

1 AN ACT relating to education and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 158.192 is amended to read as follows:

4 (1) As used in this section:~~["harmful to minors" means materials, programs, or~~
5 ~~events that:~~

6 ~~(a) Contain the exposure, in an obscene manner, of the unclothed or apparently~~
7 ~~unclothed human male or female genitals, pubic area, or buttocks or the~~
8 ~~female breast, or visual depictions of sexual acts or simulations of sexual acts,~~
9 ~~or explicit written descriptions of sexual acts;~~

10 ~~(b) Taken as a whole, appeal to the prurient interest in sex; or~~

11 ~~(c) Are patently offensive to prevailing standards regarding what is suitable for~~
12 ~~minors.]~~

13 **(a) "Harmful to minors" means that quality of any material, program, or event**
14 **containing a description, depiction, or representation, in whatever form, of**
15 **nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when**
16 **it:**

17 **1. Taken as a whole, would be found by the average person applying**
18 **contemporary community standards to appeal predominantly to the**
19 **prurient, shameful, or morbid interest of minors;**

20 **2. Is patently offensive to prevailing standards in the adult community as**
21 **a whole with respect to what is suitable for minors; and**

22 **3. Taken as a whole, would be found by a reasonable person to lack**
23 **serious literary, artistic, political, or scientific values for minors;**

24 **(b) "Matter" or "material" has the same meaning as "matter" in KRS**
25 **531.010;**

26 **(c) "Nudity" or "nude" means the:**

27 **1. Showing of the human male or female genitals, pubic area, or**

- 1 buttocks with less than a fully opaque covering;
- 2 2. Showing the adult or adolescent female breast with less than a fully
- 3 opaque covering of any portion below the top of the areola; or
- 4 3. Depiction of covered male genitals in a discernibly turgid state;
- 5 (d) "Obscene" or "obscenity" has the same meaning as "obscene" in KRS
- 6 531.010;
- 7 (e) "Obscene imagery representing minors" means a visual depiction of any
- 8 kind produced by any means, including but not limited to a drawing,
- 9 cartoon, sculpture, or painting, that:
- 10 1. a. Depicts a minor engaging in sexual conduct; and
- 11 b. Is obscene; or
- 12 2. a. Depicts an image that is or appears to be of a minor engaging in
- 13 graphic bestiality, sadomasochistic abuse, or sexual intercourse;
- 14 and
- 15 b. Lacks serious literary, artistic, political, or scientific value; and
- 16 (f) "Sexual conduct" has the same meaning as in KRS 531.010.
- 17 (2) Notwithstanding existing criminal prohibitions in federal and state law against
- 18 the distribution of material, or permitting access to an event or program, to
- 19 minors that is obscene, harmful to minors, or that contains obscene imagery
- 20 representing minors, a matter, performance, program, or event shall not be
- 21 deemed to have educational value, be educationally suitable, or age appropriate
- 22 for students, in this Commonwealth that:
- 23 (a) Is obscene for minors;
- 24 (b) Is harmful to minors;
- 25 (c) Contains obscene imagery representing minors; or
- 26 (d) Is pervasively vulgar.
- 27 (3) The Supreme Court of the United States has established that boards of education

1 and school administrators have significant latitude when determining
2 educational suitability for content made optionally available to students,
3 including in school libraries, with even greater latitude to regulate content that is
4 required, including in course curricula, so long as the intent is not to prescribe
5 what shall be orthodox in politics, nationalism, religion, or matters of opinion, or
6 to exercise that discretion in a narrowly partisan or political manner.

7 (4) Winning an award, prize, or other institutional recognition that considers any
8 factor, including but not limited to the demographic characteristics or historical
9 significance of the content's author, or the content's broader social impact, other
10 than the purely literary, artistic, political, or scientific value of the content for
11 educational purposes shall not factor into the assessments in subsections (2) and
12 (3) of this section.

13 (5)(2) No later than August~~July~~ 1, 2025~~2023~~, each local board of education shall
14 adopt a complaint resolution policy for its local schools to be used to address
15 complaints submitted by parents or guardians alleging that material, a program, or
16 an event that is not both educationally suitable and age appropriate for
17 students~~[harmful to minors]~~ has been provided or is currently available to a student
18 enrolled in the local school district who is the child of the parent or guardian. The
19 complaint resolution process shall require that:

- 20 (a) Complaints be submitted in writing to the principal of the school where the
21 student is enrolled;
- 22 (b) Complaints provide the name of the complainant, a reasonably detailed
23 description of the material, program, or event that is alleged to be not both
24 educationally suitable and age appropriate for students~~[harmful to minors]~~,
25 and how the material, program, or event is believed to be not both
26 educationally suitable and age appropriate for students~~[harmful to minors]~~;
- 27 (c) Within seven (7) business days of receiving a written complaint, the school

principal shall review the complaint and take reasonable steps to investigate the allegations in the complaint, including but not limited to reviewing the material, program, or event that is alleged to be **not both educationally suitable and age appropriate for students**~~[harmful to minors]~~;

(d) The school principal shall determine whether the material, program, or event that is the subject of the complaint is **not both educationally suitable and age appropriate for students**~~[harmful to minors]~~;

(e) **If the material, program, or event that is the subject of the complaint is determined to be not both educationally suitable and age appropriate for students in paragraph (d) of this subsection, the school principal shall remove current and future student access to the subject of the complaint.**

Otherwise, the school principal shall determine whether student access to material that is the subject of the complaint shall remain, be restricted, or be removed;

(f) The school principal shall determine whether a program or event that is the subject of the complaint shall be eligible for future participation by students in the school;

(g) Within ten (10) business days of receiving the complaint, unless another schedule is mutually agreed to by the parent or guardian and the school principal, the school principal shall confer with the parent or guardian and inform him or her whether the material, program, or event that is the subject of the complaint was determined to be **not both educationally suitable and age appropriate for students**~~[harmful to minors]~~ and what the resolution will be in accordance with paragraphs (e) and (f) of this subsection;

(h) Appeals of the school principal's determination provided for in paragraphs (d), (e), and (f) of this subsection shall:

1. Be subject to full administrative and substantive review by the local

- 1 board of education and shall not be delegated;
- 2 2. Include an opportunity for the parent or guardian to provide input during
- 3 public comment at a local board of education meeting **prior to the**
- 4 **appeal being voted upon;**
- 5 3. **Have a review of the facts and processes**~~[Be]~~ completed within thirty
- 6 (30) calendar days of receiving the written appeal unless another time
- 7 frame is mutually agreed upon by the parent or guardian and the local
- 8 board of education; and
- 9 4. Be discussed and voted on during a meeting of the local board of
- 10 education **within seventy-five (75) calendar days of receiving the**
- 11 **written appeal unless another time frame is mutually agreed upon by**
- 12 **the parent or guardian and the local board of education,** subject to the
- 13 open records and open meeting requirements~~[under KRS Chapter 61];~~
- 14 (i) The board's final disposition of the appeal shall be made in writing and shall
- 15 state whether the material, program, or event was determined to be **not both**
- 16 **educationally suitable and age appropriate for students**~~[harmful to minors]~~
- 17 and whether student access to the material will remain, be restricted, or be
- 18 removed and whether the program or event shall be eligible for future
- 19 participation by students in the school;~~[and]~~
- 20 (j) Within fifteen (15) business days from the date of a final disposition, the title
- 21 of the material or a description of the program or event submitted for appeal
- 22 pursuant to paragraph (h) of this subsection, whether the material, program, or
- 23 event was determined to be **not both educationally suitable and age**
- 24 **appropriate for students**~~[harmful to minors]~~, whether student access to the
- 25 material will remain, be restricted, or be removed or whether the program or
- 26 event shall be eligible for future participation by students in the school, and
- 27 the vote cast by each individual board member shall:

1 1. Be published on the website of the local board of education where it
2 shall remain available for review; and

3 2. Be published in the newspaper with the largest circulation in the county;
4 and

5 **(k) Within fifteen (15) days of a school principal's determination or local board**
6 **of education's determination of an appeal that a material, program, or event**
7 **was not both educationally suitable and age appropriate for students, the**
8 **principal or chair of the local board of education making the determination**
9 **shall report to the educational materials review committee identified in**
10 **subsection (11) of this section.**

11 ~~(6)(3)~~ (a) A parent or guardian may request in writing to the school, after final
12 disposition is determined by the board as provided for in subsection
13 ~~(5)(i)(2)(i)~~ of this section, that the school ensure his or her student does not
14 have access to the material, program, or event that the parent or guardian
15 believes to be **not both educationally suitable and age appropriate for**
16 **students**~~[harmful to minors]~~ but was allowed to remain or be eligible for
17 future participation.

18 (b) The school shall ensure that the student whose parent or guardian has made a
19 request as provided for in paragraph (a) of this subsection does not have
20 access to the material or is not allowed to participate in the program or event
21 that the parent or guardian believes to be **not both educationally suitable and**
22 **age appropriate for students**~~[harmful to minors]~~.

23 ~~(7)(4)~~ A parent or guardian not having filed the appeal may request in writing access
24 to the appealed materials, programs, or events for review and shall abide by the
25 school's and district's policies and procedures when requesting and reviewing such
26 information.

27 **(8) Willful violation of this section by knowingly providing students with access to**

1 material, or a performance, event, or program, that has been deemed or should
2 reasonably be known to be not both educationally suitable and age appropriate
3 for students by an employee of a public school shall be a basis for disciplinary
4 action.

5 (9) No later than July 1, 2025, each local board of education shall adopt policy and
6 procedures to ensure that a matter, program, or event that is lacking educational
7 value, or is educationally unsuitable in any way for minors is not introduced into
8 the school library, or made accessible to students on any property owned,
9 operated, or leased by the board of education.

10 (10) [(5)] No later than May 1, 2025 [(2023)], the Department of Education shall
11 promulgate a model policy for a complaint resolution process that meets the
12 requirements of subsections (5) [(2)], (6) [(3)], and (7) [(4)] of this section and a
13 model policy for excluding matter from the school library that meets the
14 requirements of subsection (6) of this section. A local board of education shall
15 not be required to adopt these model policies so long as all schools under its
16 control nevertheless comply with subsections (2) to (9) and (11) of this section.

17 (11) (a) No later than May 1, 2025, the Kentucky Board of Education shall establish
18 an educational materials review committee.

19 (b) The committee shall be composed of five (5) members appointed by the
20 Kentucky Board of Education, upon the recommendation of the
21 commissioner of education. All members shall serve for a term of four (4)
22 years or until their successors are appointed. All vacancies that occur on the
23 committee shall be filled in like manner for the remainder of the unexpired
24 terms. Membership of the committee shall include:

25 1. One (1) member who is a member of the Kentucky Board of
26 Education;

27 2. One (1) member who is a principal or superintendent of a school

1 district;

2 3. One (1) member who is a member of a school council; and

3 4. Two (2) members who are parents of students currently enrolled in a
4 school district.

5 (c) The functions of the committee shall be as follows:

6 1. Review materials, programs, and events reported to be not both
7 educationally suitable and age appropriate pursuant to subsection
8 (5)(k) of this section; and

9 2. Make recommendations to the Kentucky Board of Education on the
10 usage of materials, programs, and events identified in subparagraph
11 (1) of this paragraph in school districts.

12 (d) All operating expenses of the committee shall be approved and paid by the
13 Kentucky Board of Education. Members shall be reimbursed for actual
14 expenses for attendance at committee meetings and for other actual
15 expenses incurred in carrying out their official duties.

16 (e) Within seventy-five (75) days of receiving a report identified in subsection
17 (5)(k) of this section, the committee shall conduct a review of the facts and
18 processes, discuss, and make a determination on whether a material,
19 program, or event that is the subject of the complaint is educationally
20 suitable and age appropriate for students.

21 (f) Within fifteen (15) days of making a determination identified in paragraph
22 (e) of this subsection, the committee shall report its findings to the Kentucky
23 Board of Education as a recommendation on the use of the material,
24 program, or event.

25 (12) Upon receipt of a report from the educational materials review committee
26 identified in subsection (11)(f) of this section, the Kentucky Board of Education
27 shall have ninety (90) calendar days to review the committee's findings and make

1 *a determination to either:*

2 *(a) Allow the usage of the material, program, or event in school districts.*

3 *Nothing in this paragraph shall be construed to prohibit a principal or*
4 *school district from prohibiting the material, program, or event from their*
5 *respective school or district, with the decision of the school district*
6 *prevailing; or*

7 *(b) Prohibit the usage of the material, program, or event in all school districts.*

8 ➔Section 2. Whereas it is imperative that materials, programs, and events that are
9 not educationally suitable for students not be made available to students within the
10 schools of the Commonwealth, an emergency is declared to exist, and this Act takes
11 effect upon its passage and approval by the Governor or upon its otherwise becoming a
12 law.