

**Assembly Bill No. 146**

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Passed the Assembly September 9, 2009

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*Chief Clerk of the Assembly*

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Passed the Senate September 3, 2009

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 60061.5 of the Education Code, relating to instructional materials.

## LEGISLATIVE COUNSEL'S DIGEST

AB 146, Mendoza. Instructional materials: delivery.

Existing law requires the State Board of Education to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive. Every publisher or manufacturer of instructional materials offered for adoption or sale in California is required to comply with certain requirements, including guaranteeing delivery of textbooks and instructional materials prior to the opening of school in the year in which the textbooks and instructional materials are to be used if they are ordered by a date or dates specified in the contract with the district.

This bill would require a publisher or manufacturer of instructional materials offered for adoption or sale in California to guarantee delivery, if applicable, by the date specified in the contract with the district and would make a publisher or manufacturer that fails to deliver instructional materials within 60 days of the receipt of a purchase order from a school district liable for damages in the amount of \$500 for each working day that the order is delayed beyond 60 calendar days unless there is a natural disaster, terrorist attack, act of war, or worker strike that prevents the normal transit of instructional materials, resulting in their late delivery, or if there is a delay in implementation of governing board requirements, as specified. This requirement would apply only to contracts with districts enrolling 25,000 or fewer pupils.

*The people of the State of California do enact as follows:*

SECTION 1. Section 60061.5 of the Education Code is amended to read:

60061.5. A publisher or manufacturer shall do all of the following:

(a) Actively solicit or make available a process through which input concerning the quality, content, and usability of textbooks

and instructional materials can be obtained from educators, parents, teachers, and pupils.

Upon request of a district governing board a publisher shall provide a summation of that information including both positive and critical input and their responses to the positive and critical input.

(b) (1) Guarantee delivery of textbooks and instructional materials prior to the opening of school in the year in which the textbooks and instructional materials are to be used if they are ordered by a date or dates specified in the contract with the district.

(2) If a publisher or manufacturer fails to deliver instructional materials within 60 days of the receipt of a purchase order from a school district and the publisher or manufacturer has not received prior written approval from the district for a delay in delivery, which shall not be unreasonably withheld, the publisher or manufacturer shall be liable for damages in the amount of five hundred dollars (\$500) for each working day that the order is delayed beyond 60 calendar days.

(3) If a natural disaster, terrorist attack, act of war, or worker strike prevents the normal transit of instructional materials, resulting in their late delivery, or there is a delay in the implementation of governing board requirements, neither the publisher nor the manufacturer shall be held liable.

(4) No publisher or manufacturer shall be liable for an amount greater than twenty thousand dollars (\$20,000) for any individual purchase order placed by a school district pursuant to this subdivision.

(5) If a school district seeks to recover damages pursuant to this subdivision, it shall give the publisher or manufacturer written notification of the actual delivery date of the instructional materials and the date upon which damages, as described in this subdivision, began to accrue.

(c) Paragraphs (2) through (5) of subdivision (b) shall apply only to contracts with school districts enrolling 25,000 or fewer pupils.

Approved \_\_\_\_\_, 2009

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*Governor*