



SB 2360
Testimony of Amy De Kok
Senate Judiciary Committee
February 14, 2023

Chair Larson and members of the committee, my name is Amy De Kok. I am General Counsel for the North Dakota School Boards Association. NDSBA represents all North Dakota public school districts and their boards. NDSBA stands in opposition to SB 2360.

NDSBA's opposition centers on Sections 3, 4, and 5 of the bill. Section 3 seeks to amend existing section 12.1-27.1-03.1 of the North Dakota Century Code which addresses criminal penalties for willful display of materials which depict nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain. Currently, the definitions in that section are expressly not to be construed to include a bona fide school, college, university, museum, public library, or art gallery. Section 3 of the bill removes "bona fide school" from this list. Likewise, Section 4 of the bill removes "a bona fide school" from the list of entities that are exempt from the criminal penalties set forth in sections 12.1-27.1-01 and 12.1-27-03. NDSBA opposes these proposed amendments as it may prevent schools from using age-appropriate materials in conjunction with teaching human anatomy or human reproduction.

Section 5 of the bill adds a new section to chapter 12.1-27.1 of the Century Code permitting a school district, among others, to offer a digital or online library database resource to students in kindergarten through twelfth grade if the database provider verifies that all the database resources:

- Prohibit and prevent the user from sending, receiving, viewing, or downloading materials constituting child sexual abuse material, an obscene performance, or pornography; and,
- Filter or block access to pornography and child sexual abuse material.

The bill further requires a public school library to submit an aggregate written report to the attorney general no later than December 1 of each year regarding any issues related to provider compliance with the requirements of subsection 2 of the proposed section. NDSBA believes that this proposed new section is unnecessary as federal law, specifically the Children's Internet Protection Act (CIPA), already more than adequately addresses these concerns. All public school districts in North Dakota are already required to adopt an acceptable use policy that complies with the requirements of CIPA.

The CIPA was enacted by Congress in 2000 to address concerns about children's access to obscene or harmful content over the Internet. CIPA imposes certain requirements on schools or libraries that receive discounts for Internet access or internal connections through the E-rate program – a program that makes certain communications services and products more affordable for eligible schools and libraries. In early 2001, the FCC issued rules implementing CIPA and provided updates to those rules in 2011. Schools and libraries subject to CIPA may not receive the discounts offered by the E-rate program unless they certify that they have an Internet safety policy that includes technology protection measures. The protection measures must block or filter Internet access to pictures that are: (a) obscene; (b) child pornography; or (c) harmful to minors (for computers that are accessed by minors). Before adopting this Internet safety policy, schools and libraries must provide reasonable notice and hold at least one public hearing or meeting to address the proposal.

Schools subject to CIPA have two additional certification requirements: 1) their Internet safety policies must include monitoring the online activities of minors; and 2) as required by the Protecting Children in the 21st Century Act, they must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms, and cyberbullying awareness and response.

Schools and libraries subject to CIPA are required to adopt and implement an Internet safety policy addressing:

- Access by minors to inappropriate matter on the Internet;
- The safety and security of minors when using electronic mail, chat rooms and other forms of direct electronic communications;
- Unauthorized access, including so-called “hacking,” and other unlawful activities by minors online;
- Unauthorized disclosure, use, and dissemination of personal information regarding minors; and
- Measures restricting minors' access to materials harmful to them.

Schools and libraries must certify they are in compliance with CIPA before they can receive E-rate funding.

For these reasons, NDSBA urges a Do Not Pass recommendation on SB 2360. Thank you for your time.