

By: Eissler

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, 31.0231, and 31.0232
18 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 31.0212 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 attendance reports submitted under
13 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. (a) For
20 the maximum attendance reported under Section 31.103 in a school
21 year, a school district or open-enrollment charter school is
22 entitled to an annual allotment of \$75 for each student or a greater
23 amount provided by appropriation, to be transferred from the
24 instructional materials fund to the credit of the school district's
25 instructional materials account as provided by Section 31.0212.

26 (b) In addition to the allotment provided by Subsection (a),
27 a school district that contracts with a juvenile justice

1 alternative education program under Section 37.011 is entitled to
2 an allotment from the instructional materials fund in an amount
3 determined by the commissioner. The district and the program may
4 contract for the program to use the allotment to purchase approved
5 instructional materials for students enrolled in the program. The
6 commissioner's determination under this subsection is final and may
7 not be appealed.

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

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

12 Sec. 31.0212. SCHOOL DISTRICT OR CHARTER SCHOOL
13 INSTRUCTIONAL MATERIALS ACCOUNT. (a) The commissioner shall
14 maintain an instructional materials account for each school
15 district or open-enrollment charter school. Each school year, the
16 commissioner shall deposit in a district's or school's account the
17 amount of the instructional materials allotment under Section
18 31.0211 for the district or school.

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

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

27 (d) The commissioner may adopt rules as necessary to

1 implement this section.

2 Sec. 31.022. INSTRUCTIONAL MATERIAL [~~TEXTBOOK~~] REVIEW AND
3 ADOPTION. (a) The State Board of Education shall adopt a review
4 and adoption cycle for instructional materials [~~textbooks~~] for
5 elementary grade levels, including prekindergarten, and secondary
6 grade levels, for each subject in the required curriculum under
7 Section 28.002.

8 (b) The board shall organize the cycle for subjects in the
9 foundation curriculum so that not more than one-sixth of the
10 instructional materials [~~textbooks~~] for subjects in the foundation
11 curriculum are reviewed each year. The board shall adopt rules to
12 provide for a full and complete investigation of instructional
13 materials [~~textbooks~~] for each subject in the foundation curriculum
14 at least every six years. The adoption of instructional materials
15 [~~textbooks~~] for a subject in the foundation curriculum may be
16 extended beyond the six-year period only if the content of
17 instructional materials [~~textbooks~~] for a subject is sufficiently
18 current.

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

23 (d) At least 24 months before the beginning of the school
24 year for which instructional materials [~~textbooks~~] for a particular
25 subject and grade level will be purchased under the review and
26 adoption cycle adopted by the board, the board shall publish notice
27 of the review and adoption cycle for those instructional materials

1 [~~textbooks~~].

2 (e) In organizing the cycle for review and adoption of
3 instructional materials, the board shall review and consider
4 expected average costs of the instructional materials that will be
5 adopted and the amount of the instructional materials allotment to
6 ensure that the amount of the instructional materials that will be
7 adopted over a two-year period may be purchased within the amount of
8 the instructional material allotment for that same period.

9 (f) In addition to organizing a review and adoption cycle,
10 the board by rule shall allow an instructional material to be
11 submitted, reviewed, and adopted at a time when the subject or grade
12 level is not scheduled for review and adoption in the cycle, at an
13 interval of at least once every two years, or at another time in the
14 discretion of the board to respond to needs that may arise, in
15 conformance with the procedures for adoption of other state-adopted
16 instructional materials. The board shall place each instructional
17 material submitted under this subsection and adopted on the
18 state-adopted instructional materials list under Section 31.0231.

19 Sec. 31.0231. STATE-ADOPTED INSTRUCTIONAL MATERIALS. (a)
20 For each subject and grade level, the State Board of Education shall
21 review submitted instructional materials for factual errors. The
22 board shall adopt all instructional materials that the board
23 determines are free from factual errors and shall place the
24 materials on the state-adopted instructional materials list.

25 (b) For each state-adopted instructional material, the
26 board must determine the alignment of the instructional material
27 with the essential knowledge and skills for the subject area and

1 grade level. The board must identify:

2 (1) the elements of the essential knowledge and skills
3 for the subject and grade level covered by the instructional
4 material; and

5 (2) the degree to which the instructional material
6 covers each element of the essential knowledge and skills for the
7 subject and grade level.

8 Sec. 31.0232. PUBLICATION OF STATE-ADOPTED INSTRUCTIONAL
9 MATERIALS LIST. Not later than December 1 of the year preceding the
10 school year for which the instructional materials for a particular
11 subject and grade level will be purchased under the cycle adopted by
12 the board under Section 31.022, the board shall provide the list of
13 state-adopted instructional materials to each school district and
14 open-enrollment charter school.

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

17 [~~(1)~~] for the purchase or licensing of each
18 state-adopted instructional material. [~~adopted textbook other than~~
19 ~~an electronic textbook; and~~

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

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

27 (c) As applicable, a contract must provide for the purchase

1 or licensing of instructional materials [~~a textbook~~] at a specific
2 price, which may not exceed the lowest price paid by any other state
3 or any school or school district. The price must be fixed for the
4 term of the contract.

5 Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; SAMPLE
6 COPIES. (a) A publisher shall provide each school district and
7 open-enrollment charter school with information that fully
8 describes each of the publisher's state-adopted instructional
9 materials [~~adopted textbooks~~]. On request of a school district, a
10 publisher shall provide a sample copy of a state-adopted
11 instructional material [~~an adopted textbook~~].

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

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

16 (a) The State Board of Education may purchase special
17 instructional materials [~~textbooks~~] for the education of blind and
18 visually impaired students in public schools. In addition, for a
19 teacher who is blind or visually impaired, the board shall provide a
20 teacher's edition in Braille or large type, as requested by the
21 teacher, for each instructional material [~~textbook~~] the teacher
22 uses in the instruction of students. The teacher edition must be
23 available at the same time the student instructional materials
24 [~~textbooks~~] become available.

25 (b) The publisher of an adopted instructional material
26 [~~textbook~~] shall provide the agency with computerized [~~textbook~~]
27 files for the production of Braille instructional materials

1 ~~[textbooks]~~ or other versions of instructional materials
2 ~~[textbooks]~~ to be used by students with disabilities, on request of
3 the State Board of Education. A publisher shall arrange the
4 computerized ~~[textbook]~~ files in one of several optional formats
5 specified by the State Board of Education.

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

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

14 (d) In this section:

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

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

23 Sec. 31.029. BILINGUAL INSTRUCTIONAL MATERIALS
24 ~~[TEXTBOOKS]~~. The board shall adopt instructional materials
25 ~~[purchase or otherwise acquire textbooks]~~ for use in bilingual
26 education classes.

27 Sec. 31.030. USED INSTRUCTIONAL MATERIALS ~~[TEXTBOOKS]~~. The

1 State Board of Education shall adopt rules to ensure that used
2 instructional materials [~~textbooks~~] sold to school districts and
3 open-enrollment charter schools are not sample copies that contain
4 factual errors. The rules may provide for the imposition of an
5 administrative penalty in accordance with Section 31.151 against a
6 seller of used instructional materials [~~textbooks~~] who knowingly
7 violates this section.

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

10 (b) From the amount set aside by the State Board of
11 Education under Section 31.021(c) or credited to the district's
12 instructional materials account under Section 31.0212, the school
13 district that a student entitled to free textbooks under the pilot
14 project established by Section 54.2161 attends shall pay the costs
15 of each textbook the student requires for a course described by
16 Section 54.2161(b)(2).

17 SECTION 17. Subchapter C, Chapter 31, Education Code, is
18 amended by adding Sections 31.1011 and 31.1012 to read as follows:

19 Sec. 31.1011. SELECTION AND PURCHASE OF INSTRUCTIONAL
20 MATERIALS BY SCHOOL DISTRICTS AND CHARTER SCHOOLS. (a) Each year,
21 during a period established by the State Board of Education, the
22 board of trustees of each school district and the governing body of
23 each open-enrollment charter school shall notify the State Board of
24 Education of the instructional materials selected by the board of
25 trustees or governing body for the following school year from among
26 the state-adopted instructional materials.

27 (b) A school district may select to use more than one

1 state-adopted instructional material for each subject.

2 Sec. 31.1012. CERTIFICATION OF PROVISION OF INSTRUCTIONAL
3 MATERIALS. Each school district or open-enrollment charter school
4 shall annually certify to the agency that, for each subject in the
5 foundation curriculum and each grade level, the district or school
6 provides each student with one or more instructional materials that
7 in combination are aligned with the essential knowledge and skills
8 adopted by the State Board of Education for that subject and grade
9 level.

10 SECTION 18. Section 31.102, Education Code, is amended to
11 read as follows:

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 SECTION 19. The heading to Section 31.103, Education Code,
26 is amended to read as follows:

27 Sec. 31.103. INSTRUCTIONAL MATERIAL [~~TEXTBOOK~~]

1 REQUISITIONS.

2 SECTION 20. Sections 31.103(b) and (c), Education Code, are
3 amended to read as follows:

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

25 (c) In making a requisition under this section, a school
26 district or open-enrollment charter school may requisition
27 instructional materials [~~textbooks on the conforming or~~

1 ~~nonconforming list~~] for grades above the grade level in which a
2 student is enrolled, except that the total quantity of
3 instructional materials [~~textbooks~~] requisitioned under this
4 section may not exceed the limit prescribed by Subsection (b).

5 SECTION 21. Sections 31.104 through 31.106, Education Code,
6 are amended to read as follows:

7 Sec. 31.104. DISTRIBUTION AND HANDLING. (a) The board of
8 trustees of a school district or the governing body of an
9 open-enrollment charter school may delegate to an employee the
10 authority to requisition, distribute, and manage the inventory of
11 instructional materials [~~textbooks~~] in a manner consistent with
12 this chapter and rules adopted under this chapter.

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

16 (1) the instructional materials [~~textbook~~]
17 depository; or

18 (2) the [~~textbook~~] publisher of the instructional
19 materials [~~or manufacturer~~] if the [~~textbook~~] publisher [~~or~~
20 ~~manufacturer~~] does not have a designated instructional materials
21 [~~textbook~~] depository in this state under Section 31.151(a)(6)(B).

22 (c) Each instructional material [~~textbook~~] must state that
23 the instructional material [~~textbook~~] is the property of or is
24 licensed to this state, as appropriate. Each instructional material
25 [~~textbook~~], other than an electronic instructional material
26 [~~textbook~~], must be covered by the student under the direction of
27 the teacher. A student must return all instructional materials

1 [~~textbooks~~] to the teacher at the end of the school year or when the
2 student withdraws from school.

3 (d) Each student, or the student's parent or guardian, is
4 responsible for each instructional material [~~textbook~~] not
5 returned by the student. A student who fails to return all
6 instructional materials [~~textbooks~~] forfeits the right to free
7 instructional materials [~~textbooks~~] until each instructional
8 material [~~textbook~~] previously issued but not returned is paid for
9 by the student, parent, or guardian. As provided by policy of the
10 board of trustees or governing body, a school district or
11 open-enrollment charter school may waive or reduce the payment
12 requirement if the student is from a low-income family. The
13 district or school shall allow the student to use instructional
14 materials [~~textbooks~~] at school during each school day. If an
15 instructional material [~~a textbook~~] is not returned or paid for,
16 the district or school may withhold the student's records. A
17 district or school may not, under this subsection, prevent a
18 student from graduating, participating in a graduation ceremony, or
19 receiving a diploma.

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

24 Sec. 31.105. SALE OF INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~].
25 The board of trustees of a school district or governing body of an
26 open-enrollment charter school may sell instructional materials
27 [~~textbooks~~], other than electronic instructional materials

1 ~~[textbooks]~~, to a student or another school at the state contract
2 price. The district or school shall send money from the sale of
3 instructional materials ~~[textbooks]~~ to the commissioner as
4 required by the commissioner. The commissioner shall deposit the
5 money in the state instructional materials ~~[textbook]~~ fund to the
6 credit of the district's or school's instructional materials
7 account.

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

12 SECTION 22. The heading to Section 31.151, Education Code,
13 is amended to read as follows:

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

15 SECTION 23. Sections 31.151(a), (b), and (d), Education
16 Code, are amended to read as follows:

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

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

25 (2) shall automatically reduce the price of an
26 instructional material ~~[a textbook]~~ sold for use in a school
27 district or open-enrollment charter school to the extent that the

1 price is reduced elsewhere in the United States;

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

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

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

18 (6) shall:

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

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

1 school, or state, if:

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

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

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

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

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

24 (b) The State Board of Education may impose a reasonable
25 administrative penalty against a publisher [~~or manufacturer~~] who
26 knowingly violates Subsection (a). The board shall provide for a
27 hearing to be held to determine whether a penalty is to be imposed

1 and, if so, the amount of the penalty. The board shall base the
2 amount of the penalty on:

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

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

11 SECTION 24. The heading to Section 31.152, Education Code,
12 is amended to read as follows:

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

15 SECTION 25. Sections 31.152(a) and (b), Education Code, are
16 amended to read as follows:

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

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

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

27 (3) could not be lawfully purchased with funds from

1 the state instructional materials [~~textbook~~] fund.

2 SECTION 26. The heading to Section 31.153, Education Code,
3 is amended to read as follows:

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

6 SECTION 27. Section 31.153(a), Education Code, is amended
7 to read as follows:

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

11 SECTION 28. Subchapter E, Chapter 31, Education Code, is
12 amended to read as follows:

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

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

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

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

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

1 of the institutional division of the Texas Department of Criminal
2 Justice and other state agencies.

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

8 SECTION 29. Section 32.005, Education Code, is amended by
9 adding Subsection (d) to read as follows:

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

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

15 (2) professional use by a classroom teacher.

16 SECTION 30. Section 32.156, Education Code, as added by
17 Chapter 1216, Acts of the 78th Legislature, Regular Session, 2003,
18 is amended to read as follows:

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

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

24 (b) In developing and adopting strategies under this
25 section, the agency shall seek to achieve a system under which a
26 student may, in addition to [~~a~~] traditional instructional materials
27 [~~textbook~~], be provided with secure Internet access to each

1 instructional material [~~textbook~~] used by the student.

2 SECTION 31. Section 32.161(b), Education Code, is amended
3 to read as follows:

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

10 SECTION 32. The following sections of the Education Code
11 are repealed:

- 12 (1) Section 31.023;
- 13 (2) Section 31.024;
- 14 (3) Section 31.025;
- 15 (4) Section 31.101; and
- 16 (5) Section 31.1031.

17 SECTION 33. This Act takes effect September 1, 2007.