

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 that reflects the histories and experiences of all Americans. Truthful and comprehensive discussions about United States and South Carolina history are critical to understanding the vast racial and gender inequalities that persist in our society. Teachers need an array of curricular 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. Two versions of H. 3728 exist in the South Carolina House and Senate and lawmakers must agree on a common version of the legislation for it to pass.

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 certain ethnic groups; 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 unpredictable implementation of the law.

H. 3728 further prohibits any library or media material deemed not to be “age appropriate” or “grade appropriate” without defining those terms. Book banning is already underway in the state and H. 3728 may make attacks on books more frequent and widespread.

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?

H. 3728 subjects public educators to censorship and undue surveillance of their lesson plans by a broader, untrained audience.

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 does not provide 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?

H. 3728 mandates LEAs to investigate suspected violations and complaints alleging violations without providing additional resources or staff to conduct those investigations.

If the State Board of Education 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 and may face potentially severe financial consequences.

The House version of H. 3728 establishes a private right of action for any parent or guardian alleging violation of the law. This means that any parent or guardian can sue a school district to stop it from teaching certain concepts and recover attorney’s fees with taxpayer dollars.

What are the penalties for violating H. 3728?

The state may withhold up to 5% of an LEA’s State Aid to 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 the complaint. **Based on estimates released by the South Carolina Revenue & Fiscal Affairs State Aid to Classrooms in August 2022, up to \$186 million is at risk from H. 3728.**

This vague and overly broad legislation may limit and censor the free speech and free exchange of important ideas about race, gender, and inequality 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 an inclusive curriculum and learning environment.

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