

April 7, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2360

In addition to the amendments printed on pages 1414-1416 of the House Journal, Engrossed Senate Bill No. 2360 is further amended as follows:

Page 4, after line 13, insert:

- "7. As used in this section, the term "public library" or "state agency" does not include the state library."

Re-number accordingly

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; and to provide a penalty; ~~and to~~
6 ~~provide an effective date.~~

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

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

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

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

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

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

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

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

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

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

6 **12.1-27.1-03.1. Objectionable materials or performance - Display to minors -**
7 **Definitions - Penalty.**

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

16 2. As used in this section:

17 a. ~~"Explicit sexual material" means any written, pictorial, three-dimensional, or visual~~
18 ~~depiction that is patently offensive, including any photography, picture, or~~
19 ~~computer-generated image, showing or describing~~material which:

20 (1) ~~Human masturbation~~Taken as a whole, appeals to the prurient interest of
21 minors;

22 (2) ~~Deviant sexual intercourse~~is patently offensive under prevailing standards in
23 the adult community in North Dakota as a whole with respect to what is
24 suitable material for minors; and

25 (3) ~~Sexual intercourse;~~

26 (4) ~~Direct physical stimulation of genitals;~~

27 (5) ~~Sadomasochistic abuse;~~

28 (6) ~~Postpubertal human genitals;~~

29 (7) ~~Sexual activity;~~

30 (8) ~~Sexual perversion; or~~

1 ~~(9) Sex-based classifications~~ Taken as a whole, lacks serious literary, artistic,
2 political, or scientific value for minors.

3 b. "Nude or partially denuded human figures" means less than completely and
4 opaquely covered human genitals, pubic regions, female breasts or a female
5 breast, if the breast or breasts are exposed below a point immediately above the
6 top of the areola, or human buttocks; and includes human male genitals in a
7 discernibly turgid state even if completely and opaquely covered.

8 b-c. "Where minors are or may be invited as a part of the general public" includes any
9 public roadway ~~or~~ public walkway, public library, or public school library.

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

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

14 **12.1-27.1-11. Exceptions to criminal liability.**

15 Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of
16 material in the course of law enforcement, judicial, or legislative activities; or to the possession
17 of material by a ~~bona fide school~~, college, university, ~~or~~ museum, or public library for limited
18 access for educational research purposes carried on at such an institution by adults only.

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

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

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

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

28 2. Digital or online library database resources offered by a school district, state agency,
29 or public library to students in kindergarten through twelfth grade must have safety
30 policies and technology protection measures that:

- 1 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
2 downloading materials constituting ~~child sexual abuse material~~, an obscene
3 performance, or ~~pornography~~explicit sexual material; and
- 4 b. Filter or block access to ~~pornography and child~~explicit sexual ~~abuse~~ material.
- 5 3. Notwithstanding any contract provision, if a provider of digital or online library
6 resources fails to comply with subsection 2, the school district, state agency, or public
7 library shall withhold any further payments to the provider pending verification of
8 compliance.
- 9 4. If a provider of digital or online library database resources fails to timely verify the
10 provider is in compliance with the safety policies and requirements of subsection 2, the
11 school district, state agency, or public library shall consider the provider's act of
12 noncompliance a breach of contract.
- 13 5. A public school library and a public library shall submit an aggregate written report to
14 the ~~attorney general~~legislative management no later than December first of each year
15 regarding any issues related to provider compliance with technology protection
16 measures required by subsection 2.
- 17 6. An employee of a school district, state agency, or public library ~~is not exempt from~~
18 ~~prosecution for willful indecent exposure of child sexual abuse material or~~
19 ~~pornography~~who willfully exposes explicit sexual material to a minor in violation of this
20 section is guilty of a class B misdemeanor.
- 21 7. As used in this section, the term "public library" or "state agency" does not include the
22 state library.

23 ~~SECTION 6. EFFECTIVE DATE. This Act is effective August 20, 2023.~~