

Sixty-eighth Legislative Assembly of North Dakota

ENGROSSED 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 subsection to section 12.1-27.1-01 and a new
2 section to chapter 12.1-27.1 of the North Dakota Century Code, relating to the definition of a
3 public library and required safety policies and technology protection measures; to amend and
4 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
5 North Dakota Century Code, relating to obscenity control; to provide a penalty; and to provide
6 an effective date.

7
8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**
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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 first through the
21 'Collection Development' policy set forth by the local governing board.

22 a. Should a reasonable adult still find the professionally reviewed material or
23 performance to be considered obscene when applying contemporary North
1 Dakota standards, it will then be reviewed using a 'Reconsideration of Materials'
2 process set forth by the local governing board.

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

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

9 As used in this chapter, the term "public library" refers to public libraries as established
under NDCC 40-38. ~~means a library containing collections~~
10 ~~of books or periodicals for the general population to read, borrow, or refer to which is~~
11 ~~supported with funds derived from taxation.~~

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

14 **12.1-27.1-03.1. Objectionable materials or performance - Display to minors -**
15 **Definitions - Penalty.**

16 1. A person is guilty of a class B misdemeanor if ~~hethe~~ the person, knowingly and willfully
displays displaying, at newsstands or any other business establishment frequented by
minors, ~~or where~~
17 ~~minors are or may be invited as a part of the general public~~, any photograph, book,
18 paperback book, pamphlet, or magazine, the exposed cover or available content of
19 which either contains explicit sexual material that is harmful to minors, or exploits, is
20 devoted to, or is principally made up of predominantly contains depictions or written
descriptions of nude or partially denuded human figures posed or presented in a manner
to exploit sex, lust, or perversion for commercial gain. ~~for commercial gain.~~

21 2. As used in this section: the terms "explicit sexual material" mean material or a
22 performance which:

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

25 b. ~~Depicts or describes in a patently offensive manner sexual conduct, whether~~
26 normal or perverted; and Whether the work depicts or describes, in a patently offensive
27 way, sexual conduct specifically defined by the applicable state law; and

28 c. Taken as a whole, the reasonable person would find lacking in serious literary,
29 artistic, political, or scientific value.s

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2.

a. ~~"Explicit sexual material" means any written, pictorial, three-dimensional, or visual~~

3. ~~depiction that is patently offensive, including any photography, picture, or~~

4. ~~computer-generated image, showing or describing:~~

5. ~~(1) Human masturbation;~~

6. ~~(2) Deviant sexual intercourse;~~

7. ~~(3) Sexual intercourse;~~

8. ~~(4) Direct physical stimulation of genitals;~~

9. ~~(5) Sadomasochistic abuse;~~

10. ~~(6) Postpubertal human genitals;~~

11. ~~(7) Sexual activity;~~

12. ~~(8) Sexual perversion; or~~

13. ~~(9) Sex-based classifications.~~

14.

b. "Nude or partially denuded human figures" means less than completely and

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opaquely covered human genitals, pubic regions, female breasts or a female

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breast, if the breast or breasts are exposed below a point immediately above the

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top of the areola, or human buttocks; and includes human male genitals in a

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discernibly turgid state even if completely and opaquely covered.

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b.c. "Where minors are or may be invited as a part of the general public" includes any

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public roadway or public walkway.

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

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SECTION 4. AMENDMENT. Section 12.1-27.1-11 of the North Dakota Century Code is

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amended and reenacted as follows:

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12.1-27.1-11. Exceptions to criminal liability.

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Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of

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material in the course of law enforcement, judicial, or legislative activities; or to the possession

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of material by a ~~bona fide school, bona fide school,~~ college, university, ~~or~~ museum, ~~or public~~

~~library for educational research purposes.~~ library for educational research purposes. ~~, or public library for limited~~

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~~access for educational research purposes carried on at such an institution by adults only.~~

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Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning

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material, found to be obscene, to the distributor or publisher initially delivering it to the person

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returning it.

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Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to interlibrary loan materials.

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

2. **Safety policies, collection development policies, reconsideration of materials policies,**
3. **and technology protection measures required - Report.**

4. 1. A school district, state agency, or public library may offer digital or online library
5. database resources to students in kindergarten through twelfth grade if the person
6. providing the resources verifies all the resources comply with subsection 2.

7. 2. Digital or online library database resources offered by a school district, state agency,
8. or public library to students in kindergarten through twelfth grade must have safety
9. policies and technology protection within their buildings that measures that:

10. a. Comply with CIPA and/or COPPA and/or FERPA guidelines which prohibit and
11. prevent a user of the resource from sending, receiving, viewing, or downloading
12. materials constituting child sexual abuse material, an obscene performance, or
13. pornography; and

14. ~~b. Filter or block access to pornography and child sexual abuse material.~~

15. ~~3. Notwithstanding any contract provision, if a provider of digital or online library~~
16. ~~resources fails to comply with subsection 2, the school district, state agency, or public~~
17. ~~library shall withhold any further payments to the provider pending verification of~~
18. ~~compliance.~~

19. ~~4. If a provider of digital or online library database resources fails to timely verify the~~
20. ~~provider is in compliance with the safety policies and requirements of subsection 2, the~~
21. ~~school district, state agency, or public library shall consider the provider's act of~~
22. ~~noncompliance a breach of contract.~~

23. 5. A public school library and a public library shall submit their collection development and
24. 'Reconsideration of Materials' policies in an aggregate written report to
25. the attorney general no later than December first of each year, related to provider
26. ~~compliance with technology protection measures required by~~
27. ~~subsection 2.~~

28. ~~6. An employee of a school district, state agency, or public library is not exempt from~~
29. ~~prosecution for willful indecent exposure of child sexual abuse material or pornography~~
30. ~~to a minor.~~

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