agreements providing for
16 the acceptance, requisition, and distribution of special
17 instructional materials [~~textbooks and instructional aids~~]
18 pursuant to 20 U.S.C. Section 101 et seq. for use by students
19 enrolled in:

- 20 (1) public schools; or
21 (2) private nonprofit schools, if state funds, other
22 than for administrative costs, are not involved.

23 (d) In this section:

24 (1) "Blind or visually impaired student" includes any
25 student whose visual acuity is impaired to the extent that the
26 student is unable to read the text [~~print~~] in [~~a~~] regularly adopted
27 instructional materials [~~textbook~~] used in the student's class.

1 (2) "Special instructional materials" [~~textbook~~]
2 means instructional materials [~~a textbook~~] in Braille, large type
3 or any other medium or any apparatus that conveys information to a
4 student or otherwise contributes to the learning process.

5 Sec. 31.029. BILINGUAL AND ENGLISH AS A SECOND LANGUAGE
6 INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. The board shall adopt
7 instructional materials [~~purchase or otherwise acquire textbooks~~]
8 for use in bilingual education and English as a second language
9 classes.

10 Sec. 31.030. USED INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. The
11 State Board of Education shall adopt rules to ensure that used
12 instructional materials [~~textbooks~~] sold to school districts and
13 open-enrollment charter schools are not sample copies that contain
14 factual errors. The rules may provide for the imposition of an
15 administrative penalty in accordance with Section 31.151 against a
16 seller of used instructional materials [~~textbooks~~] who knowingly
17 violates this section.

18 SECTION 16. Section 31.031(b), Education Code, is amended
19 to read as follows:

20 (b) From the amount set aside by the State Board of
21 Education under Section 31.021(c) or credited to the district's
22 instructional materials account under Section 31.0213, the school
23 district that a student entitled to free textbooks under the pilot
24 project established by Section 54.2161 attends shall pay the costs
25 of each textbook the student requires for a course described by
26 Section 54.2161(b)(2).

27 SECTION 17. Subchapter B, Chapter 31, Education Code, is

1 amended by adding Section 31.034 to read as follows:

2 Sec. 31.034. STATE DEPOSITORY. The State Board of
3 Education shall establish and maintain a state depository for
4 instructional materials.

5 SECTION 18. Subchapter C, Chapter 31, Education Code, is
6 amended by adding Sections 31.1011 and 31.1012 and amending
7 Sections 31.102, 31.103, 31.1031, 31.104, 31.105, and 31.106 to
8 read as follows:

9 Sec. 31.1011. SELECTION AND PURCHASE OF INSTRUCTIONAL
10 MATERIALS BY SCHOOL DISTRICTS AND CHARTER SCHOOLS. (a) Each year,
11 during a period established by the State Board of Education, the
12 board of trustees of each school district and the governing body of
13 each open-enrollment charter school shall notify the State Board of
14 Education of the instructional materials selected by the board of
15 trustees or governing body for the following school year from among
16 the state-adopted instructional materials.

17 (b) A school district may select to use more than one
18 state-adopted instructional material for each subject.

19 (c) This section applies beginning with the 2009-2010
20 school year. This subsection expires September 1, 2010.

21 Sec. 31.1012. CERTIFICATION OF PROVISION OF INSTRUCTIONAL
22 MATERIALS. (a) Each school district or open-enrollment charter
23 school shall annually certify to the agency that, for each subject
24 in the foundation curriculum and each grade level, the district or
25 school provides each student with one or more instructional
26 materials that in combination are aligned with the essential
27 knowledge and skills adopted by the State Board of Education for

1 that subject and grade level.

2 (b) A school district shall post on the district's Internet
3 website information regarding the instructional materials used in
4 each subject area and grade level for each school in the district.

5 A school district shall certify that the state-adopted
6 instructional materials for the foundation curriculum that are
7 provided to each student may be used in class and for home study.
8 This subsection does not require a district to provide two sets of
9 instructional materials for each student.

10 (c) This section applies beginning with the 2009-2010
11 school year. This subsection expires September 1, 2010.

12 Sec. 31.102. TITLE AND CUSTODY. (a) Each instructional
13 material [~~textbook~~] purchased as provided by this chapter is the
14 property of this state.

15 (b) Subsection (a) applies to an electronic instructional
16 material [~~textbook~~] only to the extent of any applicable licensing
17 agreement.

18 (c) The board of trustees of a school district or the
19 governing body of an open-enrollment charter school is the legal
20 custodian of instructional materials [~~textbooks~~] purchased as
21 provided by this chapter for the district or school. The board of
22 trustees shall distribute instructional materials [~~textbooks~~] to
23 students in the manner that the board or governing body determines
24 is most effective and economical.

25 Sec. 31.103. INSTRUCTIONAL MATERIAL [~~TEXTBOOK~~]
26 REQUISITIONS. (a) Not later than the seventh day after the first
27 school day in April, each principal shall report the student

1 enrollment [~~maximum attendance~~] for the school to the
2 superintendent. Not later than April 25, the superintendent of a
3 school district or the chief operating officer of an
4 open-enrollment charter school shall report the district's or
5 school's student enrollment [~~maximum attendance~~] to the
6 commissioner.

7 (b) A requisition for instructional materials [~~textbooks~~]
8 for the following school year shall be based on the student
9 enrollment [~~maximum attendance~~] reports under Subsection (a), plus
10 an additional 10 percent, except as otherwise provided. A school
11 district or open-enrollment charter school shall make a requisition
12 for instructional materials [~~a textbook on the conforming or~~
13 ~~nonconforming list~~] through the commissioner to the state
14 depository designated by the publisher or as provided by State
15 Board of Education rule, as applicable, not later than June 1 of
16 each year. The designated state depository or, if the publisher [~~or~~
17 ~~manufacturer~~] does not have a designated instructional materials
18 [~~textbook~~] depository in this state under Section 31.151(a)(6)(B),
19 the publisher [~~or manufacturer~~] shall fill a requisition approved
20 by the agency at any other time in the case of an emergency. As made
21 necessary by available funds, the commissioner shall reduce the
22 additional percentage of student enrollment [~~attendance~~] for which
23 a district or school may requisition instructional materials
24 [~~textbooks~~]. The commissioner may, on application of a district or
25 school that is experiencing high enrollment growth, increase the
26 additional percentage of student enrollment [~~attendance~~] for which
27 the district or school may requisition instructional materials

1 [~~textbooks~~].

2 (c) In making a requisition under this section, a school
3 district or open-enrollment charter school may requisition
4 instructional materials [~~textbooks on the conforming or~~
5 ~~nonconforming list~~] for grades above the grade level in which a
6 student is enrolled, except that the total quantity of
7 instructional materials [~~textbooks~~] requisitioned under this
8 section may not exceed the limit prescribed by Subsection (b).

9 Sec. 31.1031. SHORTAGE OF REQUISITIONED INSTRUCTIONAL
10 MATERIALS [~~TEXTBOOKS~~]. If a school district or open-enrollment
11 charter school does not have a sufficient number of copies of an
12 instructional material [~~a textbook~~] used by the district or school
13 for use during the following school year, and a sufficient number of
14 additional copies will not be available from the depository or the
15 publisher within the time specified by Section 31.151(a)(8), the
16 district or school is entitled to:

17 (1) be reimbursed from the state instructional
18 material [~~textbook~~] fund, at a rate and in the manner provided by
19 State Board of Education rule, for the purchase of a sufficient
20 number of used state-adopted instructional materials [~~adopted~~
21 ~~textbooks~~]; or

22 (2) return currently used instructional materials
23 [~~textbooks~~] to the commissioner in exchange for sufficient copies,
24 if available, of other instructional materials [~~textbooks~~] on the
25 state-adopted instructional materials [~~conforming or~~
26 ~~nonconforming~~] list to be used during the following school year.

27 Sec. 31.104. DISTRIBUTION AND HANDLING. (a) The board of

1 trustees of a school district or the governing body of an
2 open-enrollment charter school may delegate to an employee the
3 authority to requisition, distribute, and manage the inventory of
4 instructional materials [~~textbooks~~] in a manner consistent with
5 this chapter and rules adopted under this chapter.

6 (b) A school district or open-enrollment charter school may
7 order replacements for instructional materials [~~textbooks~~] that
8 have been lost or damaged directly from:

9 (1) the instructional materials [~~textbook~~]
10 depository; or

11 (2) the [~~textbook~~] publisher of the instructional
12 materials [~~or manufacturer~~] if the [~~textbook~~] publisher [~~or~~
13 ~~manufacturer~~] does not have a designated instructional materials
14 [~~textbook~~] depository in this state under Section 31.151(a)(6)(B).

15 (c) Each instructional material [~~textbook~~] must state that
16 the instructional material [~~textbook~~] is the property of or is
17 licensed to this state, as appropriate. Each instructional material
18 [~~textbook~~], other than an electronic instructional material
19 [~~textbook~~], must be covered by the student under the direction of
20 the teacher. A student must return all instructional materials
21 [~~textbooks~~] to the teacher at the end of the school year or when the
22 student withdraws from school.

23 (d) Each student, or the student's parent or guardian, is
24 responsible for each instructional material [~~textbook~~] not
25 returned by the student. A student who fails to return all
26 instructional materials [~~textbooks~~] forfeits the right to free
27 instructional materials [~~textbooks~~] until each instructional

1 material [~~textbook~~] previously issued but not returned is paid for
2 by the student, parent, or guardian. As provided by policy of the
3 board of trustees or governing body, a school district or
4 open-enrollment charter school may waive or reduce the payment
5 requirement if the student is from a low-income family. The
6 district or school shall allow the student to use instructional
7 materials [~~textbooks~~] at school during each school day. If an
8 instructional material [~~a textbook~~] is not returned or paid for,
9 the district or school may withhold the student's records. A
10 district or school may not, under this subsection, prevent a
11 student from graduating, participating in a graduation ceremony, or
12 receiving a diploma.

13 (e) The board of trustees of a school district may not
14 require an employee of the district to pay for an instructional
15 material [~~a textbook~~] or instructional technology that is stolen,
16 misplaced, or not returned by a student.

17 Sec. 31.105. USED INSTRUCTIONAL MATERIALS DEPOSITORY AND
18 SALE OF INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. The State Board of
19 Education shall develop a depreciation schedule for used
20 instructional materials and develop a depository for the sale of
21 used instructional materials. The board of trustees of a school
22 district or governing body of an open-enrollment charter school may
23 sell instructional materials [~~textbooks~~], other than electronic
24 instructional materials [~~textbooks~~], through the depository to [~~a~~
25 ~~student or~~] another school district or school at the price
26 determined by applying the depreciation schedule adopted by the
27 board [~~state contract price~~]. Following a sale under this section,

1 ~~the~~ [The district shall send money from the sale of textbooks to the
2 commissioner as required by the commissioner. The] commissioner
3 shall transfer funds in an amount equal to the cost of the
4 instructional materials sold from the instructional materials
5 account of the purchasing district or school to the instructional
6 materials account of the district or school that is selling the
7 instructional materials [~~deposit the money in the state textbook~~
8 ~~fund~~].

9 Sec. 31.106. USE OF LOCAL FUNDS. In addition to any
10 instructional materials [~~textbook~~] selected under this chapter, a
11 school district or open-enrollment charter school may use local
12 funds to purchase any instructional materials [~~textbooks~~].

13 SECTION 19. The heading to Section 31.151, Education Code,
14 is amended to read as follows:

15 Sec. 31.151. DUTIES OF PUBLISHERS [~~AND MANUFACTURERS~~].

16 SECTION 20. Sections 31.151(a), (b), and (d), Education
17 Code, are amended to read as follows:

18 (a) A publisher [~~or manufacturer~~] of instructional
19 materials [~~textbooks~~]:

20 (1) shall furnish any instructional material
21 [~~textbook~~] the publisher [~~or manufacturer~~] offers in this state[7]
22 at a price that does not exceed the lowest price at which the
23 publisher offers that instructional material [~~textbook~~] for
24 adoption or sale to any state, public school, or school district in
25 the United States;

26 (2) shall automatically reduce the price of an
27 instructional material [~~a textbook~~] sold for use in a school

1 district or open-enrollment charter school to the extent that the
2 price is reduced elsewhere in the United States;

3 (3) shall provide any instructional material
4 [~~textbook~~] or ancillary item free of charge in this state to the
5 same extent that the publisher [~~or manufacturer~~] provides the
6 instructional material [~~textbook~~] or ancillary item free of charge
7 to any state, public school, or school district in the United
8 States;

9 (4) shall guarantee that each copy of an instructional
10 material [~~a textbook~~] sold in this state is at least equal in
11 quality to copies of that instructional material [~~textbook~~] sold
12 elsewhere in the United States and is free from factual error;

13 (5) may not become associated or connected with,
14 directly or indirectly, any combination in restraint of trade in
15 instructional materials [~~textbooks~~] or enter into any
16 understanding or combination to control prices or restrict
17 competition in the sale of instructional materials [~~textbooks~~] for
18 use in this state;

19 (6) shall:

20 (A) maintain a depository in this state or
21 arrange with a depository in this state to receive and fill orders
22 for instructional materials [~~textbooks~~], other than on-line
23 instructional materials [~~textbooks~~] or on-line instructional
24 material [~~textbook~~] components, consistent with State Board of
25 Education rules; or

26 (B) deliver instructional materials [~~textbooks~~]
27 to a school district or open-enrollment charter school without a

1 delivery charge to the school district, open-enrollment charter
2 school, or state, if:

3 (i) the publisher [~~or manufacturer~~] does
4 not maintain or arrange with a depository in this state under
5 Paragraph (A) and the publisher's instructional materials [~~or~~
6 ~~manufacturer's textbooks~~] and related products are warehoused or
7 otherwise stored less than 300 miles from a border of this state; or

8 (ii) the instructional materials
9 [~~textbooks~~] are on-line instructional materials [~~textbooks~~] or
10 on-line instructional material [~~textbook~~] components;

11 (7) shall, at the time an order for instructional
12 materials [~~textbooks~~] is acknowledged, provide to school districts
13 or open-enrollment charter schools an accurate shipping date for
14 instructional materials [~~textbooks~~] that are back-ordered;

15 (8) shall guarantee delivery of instructional
16 materials [~~textbooks~~] at least 10 business days before the opening
17 day of school of the year for which the instructional materials
18 [~~textbooks~~] are ordered if the instructional materials [~~textbooks~~]
19 are ordered by a date specified in the sales contract; and

20 (9) shall submit to the State Board of Education an
21 affidavit certifying any instructional material [~~textbook~~] the
22 publisher [~~or manufacturer~~] offers in this state to be free of
23 factual errors at the time the publisher executes the contract
24 required by Section 31.026.

25 (b) The State Board of Education may impose a reasonable
26 administrative penalty against a publisher [~~or manufacturer~~] who
27 knowingly violates Subsection (a). The board shall provide for a

1 hearing to be held to determine whether a penalty is to be imposed
2 and, if so, the amount of the penalty. The board shall base the
3 amount of the penalty on:

- 4 (1) the seriousness of the violation;
- 5 (2) any history of a previous violation;
- 6 (3) the amount necessary to deter a future violation;
- 7 (4) any effort to correct the violation; and
- 8 (5) any other matter justice requires.

9 (d) A penalty collected under this section shall be
10 deposited to the credit of the state instructional materials
11 [~~textbook~~] fund.

12 SECTION 21. The heading to Section 31.152, Education Code,
13 is amended to read as follows:

14 Sec. 31.152. ACCEPTING REBATE ON INSTRUCTIONAL MATERIALS
15 [~~TEXTBOOKS~~].

16 SECTION 22. Sections 31.152(a) and (b), Education Code, are
17 amended to read as follows:

18 (a) A school trustee, administrator, or teacher commits an
19 offense if that person receives any commission or rebate on any
20 instructional materials [~~textbooks~~] used in the schools with which
21 the person is associated as a trustee, administrator, or teacher.

22 (b) A school trustee, administrator, or teacher commits an
23 offense if the person accepts a gift, favor, or service that:

- 24 (1) is given to the person or the person's school;
- 25 (2) might reasonably tend to influence a trustee,
26 administrator, or teacher in the selection of instructional
27 materials [~~a textbook~~]; and

1 (3) could not be lawfully purchased with funds from
2 the state instructional materials [~~textbook~~] fund.

3 SECTION 23. The heading to Section 31.153, Education Code,
4 is amended to read as follows:

5 Sec. 31.153. VIOLATION OF FREE INSTRUCTIONAL MATERIALS
6 [~~TEXTBOOK~~] LAW.

7 SECTION 24. Section 31.153(a), Education Code, is amended
8 to read as follows:

9 (a) A person commits an offense if the person knowingly
10 violates any law providing for the purchase or distribution of free
11 instructional materials [~~textbooks~~] for the public schools.

12 SECTION 25. Subchapter E, Chapter 31, Education Code, is
13 amended to read as follows:

14 SUBCHAPTER E. DISPOSITION OF
15 INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]

16 Sec. 31.201. DISPOSITION OF INSTRUCTIONAL MATERIALS
17 [~~TEXTBOOKS~~]. (a) The commissioner, with the approval of the State
18 Board of Education, may provide for the disposition of:

19 (1) instructional materials [~~textbooks~~], other than
20 electronic instructional materials [~~textbooks~~], that are no longer
21 in acceptable condition to be used for instructional purposes; or

22 (2) discontinued instructional materials [~~textbooks~~],
23 other than electronic instructional materials [~~textbooks~~].

24 (b) The commissioner, as provided by rules adopted by the
25 State Board of Education, shall make available on request copies of
26 discontinued instructional materials [~~textbooks~~], other than
27 electronic instructional materials [~~textbooks~~], for use in

1 libraries maintained in municipal and county jails and facilities
2 of the institutional division of the Texas Department of Criminal
3 Justice and other state agencies.

4 (c) The State Board of Education shall adopt rules under
5 which a school district or open-enrollment charter school may
6 donate discontinued instructional materials [~~textbooks~~], other
7 than electronic instructional materials [~~textbooks~~], to a student,
8 to an adult education program, or to a nonprofit organization.

9 SECTION 26. Section 32.005, Education Code, is amended by
10 adding Subsection (d) to read as follows:

11 (d) "Technological equipment" means hardware, a device, or
12 equipment necessary for:

13 (1) instructional use in the classroom, including to
14 gain access to or enhance the use of electronic instructional
15 materials; or

16 (2) professional use by a classroom teacher.

17 SECTION 27. Section 32.156, Education Code, as added by
18 Chapter 1216, Acts of the 78th Legislature, Regular Session, 2003,
19 is amended to read as follows:

20 Sec. 32.156. ON-LINE INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~].

21 (a) The agency may develop and adopt strategies for making
22 instructional materials [~~textbooks~~] available through the portal
23 or through other means in an electronic format as an alternative or
24 supplement to traditional instructional materials [~~textbooks~~].

25 (b) In developing and adopting strategies under this
26 section, the agency shall seek to achieve a system under which a
27 student may, in addition to [~~a~~] traditional instructional materials

1 ~~[textbook]~~, be provided with secure Internet access to each
2 instructional material ~~[textbook]~~ used by the student.

3 SECTION 28. Section 32.161(b), Education Code, is amended
4 to read as follows:

5 (b) To the extent possible considering other statutory
6 requirements, the commissioner and agency shall encourage the use
7 of instructional materials allotment ~~[textbook]~~ funds under
8 Section 31.0211 and technology allotment funds under Section 32.005
9 ~~[31.021(b)(2)]~~ in a manner that facilitates the development and use
10 of the portal.

11 SECTION 29. (a) The following sections of the Education
12 Code are repealed:

- 13 (1) Section 31.023;
14 (2) Section 31.024; and
15 (3) Section 31.025.

16 (b) Effective September 1, 2009, Section 31.101, Education
17 Code, is repealed.

18 (c) Section 13.04, Chapter 5, Acts of the 79th Legislature,
19 3rd Called Session, 2005, is repealed.

20 SECTION 30. (a) The change in law made by this Act
21 regarding the adoption of instructional materials applies only to
22 the adoption of an instructional material that is submitted to the
23 State Board of Education for adoption under Subchapter B, Chapter
24 31, Education Code, as amended by this Act, on or after September 1,
25 2007. An instructional material submitted to the State Board of
26 Education before that date is governed by the law in effect when the
27 instructional material was submitted, and the former law is

1 continued in effect for that purpose.

2 (b) The change in law made by this Act regarding a contract
3 entered into by the State Board of Education for the purchase of
4 instructional materials applies only to a contract for
5 instructional materials entered into by the State Board of
6 Education on or after September 1, 2008. A contract for the
7 purchase of instructional materials entered into before that date
8 is governed by the law in effect when the contract for instructional
9 materials was entered, and the former law is continued in effect for
10 that purpose.

11 (c) The State Board of Education is responsible for an
12 expense associated with continuing contracts for the purchase of
13 instructional materials entered into by the board before September
14 1, 2009, including:

- 15 (1) subscription services;
16 (2) enrollment growth;
17 (3) consumable materials purchased annually; and
18 (4) replacement for an instructional material that is
19 in disrepair.

20 (d) A school district or open-enrollment charter school is
21 responsible for an expense associated with a continuing contract
22 for the purchase of instructional materials entered into by the
23 State Board of Education on or after September 1, 2009, including
24 expenses described by Subsections (c)(1)-(4) of this section.

25 SECTION 31. Except as otherwise provided by this Act, this
26 Act takes effect September 1, 2007.