

## **BILL ANALYSIS**

Senate Research Center

H.B. 900  
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Education  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Restricting Explicit and Adult-Designated Educational Resources Act, or READER Act, provides procedures for rating school library materials to identify content that is sexually relevant or sexually explicit, as well as establishes state standards for school libraries. In doing so, the READER Act provides Texas public school students and their families with increased transparency regarding library materials and increased parental control over the types of content their children may access at school.

H.B. 900 amends current law relating to the regulation of library materials sold to or included in public school libraries.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 3 (Section 35.007, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Requires that this Act be known as the Restricting Explicit and Adult-Designated Educational Resources (READER) Act.

SECTION 2. Amends Section 33.021, Education Code, as follows:

Sec. 33.021. LIBRARY STANDARDS. (a) Defines "sexually explicit material."

(b) Creates this subsection from existing text. Requires the Texas State Library and Archives Commission (TSLAC), in consultation with the State Board of Education (SBOE), to adopt voluntary standards for school library services, other than collection development, that a school district is required to consider in developing, implementing, or expanding library services. Makes nonsubstantive changes.

(c) Requires TSLAC, with approval by majority vote of SBOE, to adopt standards for school library collection development that a school district is required to adhere to in developing or implementing the district's library collection development policies.

(d) Requires that the standards adopted under Subsection (c):

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

(2) include a collection development policy that:

(A) prohibits the possession, acquisition, and purchase of:

(i) harmful material, as defined by Section 43.24 (Sale, Distribution, or Display of Harmful Material to Minor), Penal Code;

(ii) library material rated sexually explicit material by the selling library material vendor; or

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

(B) recognizes that obscene content is not protected by the First Amendment to the United States Constitution;

(C) is required for all library materials available for use or display, including material contained in school libraries, classroom libraries, and online catalogs;

(D) recognizes that parents are the primary decision makers regarding a student's access to library material;

(E) encourages schools to provide library catalog transparency;

(F) recommends schools communicate effectively with parents regarding collection development; and

(G) prohibits the removal of material based solely on the:

(i) ideas contained in the material; or

(ii) personal background of the author or of the material or of characters in the material.

SECTION 3. Amends Subtitle F, Title 2, Education Code, by adding Chapter 35, as follows:

#### CHAPTER 35. REGULATION OF CERTAIN LIBRARY MATERIAL

Sec. 35.001. DEFINITIONS. Defines "library material vendor," "sexually explicit material," and "sexually relevant material."

Sec. 35.002. RATINGS REQUIRED. (a) Prohibits a library material vendor from selling library materials to a school district or open-enrollment charter school unless the vendor has issued appropriate ratings regarding sexually explicit material and sexually relevant material previously sold to a district or school.

(b) Provides that a library material vendor is prohibited from selling library material rated sexually explicit material and is required to issue a recall for all copies of library material sold to a district or school that is rated sexually explicit material and in active use by the district or school.

(c) Requires each library material vendor, not later than April 1, 2024, to develop and submit to the Texas Education Agency (TEA) a list of library material rated as sexually explicit material or sexually relevant material sold by the vendor to a school district or open-enrollment charter school before that date and still in active use by the district or school.

(d) Requires each library material vendor, not later than September 1 of each year, to submit to TEA an updated list of library material rated as sexually explicit material or sexually relevant material sold by the vendor to a school district or open-enrollment charter school during the preceding year and still in active use by the district or school.

(e) Requires TEA to post each list submitted under Subsection (c) or (d) in a conspicuous place on TEA's Internet website as soon as practicable.

Sec. 35.0021. RATING GUIDELINES. (a) Requires a library material vendor, for purposes of determining whether a library material is sexually explicit as required by Section 35.002, to perform a contextual analysis of the material to determine whether the material describes, depicts, or portrays sexual conduct in a way that is patently offensive.

(b) Requires a library material vendor, in performing the contextual analysis of a library material, to consider the following three principal factors with respect to the material:

(1) the explicitness or graphic nature of a description or depiction of sexual conduct contained in the material;

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

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

(c) Requires a vendor, in examining the three factors listed under Subsection (b), to weigh and balance each factor and conclude whether the library material is patently offensive, recognizing that because each instance of a description, depiction, or portrayal of sexual conduct contained in a material may present a unique mix of factors.

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

Sec. 35.003. AGENCY REVIEW. (a) Authorizes TEA to review library material sold by a library material vendor that is not rated or incorrectly rated by the vendor as sexually explicit material, sexually relevant material, or no rating in accordance with Section 35.002(a). Requires TEA, if TEA determines that the library material is required to be rated as sexually explicit material or sexually relevant material or to receive no rating at all under that subsection, to provide written notice to the vendor. Requires that the notice include information regarding the vendor's duty under this section and provide the corrected rating required for the library material.

(b) Requires a library material vendor, not later than the 60th day after the date on which the vendor receives notice regarding library material under Subsection (a), to:

(1) rate the library material according to TEA's corrected rating; and

(2) notify TEA of the action taken under Subdivision (1).

(c) Requires TEA to post and maintain in a conspicuous place on TEA's Internet website a list of library material vendors who fail to comply with Subsection (b).

(d) Prohibits a school district or open-enrollment charter school from purchasing library material from a library material vendor on the list described by Subsection (c).

(e) Authorizes a library material vendor placed on the list described by Subsection (c) to petition TEA for removal from the list. Authorizes TEA to remove a vendor from the list only if TEA is satisfied that the vendor has taken appropriate action under Subsection (b).

Sec. 35.004. **LIABILITY.** Provides that a school district or open-enrollment charter school or a teacher, librarian, or other staff member employed by a district or school is not liable for any claim or damage resulting from a library material vendor's violation of this chapter.

Sec. 35.005. **PARENTAL CONSENT REQUIRED FOR USE OF CERTAIN LIBRARY MATERIALS.** Prohibits a school district or open-enrollment charter school from allowing a student enrolled in the district or school to reserve, check out, or otherwise use outside the school library library material the library material vendor has rated as sexually relevant material under Section 35.002(a) unless the district or school first obtains written consent from the student's parent or person standing in parental relation.

Sec. 35.006. **REVIEW AND REPORTING OF CERTAIN LIBRARY MATERIALS.** (a) Requires each school district and open-enrollment charter school, not later than January 1 of every odd-numbered year, to:

(1) review the content of each library material in the catalog of a district or school library that is rated as sexually relevant material under Section 35.002(a) by the library material vendor;

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

(3) either post in a conspicuous place on the Internet website maintained by the district or school a report or provide physical copies of the report at the central administrative building for the district or school.

(b) Requires that the report required under Subsection (a)(3) include:

(1) the title of each library material reviewed under Subsection (a)(1);

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

(3) the school or campus where the library material is currently located.

Sec. 35.007. **RULES.** Authorizes the commissioner of education to adopt rules as necessary to administer this chapter.

Sec. 35.008. **ASSISTANCE OF AGENCY.** Authorizes TEA to provide assistance to school districts and open-enrollment charter schools in complying with this chapter.

**SECTION 4.** Requires TSLAC, not later than January 1, 2024, to adopt the standards for school library collection development as required under Section 33.021(c), Education Code, as added by this Act.

**SECTION 5.** (a) Requires each library material vendor, as defined by Section 35.001, Education Code, as added by this Act, not later than April 1, 2024, to submit the initial list required under Section 35.002(c), Education Code, as added by this Act.

(b) Requires each library material vendor, as defined by Section 35.001, Education Code, as added by this Act, not later than September 1, 2024, to submit the initial updated list required under Section 35.002(d), Education Code, as added by this Act.

(c) Requires each school district and open-enrollment charter school, not later than January 1, 2025, to conduct the initial content review and submit the initial report required under Section 35.006(a), Education Code, as added by this Act.

SECTION 6. Provides that the changes in law made by this Act to the Education Code apply beginning with the 2023–2024 school year.

SECTION 7. Effective date: upon passage or September 1, 2023.