

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [CS/HB 1539](#)

TITLE: Materials Harmful to Minors

SPONSOR(S): Bankson

COMPANION BILL: [CS/SB 1692](#) (McClain)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Education Administration](#)

13 Y, 4 N, As CS

[PreK-12 Budget](#)

[Education & Employment](#)

SUMMARY

Effect of the Bill:

The bill adds a definition of harmful to minors into the statute governing school district adoption of instructional materials and challenges to such materials. The bill revises the reasons any material used in a classroom, made available in a school or classroom library, or included on a reading list may be challenged, providing that a board may not consider potential literary, artistic, political, or scientific value as a basis for retaining the material. The bill requires the State Board of Education to monitor district compliance with the material challenge and review requirements and notify a district of any noncompliance and the SBE may withhold funds until the school district complies with the requirements.

Fiscal or Economic Impact:

None

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ANALYSIS

EFFECT OF THE BILL:

The bill adds a definition of [harmful to minors](#) into the statute governing school district adoption of instructional materials and challenges to such materials. The definition mirrors that in the criminal code except it does not permit the consideration of the serious literary, artistic, political, or scientific value for minors of the material.

The bill revises the reasons [any material used in a classroom](#), made available in a school or classroom library, or included on a reading list may be challenged. A parent or resident may object to any such material that is harmful to minors, as defined by the bill, or contains content which depicts or describes sexual conduct, unless such material is specifically authorized as part of a health education course, comprehensive health education, or approved through the State Board of Education (SBE) for specific educational purposes. The bill provides such materials must be removed within 5 school days upon receipt of an objection by a parent or resident of the county and must remain unavailable throughout the objection review process. The school board may not consider potential literary, artistic, political, or scientific value as a basis for retaining the material.

The SBE is required to monitor district compliance with objections to material content through regular audits and reporting and notify a district of any noncompliance. Additionally, the SBE may withhold the transfer of state funds, discretionary grant funds, discretionary lottery funds, or any other funds specified by the Legislature until the school district complies with the requirements. The SBE must require a school district found to be noncompliant to submit a corrective action plan within 30 days after receiving a notice of noncompliance. (Section [1](#))

The effective date of the bill is July 1, 2025. (Section [3](#))

STORAGE NAME: h1539a.EAS

DATE: 4/3/2025

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Background

Freedom of speech is guaranteed to citizens in the United States Constitution and the State Constitution.¹ As a foundational principle, this prohibits the government from dictating what people “see or read or speak or hear.”² However, there are limits to the freedom of speech; it is not absolute. Categories of speech that do not enjoy complete protection include defamation, incitement, obscenity, and pornography involving real children.³

Courts have held, as a bedrock principle of the First Amendment, that a government may not prohibit or suppress the expression of an idea simply because an audience finds the idea offensive or disagreeable.⁴ When evaluating what constitutes the free speech rights of adults, the U.S. Supreme Court held, “[W]e have made it perfectly clear that ‘[s]exual expression which is indecent but not obscene is protected by the First Amendment.’”⁵ Stated slightly differently, this means that some forms of pornography are protected under the Constitution, but obscenity is not.

The Miller Test

In 1973, the U.S. Supreme Court developed a three-prong test in *Miller v. California*,⁶ to define obscene speech. According to the Miller test, speech is determined to be obscene if:

- The average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
- The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.⁷

The *Miller* test is incorporated into the definition of what is “harmful to minors” in s. 847.001(7), F.S., and “obscenity” in s. 847.001(12), F.S.

Further, courts have found that the state has a “compelling interest in protecting the physical and psychological well-being of minors’ which ‘extends to shielding minors from the influence of literature that is not obscene by adult standards.’ In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material. No similar tailoring is required when the material is obscene material, which is not protected by the First Amendment.”⁸

Florida Transmission of Material Harmful to Minors

In Florida, it is a crime to transmit materials harmful to minors and the law provides that:

- Any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor commits a third degree felony.⁹
- Any person in any jurisdiction other than this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, to a specific individual known by the defendant to be a minor commits a third degree felony.^{10,11}

¹The United States Constitution states, “Congress shall make no law ... abridging the freedom of speech.” U.S. CONST. amend. I. The State Constitution similarly states “No law shall be passed to restrain or abridge the liberty of speech or of the press.” Fla. Const. art. I, s. 4.

² *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245 (2002).

³ *Id.*

⁴ *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd*, 502 U.S. 105, 118 (1991).

⁵ *Ashcroft*, 245, quoting *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).

⁶ *Miller v. California*, 413 U.S. 15 (1973).

⁷ *Id.* at 24.

⁸ *Simmons v. State*, 944 So. 2d 317 (Fla. 2006). See also *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244-45 (2002).

⁹ Section [847.0138\(2\), F.S.](#)

¹⁰ Section [847.0138\(3\), F.S.](#)

¹¹ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections [775.082](#) and [775.083, F.S.](#)

Current law defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement¹² when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

K-12 Student and Parent Rights

Parents of public school students are required by law to receive accurate and timely information regarding their child’s academic progress and must be informed of ways they can help their child succeed in school.¹³ K-12 students and their parents are afforded numerous statutory rights pertaining to student education, including reproductive health and disease education.¹⁴

Florida law requires district school boards to provide comprehensive health education that among other issues addresses community health, family life (including awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy), personal health, and the prevention and control of disease. One right a parent of a public school student has is to make a written request to the school principal to exempt his or her student from reproductive health and disease instruction, including instruction relating to HIV/AIDS. If such a request is made the student must be exempt from such instruction and may not be penalized.¹⁵

Health education is included in the required instruction to ensure that students meets SBE adopted standards. Course curriculum refers to the lessons and academic content taught in a school or specific course. It may include but is not limited to a course syllabus and standards, instructional materials, or other resources an instructor may use in the class. Standards and instructional materials are subject to specific selection, adoption, and review processes.¹⁶

Among other requirements, each school district is required to adopt and publish on its website the process for a parent to limit his or her student’s access to materials in the school or classroom library.¹⁷

Instructional Materials

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. School districts may purchase instructional materials from a list of state-reviewed and adopted instructional materials or establish their own review and adoption program.

Each district school board is responsible for the content of all instructional materials and any other materials used in the classroom, made available in a school library, or included on a reading list. Each district school board must maintain on its website a current list of instructional materials, purchased by the district, separated by grade level. Florida law establishes that the parent of a public school student has the right to receive effective communication from the school principal about the manner in which instructional materials are used to implement curricular objectives.¹⁸

¹² Section [847.001\(20\), F.S.](#), defines “sexual excitement” as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

¹³ Section [1002.20, F.S.](#)

¹⁴ *Id.*

¹⁵ Section [1003.42\(5\), F.S.](#)

¹⁶ Florida Department of Education, Healthy Schools, *Comprehensive Health Education*, available at: <https://www.fldoe.org/schools/healthy-schools/comprehensive-health-edu.stml> (last visited Apr. 2, 2025).

¹⁷ Section 1006.28(2)(d)4., F.S.

¹⁸ Section [1006.28\(4\)\(a\), F.S.](#)

District school boards are required to adopt a policy for objections by a parent or resident of the county to the use of a specific instructional material.¹⁹ The policy must clearly describe a process, in which the objector has the opportunity to provide specific evidence to the district school board, and provide for resolution. The process must provide the parent or resident the opportunity to proffer evidence to the district school board that:

- An instructional material does not meet the criteria for instructional materials established in law or adopted by the DOE,²⁰ if it was selected for use in a course or otherwise made available to students in the school district but was not subject to the public notice, review, comment, and hearing procedures during the school district adoption process.
- Any material used in a classroom, made available in a school or classroom library, or included in a reading list contains content which:
 - Is pornographic or harmful to minors;
 - Depicts or describes sexual conduct,²¹ unless such material is for a course relating to health education and the instruction in acquired immune deficiency syndrome (AIDS),²² the prevention of child sexual abuse, exploitation, and human trafficking,²³ the awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy for grades 6 through 12,²⁴ or is identified by SBE rule;
 - Is not suited to student needs and their ability to comprehend the material presented; or,
 - Is inappropriate for the grade level and age group for which the material is used.

The policy must allow for a resident of the county who is not a parent or guardian to file one objection per month.²⁵ The DOE is required to publish and regularly update a list of materials that were removed or discontinued, sorted by grade level, as a result of an objection and disseminate the list to school districts for consideration in their selection procedures.²⁶

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	CS/CS/HB 1285	Canady	Burgess	Became law on July 1, 2024.
2023	CS/CS/HB 1069	McClain, Anderson	Yarborough	Became law on July 1, 2023.

¹⁹ Section [1006.28\(2\)\(a\)2., F.S.](#)

²⁰ See s. [1006.31\(2\), F.S.](#), provides, along with additional requirements, instructional materials recommended by a reviewer must be, accurate, objective, balanced, noninflammatory, current, free of pornography and prohibited material, and suited to student needs and their ability to comprehend the material presented. See also s. [1006.40\(3\)\(c\), F.S.](#) requires any instructional materials purchased must be free of pornography or prohibited material, suited to student needs and their ability to comprehend the material presented, and appropriate for the grade level and age group for which the materials are used or made available.

²¹ “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulated that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct”. Section [847.001\(19\), F.S.](#)

²² Section [1003.46, F.S.](#)

²³ Section [1003.42\(2\)\(o\)1.g., F.S.](#)

²⁴ Section [1003.42\(2\)\(o\)3., F.S.](#)

²⁵ Section [1006.28\(2\)\(a\)2., F.S.](#) (flush left provision at the end of the subparagraph).

²⁶ Section [1006.28\(2\), F.S.](#) (flush left provision at the end of the subsection). See Florida Department of Education, 2023-2024 School District Reporting Pursuant to Section 1006.28(2), Florida Statutes, available at <https://www.fldoe.org/file/5574/2324-SDRPS-100628-2.pdf>.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Education Administration Subcommittee	13 Y, 4 N, As CS	4/2/2025	Sleap	Wolff
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none"> • Added a definition of harmful to minors to the statute governing school district adoption of instructional materials and challenges thereto. • Incorporated the new definition of harmful to minors into the authorized bases for challenges to materials made available in schools. • Removed amendments to the criminal code related to materials harmful to minors. 			
PreK-12 Budget Subcommittee				
Education & Employment Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.
