

AN ACT

relating to open-source instructional material for public schools.

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

SECTION 1. Section 31.002(1-a), Education Code, is amended to read as follows:

(1-a) "Open-source instructional material" means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that allows for free use, reuse, modification, and sharing with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge.

~~[electronic instructional material that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional material.]~~

The term includes state-developed open-source instructional material purchased under Subchapter B-1.

SECTION 2. Section 31.071(c), Education Code, is amended to read as follows:

(c) Except as provided by Section 31.0711, a state-developed ~~[State-developed]~~ open-source instructional material must be irrevocably owned by ~~[or licensed to]~~ the state

1 ~~[for use in the applicable subject or grade level]~~. The state must
2 have unlimited authority to modify, delete, combine, or add content
3 to the instructional material after purchase.

4 SECTION 3. Subchapter B-1, Chapter 31, Education Code, is
5 amended by adding Section 31.0711 to read as follows:

6 Sec. 31.0711. CONTENT NOT OWNED BY STATE. Instructional
7 material purchased under this subchapter may include content not
8 owned by the state and for which preexisting rights may exist if the
9 content:

- 10 (1) is in the public domain;
11 (2) may be used under a limitation or exception to
12 copyright law, including a limitation under Section 107, Copyright
13 Act of 1976 (17 U.S.C. Section 107); or
14 (3) is licensed to the state under a license that:
15 (A) grants the state unlimited authority to
16 modify, delete, combine, or add content;
17 (B) permits the free use and repurposing of the
18 material by any person or entity; and
19 (C) is for a term of use acceptable to the
20 commissioner to ensure a useful life of the material.

21 SECTION 4. Section 31.075, Education Code, is amended by
22 amending Subsections (b) and (c) and adding Subsections (d), (e),
23 (f), (g), and (h) to read as follows:

24 (b) To encourage the use of instructional material
25 purchased by the state under this subchapter by school districts
26 and open-enrollment charter schools, the [The] commissioner shall
27 provide a license for the instructional material that allows for

1 the free use, reuse, modification, or sharing of the material by any
2 person or entity [~~to each public school in the state, including a~~
3 ~~school district, an open-enrollment charter school, and a state or~~
4 ~~local agency educating students in any grade from prekindergarten~~
5 ~~through high school, to use and reproduce state-developed~~
6 ~~open-source instructional material~~].

7 (c) The terms of a license provided by the commissioner
8 under this section:

9 (1) shall require that a user who reproduces the
10 instructional material in any manner:

11 (A) except as provided by Subdivision (2)(A),
12 must keep all copyright notices for the material intact;

13 (B) except as provided by Subdivision (2)(A),
14 must attribute the authorship of the material to the agency or
15 another person specified by the commissioner;

16 (C) must indicate if the user has modified the
17 material;

18 (D) may not assert or imply any connection with
19 or sponsorship or endorsement by the agency or this state, unless
20 authorized by the commissioner; and

21 (E) to the extent reasonably practicable, must
22 provide in any product or derivative material a uniform resource
23 identifier or hyperlink through which a person may obtain the
24 material free of charge;

25 (2) must provide that:

26 (A) the commissioner may request that a user
27 remove a copyright notice or attribution from the material and that

1 a user must comply with the request to the extent reasonably
2 practicable; and

3 (B) the rights granted under the license to a
4 user are automatically terminated if the user fails to comply with
5 the terms of the license; and

6 (3) may include any additional terms determined by the
7 commissioner [~~The commissioner may provide a license to use~~
8 ~~state-developed open-source instructional material to an entity~~
9 ~~not listed in Subsection (b). In determining the cost of a license~~
10 ~~under this subsection, the commissioner shall seek, to the extent~~
11 ~~feasible, to recover the costs of developing, revising, and~~
12 ~~distributing state-developed open-source instructional~~
13 ~~materials].~~

14 (d) The commissioner may exempt a license under this section
15 from including one or more of the requirements under Subsection
16 (c)(1).

17 (e) The commissioner shall determine what is considered
18 reasonably practicable for purposes of Subsections (c)(1)(E) and
19 (c)(2)(A).

20 (f) The commissioner may:

21 (1) specify requirements to reinstate a user's rights
22 under a license that has been terminated; and

23 (2) reinstate a user's rights on completion of those
24 requirements.

25 (g) The commissioner may use a license commonly applied to
26 an open education resource in implementing this section.

27 (h) The attorney general shall represent the agency in an

1 action brought under this section and may recover reasonable
2 expenses incurred in obtaining relief, including court costs,
3 reasonable attorney's fees, investigative costs, witness fees, and
4 deposition costs.

5 SECTION 5. Section 31.076(b), Education Code, is amended to
6 read as follows:

7 (b) A decision by the commissioner regarding the purchase,
8 revision, cost, licensing, or distribution of state-developed
9 open-source instructional material is final and may not be
10 appealed.

11 SECTION 6. Section 31.077, Education Code, is repealed.

12 SECTION 7. The commissioner of education may apply the
13 changes in law made by this Act to instructional material purchased
14 by the state under Subchapter B-1, Chapter 31, Education Code,
15 regardless of whether the instructional material was purchased
16 before, on, or after the effective date of this Act.

17 SECTION 8. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1784 passed the Senate on April 26, 2017, by the following vote: Yeas 31, Nays 0; May 26, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2017, House granted request of the Senate; May 28, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 1784 passed the House, with amendments, on May 22, 2017, by the following vote: Yeas 146, Nays 0, one present not voting; May 27, 2017, House granted request of the Senate for appointment of Conference Committee; May 28, 2017, House adopted Conference Committee Report by the following vote: Yeas 144, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor