

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~~ for application.

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 ~~(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:

April 7, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2360

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

Page 1, line 6, replace "an effective date" with "for application"

Page 2, line 13, remove the overstrike over "~~is principally made up of~~"

Page 2, line 13, remove "contains"

Page 2, line 13, remove "or written descriptions"

Page 2, line 15, remove the overstrike over "~~for commercial gain~~"

Page 2, line 17, remove "written, pictorial, three-dimensional, or visual"

Page 2, remove line 18

Page 2, line 19, replace "computer-generated image, showing or describing" with "material which"

Page 2, line 20, replace "Human masturbation" with "Taken as a whole, appeals to the prurient interest of minors"

Page 2, line 21, replace "Deviant sexual intercourse" with "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"

Page 2, line 21, after the underscored semicolon insert "and"

Page 2, line 22, remove "Sexual intercourse:"

Page 2, remove lines 23 through 27

Page 2, line 28, replace "(9) Sex-based classifications" with "Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors"

Page 3, line 4, overstrike "or" and insert immediately thereafter an underscored comma

Page 3, line 4, after "walkway" insert ", public library, or public school library"

Page 3, line 12, remove "or"

Page 3, line 12, remove the overstrike over "~~, or public library for limited~~"

Page 3, line 13, remove the overstrike over "~~access for educational research purposes carried on at such an institution by adults only~~"

Page 3, line 19, after "**Report**" insert "**- Penalty**"

Page 3, line 27, remove "child sexual abuse material,"

Page 3, line 28, remove the underscored comma

Page 3, line 28, replace "pornography" with "explicit sexual material"