

SENATE BILL NO. 2360

Introduced by

Senators Boehm, Beard, Hogue, Paulson, Wobbema

Representative Kasper

1 A BILL for an Act to create and enact a new section to chapter 12.1-27.1 of the North Dakota
2 Century Code, relating to required safety policies and technology protection measures; to
3 amend and reenact subsection 5 of section 12.1-27.1-01, sections 12.1-27.1-02,
4 12.1-27.1-03.1, and 12.1-27.1-11 of the North Dakota Century Code, relating to obscenity
5 control; to provide a penalty; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

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

11 a. Taken as a whole, the average person, applying ~~contemporary~~ North Dakota
12 standards, would find predominantly appeals to a prurient interest;

13 b. Depicts or describes in a patently offensive manner sexual conduct, whether
14 normal or perverted; and

15 c. Taken as a whole, the reasonable person would find lacking in serious literary,
16 artistic, ~~political~~, or scientific value.

17 Whether material or a performance is obscene must be judged with reference to
18 ~~ordinary~~reasonable adults, unless it appears from the character of the material or the
19 circumstances of its dissemination that the material or performance is designed for
20 minors or other specially susceptible audience, in which case the material or
21 performance must be judged with reference to that type of audience.

22 **SECTION 2. AMENDMENT.** Section 12.1-27.1-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **12.1-27.1-02. Promoting obscenity to minors - Definitions.**

2 As used in this section and in section 12.1-27.1-03:

- 3 1. "Promote" means to produce, direct, manufacture, issue, sell, lend, mail, publish,
4 distribute, exhibit, or advertise.
- 5 2. "Harmful to minors" means that quality of any description or representation, in
6 whatever form of sexual conduct or sexual excitement, when such description or
7 representation:
8 a. Considered as a whole, appeals to the prurient sexual interest of minors;
9 b. Is patently offensive to prevailing standards in the adult community in North
10 Dakota as a whole with respect to what is suitable material for minors; and
11 c. Considered as a whole, lacks serious literary, artistic, ~~political~~, or scientific value
12 for minors.
- 13 3. "Sexual excitement" means the condition of human male or female genitals when in a
14 state of sexual stimulation or arousal.

15 **SECTION 3. AMENDMENT.** Section 12.1-27.1-03.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **12.1-27.1-03.1. Objectionable materials or performance - Display to minors -**
18 **Definitions - Penalty.**

- 19 1. A person is guilty of a class B misdemeanor if he willfully displays at newsstands or
20 any other business establishment frequented by minors, or where minors are or may
21 be invited as a part of the general public, any photograph, book, paperback book,
22 pamphlet, or magazine, the exposed cover or available content of which exploits, is
23 devoted to, or is principally made up of depictions of nude or partially denuded human
24 figures posed or presented in a manner to exploit sex, lust, or perversion for
25 commercial gain.
- 26 2. As used in this section:
27 a. "Nude or partially denuded human figures" means less than completely and
28 opaquely covered human genitals, pubic regions, female breasts or a female
29 breast, if the breast or breasts are exposed below a point immediately above the
30 top of the areola, or human buttocks; and includes human male genitals in a
31 discernibly turgid state even if completely and opaquely covered.

- 1 b. "Where minors are or may be invited as a part of the general public" includes any
2 public roadway or public walkway.
- 3 c. The above ~~shall~~may not be construed to include a ~~bona fide school~~, college,
4 university, museum, ~~public library~~, or art gallery.

5 **SECTION 4. AMENDMENT.** Section 12.1-27.1-11 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-27.1-11. Exceptions to criminal liability.**

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

15 **SECTION 5.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
16 created and enacted as follows:

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

- 18 1. A school district, state agency, public library, or university may offer digital or online
19 library database resources to students in kindergarten through twelfth grade if the
20 person providing the resources verifies all the resources comply with subsection 2.
- 21 2. Digital or online library database resources offered by a school district, state agency,
22 public library, or university to students in kindergarten through twelfth grade must have
23 safety policies and technology protection measures that:
- 24 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
25 downloading materials constituting child sexual abuse material, an obscene
26 performance, or pornography; and
- 27 b. Filter or block access to pornography and child sexual abuse material.
- 28 3. Notwithstanding any contract provision, if a provider of digital or online library
29 resources fails to comply with subsection 2, the school district, state agency, public
30 library, or university shall withhold any further payments to the provider pending
31 verification of compliance.

- 1 4. If a provider of digital or online library database resources fails to timely verify the
2 provider is in compliance with the safety policies and requirements of subsection 2, the
3 school district, state agency, public library, or university shall consider the provider's
4 act of noncompliance a breach of contract.
- 5 5. A public school library and a public library shall submit an aggregate written report to
6 the attorney general no later than December first of each year regarding any issues
7 related to provider compliance with technology protection measures required by
8 subsection 2.
- 9 6. An employee of a school district, state agency, public library, or university is not
10 exempt from prosecution for willful indecent exposure to child sexual abuse material or
11 pornography.

12 **SECTION 6. EFFECTIVE DATE.** This Act is effective August 20, 2023.