

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 12.1-27.1-02, 12.1-27.1-03.1, and
5 12.1-27.1-11 of the North Dakota Century Code, relating to obscenity control; to provide a
6 penalty; and to 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 12.1-27.1-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-27.1-02. Promoting obscenity to minors - Definitions.**

7 As used in this section and in section 12.1-27.1-03:

- 8 1. "Promote" means to produce, direct, manufacture, issue, sell, lend, mail, publish,
9 distribute, exhibit, or advertise.
- 10 2. "Harmful to minors" means that quality of any description or representation, in
11 whatever form of sexual conduct or sexual excitement, when such description or
12 representation:
 - 13 a. Considered as a whole, appeals to the prurient sexual interest of minors;
 - 14 b. Is patently offensive to prevailing standards in the adult community in North
15 Dakota as a whole with respect to what is suitable material for minors; and
 - 16 c. Considered as a whole, lacks serious literary, artistic, political, or scientific value
17 for minors.
- 18 3. "Sexual excitement" means the condition of human male or female genitals when in a
19 state of sexual stimulation or arousal.

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

22 **12.1-27.1-03.1. Objectionable materials or performance - Display to minors -**
23 **Definitions - Penalty.**

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

1 2. As used in this section:

2 a. "Explicit sexual material" means any written, pictorial, three-dimensional, or visual
3 depiction, including any photography, picture, or computer-generated image,
4 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) Sadoomasochistic 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
15 opaquely covered human genitals, pubic regions, female breasts or a female
16 breast, if the breast or breasts are exposed below a point immediately above the
17 top of the areola, or human buttocks; and includes human male genitals in a
18 discernibly turgid state even if completely and opaquely covered.

19 ~~b-c.~~ "Where minors are or may be invited as a part of the general public" includes any
20 public roadway or public walkway.

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

23 **SECTION 5. AMENDMENT.** Section 12.1-27.1-11 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **12.1-27.1-11. Exceptions to criminal liability.**

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

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

1 material, found to be obscene, to the distributor or publisher initially delivering it to the person
2 returning it.

3 **SECTION 6.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Safety policies and technology protection measures required - Report.**

- 6 1. A school district, state agency, or public library, ~~or university~~ may offer digital or online
7 library database resources to students in kindergarten through twelfth grade if the
8 person providing the resources verifies all the resources comply with subsection 2.
9 2. Digital or online library database resources offered by a school district, state agency,
10 or public library, ~~or university~~ to students in kindergarten through twelfth grade must
11 have safety policies and technology protection measures that:
12 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
13 downloading materials constituting child sexual abuse material, an obscene
14 performance, or pornography; and
15 b. Filter or block access to pornography and child sexual abuse material.
16 3. Notwithstanding any contract provision, if a provider of digital or online library
17 resources fails to comply with subsection 2, the school district, state agency, or public
18 library, ~~or university~~ shall withhold any further payments to the provider pending
19 verification of compliance.
20 4. If a provider of digital or online library database resources fails to timely verify the
21 provider is in compliance with the safety policies and requirements of subsection 2, the
22 school district, state agency, or public library, ~~or university~~ shall consider the provider's
23 act of noncompliance a breach of contract.
24 5. A public school library and a public library shall submit an aggregate written report to
25 the attorney general no later than December first of each year regarding any issues
26 related to provider compliance with technology protection measures required by
27 subsection 2.
28 6. An employee of a school district, state agency, or public library, ~~or university~~ is not
29 exempt from prosecution for willful indecent exposure ~~to~~of child sexual abuse material
30 or pornography to a minor.

31 **SECTION 7. EFFECTIVE DATE.** This Act is effective August 20, 2023.