

BILL ANALYSIS

Senate Research Center
88R23147 ANG-D

C.S.S.B. 1072
By: Hughes
Education
4/20/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 7, H.B. 1525 (87R) reformed the way that public schools review and adopt curriculum related to human sexuality instruction. The goal of this legislation was to ensure that parents are involved in the curriculum review process and that their rights over a child's access to such curriculum are respected.

Public schools may disregard the parental rights over sex education curriculum protected by H.B. 1525 by having events or commentary on human sexuality and calling such things "extracurricular." S.B. 1072 remedies such situations by requiring a public school to adopt a policy regarding when an employee may discuss human sexuality with a student outside of a class dedicated to human sexuality instruction. Also, the bill requires a public school to adopt a policy on when extracurricular events related to human sexuality may be held.

The bill also authorizes the attorney general or county or district attorney to bring a cause of action against a public school that is violating the provisions of Section 28.004, Education Code, relating to local school health advisory councils and health education.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1072 amends current law relating to local school health advisory councils and instruction regarding human sexuality, sexual orientation, and gender identity provided by public schools.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts Section 12.104(b), Education Code, as amended by Chapters 542 (S.B. 168), 887 (S.B. 1697), 915 (H.B. 3607), 974 (S.B. 2081), and 1046 (S.B. 1365), Acts of the 87th Legislature, Regular Session, 2021, and amends it, as follows:

(b) Provides that an open-enrollment charter school is subject to certain provisions, including a prohibition, restriction, or requirement, as applicable, imposed by Title 2 (Public Education) or a rule adopted under this title, relating to certain actions, including establishing a local school health advisory council in which members are appointed by the governing body of the school and health education instruction complies with Section 28.004 (Local School Health Advisory Council and Health Education Instruction). Makes nonsubstantive changes.

SECTION 2. Amends Section 28.004, Education Code, by amending Subsection (c) and adding Subsections (r), (s), (t), (u), and (v), as follows:

(c) Provides that the local school health advisory council's duties include recommending certain items, including, if approved by the board of trustees of a school district (board), the policies, procedures, and circumstances in which a school district employee is

authorized to discuss matters of human sexuality with students and a campus is authorized to host an extracurricular event related to human sexuality. Makes nonsubstantive changes.

(r) Authorizes the board, using the procedure described by Subsection (e-1), to adopt a policy allowing the local school health advisory council to determine the circumstances in which a school district employee is authorized to discuss matters of human sexuality with students and a campus is authorized to host an extracurricular event related to human sexuality.

(s) Requires the board, if the board adopts a policy under Subsection (r), to notify each parent of a child enrolled in the district of the adoption of the policy before the beginning of each school year and to make the policy available in the same manner as curriculum materials under Subsection (j)(1).

(t) Prohibits a school district employee, except as provided by Subsection (r), from discussing matters of human sexuality with a student in any class or interaction with a student other than a class designed and approved by the board to provide human sexuality instruction. Authorizes a school district employee, if the board adopts a policy under Subsection (r) to allow discussion with students regarding human sexuality, to discuss matters of human sexuality with a student only in accordance with that policy.

(u) Prohibits a campus, except as provided by Subsection (r), from hosting an extracurricular activity related to human sexuality. Authorizes the campus, if the board adopts a policy under Subsection (r) specifying the circumstances in which a campus is authorized to host an extracurricular activity related to human sexuality, to host the extracurricular activity only in accordance with that policy.

(v) Authorizes the attorney general or an appropriate district or county attorney, if the attorney general or district or county attorney believes that a school district has violated or is violating the provisions of this section, to bring a cause of action on behalf of the state to enjoin the district from violating the provisions of this section. Authorizes the action to be brought in a district court in Travis County or a county in which any part of the violation or threatened violation occurred. Authorizes the court to grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

SECTION 3. Amends Subchapter A, Chapter 28, Education Code, by adding Section 28.0043, as follows:

Sec. 28.0043. RESTRICTION ON INSTRUCTION REGARDING SEXUAL ORIENTATION AND GENDER IDENTITY. (a) Prohibits a school district, open-enrollment charter school, or district or charter school employee from providing or allowing a third party to provide instruction, guidance, activities, or programming regarding sexual orientation or gender identity to students enrolled in prekindergarten through 12th grade.

(b) Prohibits this section from being construed to limit:

(1) a student's ability to engage in speech or expressive conduct protected by the First Amendment to the United States Constitution or by Section 8 (Freedom of Speech and Press; Libel), Article I (Bill of Rights), Texas Constitution, that does not result in material disruption to school activities; or

(2) the ability of a person who is authorized by the district to provide physical or mental health-related services to provide the services to a student, subject to any required parental consent.

SECTION 4. Makes application of Section 28.004, Education Code, as amended by this Act, prospective.

SECTION 5. Provides that this Act, to the extent of any conflict, prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. Effective date: upon passage or September 1, 2023.