

SUBJECT: Prohibiting certain sexually relevant material from public school libraries

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Buckley, Allen, Allison, Cunningham, Dutton, Cody Harris,
Harrison, Hefner, K. King, Longoria

2 nays — Hinojosa, Talarico

1 absent — Schaefer

WITNESSES: For —Cindy Najera, CCDF USA - Travis County; Misty Wamhoff, Families 4 Frisco; Chris Dundas, Dorothy Dundas, House of Accord; Kevin Whitt, Mass Resistance; Tracy Knudsen, Tara Petsch, Moms For Liberty-Texas Gillespie Co; Brandon Burden, North Texas Conservatives; Kelly Neidert, Protect Texas Kids; Christin Bentley, Republican Party of Texas; Cindi Castilla, Texas Eagle Forum; Diana Richards, Texas Education 911; Laura Davis, Texas Parents United PAC; Jonathan Covey, Texas Values; Mary E Castle, Texas Values Action; and 31 individuals. (*Registered, but did not testify*: Melinda Miller, CCDF USA - Travis County; Molly Sprenger, Libertforkids; Jill Glover, Republican Party of Texas; Karen Marshall, State Republican Executive Committee; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Whitney Broughton, Texas Association of School Boards; Mark Terry, Texas Elementary Principals and Supervisors Association; Beverly Roberts, Texas Mass Resistance, Houston Area Pastor Council, Texas Federation of Republican Women; Erin Valdez, Texas Public Policy Foundation; Sheila Hemphill, Texas Right To Know; Dee Carney, Texas School Alliance; Peyton LaBauve, Texas Young Republican Federation; Derrick Wilson, Texas Young Republicans; Tom Nobis, The Republican Party of Texas; Jennifer Allmon, The Texas Catholic Conference of Bishops; Fran Rhodes, True Texas Project; Joshua Medeiros, Young Conservative Federation; and 35 individuals)

Against —Brian Klosterboer, ACLU of Texas; Daniel Dawer, Educators

in Solidarity; Chloe Goodman, Equality Texas; and 16 individuals (*Registered, but did not testify*: Kathryn Kizer, Access Education RRISD; Nicole Kralj, Association of American Publishers; Nora Gustafson, Bluebrows Handmade; Maggie Stern, Children's Defense Fund - Texas; Katya Ehresman, Common Cause Texas; Ricardo Martinez, Equality Texas; Jaime Puente, Every Texan; Michael Siegel, Ground Game Texas; Paige Duggins-Clay, IDRA; Deirdre Walsh, In Good Company Inc.; Chloe Latham Sikes, Intercultural Development Research Association; Mary Cullinane, League of Women Voters of Texas; Lesley Rivas, Mexican American School Boards Association; Amber Mills, MOVE Texas Action; Marilyse Figueroa, Out Youth; Christine Broughal, Mara LaViola, Texans for Special Education Reform; Emily Amps, Texas AFL-CIO; Alejandro Pena, Texas American Federation of Teachers; Amanda Afifi, Texas Association of School Psychologists; Carisa Lopez, Texas Freedom Network; Carrie Griffith, Texas State Teachers Association; Cynthia Van Maanen, Travis County Democratic Party; Samantha Brown, United Way for Greater Austin; Nicole Ma, Quynh-Huong Nguyen, Steven Wu, Woori Juntos; and 79 individuals)

On — Wesley Cunningham, Frisco ISD; Lucy Podmore, Mary Woodard, Texas Library Association (*Registered, but did not testify*: Eric Marin, TEA; Monica Martinez, Texas Education Agency; Gloria Meraz, Texas State Library and Archives Commission; Laura Unnasch)

BACKGROUND: Penal Code sec. 43.21 defines "patently offensive" as something so offensive on its face as to affront current community standards of decency.

Sec. 43.24 defines "harmful material" as material whose dominant theme taken as a whole:

- appeals to the prurient interest of a minor, in sex, nudity, or excretion;
- is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
- is utterly without redeeming social value for minors.

Sec. 43.25 defines “sexual conduct” as 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.

Education Code sec. 33.021 establishes that the Texas State Library and Archives Commission (TSLAC), in consultation with the State Board of Education must adopt standards for school library services that a school district is required to consider in developing, implementing, or expanding library services.

DIGEST:

CSHB 900 would make amendments to the authority of the Texas State Library and Archives Commission, the requirements of school library vendors, and the definitions of what is considered sexually relevant or sexually explicit material. The bill would also create requirements for the Texas Education Agency (TEA) and local school districts regarding their enforcement of these provisions.

Definitions. CSHB 900 would define “sexually explicit material” 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 kindergarten through twelfth grade curriculum, that described, depicted, or portrayed sexual conduct in a way that was patently offensive.

The bill would define “sexually relevant material” 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 kindergarten through twelfth grade curriculum, that described, depicted, or portrayed sexual conduct.

The bill would define a “library material vendor” to include any entity that sold library materials to a public primary or secondary school in Texas.

Library standards. CSHB 900 would amend the Education Code,

requiring the Texas State Library and Archives Commission, in consultation with the State Board of Education, to adopt voluntary standards for school library services, other than collection development, for a school to consider in developing, implementing, or expanding library services.

The bill would require TSLAC, with approval by majority vote of the State Board of Education, to adopt standards for school library collection development that a school district would adhere to in developing or implementing the district's library collection development policies. The standards would be reviewed and updated annually and include a collection development policy that:

- prohibited the possession, acquisition, and purchase of harmful material, library material rated sexually explicit material by the selling library material vendor, or library material that was pervasively vulgar or educationally unsuitable as established in constitutional precedent;
- recognized that obscene content was not protected by the First Amendment;
- was required for all library materials available for use or display, including material contained in school libraries, classroom libraries, and online categories;
- recognized that parents were the primary decision makers regarding a student's access to library material;
- encouraged schools to provide library catalog transparency; and
- recommended schools communicate effectively with parents regarding collection development.

Ratings required. The bill would prohibit a library material vendor from selling library materials to a district or school unless the vendor had issued appropriate ratings regarding sexually explicit material and sexually relevant material previously sold to a district or school. A vendor could not sell library material rated sexually explicit material and would issue a recall for all copies sold to a district or school that was rated sexually explicit and in active use by the district or school.

No later than September 1, 2023, the bill would require each vendor to develop and submit to TEA a list of library material rated sexually explicit or sexually relevant sold by the vendor to a district or school before that date and still in active use by the district or school. No later than September 1 of each year, each vendor would be required to submit to TEA an updated list of such library materials sold during the preceding year and still in active use by a district or school. The bill would require TEA to post each list in a conspicuous place on the agency's website.

TEA review and school/staff liability. The bill would allow TEA to review library material sold by a vendor that was not rated or incorrectly rated by the vendor as sexually explicit material, sexually relevant material, or no rating. TEA would be required to provide written notice to the vendor if the agency determined the library material was required to be rated as sexually explicit or sexually relevant. The notice would include information regarding the vendor's rating duty and provide the corrected rating required for the library material. No later than the 60th day after the date the vendor received notice regarding such material, the vendor would be required to rate the library material according to the TEA-corrected rating and notify TEA of the updated rating.

TEA would be required to post and maintain a list of vendors who failed to update the rating and notify TEA on its website. The bill would prohibit a district or school from purchasing library material from a vendor on the list. A vendor on the list could petition TEA for removal from the list. TEA could remove the vendor from the list only if TEA was satisfied that the vendor had taken appropriate actions to update the rating and notify TEA.

The bill would establish that a district or school or a teacher, librarian, or other staff member of a school or district would not be liable for any claim or damage resulting from a vendor's violation of the bill's provisions.

Review and reporting of library materials. No later than August 1 of every even-numbered year, CSHB 900 would require each district and

charter school to:

- review the content of each library material in the catalog of a district or school library that was rated as sexually relevant material by the vendor;
- determine in accordance with the district's or school's approval, review, and reconsideration of library materials policies whether to retain each reviewed library material in the school library catalog; and
- either conspicuously post a report on the district or school website or provide physical copies of the report at the district's or school's central administrative building.

The bill would require the report to include the title of each relevant reviewed library material, the district's or school's decision regarding the library material, and the school or campus where the library material was located.

Parental consent. The bill would prohibit a district or school from allowing a student to reserve, check out, or otherwise use outside the school library any library material the vendor had rated as sexually relevant material unless the district or school first obtained consent from the student's parent or guardian.

Other provisions. The bill would require each library material vendor to submit the required initial list no later than October 1, 2023. The bill also would require each school district and charter school to conduct the initial content review and submit the required initial report no later than August 1, 2024.

The changes in law made by the bill would apply beginning with the 2023-2024 school year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2023.

**SUPPORTERS
SAY:**

CSHB 900 would make necessary changes to school libraries protect students from inappropriate sexual material. While freedom of speech should be protected, obscenity is not protected by the First Amendment, and obscene materials do not belong in school libraries. Current statutory definitions of harmful and offensive materials fail to create appropriate guidelines for schools and have led to many inappropriate books being left on school library shelves. Many school boards have not been responsive to the wishes of parents to protect their children from sexually inappropriate library materials. By requiring parental consent for students' to check out certain library materials, the bill would improve parental control and consent over what children had access to at school.

The bill would not unduly punish schools as the enforcement impetus would largely be placed on the vendors who supplied the materials, who would in turn have ample recourse to petition a TEA decision. The bill would not discriminate against any particular group since the books eligible to be removed under the bill have been written by people of varied backgrounds and were not selected on that basis.

**CRITICS
SAY:**

CSHB 900 would not adequately define the content in books that would make them eligible for removal and could unintentionally prohibit books that would not normally be considered objectionable. The bill could create impractical bureaucracy for libraries and vendors by giving TEA authority over what constituted appropriate material and adding unnecessary responsibilities for vendors. Libraries that do not currently have the capacity to adequately adhere to every provision created by the bill would likely have to invest in new systems to conform. Decisions about what should constitute a library collection should primarily be made by schools and librarians themselves. Additionally, some could use the bill's requirements in a way that results in discrimination against marginalized communities.

NOTES:

According to the Legislative Budget Board, the cost to the state for the biennium would be \$2,968,661 in general revenue related funds.