

Sixty-ninth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2307

Introduced by

Senators Boehm, Erbele, Hogue, Weston

Representatives Steiner, Tveit

1 A BILL for an Act to create and enact a new subsection to section 12.1-27.1-01 and two new
2 sections to chapter 12.1-27.1 of the North Dakota Century Code, relating to the definition of a
3 public library, required safety policies and technology protection measures, and the state's
4 attorney's review of public libraries, school districts, and state agencies for compliance with
5 statutes protecting minors from explicit sexual material; to amend and reenact subsection 5 of
6 section 12.1-27.1-01, subsection 2 of section 12.1-27.1-03.1, and sections 12.1-27.1-03.5 and
7 12.1-27.1-11 of the North Dakota Century Code, relating to obscenity control; to provide for a
8 report to the legislative management; and to provide a penalty.

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

10 **SECTION 1. AMENDMENT.** Subsection 5 of section 12.1-27.1-01 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 5. As used in this chapter, the terms "obscene material" and "obscene performance"
13 mean material or a performance which:

- 14 a. Taken as a whole, the average person, applying contemporary North Dakota
15 standards, would find predominantly appeals to a prurient interest;
16 b. Depicts or describes in a patently offensive manner sexual conduct, whether
17 normal or perverted; and
18 c. Taken as a whole, the reasonable person would find lacking in serious literary,
19 artistic, political, or scientific value.

20 Whether material or a performance is obscene must be judged with reference to
21 ~~ordinary~~reasonable adults, unless it appears from the character of the material or the
22 circumstances of its dissemination that the material or performance is designed for

1 minors or other specially susceptible audience, in which case the material or
2 performance must be judged with reference to that type of audience.

3 **SECTION 2.** A new subsection to section 12.1-27.1-01 of the North Dakota Century Code is
4 created and enacted as follows:

5 As used in this chapter, the term "public library" means a library containing collections
6 of books or periodicals or both for the general population to read, borrow, or refer to
7 which is supported with funds derived from taxation.

8 **SECTION 3. AMENDMENT.** Subsection 2 of section 12.1-27.1-03.1 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 2. As used in this section:

- 11 a. "Nude or partially denuded human figures" means less than completely and
12 opaquely covered human genitals, pubic regions, female breasts or a female
13 breast, if the breast or breasts are exposed below a point immediately above the
14 top of the areola, or human buttocks; and includes human male genitals in a
15 discernibly turgid state even if completely and opaquely covered.
- 16 b. "Where minors are or may be invited as a part of the general public" includes any
17 public roadway ~~or~~, public walkway, public library, or public school library.
- 18 c. The above ~~shall~~may not be construed to include a ~~bona fide school~~, college,
19 university, museum, ~~public library~~, or art gallery.

20 **SECTION 4. AMENDMENT.** Section 12.1-27.1-03.5 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **12.1-27.1-03.5. Public libraries and school districts prohibited from maintaining**
23 **explicit sexual material - Report.**

24 1. As used in this section:

- 25 a. "Explicit sexual material" means any material which:
- 26 (1) Taken as a whole, appeals to the prurient interest of minors;
- 27 (2) Is patently offensive to prevailing standards in the adult community in North
28 Dakota as a whole with respect to what is suitable material for minors; and
- 29 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
30 for minors.
- 31 b. "Public library" means a library established under chapter 40-38.

- 1 c. "School district" includes a school library or classroom library under the control of
2 the school district.
- 3 2. A public library or a school district may not maintain in its ~~children's collection~~
4 ~~inventory books~~ an area easily accessible to minors ~~that contain~~ explicit sexual
5 material.
- 6 3. By January 1, ~~2024~~2026, each public library and school district shall develop a policy
7 and process for reviewing library collections to ensure conformance with the
8 requirements of this section. The policy must include a procedure:
- 9 a. For the ~~removal or relocation~~ of explicit sexual material in the ~~public~~ library to an
10 area in the library not easily accessible to minors;
- 11 b. For the development of a book and media collection that is appropriate for the
12 age and maturity levels of the individuals who may access the materials, and
13 which is suitable for, and consistent with, the purpose of the library or school
14 district;
- 15 c. For the ~~public library to receive, evaluate, and respond to~~ relocation of materials
16 to an area not easily accessible to minors, upon a request from an individual
17 ~~regarding the removal or relocation of~~ to relocate ~~one or more of the books or~~
18 ~~other materials in the library collection containing~~ explicit sexual material in the
19 library collection; and
- 20 d. For the activation of a diverse decisionmaking committee to reconsider the
21 relocation of explicit sexual material in the library collection, if the individual is
22 unsatisfied with the result under subdivision c;
- 23 e. To refer an individual to section 7 of this Act, if the individual is unsatisfied with
24 the result of the reconsideration under subdivision d; and
- 25 f. To periodically review the library collection to ensure the library collection does
26 ~~not contain explicit sexual material in the children's collection~~ compliance with this
27 section.
- 28 4. Each public library and school district shall provide a compliance report to the
29 legislative management before May 1, ~~2024~~2026, on the implementation of collection
30 development and relocation of materials policies as required by this section and to
31 ensure sufficient compliance with this section.

1 **SECTION 5. AMENDMENT.** Section 12.1-27.1-11 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **12.1-27.1-11. Exceptions to criminal liability.**

4 Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall~~may not apply to the possession or distribution
5 of material in the course of law enforcement, judicial, or legislative activities; or to the
6 possession of material by a ~~bona fide school~~, college, university, museum, or public library for
7 limited access for educational research purposes carried on at ~~such an~~the institution by adults
8 only. Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall also~~may not apply to a person who is
9 returning material, found to be obscene, to the distributor or publisher initially delivering it to the
10 person returning it.

11 **SECTION 6.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
12 created and enacted as follows:

13 **Safety policies and technology protection measures required - Report.**

14 1. As used in this section:

- 15 a. "Explicit sexual material" means the term as defined under section
16 12.1-27.1-03.5.
17 b. "Public library" does not include the state library.
18 c. "State agency" does not include the state library or institutions of higher
19 education.

20 2. A school district, state agency, or public library may offer digital or online library
21 database resources to students in kindergarten through grade twelve if the person
22 providing the resources verifies all the resources comply with subsection 3.

23 3. Digital or online library database resources offered by a school district, state agency,
24 or public library to students in kindergarten through grade twelve must have safety
25 policies and technology protection measures that:

- 26 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
27 downloading materials constituting an obscene performance or explicit sexual
28 material; and
29 b. Filter or block access to explicit sexual material.

30 4. Notwithstanding any contract provision, if a provider of digital or online library
31 resources fails to comply with subsection 3, the school district, state agency, or public

1 library shall withhold any further payments to the provider pending verification of
2 compliance.

3 5. If a provider of digital or online library database resources fails to timely verify the
4 provider is in compliance with the safety policies and requirements of subsection 3, the
5 school district, state agency, or public library shall consider the provider's act of
6 noncompliance a breach of contract.

7 6. A public school library and a public library shall submit an aggregate written report to
8 the legislative management no later than December first of each year regarding any:

9 a. Issues related to provider compliance with technology protection measures
10 required by subsection 3; and

11 b. Incidents of complaints regarding accessible materials.

12 7. By January 1, 2026, each school district, state agency, or public library offering digital
13 or online library database resources to students in kindergarten through grade twelve
14 shall develop a policy and process for reviewing digital or online library database
15 resources to ensure conformance with this section. The policy must include a
16 procedure:

17 a. For an individual to report to the school district, state agency, or public library
18 materials containing explicit sexual material or an obscene performance in the
19 digital or online library database resources;

20 b. Upon receipt of a report under subdivision a, for the school district, state agency,
21 or public library, to provide the report to the provider of digital or online library
22 database resources and apprise the individual of the actions taken to comply with
23 this section; and

24 c. To refer an individual to section 7 of this Act, if the individual believes this section
25 is being violated after being apprised of the actions taken to comply with the
26 section.

27 **SECTION 7.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
28 created and enacted as follows:

**State's attorney - Obscenity review procedure - School districts - State agencies -
Public libraries - Penalty.**

1. Any interested individual who has exhausted the procedures under section 12.1-27.1-03.5 or section 6 of this Act may request, in the manner prescribed by the local state's attorney, the local state's attorney's opinion to review an alleged violation under section 12.1-27.1-03.5 or section 6 of this Act. Within sixty days of receiving the request, the state's attorney shall issue an opinion on the alleged violation to the interested individual, the provider of digital or online library database resources, if any, and the school district, state agency, or public library under review.
2. If the state's attorney determines a public library or state agency has violated section 12.1-27.1-03.5 or section 6 of this Act, the state's attorney shall defer any prosecution and notify the public library or state agency. After receiving notice, the public library or state agency shall take corrective action to comply with the violated law within ten days. If the public library or state agency fails to comply with the law within ten days, the state's attorney:

 - a. Shall notify the state treasurer who shall withhold and return funds allocated to the state agency or public library, until the state's attorney has determined the state agency or public library is in compliance with the relevant statute and has notified the state treasurer accordingly; and
 - b. May prosecute for failure to comply with the law.
3. If the state's attorney determines a school district has violated section 12.1-27.1-03.5 or section 6 of this Act, the state's attorney shall defer any prosecution and notify the school district. After receiving notice, the school district shall take corrective action to comply with the violated law within ten days. If the school district fails to comply with the law within ten days, the state's attorney:

 - a. Shall notify the superintendent of public instruction who shall withhold funds allocated to the school district until the state's attorney has determined the school district is in compliance with the relevant statute and has notified the superintendent of public instruction accordingly; and
 - b. May prosecute for failure to comply with the law.