By:  Patterson, et al. (Senate Sponsor - Paxton) H.B. No. 900

(In the Senate - Received from the House April 24, 2023; May 2, 2023, read first time and referred to Committee on Education; May 18, 2023, reported favorably by the following vote: Yeas 10, Nays 3; May 18, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Creighton         X

Campbell             X

Bettencourt          X

Birdwell             X

Flores               X

King                 X

LaMantia                 X

Menéndez                 X

Middleton            X

Parker               X

Paxton               X

Springer             X

West                     X

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of library materials sold to or included in public school libraries.

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

SECTION 1.  This Act shall be known as the Restricting Explicit and Adult-Designated Educational Resources (READER) Act.

SECTION 2.  Section 33.021, Education Code, is amended to read as follows:

Sec. 33.021.  LIBRARY STANDARDS. (a) In this section, "sexually explicit material" means 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 curriculum required under Section 28.002(a), that describes, depicts, or portrays sexual conduct, as defined by Section 43.25, Penal Code, in a way that is patently offensive, as defined by Section 43.21, Penal Code.

(b)  The Texas State Library and Archives Commission, in consultation with the State Board of Education, shall adopt voluntary standards for school library services, other than collection development, that a[~~. A~~] school district shall consider [~~the standards~~] in developing, implementing, or expanding library services.

(c)  The Texas State Library and Archives Commission, with approval by majority vote of the State Board of Education, shall adopt standards for school library collection development that a school district shall adhere to in developing or implementing the district's library collection development policies.

(d)  The standards adopted under Subsection (c) must:

(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, 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:

(a)  the author of the material; or

(b)  characters in the material.

SECTION 3.  Subtitle F, Title 2, Education Code, is amended by adding Chapter 35 to read as follows:

CHAPTER 35. REGULATION OF CERTAIN LIBRARY MATERIAL

Sec. 35.001.  DEFINITIONS. In this chapter:

(1)  "Library material vendor" includes any entity that sells library material to a public primary or secondary school in this state.

(2)  "Sexually explicit material" has the meaning assigned by Section 33.021.

(3)  "Sexually relevant material" means 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 curriculum required under Section 28.002(a), that describes, depicts, or portrays sexual conduct, as defined by Section 43.25, Penal Code.

Sec. 35.002.  RATINGS REQUIRED. (a) A library material vendor may not sell 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)  A library material vendor may not sell library material rated sexually explicit material and shall issue a recall for all copies of library material sold to a district or school that is:

(1)  rated sexually explicit material; and

(2)  in active use by the district or school.

(c)  Not later than April 1, 2024, each library material vendor shall develop and submit to the agency 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)  Not later than September 1 of each year, each library material vendor shall submit to the agency 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)  The agency shall post each list submitted under Subsection (c) or (d) in a conspicuous place on the agency's Internet website as soon as practicable.

Sec. 35.0021.  RATING GUIDELINES. (a) For purposes of determining whether a library material is sexually explicit as required by Section 35.002, a library material vendor must 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)  In performing the contextual analysis of a library material, a library material vendor must 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)  In examining the three factors listed under Subsection (b), a vendor must 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)  To determine whether a description, depiction, or portrayal of sexual conduct contained in a material is patently offensive, a library material vendor must 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) The agency may 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). If the agency 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, the agency shall provide written notice to the vendor. The notice must include information regarding the vendor's duty under this section and provide the corrected rating required for the library material.

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

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

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

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

(d)  A school district or open-enrollment charter school may not purchase library material from a library material vendor on the list described by Subsection (c).

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

Sec. 35.004.  LIABILITY. 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. A school district or open-enrollment charter school may not allow 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) Not later than January 1 of every odd-numbered year, each school district and open-enrollment charter school shall:

(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:

(A)  post in a conspicuous place on the Internet website maintained by the district or school a report; or

(B)  provide physical copies of the report at the central administrative building for the district or school.

(b)  The report required under Subsection (a)(3) must 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. The commissioner may adopt rules as necessary to administer this chapter.

Sec. 35.008.  ASSISTANCE OF AGENCY. The agency may provide assistance to school districts and open-enrollment charter schools in complying with this chapter.

SECTION 4.  Not later than January 1, 2024, the Texas State Library and Archives Commission shall 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) Not later than April 1, 2024, each library material vendor, as defined by Section 35.001, Education Code, as added by this Act, shall submit the initial list required under Section 35.002(c), Education Code, as added by this Act.

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

(c)  Not later than January 1, 2025, each school district and open-enrollment charter school shall 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.  The changes in law made by this Act to the Education Code apply beginning with the 2023-2024 school year.

SECTION 7.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

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