

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: S2/15/23 S2/21/23
2 94th General Assembly **A Bill**
3 Regular Session, 2023

SENATE BILL 81

4
5 By: Senators D. Sullivan, *Stone*
6 By: Representatives Gonzales, *Bentley*
7

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND THE LAW CONCERNING LIBRARIES AND
10 OBSCENE MATERIALS MADE AVAILABLE TO MINORS; TO AMEND
11 THE LAW CONCERNING THE POSSESSION, SALE,
12 DISTRIBUTION, OR FURNISHING OF OBSCENE MATERIALS; TO
13 CREATE THE OFFENSE OF FURNISHING A HARMFUL ITEM TO A
14 MINOR; TO AMEND THE CRIMINAL CODE IN RELATION TO
15 OBSCENE MATERIALS LOANED BY A LIBRARY; TO ALLOW A
16 PARENT OR LEGAL GUARDIAN OF A MINOR TO ACCESS THE
17 MINOR'S LIBRARY RECORDS; TO PROVIDE FOR A CIVIL CAUSE
18 OF ACTION AGAINST GOVERNMENTAL ENTITIES THAT POSSESS,
19 SELL, OR DISTRIBUTE OBSCENE MATERIALS; TO AMEND THE
20 LAW CONCERNING THE PROCESS FOR CHALLENGING MATERIALS
21 INCLUDED IN A LIBRARY; AND FOR OTHER PURPOSES.
22
23

24 **Subtitle**

25 TO AMEND THE LAW CONCERNING LIBRARIES AND
26 OBSCENE MATERIALS; TO CREATE THE OFFENSE
27 OF FURNISHING A HARMFUL ITEM TO A MINOR;
28 AND TO AMEND THE LAW CONCERNING OBSCENE
29 MATERIALS LOANED BY A LIBRARY.
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32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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34 SECTION 1. Arkansas Code Title 5, Chapter 27, Subchapter 2, is amended
35 to add an additional section to read as follows:

36 5-27-212. Furnishing a harmful item to a minor – Failure to report.



1 (a) As used in this section:

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

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

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

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

14 (B) "Item" includes without limitation:

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

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

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

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

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

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

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

1 transmission or sending of items over the internet.

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

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

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

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

10
11 SECTION 2. Arkansas Code § 5-68-308(c), concerning defenses to state
12 standards that define and regulate obscenity, is amended to read as follows:

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

18
19 SECTION 3. Arkansas Code § 5-68-405 is amended to read as follows:
20 5-68-405. Possession, sale, or distribution.

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

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

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

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

4 6-25-105. Establishment of guidelines for selection, removal, and
5 retention of materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (B) Material being challenged:

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

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

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

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

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

34 (11)(A) The committee established under subdivision (c)(6)(A) of
35 this section shall vote to determine whether the material being challenged
36 shall be removed from the media center's collection.

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

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

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

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

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

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

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

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

1 Information Act of 1967, § 25-19-101 et seq.

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

5 13-2-106. Establishment of guidelines for selection, removal, and
6 retention of materials.

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

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

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

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

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

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

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

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

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

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

36 (6)(A) In conducting a review of material being challenged, the

1 librarian of the county or municipal library shall select a committee of
2 library personnel.

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

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

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

12 (B) Material being challenged:

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

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

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

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

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

31 (11)(A) The committee established under subdivision (c)(6)(A) of
32 this section shall vote to determine whether the material being challenged
33 shall be removed from the library's collection.

34 (B) A member of the committee established under
35 subdivision (c)(6)(A) of this section who votes with the majority under
36 subdivision (c)(11)(A) of this section shall write a summary of the reasons

1 for the majority's decision.

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

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

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

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

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

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

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

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

1 13-2-704. Disclosure permitted.

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

4 (1) The patron;

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

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

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

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

14 (1) The patron; and

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

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18 /s/D. Sullivan

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