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H.B. No. 900

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the regulation of library materials sold to or included  
3 in public school libraries.

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

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

7 SECTION 2. Section [33.021](#), Education Code, is amended to  
8 read as follows:

9 Sec. 33.021. LIBRARY STANDARDS. (a) In this section,  
10 "sexually explicit material" means any communication, language, or  
11 material, including a written description, illustration,  
12 photographic image, video image, or audio file, other than library  
13 material directly related to the curriculum required under Section  
14 [28.002](#)(a), that describes, depicts, or portrays sexual conduct, as  
15 defined by Section [43.25](#), Penal Code, in a way that is patently  
16 offensive, as defined by Section [43.21](#), Penal Code.

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

23 (c) The Texas State Library and Archives Commission, with  
24 approval by majority vote of the State Board of Education, shall

1 adopt standards for school library collection development that a  
2 school district shall adhere to in developing or implementing the  
3 district's library collection development policies.

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

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

7 (2) include a collection development policy that:

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

10 (i) harmful material, as defined by Section  
11 43.24, Penal Code;

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

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

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

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

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

24 (E) encourages schools to provide library  
25 catalog transparency;

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

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

3                    (i) ideas contained in the material; or

4                    (ii) personal background of:

5                    (a) the author of the material; or

6                    (b) characters in the material.

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

9                    CHAPTER 35. REGULATION OF CERTAIN LIBRARY MATERIAL

10                   Sec. 35.001. DEFINITIONS. In this chapter:

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

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

16                   (3) "Sexually relevant material" means any  
17 communication, language, or material, including a written  
18 description, illustration, photographic image, video image, or  
19 audio file, other than library material directly related to the  
20 curriculum required under Section 28.002(a), that describes,  
21 depicts, or portrays sexual conduct, as defined by Section 43.25,  
22 Penal Code.

23                   Sec. 35.002. RATINGS REQUIRED. (a) A library material  
24 vendor may not sell library materials to a school district or  
25 open-enrollment charter school unless the vendor has issued  
26 appropriate ratings regarding sexually explicit material and  
27 sexually relevant material previously sold to a district or school.

1       (b) A library material vendor may not sell library material  
2 rated sexually explicit material and shall issue a recall for all  
3 copies of library material sold to a district or school that is:

4           (1) rated sexually explicit material; and

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

6       (c) Not later than April 1, 2024, each library material  
7 vendor shall develop and submit to the agency a list of library  
8 material rated as sexually explicit material or sexually relevant  
9 material sold by the vendor to a school district or open-enrollment  
10 charter school before that date and still in active use by the  
11 district or school.

12       (d) Not later than September 1 of each year, each library  
13 material vendor shall submit to the agency an updated list of  
14 library material rated as sexually explicit material or sexually  
15 relevant material sold by the vendor to a school district or  
16 open-enrollment charter school during the preceding year and still  
17 in active use by the district or school.

18       (e) The agency shall post each list submitted under  
19 Subsection (c) or (d) in a conspicuous place on the agency's  
20 Internet website as soon as practicable.

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

27       (b) In performing the contextual analysis of a library

1 material, a library material vendor must consider the following  
2 three principal factors with respect to the material:

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

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

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

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

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

26 Sec. 35.003. AGENCY REVIEW. (a) The agency may review  
27 library material sold by a library material vendor that is not rated

1 or incorrectly rated by the vendor as sexually explicit material,  
2 sexually relevant material, or no rating in accordance with Section  
3 35.002(a). If the agency determines that the library material is  
4 required to be rated as sexually explicit material or sexually  
5 relevant material or to receive no rating at all under that  
6 subsection, the agency shall provide written notice to the vendor.  
7 The notice must include information regarding the vendor's duty  
8 under this section and provide the corrected rating required for  
9 the library material.

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

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

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

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

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

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

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

6       Sec. 35.005. PARENTAL CONSENT REQUIRED FOR USE OF CERTAIN  
7 LIBRARY MATERIALS. A school district or open-enrollment charter  
8 school may not allow a student enrolled in the district or school to  
9 reserve, check out, or otherwise use outside the school library  
10 library material the library material vendor has rated as sexually  
11 relevant material under Section 35.002(a) unless the district or  
12 school first obtains written consent from the student's parent or  
13 person standing in parental relation.

14       Sec. 35.006. REVIEW AND REPORTING OF CERTAIN LIBRARY  
15 MATERIALS. (a) Not later than January 1 of every odd-numbered  
16 year, each school district and open-enrollment charter school  
17 shall:

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

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

27               (3) either:

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

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

5           (b) The report required under Subsection (a)(3) must  
6 include:

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

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

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

13           Sec. 35.007. RULES. The commissioner may adopt rules as  
14 necessary to administer this chapter.

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

18           SECTION 4. Not later than January 1, 2024, the Texas State  
19 Library and Archives Commission shall adopt the standards for  
20 school library collection development as required under Section  
21 [33.021\(c\)](#), Education Code, as added by this Act.

22           SECTION 5. (a) Not later than April 1, 2024, each library  
23 material vendor, as defined by Section 35.001, Education Code, as  
24 added by this Act, shall submit the initial list required under  
25 Section 35.002(c), Education Code, as added by this Act.

26           (b) Not later than September 1, 2024, each library material  
27 vendor, as defined by Section 35.001, Education Code, as added by

1 this Act, shall submit the initial updated list required under  
2 Section 35.002(d), Education Code, as added by this Act.

3 (c) Not later than January 1, 2025, each school district and  
4 open-enrollment charter school shall conduct the initial content  
5 review and submit the initial report required under Section  
6 35.006(a), Education Code, as added by this Act.

7 SECTION 6. The changes in law made by this Act to the  
8 Education Code apply beginning with the 2023-2024 school year.

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