

BILL ANALYSIS

C.S.H.B. 900
By: Patterson
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Following Governor Greg Abbott's letter to the Texas Association of School Boards directing the Texas Education Agency (TEA) to investigate obscene content in public schools, Representative Patterson requested all independent school districts, on November 16, 2021, to report if their libraries possessed the explicit book *Gender Queer*. Not only was this title present in multiple libraries, but other graphic material was also found. C.S.H.B. 900 seeks to resolve issues relating to library material with graphic content, library standards, and lack of parental control regarding library material by providing for the rating of library material that is sexually relevant or sexually explicit and for a list of such materials to be submitted to TEA and posted to the TEA website. The bill provides for standards for library collection development that, among other things, prohibits the purchase of sexually explicit library material and sets out standards for library material selection and removal. The bill also requires parental consent before a child is allowed to access material rated as sexually relevant and requires districts and schools to review and report the content of certain materials in their library catalog every other year.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 900 amends the Education Code to provide for the regulation of library materials sold to or included in public school libraries with regard to the following:

- adoption of and adherence to library standards for collection development;
- restrictions on library material vendors with respect to sexually relevant material and sexually explicit material;
- the required review and reporting to the Texas Education Agency (TEA) of sexually relevant library materials by a public school district and open-enrollment charter school;
- immunity from liability for a district, charter school, and school personnel;
- required parental consent for access to sexually relevant library materials; and
- review and reporting requirements applicable to districts and charter schools.

Adoption of and Adherence to Library Standards for Collection Development

C.S.H.B. 900 requires the Texas State Library and Archives Commission (TSLAC), with approval by majority vote of the State Board of Education (SBOE), to adopt standards for school

library collection development. A district must adhere to the standards in developing or implementing the district's library collection development policies. The adopted standards must be reviewed and updated annually and must include a collection development policy that, as follows:

- prohibits the possession, acquisition, and purchase of:
 - harmful material;
 - library material rated sexually explicit material by the selling library material vendor; or
 - library material that is pervasively vulgar or educationally unsuitable as referenced in *Pico v. Board of Education*;
- recognizes that obscene content is not protected by the First Amendment to the U.S. Constitution;
- is required for all library materials available for use or display, including material contained in school libraries, classroom libraries, and online catalogs;
- recognizes that parents are the primary decision makers regarding a student's access to library material;
- encourages schools to provide library catalog transparency; and
- recommends schools communicate effectively with parents regarding collection development.

The bill clarifies that the standards adopted by TSLAC for school library services other than collection development are voluntary.

C.S.H.B. 900 incorporates by reference and defines, as applicable, the following terms for purposes of its library standards provisions:

- with respect to its prohibited possession, acquisition, and purchase, "harmful material" is defined by reference to a Penal Code provision regarding the sale, distribution, or display of harmful material to minors, which defines the term as material whose dominant theme taken as a whole:
 - is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors;
 - is utterly without redeeming social value for minors; and
 - appeals to the prurient interest of a minor, in sex, nudity, or excretion; and
- with respect to its prohibited possession, acquisition, and purchase, "sexually explicit material" is defined by the bill as any communication, language, or material, including a written description, illustration, photographic image, video image, or audio file, other than library material directly related to the district's required curriculum, that describes, depicts, or portrays sexual conduct in a way that is patently offensive, with the meanings of "sexual conduct" and "patently offensive" incorporated into the definition by reference to their Penal Code definitions as follows:
 - the sexual conduct described or portrayed is "sexual conduct," as defined by the code for purposes of the code's provisions regarding sexual performance by a child, to mean sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola; and
 - the way the conduct is described or portrayed is "patently offensive," as defined by the code for purposes of its obscenity provisions generally, if it is so offensive on its face as to affront current community standards of decency.

Regulation of Certain Library Material

C.S.H.B. 900 requires an entity that sells library material to a public primary or secondary school in Texas to issue appropriate ratings related to sexually explicit material and sexually relevant material, as defined by the bill, previously sold to a district or school. The bill prohibits such a library material vendor from selling library material rated as sexually explicit material and requires that vendor to issue a recall for all copies of library material that is rated sexually

explicit material sold to and in active use by the district or charter school. Each such vendor must take the following actions with respect to material rated as sexually explicit material or sexually relevant material, as applicable, that were sold by the vendor to, and still in active use by the district or school:

- develop and submit to TEA, not later than September 1, 2023, a list of library material rated as such material sold before that date;
- submit to TEA, not later than September 1 of each year, an updated list of library material rated as such material that were sold during the preceding year; and
- submit the initial list to TEA not later than October 1, 2023.

TEA must post each list submitted by the vendors in a conspicuous place on its website as soon as practicable. The bill defines "sexually relevant material" for purposes of this prohibition as any communication, language, or material, including a written description, illustration, photographic image, video image, or audio file, other than library material directly related to the district's required curriculum, that describes, depicts, or portrays sexual conduct, as that term is defined by the Penal Code for purposes of its provisions regarding sexual performance by a child.

TEA Review

C.S.H.B. 900 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 the bill's provisions. If it determines that the library material is required to be rated as such material or to receive no rating at all, TEA must provide written notice to the vendor, which must include information regarding the vendor's applicable duty and provide the corrected rating required for the library material. Not later than the 60th day after the date on which a vendor receives such notice for library material, the vendor must rate the library material according to TEA's corrected rating and notify TEA of that action.

C.S.H.B. 900 requires TEA to post and maintain in a conspicuous place on its website a list of vendors who fail to comply with the requirement to rate library material after receiving notice from TEA under the bill's provisions. Moreover, the bill provides the following:

- a district or charter school may not purchase library material from a vendor on the list of noncompliant vendors;
- a noncompliant vendor may petition TEA for removal from the list; and
- TEA may remove the vendor from the list only if TEA is satisfied that the vendor has taken the action required under the bill.

Immunity from Liability

C.S.H.B. 900 establishes that a district or charter school or a teacher, librarian, or other staff member employed by a district or charter school is not liable for any claim or damage resulting from a vendor's violation of the bill's provisions regarding restrictions on vendors with respect to sexually relevant material and sexually explicit material.

Parental Consent for Use of Certain Library Materials

C.S.H.B. 900 prohibits a district or charter school from allowing a student enrolled in the district or charter school to reserve, check out, or otherwise use outside the school library any library material the vendor has rated as sexually relevant material unless the district or charter school first obtains written consent from the student's parent or person standing in parental relation.

Review and Reporting of Certain Library Materials

C.S.H.B. 900 requires each district and charter school, not later than August 1 of every even-numbered year, to take the following actions:

- review the content of each library material in the catalog of a district or school library

that is rated as sexually relevant material by the library material vendor;

- 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 in the school library catalog; and
- either post a report in a conspicuous place on the website maintained by the district or charter school or provide physical copies of the report at the central administrative building for the district or school.

The report must include the title of each library material reviewed, the district's or charter school's decision regarding the library material, and the school or campus where the library material is currently located. The bill requires each district and charter school, not later than August 1, 2024, to conduct this initial content review and submit the initial report as required by the bill.

Rules

C.S.H.B. 900 authorizes the commissioner of education to adopt rules as necessary to administer the bill's provisions regarding restrictions on vendors with respect to sexually explicit material and sexually relevant material and the bill's provisions regarding the review and reporting of sexually relevant library material.

Applicability

C.S.H.B. 900 applies beginning with the 2023-2024 school year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 900 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

General Provisions

The introduced provided for the regulation of books sold to or included in public school libraries whereas the substitute provides for the regulation of library materials.

Both the introduced and the substitute define "sexually explicit material" in substantially the same fashion but the substitute revises the shared definition to include as such material a depiction of sexual conduct that is patently offensive and to further specify that an illustration that describes, depicts, or portrays the defined sexual conduct is considered sexually explicit material.

Standards for Collection Development

The substitute changes the mutually shared provision in the introduced relating to the library standards that are adopted by TSLAC and to the related collection development policy. The substitute, as follows:

- specifies that approval of those standards preceding TSLAC adoption, as required by the introduced, is by majority vote of the SBOE;
- changes from at least twice each year, as provided in the introduced, to annually the required frequency of the review and update of the standards;
- requires the policy to prohibit the possession, acquisition, and purchase of harmful material, instead of only its acquisition as provided in the introduced;

- revises the provision in the introduced requiring the collection development policy to permit the exclusion from a school library of materials that are pervasively vulgar or educationally unsuitable to require the collection development policy instead to prohibit the possession, acquisition, and purchase of library material that is pervasively vulgar or educationally unsuitable as referenced in *Pico v. Board of Education*; and
- includes additional criteria for a collection development policy to specify that such a policy, as follows:
 - is required for all library materials available for use or display;
 - recognizes that parents are the primary decision makers regarding a student's access to library material;
 - encourages schools to provide library catalog transparency; and
 - recommends schools communicate effectively with parents regarding collection development.

Ratings; TEA Review

The substitute changes the mutually shared provisions in the introduced relating to the required vendor ratings and TEA's applicable review as follows:

- the substitute, but not the introduced, requires the vendor to issue appropriate ratings to material previously sold to a district or charter school;
- the substitute, but not the introduced, specifies that TEA must post in a conspicuous place on its website each list of rated material submitted by a vendor that, in both the substitute and introduced, must be developed and submitted to TEA;
- the substitute, in a transition provision, requires the initial list to be submitted not later than October 1, 2023, while the introduced, in a transition provision, required the initial list to be submitted not later than September 1, 2023;
- the substitute, but not the introduced, specifies that the requirement for the development and submission of such a list applies to material sold by the vendor that is still in active use by the district or school;
- the substitute provides for TEA review of library material sold by a vendor that is incorrectly rated or not rated and provides for TEA's notice that provides a corrected rating, whereas the introduced provided only for TEA review of a book not already rated by a vendor; and
- the substitute requires the list of noncompliant vendors to be posted and maintained conspicuously on TEA's website, whereas the introduced only required the list to be maintained on the website.

Recall of Material

Both the introduced and the substitute provide for a recall of material rated as sexually explicit material or sexually relevant material but differ as follows:

- the substitute requires a vendor to issue a recall for all copies of prohibited library material sold to a district that is rated sexually explicit material and that is in active use by the district or school, regardless of TEA's subsequent review of the unrated or incorrectly rated material; but
- the introduced required the recall and cessation of all sales only after TEA has reviewed a book that was not rated by a vendor.

Immunity from Liability

While both the introduced and the substitute grant immunity from liability to a school district or charter school for any claim or damage resulting from an applicable vendor's violation of the bill's provisions, the substitute extends such immunity to a teacher, librarian, or other staff member employed by a district or charter school. The introduced provided that only the district and school are not liable and did not explicitly mention those personnel as being immune.

Review and Reporting of Certain Library Materials

The substitute changes provisions mutually shared in the introduced regarding the review and reporting of certain library materials as follows:

- the substitute changes from August 1 of every fifth year, as in the introduced, to August 1 of every even-numbered year the deadline by which a district and charter school must review and report certain library materials;
- the substitute, but not the introduced, requires the district's or charter school's report to include the school or campus where the library material is currently located; and
- the substitute does not include a requirement or its related provisions contained in the introduced for the district or charter school to submit to TEA a report on the district's or school's actions regarding the review and reporting of certain library materials, but the substitute nevertheless requires the district or charter school to either post such a report on its own website or provide physical copies in the central administrative building for the district or school.