

Stricken language would be deleted from and underlined language would be added to present law.
Act 372 of the Regular Session

State of Arkansas *As Engrossed: S2/15/23 S2/21/23 H3/13/23*
94th General Assembly **A Bill**
Regular Session, 2023

SENATE BILL 81

By: Senators D. Sullivan, *Stone*
By: Representatives Gonzales, *Bentley*

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING LIBRARIES AND
OBSCENE MATERIALS MADE AVAILABLE TO MINORS; TO AMEND
THE LAW CONCERNING THE POSSESSION, SALE,
DISTRIBUTION, OR FURNISHING OF OBSCENE MATERIALS; TO
CREATE THE OFFENSE OF FURNISHING A HARMFUL ITEM TO A
MINOR; TO AMEND THE CRIMINAL CODE IN RELATION TO
OBSCENE MATERIALS LOANED BY A LIBRARY; TO ALLOW A
PARENT OR LEGAL GUARDIAN OF A MINOR TO ACCESS THE
MINOR'S LIBRARY RECORDS; TO PROVIDE FOR A CIVIL CAUSE
OF ACTION AGAINST GOVERNMENTAL ENTITIES THAT POSSESS,
SELL, OR DISTRIBUTE OBSCENE MATERIALS; TO AMEND THE
LAW CONCERNING THE PROCESS FOR CHALLENGING MATERIALS
INCLUDED IN A LIBRARY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING LIBRARIES AND
OBSCENE MATERIALS; TO CREATE THE OFFENSE
OF FURNISHING A HARMFUL ITEM TO A MINOR;
AND TO AMEND THE LAW CONCERNING OBSCENE
MATERIALS LOANED BY A LIBRARY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 5, Chapter 27, Subchapter 2, is amended
to add an additional section to read as follows:

5-27-212. Furnishing a harmful item to a minor – Failure to report.



(a) As used in this section:

(1) "Harmful to minors" means the same as defined in § 5-68-501;

(2) "Internet" means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol (TCP/IP) or any successor protocol to transmit information;

(3) "Internet website" means a location where material placed in a computer server-based file archive is publicly accessible over the internet using hypertext transfer protocol or any successor protocol; and

(4)(A) "Item" means a material or performance that depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as those terms are defined in § 5-68-501.

(B) "Item" includes without limitation:

(i) A book, leaflet, pamphlet, magazine, booklet, picture, drawing, photograph, film, negative, slide, motion picture, figure, object, article, novelty device, recording, transcription, live or recorded telephone message, or other similar item whether tangible or intangible;

(ii) A performance, exhibition, transmission, or dissemination of any of the items listed in subdivision (a)(4)(B)(i) of this section; and

(iii) A live performance or exhibition that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as those terms are defined in § 5-68-501, to the public or an audience of one (1) or more persons.

(b) A person commits furnishing a harmful item to a minor if, knowing the character of the item involved, the person knowingly:

(1) Furnishes, presents, provides, makes available, gives, lends, shows, advertises, or distributes to a minor an item that is harmful to minors; or

(2) Transmits or sends to a person that he or she believes to be a minor by means of electronic mail, personal messaging, or any other direct internet communication an item that is harmful to minors when the person knows or believes at the time of the transmission that a minor in this state will receive the item.

(c)(1) Subdivision (b)(1) of this section does not apply to the

transmission or sending of items over the internet.

(2) Subdivision (b)(2) of this section does not apply to:

(A) Posting material on an internet website, bulletin board, or newsgroup; or

(B) Sending material via a mailing list, listserv, or other method of internet communication in which a message is sent to an internet address and then retransmitted to one (1) or more subscribers, that is not administered by the sender.

(d) Furnishing a harmful item to a minor is a Class A misdemeanor.

SECTION 2. Arkansas Code § 5-68-308(c), concerning defenses to state standards that define and regulate obscenity, is amended to read as follows:

(c) No employee, director, or trustee of a bona fide ~~school~~, museum, ~~or public library~~, acting within the scope of his or her regular employment, is liable to prosecution for a violation of this subchapter for disseminating a writing, film, slide, drawing, or other visual reproduction that is *claimed* to be obscene.

SECTION 3. Arkansas Code § 5-68-405 is amended to read as follows:
5-68-405. Possession, sale, or distribution.

(a) ~~Any person that, with knowledge of its contents,~~ A person that knowingly sends or causes to be sent or brings or causes to be brought into this state for sale or commercial distribution, or in this state prepares, publishes, sells, exhibits, loans at a library, or commercially distributes, or gives away or offers to give away or has in the person's possession with ~~intent~~ the purpose to sell or commercially distribute or to exhibit or to give away, ~~any~~ obscene printed or written matter or material other than mailable matter, or any mailable matter known by the person to have been judicially found to be obscene under this subchapter, or that knowingly informs another of when, where, how, or from whom or by what means any of these things can be purchased or obtained, upon conviction is guilty of a Class D felony.

(b) ~~Any person that, with knowledge of its contents,~~ A person that knowingly has in the person's possession ~~any~~ obscene printed or written matter or material other than mailable matter, or any mailable matter known by that person to have been judicially found to be obscene under this

subchapter, upon conviction is guilty of a Class A misdemeanor.

SECTION 4. Arkansas Code § 6-25-105 is amended to read as follows:

6-25-105. Establishment of guidelines for selection, ~~removal~~ relocation, and retention of materials.

(a) Media centers shall have written policies to establish guidelines for the selection, ~~removal~~ relocation, and retention of physical materials that are available to the public.

(b) The school district shall have a written policy for addressing challenged material that is physically present in the library and available to the public and meets the requirements stated in subsection (c) of this section.

(c) A written policy adopted by a school district under subsection (b) of this section shall provide, at a minimum, the following:

(1) A parent or guardian of a student affected by the material to be challenged or an employee of the school district may challenge the appropriateness of material available in the school district's media center;

(2) The school district shall decide if material being challenged shall remain available throughout the challenge process;

(3) Before a person can file a challenge, the person shall request a conference through the principal's office with a licensed media center employee;

(4) Before a conference under subdivision (c)(3) of this section occurs, the school district shall provide a copy of the following to a person who requests a conference under subdivision (c)(3) of this section:

(A) The written policy adopted by a school district under subsection (b) of this section; and

(B) A form or other method by which a person may request a reconsideration of the appropriateness of the material being challenged;

(5) After the conference requested under subdivision (c)(3) of this section occurs, if the person who requested the conference wants to formally challenge the appropriateness of the material that was the subject of the conference, the person shall complete and submit the request for reconsideration using the form or other method provided under subdivision (c)(4)(B) of this section to challenge the material that was the subject of the conference;

(6)(A) In conducting a review of material being challenged, the principal of the school district shall select a committee of licensed personnel.

(B) The principal or his or her designee shall be a member of the committee and may serve as the chair of the committee established under subdivision (c)(6)(A) of this section.

(C) At least one (1) member of the committee established under subdivision (c)(6)(A) of this section shall be a media specialist.

(D) The committee members who are not the principal or a media specialist shall be licensed personnel with curriculum knowledge appropriate for the material being challenged and be representative of diverse viewpoints;

(7)(A) The committee established under subdivision (c)(6)(A) of this section shall determine if the material being challenged meets the criteria of selection.

(B) Material being challenged:

(i) Shall not be withdrawn solely for the viewpoints expressed within the material; and

(ii) Shall be reviewed in its entirety and shall not have selected portions taken out of context;

(8) The school district shall convene a meeting of the committee established under subdivision (c)(6)(A) of this section after allowing a reasonable time for the committee members to adequately review the material being challenged and the request submitted under subdivision (c)(5) of this section by the person challenging the appropriateness of the material;

(9) The committee established under subdivision (c)(6)(A) of this section shall allow the person who submitted the request under subdivision (c)(5) of this section to present his or her request to the committee;

(10) After hearing from the person who submitted the request under subdivision (c)(5) of this section, the committee established under subdivision (c)(6)(A) of this section shall meet to discuss the material being challenged;

(11)(A) The committee established under subdivision (c)(6)(A) of this section shall vote to determine whether the material being challenged shall be relocated within the media center's collection to an area that is

not accessible to minors under the age of eighteen (18) years.

(B) A member of the committee established under subdivision (c)(6)(A) of this section who votes with the majority under subdivision (c)(11)(A) of this section shall write a summary of the reasons for the majority's decision.

(C) Notice of the committee's decision under subdivision (c)(11)(A) of this section and the summary prepared under subdivision (c)(11)(B) of this section shall be given by hand or by certified mail to the person who submitted the request under subdivision (c)(5) of this section;

(12)(A) If the committee established under subdivision (c)(6)(A) of this section decides not to relocate the material being challenged, the person who submitted the request under subdivision (c)(5) of this section may appeal the committee's decision to the board of directors for the school district by filing a written appeal to the superintendent within five (5) working days of the committee's decision or written receipt of the committee's decision.

(B)(i) If a person appeals the decision of a committee under this subdivision (c)(12), the superintendent shall present the material being challenged, the request submitted by the person under subdivision (c)(5) of this section, the committee's decision under subdivision (c)(11)(A) of this section, and the summary prepared under subdivision (c)(11)(B) of this section to the board of directors within fifteen (15) days of the committee's decision.

(ii) In addition to the information required to be provided under subdivision (c)(12)(B)(i) of this section, the superintendent may also include the administration's recommendation regarding the appeal submitted under this subdivision (c)(12).

(C)(i) The members of the board of directors shall review the information submitted to them under this subdivision (c)(12) and shall make a decision on the appeal within thirty (30) days of receiving the information.

(ii) The decision of a board of directors under subdivision (c)(12)(C)(i) of this section is final; and

(13) A meeting held regarding a challenge or an appeal submitted under a written policy adopted by a school district under subsection (b) of this section shall be a public meeting and the records submitted and

considered at a meeting shall be public records under the Freedom of Information Act of 1967, § 25-19-101 et seq.

SECTION 5. Arkansas Code Title 13, Chapter 2, Subchapter 1, is amended to add an additional section to read as follows:

13-2-106. Establishment of guidelines for selection, relocation, and retention of materials.

(a) Each county or municipal library shall have a written policy to establish guidelines for the selection, relocation, and retention of physical materials that are available to the public.

(b) A county or municipal library shall have a written policy for addressing challenged material that is physically present in the library and available to the public and meets the requirements stated in subsection (c) of this section.

(c) A written policy adopted by a county or municipal library under subsection (b) of this section shall provide, at a minimum, the following:

(1) A person affected by the material to be challenged or an employee of the county or municipal library may challenge the appropriateness of material available in the county or municipal library;

(2) The county or municipal library shall decide if material being challenged shall remain available throughout the challenge process;

(3) Before a person can file a challenge, the person shall request a meeting with the librarian of the county or municipal library;

(4) Before a meeting under subdivision (c)(3) of this section occurs, the county or municipal library shall provide a copy of the following to a person who requests a meeting under subdivision (c)(3) of this section:

(A) The written policy adopted by the county or municipal library under subsection (b) of this section; and

(B) A form or other method by which a person may request a reconsideration of the appropriateness of the material being challenged;

(5) After the meeting requested under subdivision (c)(3) of this section occurs, if the person who requested the meeting wants to formally challenge the appropriateness of the material that was the subject of the meeting, the person shall complete and submit the request for reconsideration using the form or other method provided under subdivision (c)(4)(B) of this section to challenge the material that was the subject of the meeting;

(6)(A) In conducting a review of material being challenged, the librarian of the county or municipal library shall select a committee of library personnel.

(B) The librarian or his or her designee shall be a member of the committee and may serve as the chair of the committee established under subdivision (c)(6)(A) of this section.

(C) The committee members who are not the librarian shall have knowledge appropriate for the material being challenged and be representative of diverse viewpoints;

(7)(A) The committee established under subdivision (c)(6)(A) of this section shall determine if the material being challenged meets the criteria of selection.

(B) Material being challenged:

(i) Shall not be withdrawn solely for the viewpoints expressed within the material; and

(ii) Shall be reviewed in its entirety and shall not have selected portions taken out of context;

(8) The county or municipal library shall convene a meeting of the committee established under subdivision (c)(6)(A) of this section after allowing a reasonable time for the committee members to adequately review the material being challenged and the request submitted under subdivision (c)(5) of this section by the person challenging the appropriateness of the material;

(9) The committee established under subdivision (c)(6)(A) of this section shall allow the person who submitted the request under subdivision (c)(5) of this section to present his or her request to the committee;

(10) After hearing from the person who submitted the request under subdivision (c)(5) of this section, the committee established under subdivision (c)(6)(A) of this section shall meet to discuss the material being challenged;

(11)(A) The committee established under subdivision (c)(6)(A) of this section shall vote to determine whether the material being challenged shall be relocated within the library's collection to an area that is not accessible to minors under the age of eighteen (18) years.

(B) A member of the committee established under

subdivision (c)(6)(A) of this section who votes with the majority under subdivision (c)(11)(A) of this section shall write a summary of the reasons for the majority's decision.

(C) Notice of the committee's decision under subdivision (c)(11)(A) of this section and the summary prepared under subdivision (c)(11)(B) of this section shall be given by hand or by certified mail to the person who submitted the request under subdivision (c)(5) of this section;

(12)(A) If the committee established under subdivision (c)(6)(A) of this section decides not to relocate the material being challenged, the person who submitted the request under subdivision (c)(5) of this section may appeal the committee's decision to the governing body of the county or city by filing a written appeal to the executive head of the governing body of the county or city within five (5) working days of the committee's decision or written receipt of the committee's decision.

(B)(i) If a person appeals the decision of a committee under this subdivision (c)(12), the executive head of the county or city shall present the material being challenged, the request submitted by the person under subdivision (c)(5) of this section, the committee's decision under subdivision (c)(11)(A) of this section, and the summary prepared under subdivision (c)(11)(B) of this section to the governing body of the county or city within fifteen (15) days of the committee's decision.

(ii) In addition to the information required to be provided under subdivision (c)(12)(B)(i) of this section, the executive head of the county or city may also include his or her recommendation regarding the appeal submitted under this subdivision (c)(12).

(C)(i) The members of the governing body of the county or city shall review the information submitted to them under this subdivision (c)(12) and shall make a decision on the appeal within thirty (30) days of receiving the information.

(ii) The decision of the governing body of the county or city under subdivision (c)(12)(C)(i) of this section is final; and

(13) A meeting held regarding a challenge or an appeal submitted under a written policy adopted by a county or city library under subsection (b) of this section shall be a public meeting and the records submitted and considered at a meeting shall be public records under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(d) As used in this section:

(1) "Executive head of the county or city" means:

(A) For a county library, the executive head of the county;

(B) For a city library, the executive head of the city;
and

(C) For a library that is funded by both a county and a city, the executive head of the county or city that provides the majority of the funding for the library; and

(2) "Governing body of the county or city" means:

(A) For a county library, the county;

(B) For a city library, the city; and

(C) For a library that is funded by both a county and a city, the county or city that provides the majority of the funding for the library.

SECTION 6. Arkansas Code § 13-2-704 is amended to read as follows:

13-2-704. Disclosure permitted.

(a) A library may disclose personally identifiable information concerning any patron to:

(1) The patron;

(2) Any person with the informed, written consent of the patron;

(3) A law enforcement agency or civil court, under a search warrant; or

(4) Any person, including without limitation the patron, who has received an automated telephone notification or other electronic communication for overdue materials or reserve materials if the person making the request can verify the telephone number or email address to which the notice was sent.

(b) A library may disclose confidential library records to:

(1) The patron; and

(2) The parent or legal guardian of a patron who is younger than eighteen (18) years of age.

/s/D. Sullivan

APPROVED: 3/30/23