By Senator Mayfield

A bill to be entitled
An act relating to instructional materials; amending s. 847.001, F.S.; revising definitions; amending s. 847.012, F.S.; prohibiting a public school employee or volunteer from providing certain materials to minors; revising the requirements for a material to be considered harmful to minors; amending s. 1003.42, F.S.; requiring a school principal to notify certain parents of the inclusion of sex education instructional materials in a course; requiring a parent to provide written approval for his or her child to be included in portions of the course containing such instructional materials; prohibiting penalization of students exempt from such portions of the course; amending s. 1006.28, F.S.; revising and providing definitions; requiring the chair of each school district to annually provide a certain certification to the Department of Education; requiring district school boards to make certain information relating to instructional materials available to the public; revising the requirements for a school district policy relating to an objection to the use of a specified instructional material; requiring a school district to evaluate certain materials by a specified date and remove materials meeting certain criteria; providing that certain persons who purchase certain prohibited materials commit a felony of the third degree; providing criminal penalties; revising the district school board
process for contesting the adoption of specific
instructional materials; providing school district
notification requirements; providing requirements for
hearing officers; providing that certain persons may
attend specified hearings but may not participate;
prohibiting an attorney for the school district from
designing or establishing the rules of operations for
certain hearings; authorizing a petitioner to appeal a
school board decision to the State Board of Education;
authorizing a petitioner to appeal a state board
decision to the circuit court; authorizing the
petitioner to recover reasonable attorney fees and
costs; revising district school board duties relating
to the use of supplemental instructional materials;
requiring the district school board to post certain
information on its website; requiring the district
school superintendent to provide an annual
certification relating to instructional materials;
amending s. 1006.283, F.S.; revising the requirements
for the district school board instructional materials
review process; providing requirements for certain
hearings and public meetings; requiring instructional
materials to comply with department contract
provisions; amending s. 1006.31, F.S.; revising duties
of the department and school district instructional
materials reviewers; requiring instructional materials
to comply with certain requirements; amending s.
1006.34, F.S.; conforming provisions to changes made
by the act; amending s. 1006.40, F.S.; encouraging
school districts to purchase certain instructional materials and literature; revising the requirements for materials purchased using the instructional materials allocation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (3) and (6) of section 847.001, Florida Statutes, are amended to read:

847.001 Definitions.—As used in this chapter, the term:

(3) “Child pornography” means any image or text depicting a minor engaged in sexual conduct.

(6) “Harmful to minors” means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

(a) Predominantly appeals to a prurient, shameful, or morbid interest;

(b) 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

(c) Depicts an image or text that meets the definition of “deviate sexual intercourse” under subsection (5) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

The term “harmful to minors” does not include materials used in a formal, scheduled sex education course. A mother’s breastfeeding of her baby is not under any circumstance “harmful
to minors.”

Section 2. Subsections (3) and (5) of section 847.012, Florida Statutes, are amended, and subsection (6) of that section is republished, to read:

847.012 Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty.—

(3) A person, including a public school employee or volunteer, may not knowingly sell, rent, or loan for monetary consideration to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in s. 847.001, explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and that is harmful to minors.

(5) An adult may not knowingly distribute to a minor on school property, or post on school property, any material described in subsection (3). As used in this subsection, the term “school property” means the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic. This subsection does not apply to the distribution or posting of school-approved instructional materials that by design serve as a major tool for assisting in the instruction of a sex education
subject or course by school officers, instructional personnel, administrative personnel, school volunteers, educational support employees, or managers as those terms are defined in s. 1012.01.

(6) Any person violating any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Subsection (3) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(3)(a) A school principal must notify each parent of a student enrolled in a course that will include sex education instructional materials of the content and the nature of such materials at least 10 instructional days before such materials are to be used. A parent must provide written approval for his or her child to be included in the portions of the course that include such instructional materials. A student so exempted may not be penalized by reason of that exemption.

(b) Any student whose parent makes written request to the school principal shall be exempted from the teaching of reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment. A student so exempted may not be penalized by reason of that exemption. Course descriptions for comprehensive health education shall not interfere with the local determination of appropriate curriculum which reflects local values and concerns.

Section 4. Subsections (1) and (2) and paragraph (a) of subsection (3) of section 1006.28, Florida Statutes, are amended to read:

1006.28 Duties of district school board, district school
superintendent; and school principal regarding K-12 instructional materials.—

(1) DEFINITIONS.—

(a) As used in this section, the term:

1. “Adequate instructional materials” means a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core subject areas of mathematics, language arts, social studies, science, reading, and literature.

2. “Instructional materials” means systematically arranged content in text, digital, braille, and large print or audio format which may be used within the state curriculum framework for courses of study by public school students. The term includes textbooks, workbooks, worksheets, handouts, computer software, online and Internet courses, CDs or DVDs, all materials used in the classroom, including supplemental materials and materials available to students in school libraries or media centers, and multiple forms of communication and electronic media. Instructional materials must be designed for student use and may contain or be accompanied by teaching and study guides has the same meaning as in s. 1006.29(2).

(b) As used in this section, the term “hearing officer” means a general magistrate, a special magistrate, or a hearing officer who is employed by the circuit court of the county or by a state agency.
As used in this section and s. 1006.283, the term “resident” means a person who has maintained his or her residence in this state for the preceding year, has purchased a home that is occupied by him or her as his or her residence, or has established a domicile in this state pursuant to s. 222.17. As used in this section and ss. 1006.283, 1006.32, 1006.35, 1006.37, 1006.38, 1006.40, and 1006.42, the term “purchase” includes purchase, lease, license, and acquire.

(2) DISTRICT SCHOOL BOARD.—The district school board has the constitutional duty and responsibility to select and provide the highest quality adequate instructional materials for all students. Annually, by January 1, the chair of each district school board shall certify in writing to the Department of Education that all school district instructional materials comply with all state laws relating to instructional materials in accordance with the requirements of this part. The district school board also has the following specific duties and responsibilities:

(a) Courses of study; adoption.—Adopt courses of study, including instructional materials, for use in the schools of the district.

1. Each district school board is responsible for the quality and content of all instructional materials and any other materials used in a classroom, made available in a school library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program under s. 1006.283, or otherwise purchased or made available. Each district school board shall maintain on its...
website a current list of instructional materials, by grade level, purchased by the district and make such materials available to the public. Such list must contain, at a minimum, the title, author, and, if appropriate, ISBN number for all instructional materials.

2. Each district school board must adopt a policy regarding an objection by a parent or a resident of the county to the use of a specific instructional material, which clearly describes a process to handle each objection all objections and provide for resolution. The process must provide the parent or resident with adequate time and the opportunity to proffer evidence for each objection to the district school board that:

   a. An instructional material does not meet the criteria of s. 1006.31(2) or s. 1006.40(3)(d) 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 under s. 1006.283(2)(b)8., 9., and 11.

   b. Any material used in a classroom, made available in a school library, or included on a reading list containing is pornographic or prohibited under s. 847.012 or is not acceptable 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.

3. a. If the district school board finds that an instructional material does not meet the criteria under sub-subparagraph 2.a or that any other material contains prohibited content under sub-subparagraph 2.b, the school
district shall proactively remove discontinue use of the material regardless of whether a parent or resident has objected to the material for any grade level or age group for which such use is inappropriate or unsuitable.

b. Each school district must evaluate all such materials no later than October 1, 2019, and remove materials that are pornographic or prohibited under s. 847.012.

c. Effective October 1, 2019, any person who purchases a textbook, novel, or material that is pornographic or prohibited under s. 847.012 with the intent to expose students to such material commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Every textbook, novel, or material purchased shall constitute a separate offense and is punishable as such.

d. After exhausting all local policy remedies and appealing to the State Board of Education, a parent or resident may sue in circuit court for an injunction to remove such materials and may recover reasonable attorney fees and costs.

4. Each district school board must establish a process by which the parent of a public school student or a resident of the county may contest the district school board’s adoption of a specific instructional material. The parent or resident must file a petition, on a form provided by the school board, within 30 calendar days after the adoption of the material by the school board. The school board must make the form easy to use, prominently advertise the school board’s policy and the form available to the public, and publish the form on the school district’s website. The form must be signed by the parent or resident, include the required contact information, and state
the objection to the instructional material based on the criteria of s. 1006.31(2) or s. 1006.40(3)(d). A hearing officer must give priority to a parent’s or resident’s objections based on failure of a material to comply with the criteria of s. 1006.31(2) or s. 1006.40(3)(d) in his or her written findings. Within 30 days after the 30-day period has expired, the school board must, for all petitions timely received, commission conduct at least one open public hearing by an independent before an unbiased and qualified hearing officer. A district school board may not appoint its own hearing officer, and the hearing officer may not be an employee or agent of the school district. At least 7 days before the hearing, a school board must provide each petitioner with a written notification of the date and time of the hearing and publish on its website for the public all instructional materials included in a petition. A school board’s failure to provide petitioners with the required written notice or publish such instructional materials on its website for the public shall result in the hearing being rescheduled to satisfy these requirements. The hearing is not subject to the provisions of chapter 120; however, The hearing must provide sufficient procedural protections to allow each petitioner an adequate and fair opportunity to be heard and present evidence to the hearing officer on all petitions timely received. The hearing officer shall provide written findings on each objection with his or her recommendations to the school board. Failure of the hearing officer to provide written findings on each objection voids the adoption process. Members of the district school board, the district school superintendent, and any attorney for the school district may...
attend a hearing as part of the audience, but may not participate in the hearing. An attorney for the school district may not have been involved in designing or establishing the rules of operation for the hearing.

The rationale for the school board’s decision for each contested instructional material must be documented and available to the public. Decisions regarding such instructional materials by the school board may be appealed by the petitioner to the State Board of Education. A petitioner may appeal the decision of the state board to a circuit court and may seek damages or injunctive relief, or both. The circuit court has original and exclusive jurisdiction of all proceedings brought under this section. If any proceeding brought under this section is deemed to be frivolous by the court, the petitioner may recover reasonable attorney fees and costs after convening a hearing is final and not subject to further petition or review.

(b) Instructional materials.—Provide for proper requisitioning, distribution, accounting, storage, care, and use of all instructional materials and furnish such other instructional materials as may be needed. Instructional materials used must be consistent with the district goals and objectives and the course descriptions established in rule of the State Board of Education, as well as with the applicable Next Generation Sunshine State Standards provided for in s. 1003.41.

(c) Other instructional materials.—Provide such other teaching accessories and aids as are needed for the school district’s educational program, including supplemental
instructional materials. Each school district shall create a policy and training program for the use of supplemental instructional materials in the classroom to ensure that the materials used comply with s. 1006.31(2) and any other state laws relating to instructional materials.

(d) School library media services; establishment and maintenance.—Establish and maintain a program of school library media services for all public schools in the district, including school library media centers, or school library media centers open to the public, and, in addition such traveling or circulating libraries as may be needed for the proper operation of the district school system. Each school district shall post on its website a current list of all instructional materials, including library materials. Upon written request, a school district shall provide access to any material or book specified in the request that is maintained in a district school system library and is available for review.

(3) DISTRICT SCHOOL SUPERINTENDENT.—

(a) The district school superintendent has the duty to annually certify, by March 31, that he or she is following state laws relating to instructional materials. If there is a conflict between state law and the Next Generation Sunshine State Standards, state law prevails. The district school superintendent shall recommend such plans for improving, providing, distributing, accounting for, and caring for instructional materials and other instructional aids as will result in general improvement of the district school system, as prescribed in this part, in accordance with adopted district school board rules prescribing the duties and responsibilities
of the district school superintendent regarding the requisition, purchase, receipt, storage, distribution, use, conservation, records, and reports of, and management practices and property accountability concerning, instructional materials, and providing for an evaluation of any instructional materials to be requisitioned that have not been used previously in the district’s schools. The district school superintendent must keep adequate records and accounts for all financial transactions for funds collected pursuant to subsection (4).

Section 5. Subsection (2) of section 1006.283, Florida Statutes, is amended to read:

1006.283 District school board instructional materials review process.—

(2)(a) If a district school board chooses to implement its own instructional materials program, the school board shall adopt rules implementing the district’s instructional materials program which must include its processes, criteria, and requirements for the following:

1. Selection of reviewers, one-third one or more of whom must be parents with children in public schools.
2. Review of instructional materials.
3. Selection of instructional materials, including a thorough review of curriculum content.
4. Reviewer recommendations.
5. District school board adoption.

(b) District school board rules must also:

1. Identify, by subject area, a review cycle for instructional materials.
2. Specify the qualifications for an instructional materials reviewer and the process for selecting reviewers; list a reviewer’s duties and responsibilities; provide for training to ensure compliance with the requirements of ss. 847.012, 1003.42(2)(a)-(f), and 1006.28 s. 1006.31; and provide that all instructional materials recommended by a reviewer be accompanied by the reviewer’s statement that the materials align with or exceed the state standards pursuant to s. 1003.41 and the requirements of s. 1006.31.

3. State the requirements for an affidavit to be made by each district instructional materials reviewer which substantially meet the requirements of s. 1006.30.

4. Comply with s. 1006.32, relating to prohibited acts.

5. Establish a process that certifies the accuracy and quality of instructional materials in accordance with the criteria established under s. 1006.28 and other state laws relating to instructional materials.

6. Incorporate applicable requirements of s. 1006.31, which relates to the duties of instructional materials reviewers.

7. Incorporate applicable requirements of s. 1006.38, relating to the duties, responsibilities, and requirements of publishers of instructional materials.

8. Establish the process by which instructional materials are adopted by the district school board, which must include:

   a. A process to allow student and teacher editions of recommended instructional materials to be accessed and viewed online by the public at least 45 calendar days before the district school board’s independent hearing and public meeting as specified in this subparagraph. Failure to meet the
45-calendar day deadline shall result in the hearing and public meeting being rescheduled. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption.

b. An open, noticed school board hearing to receive public comment on the recommended instructional materials.

c. An open, noticed public meeting to approve an annual instructional materials plan to identify any instructional materials that will be purchased through the district school board instructional materials review process pursuant to this section. This public meeting must be held at least 10 days after the last hearing to address objections to instructional materials as provided in s. 1006.28 to allow the school board adequate time to review the findings of the hearing officer.

Failure to adhere to this timeline will render the school board’s adoption of materials void on a different date than the school board hearing.

d. Notice requirements for the school board hearing and the public meeting that must specifically state which instructional materials are being reviewed and the manner in which the instructional materials can be accessed for public review. The hearing officer must allow the parent of a public school student or a resident of the county a minimum of 10 minutes per objection to proffer evidence that a recommended instructional material does not meet the criteria provided in s. 1006.31(2), taking into consideration course expectations based on the district’s comprehensive plan for student progression under s. 1008.25(2) and course descriptions in the course code directory.

9. Establish the process by which the district school board
shall receive public comment on and accept or deny each of the findings of the independent hearing officer, and review, the recommended instructional materials.

10. Establish the process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements. Purchased instructional materials must comply with Department of Education contract provisions. All bid contract terms, whether acquired from department-approved lists or under this section, are subject to public records requests during and after the acquisition process.

11. Establish the process by which the school district will notify parents of their ability to access their children’s instructional materials through the district’s local instructional improvement system and by which the school district will encourage parents to access the system. This notification must be displayed prominently on the school district’s website and provided annually in written format to all parents of enrolled students.

Section 6. Subsection (2) of section 1006.31, Florida Statutes, is amended to read:

1006.31 Duties of the Department of Education and school district instructional materials reviewer.—The duties of the instructional materials reviewer are:

(2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To use the selection criteria listed in s. 1006.34(2)(b) and recommend for adoption only those instructional materials aligned with or exceeding the Next Generation Sunshine State Standards provided for in s. 1003.41. Instructional materials recommended by each reviewer shall comply with all quality and content criteria
established in state law, including an assurance that such materials are researched-based and proven to be effective in supporting student learning; are, to the satisfaction of each reviewer, accurate and factual; provide, objective, balanced, and noninflammatory viewpoints on controversial issues; are, current, free of pornography and material prohibited under s. 847.012; are of acceptable quality; are in full compliance with s. 847.012, s. 1003.42, and all other state laws relating to instructional materials; and are suited to student needs and their ability to comprehend the material presented. Reviewers shall consider for recommendation materials developed for academically talented students, such as students enrolled in advanced placement courses. When recommending instructional materials, each reviewer shall:

(a) Include only instructional materials that accurately portray the ethnic, socioeconomic, cultural, religious, physical, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States. Instructional materials that are recommended must comply with s. 1002.206 relating to religious expression in public schools.

(b) Include only materials that accurately portray, whenever appropriate, humankind’s place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.

(c) Include materials that encourage thrift, fire
prevention, and humane treatment of people and animals.

(d) Require, when appropriate to the comprehension of
students, that materials for social science, history, or civics
classes contain the Declaration of Independence and the
Constitution of the United States. A reviewer may not recommend
any instructional materials that contain any matter that
contradicts s. 1003.42(2)(a)-(f) or that reflects reflecting
unfairly upon persons because of their race, color, creed,
national origin, ancestry, gender, religion, disability,
socioeconomic status, or occupation.

Section 7. Paragraph (b) of subsection (2) of section
1006.34, Florida Statutes, is amended to read:

1006.34 Powers and duties of the commissioner and the
department in selecting and adopting instructional materials.—

(2) SELECTION AND ADOPTION OF INSTRUCTIONAL MATERIALS.—

(b) In the selection of instructional materials, library
media, and other reading material used in the public school
system, the standards used to determine the propriety of the
material shall include:

1. The age of the students who normally could be expected
to have access to the material.

2. The educational purpose to be served by the material.
Priority shall be given to the selection of materials that align
with or exceed the Next Generation Sunshine State Standards as
provided for in s. 1003.41 and include the instructional
objectives contained within the curriculum frameworks for career
and technical education and adult and adult general education
adopted by rule of the State Board of Education under s.
1004.92.
3. The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.

4. The consideration of the broad racial, ethnic, socioeconomic, and cultural diversity of the students of this state.

5. The requirements established in s. 1006.31(2).

Any instructional material containing pornography or otherwise prohibited by s. 847.012 may not be used or made available within any public school.

Section 8. Subsection (2), paragraphs (a) and (d) of subsection (3), and subsections (4) and (7) of section 1006.40, Florida Statutes, are amended to read:

1006.40 Use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.—

(2) Each district school board must purchase current instructional materials to provide each student in kindergarten through grade 12 with a major tool of instruction in core courses of the subject areas of mathematics, language arts, science, social studies, reading, and literature. Such purchase must be made within the first 3 years after the effective date of the adoption cycle unless a district school board or a consortium of school districts has implemented an instructional materials program pursuant to s. 1006.283. Each district school board is encouraged to purchase originally sourced instructional materials and classical literature.

(3)(a) Except for a school district or a consortium of
school districts that implements an instructional materials program pursuant to s. 1006.283, each district school board shall use the annual allocation only for the purchase of instructional materials that align with or exceed state standards and are included on the state-adopted list, except as otherwise authorized in paragraphs (b) and (c).

(d) Any materials purchased pursuant to this section must be:

1. free of pornography and material prohibited under s. 847.012.
2. Suited to student needs and their ability to comprehend the material presented.
3. Appropriate for the grade level and age group for which the materials are used or made available.

(4) Each district school board is responsible for the content and quality of all materials used in a classroom or otherwise made available to students and the compliance of such materials with state laws relating to instructional materials. Each district school board shall adopt rules, and each district school superintendent shall implement procedures, that:

(a) Maximize student use of the district-approved instructional materials.

(b) Provide a process for public review of, public comment on, formal objections to, appropriate hearings on, and the adoption of instructional materials that satisfies the requirements of s. 1006.283(2)(b)8., 9., and 11.

(7) A district school board or a consortium of school districts that implements an instructional materials program pursuant to s. 1006.283 may use the annual allocation to
purchase instructional materials not on the state-adopted list. However, instructional materials purchased pursuant to this section which are not included on the state-adopted list must meet the criteria of s. 1006.31(2), align with or exceed state standards adopted by the State Board of Education pursuant to s. 1003.41, and be consistent with course expectations based on the district’s comprehensive plan for student progression and course descriptions adopted in state board rule.

Section 9. This act shall take effect July 1, 2019.