

Sixty-first  
Legislative Assembly  
of North Dakota

## SENATE BILL NO. 2344

Introduced by

Senators Marcellais, Bakke, Mathern, Oehlke

Representatives Conrad, Potter

A BILL for an Act to create and enact a new section to chapter 14-02.4 and a new section to chapter 23-12 of the North Dakota Century Code, relating to breastfeeding; and to amend and reenact sections 12.1-20-02(4), 12.1-20-12.1, 12.1-27.1-11, 14-02.4-02(18), and 42-01-01 of the North Dakota Century Code, relating to discriminatory practices and exempting the act of breastfeeding from certain offenses.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### **SECTION 1. AMENDMENT.** Section 12.1-20-02(4) is amended:

4. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires. The term does not include the act of a woman breastfeeding her child.

#### **SECTION 2. AMENDMENT.** Section 12.1-20-12.1 is amended:

##### **12.1-20-12.1. Indecent exposure.**

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:
  - a. Masturbates in a public place or in the presence of a minor; or
  - b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.

3. A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

4. The act of a woman breastfeeding her child is not a violation of this section.

**SECTION 3. AMENDMENT.** Section 12.1-27.1-11 is amended:

**12.1-27.1-11. Exceptions to criminal liability.** Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall do not~~ apply to the:

1. The possession or distribution of material in the course of law enforcement, judicial, or legislative activities; or to the possession of material by a bona fide school, college, university, museum, or public library for limited access for educational research purposes carried on at such an institution by adults only.  
~~Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a;~~
2. A person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it; or
3. The act of a woman breastfeeding her child.

**SECTION 4. AMENDMENT.** Section 14-02.4-02(18) is amended:

18. "Sex" includes pregnancy, childbirth, breastfeeding, and disabilities related to pregnancy or childbirth.

**SECTION 5.** A new section to chapter 14-02.4 is created:

**Right to breastfeed - Discriminatory practices.**

1. Except for the private home or residence of another, a woman may breastfeed her child in any location, public or private, where the woman and child are otherwise authorized to be, irrespective of whether the nipple of the woman's breast is uncovered during or incidental to the breastfeeding.
2. It is a discriminatory practice to deny or attempt to deny the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation to a woman because the woman is breastfeeding her child.

- 1        3. It is a discriminatory practice for any employer to refuse to hire or employ or to bar  
2        or discharge from employment or withhold pay, demote, or penalize an employee  
3        because the employee breastfeeds or expresses milk at the workplace. An  
4        employer may not prohibit an employee from expressing breast milk during any  
5        meal period or other break period required by law to be provided by an employer.

6        **SECTION 6.** A new section to chapter 23-12 is created:

7        **Workplace breastfeeding policies - Infant friendly designation.**

- 8        1. An employer may use the designation "infant friendly" on its promotional materials  
9        if the employer has an approved workplace breastfeeding policy that addresses at  
10       least the following:  
11       a. Flexible work scheduling, including scheduling breaks and permitting work  
12       patterns that provide time for expression of breast milk;  
13       b. A convenient, sanitary, safe, and private location, other than a restroom,  
14       allowing privacy for breastfeeding or expressing breast milk;  
15       c. A convenient clean and safe water source with facilities for washing hands  
16       and rinsing breast-pumping equipment located in the private location specified  
17       in subdivision b; and  
18       d. A convenient hygienic refrigerator in the workplace for the temporary storage  
19       of the mother's breast milk.  
20       2. An employer seeking approval of a workplace breastfeeding policy must submit the  
21       policy to the state department of health. The state department of health shall  
22       review and approve those policies that meet the requirements of this section. The  
23       state department of health shall develop and implement the criteria for "infant  
24       friendly" employers.

25       **SECTION 7. AMENDMENT.** Section 42-01-01 is amended:

26       **42-01-01. Nuisance - Definition.**

- 27       1. A nuisance consists in unlawfully doing an act or omitting to perform a duty, which  
28       act or omission:  
29       ~~4.~~ a. Annoys, injures, or endangers the comfort, repose, health, or safety of others;  
30       ~~2.~~ b. Offends decency;

- 1           ~~3.~~   c.   Unlawfully interferes with, obstructs or tends to obstruct, or renders  
2                           dangerous for passage, any lake, navigable river, bay, stream, canal, basin,  
3                           public park, square, street, or highway; or  
4           ~~4.~~   d.   In any way renders other persons insecure in life or in the use of property.  
5           2.   Nuisance does not include the act of a woman breastfeeding her child.