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2 95th General Assembly
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4

A Bill

HOUSE BILL 1028

5 By: Representative A. Collins
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For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING LIBRARIES; TO
10 AMEND THE LAW CONCERNING MATERIALS MADE AVAILABLE BY
11 LIBRARIES; TO REPEAL PROVISIONS OF THE LAW CONCERNING
12 THE PROCESS FOR CHALLENGING MATERIALS INCLUDED IN A
13 LIBRARY; TO REPEAL THE OFFENSE OF FURNISHING A
14 HARMFUL ITEM TO A MINOR; TO AMEND PROVISIONS IN THE
15 CRIMINAL CODE CONCERNING OBSCENITY; TO REQUIRE A
16 LIBRARY TO HAVE A WRITTEN POLICY PROHIBITING BOOK
17 BANNING IN ORDER TO RECEIVE STATE FUNDING; TO AMEND
18 THE LAW CONCERNING THE INFORMATION THAT A LIBRARY MAY
19 DISCLOSE; AND FOR OTHER PURPOSES.
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Subtitle

22 TO AMEND PROVISIONS OF THE LAW
23 CONCERNING OBSCENITY AND THE PROCESS FOR
24 CHALLENGING MATERIALS INCLUDED IN A
25 LIBRARY; AND TO REQUIRE A LIBRARY TO
26 HAVE A POLICY PROHIBITING BOOK BANNING
27 IN ORDER TO RECEIVE STATE FUNDING.
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30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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32 SECTION 1. Arkansas Code § 5-27-212 is repealed.

33 ~~5-27-212. Furnishing a harmful item to a minor.~~

34 ~~(a) As used in this section:~~

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

36 ~~(2) "Internet" means the combination of computer facilities and~~



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

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

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

11 ~~(B) "Item" includes without limitation:~~

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

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

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

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

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

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

33 ~~(c)(1) Subdivision (b)(1) of this section does not apply to the~~
 34 ~~transmission or sending of items over the internet.~~

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

36 ~~(A) Posting material on an internet website, bulletin~~

1 ~~board, or newsgroup; or~~

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

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

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

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

15
 16 SECTION 3. Arkansas Code § 5-68-405(a), concerning the possession,
 17 sale, or distribution of obscenity, is amended to read as follows:

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

29
 30 SECTION 4. Arkansas Code § 6-25-105 is amended to read as follows:

31 6-25-105. Establishment of guidelines for selection, ~~relocation~~
 32 removal, and retention of materials.

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

36 (b) The school district shall have a written policy for addressing

1 ~~challenged material that is physically present in the library and available~~
2 ~~to the public and meets the requirements stated in subsection (c) of this~~
3 ~~section.~~

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

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

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

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

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

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

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

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

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

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

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

36 ~~(D) The committee members who are not the principal or a~~

1 ~~media specialist shall be licensed personnel with curriculum knowledge~~
2 ~~appropriate for the material being challenged and be representative of~~
3 ~~diverse viewpoints;~~

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

7 ~~(B) Material being challenged:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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31 SECTION 5. Arkansas Code § 13-2-106 is repealed.

32 ~~13-2-106. Establishment of guidelines for selection, relocation, and~~
33 ~~retention of materials — Definitions.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

36 ~~(7)(A) The committee established under subdivision (c)(6)(A) of~~

1 ~~this section shall determine if the material being challenged meets the~~
2 ~~criteria of selection.~~

3 ~~(B) Material being challenged:~~

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

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

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

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

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

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

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

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

34 ~~(12)(A) If the committee established under subdivision (c)(6)(A)~~
35 ~~of this section decides not to relocate the material being challenged, the~~
36 ~~person who submitted the request under subdivision (c)(5) of this section may~~

~~1 appeal the committee's decision to the governing body of the county or city
2 by filing a written appeal to the executive head of the governing body of the
3 county or city within five (5) working days of the committee's decision or
4 written receipt of the committee's decision.~~

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

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

~~16 (C)(i) The members of the governing body of the county or
17 city shall review the information submitted to them under this subdivision
18 (c)(12) and shall make a decision on the appeal within thirty (30) days of
19 receiving the information.~~

~~20 (ii) The decision of the governing body of the
21 county or city under subdivision (c)(12)(C)(i) of this section is final; and~~

~~22 (13) A meeting held regarding a challenge or an appeal submitted
23 under a written policy adopted by a county or city library under subsection
24 (b) of this section shall be a public meeting and the records submitted and
25 considered at a meeting shall be public records under the Freedom of
26 Information Act of 1967, § 25-19-101 et seq.~~

~~27 (d) As used in this section:~~

~~28 (1) "Executive head of the county or city" means:~~

~~29 (A) For a county library, the executive head of the
30 county;~~

~~31 (B) For a city library, the executive head of the city;
32 and~~

~~33 (C) For a library that is funded by both a county and a
34 city, the executive head of the county or city that provides the majority of
35 the funding for the library; and~~

~~36 (2) "Governing body of the county or city" means:~~

- 1 ~~(A) For a county library, the county;~~
- 2 ~~(B) For a city library, the city; and~~
- 3 ~~(C) For a library that is funded by both a county and a~~
- 4 ~~city, the county or city that provides the majority of the funding for the~~
- 5 ~~library.~~

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7 SECTION 6. Arkansas Code Title 13, Chapter 2, Subchapter 2, is amended

8 to add an additional section to read as follows:

9 13-2-215. Administration of state programs of aid.

10 In determining a public library's eligibility to receive funding from

11 state programs of aid, the Arkansas State Library shall provide state funding

12 to a library only if the public library has a written policy prohibiting the

13 practice of banning books or other materials because of partisan or doctrinal

14 disapproval.

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16 SECTION 7. Arkansas Code § 13-2-704(b), concerning the disclosure of

17 information permitted by a library, is repealed.

- 18 ~~(b) A library may disclose confidential library records to:~~
- 19 ~~(1) The patron; and~~
 - 20 ~~(2) The parent or legal guardian of a patron who is younger than~~
 - 21 ~~eighteen (18) years of age.~~

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