

WHAT YOU NEED TO KNOW ABOUT H. 3728

The “South Carolina Transparency and Integrity in Education Act”

All students deserve access to high-quality education that includes an accurate accounting of American History and present-day inequalities, as well as diverse perspectives on educational topics. Truthful and comprehensive discussions about United States and South Carolina history are critical to understanding the vast racial and gender inequalities that persist in society. Teachers need an array of curricula content and pedagogical tools to facilitate discussions about past and current-day inequalities and the importance of diversity and inclusion in our everyday lives.

H. 3728 could prevent public educators from teaching the full truth, subject them to undue surveillance of their instruction, burden them with unnecessary complaint processes, and risk the loss of a significant amount of state funding.

Who is covered under H. 3728?

K-12 public school teachers, state boards of education, and local education agencies (LEA), including school boards and public charter schools

What is banned under H. 3728?

Certain concepts are prohibited from any course of instruction, curriculum, assignment, instructional program, instructional material, or professional educator development or training.

The prohibited concepts include the following:

1. An individual, by virtue of the race, sex, ethnicity, religion, color, or national origin of the individual, inherently is privileged, racist, sexist, or oppressive, whether consciously or subconsciously.

For example, reference to “implicit” or “unconscious” bias may be prohibited despite being well-documented in scientific research.

2. An individual should be discriminated against or receive adverse treatment because of the race, sex, ethnicity, religion, color, or national origin of the individual.

For example, efforts to advance educational equity for certain students who have been historically disadvantaged, including certain students of color, girls, LGBTQ+ students, or English Language Learners, may be prohibited.

3. Fault, blame, or bias should be assigned to race, sex, ethnicity, religion, color, or national origin, or to members of a race, sex, ethnicity, religion, color, or national origin because of their race, sex, ethnicity, religion, color, or national origin.

For example, educators may be prohibited from discussing or even acknowledging the role of white supremacy in slavery, lynchings, and Jim Crow laws.

H. 3728 includes an exception to its ban on certain instructional concepts if the instruction or materials involve the history of an ethnic group, as described in the S.C. State Standards and instructional materials; the fact-based discussion of controversial aspects of history; or fact-based instruction on the historical oppression of a particular group of people based on race, ethnicity, class, nationality, religion or geographic region.

However, it is still unclear what concepts would be deemed “fact-based” and which would be determined “controversial” under this law because the bill fails to articulate a standard or definition for those terms. **This could lead to potentially inconsistent and arbitrary implementation of the law.**

It further prohibits any library or media material deemed not to be “age appropriate” or “grade appropriate” without explaining what is and is not appropriate. Book banning is already underway in the state — the Beaufort County School Board pulled nearly 100 books from library shelves before any review was conducted and, in Travelers Rest, the police were called to a library due to what law enforcement found to be “unfounded” claims of obscene materials.

H. 3728 also prohibits mandatory training for teachers on gender and sexual diversity unless it is first required of them under a corrective action plan, after harm has already been inflicted.

How does H. 3728 impact public educators?

The bill subjects public educators to undue surveillance of their adherence to curriculum standards by a broader, untrained audience. The bill may also burden these educators with complaints based on subjective, undefined criteria and creates a redundant investigative process.

For example, any current student, parent or employee in the LEA may file a complaint against any public educator in the LEA about a prohibited concept.

H. 3728 provides minimal due process, without any right to representation, for public educators who could be subject to a lengthy discipline process between the LEA and S.C. Department of Education.

How does H. 3728 impact school districts?

- Mandates LEAs to investigate suspected violations and complaints alleging violations without providing additional resources or staff to conduct those investigations.
- If the State Board decides that the LEA failed to initiate an investigation, remedy a violation, or make a timely decision about whether the complaint is substantiated, the LEA is considered to have “knowingly violated” the proposed law with potentially severe financial consequences.
- H. 3728 mandates the State Board to hold a public hearing before adopting any textbook or instructional material for use in South Carolina schools.

What are the penalties for violating H. 3728?

The state may withhold up to 5% of an LEA’s State Aid Classrooms funds if it is found not to be in compliance with a corrective action plan or fails to pursue investigations of educators, no matter how frivolous. *Based on estimates released by the South Carolina Revenue & Fiscal Affairs State Aid to Classrooms in August 2022, up to \$186 million in state aid to classrooms is at risk from H. 3728.*

This vague and overly broad legislation may limit and censor the free speech and free exchange of ideas between students and educators. The potential silencing of honest discussions of our country’s history and ongoing problems with systemic inequalities could deny the experiences of Black, Indigenous, and other people of color, women and LGBTQ+ individuals and pose challenges for districts in providing all students with equal educational opportunity.

South Carolina must focus on the real educational needs of our students, including closing educational gaps and working collaboratively to improve the accuracy and inclusiveness in the state’s current standards.

VOTE NO ON H. 3728