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Sixty-eighth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2360

Introduced by

Senators Boehm, Beard, Hogue, Paulson, Wobbema

Representative Kasper

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

5. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:
   a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
   b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
   c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

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

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

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

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

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

1. A person is guilty of a class B misdemeanor if ~~he~~the person willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which either contains explicit sexual material that is harmful to minors or exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.
2. As used in this section:
   a. "Explicit sexual material" means any material which:
      (1) Taken as a whole, appeals to the prurient interest of minors;
      (2) Is patently offensive under prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
      (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
   b. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.
   ~~b.~~c. "Where minors are or may be invited as a part of the general public" includes any public roadway ~~or~~, public walkway, public library, or public school library.

~~c.~~d. The above ~~shall~~may not be construed to include a ~~bona fide school,~~ college, university, museum, ~~public library,~~ or art gallery.

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

12.1-27.1-11. Exceptions to criminal liability.

Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to 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 person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it.

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

Safety policies and technology protection measures required - Report - Penalty.

1. A school district, state agency, or public library may offer digital or online library database resources to students in kindergarten through twelfth grade if the person providing the resources verifies all the resources comply with subsection 2.
2. Digital or online library database resources offered by a school district, state agency, or public library to students in kindergarten through twelfth grade must have safety policies and technology protection measures that:
   a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or downloading materials constituting an obscene performance or explicit sexual material; and
   b. Filter or block access to explicit sexual material.
3. Notwithstanding any contract provision, if a provider of digital or online library resources fails to comply with subsection 2, the school district, state agency, or public library shall withhold any further payments to the provider pending verification of compliance.
4. If a provider of digital or online library database resources fails to timely verify the provider is in compliance with the safety policies and requirements of subsection 2, the

school district, state agency, or public library shall consider the provider's act of noncompliance a breach of contract.

5. A public school library and a public library shall submit an aggregate written report to the legislative management no later than December first of each year regarding any issues related to provider compliance with technology protection measures required by subsection 2.

6. An employee of a school district, state agency, or public library who willfully exposes explicit sexual material to a minor in violation of this section is guilty of a class B misdemeanor.