

February 18, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2307

Introduced by

Senators Boehm, Erbele, Hogue, Weston

Representatives Steiner, Tveit

1 A BILL for an Act to create and enact a new subsection to section 12.1-27.1-01 and two new
2 sections to chapter 12.1-27.1 of the North Dakota Century Code, relating to the definition of a
3 public library, required safety policies and technology protection measures, and the ~~attorney-~~
4 ~~general's~~state's attorney's review of public libraries, school districts, and state agencies for
5 compliance with statutes protecting minors from explicit sexual material; to amend and reenact
6 subsection 5 of section 12.1-27.1-01 ~~and sections~~, subsection 2 of section 12.1-27.1-03.1, and
7 sections 12.1-27.1-03.5; and 12.1-27.1-11 of the North Dakota Century Code, relating to
8 obscenity control; to provide for a report to the legislative management; and to provide a
9 penalty.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

- 13 5. As used in this chapter, the terms "obscene material" and "obscene performance"
14 mean material or a performance which:
- 15 a. Taken as a whole, the average person, applying contemporary North Dakota
16 standards, would find predominantly appeals to a prurient interest;
 - 17 b. Depicts or describes in a patently offensive manner sexual conduct, whether
18 normal or perverted; and
 - 19 c. Taken as a whole, the reasonable person would find lacking in serious literary,
20 artistic, political, or scientific value.

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

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

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

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

13 ~~**12.1-27.1-03.1. Objectionable materials or performance -- Display to minors --**~~
14 ~~**Definitions -- Penalty.**~~

15 ~~1. A person is guilty of a class B misdemeanor if he~~the person ~~willfully displays at~~
16 ~~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 material harmful to minors or exploits, is devoted to, or is~~
20 ~~principally made up of depictions of nude or partially denuded human figures posed or~~
21 ~~presented in a manner to exploit sex, lust, or perversion for commercial gain.~~

22 ~~2. As used in this section:~~

23 ~~a. "Explicit sexual material" means any material that:~~

24 ~~(1) Taken as a whole, appeals to the prurient interest of minors;~~

25 ~~(2) Is patently offensive under prevailing standards in the adult community in~~
26 ~~North Dakota as a whole regarding what is suitable for minors; and~~

27 ~~(3) Taken as a whole, lacks serious literary, artistic, political, or scientific value~~
28 ~~for minors.~~

29 ~~b. "Nude or partially denuded human figures" means less than completely and~~
30 ~~opaquely covered human genitals, pubic regions, female breasts or a female~~
31 ~~breast, if the breast or breasts are exposed below a point immediately above the~~

1 ~~top of the areola, or human buttocks; and includes human male genitals in a~~
2 ~~discernibly turgid state even if completely and opaquely covered.~~
3 ~~b.c.~~ "Where minors are or may be invited as a part of the general public" includes any
4 ~~public roadway or, public walkway, public library, or public school library.~~
5 ~~c.d.~~ The above shall ~~may~~ not be construed to include a ~~bona fide school, college,~~
6 ~~university, museum, public library, or art gallery.~~

7 **SECTION 3. AMENDMENT.** Subsection 2 of section 12.1-27.1-03.1 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. As used in this section:

- 10 a. "Nude or partially denuded human figures" means less than completely and
11 opaquely covered human genitals, pubic regions, female breasts or a female
12 breast, if the breast or breasts are exposed below a point immediately above the
13 top of the areola, or human buttocks; and includes human male genitals in a
14 discernibly turgid state even if completely and opaquely covered.
15 b. "Where minors are or may be invited as a part of the general public" includes any
16 public roadway ~~or,~~ public walkway, public library, or public school library.
17 c. The above ~~shall~~ may not be construed to include a ~~bona fide school,~~ college,
18 university, museum, ~~public library,~~ or art gallery.

19 **SECTION 4. AMENDMENT.** Section 12.1-27.1-03.5 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **12.1-27.1-03.5. Public libraries and school districts prohibited from maintaining**
22 **explicit sexual material - Report.**

23 1. As used in this section:

- 24 a. "Explicit sexual material" means any material which:
25 (1) Taken as a whole, appeals to the prurient interest of minors;
26 (2) Is patently offensive to prevailing standards in the adult community in North
27 Dakota as a whole with respect to what is suitable material for minors; and
28 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
29 for minors.
30 b. "Public library" means a library established under chapter 40-38.

- 1 c. "School district" includes a school library or classroom library under the control of
2 the school district.
- 3 2. A public library or a school district may not maintain in its ~~children's collection-~~
4 inventory books an area easily accessible to minors ~~a book or any other medium that~~
5 contains explicit sexual material.
- 6 3. By January 1, ~~2024~~2026, each public library and school district shall develop a policy
7 and process for reviewing library collections to ensure conformance with the
8 requirements of this section. The policy must include a procedure:
- 9 a. For the ~~removal or relocation of explicit sexual material in the public~~ library to an
10 area in the library inaccessible not easily accessible to minors;
- 11 b. For the development of a book and media collection that is appropriate for the
12 age and maturity levels of the individuals who may access the materials, and
13 which is suitable for, and consistent with, the purpose of the library or school
14 district;
- 15 c. For the ~~public library to receive, evaluate, and respond to or school district to~~
16 ~~relocate~~ relocation of materials to an area inaccessible not easily accessible to
17 minors or refer an individual to the attorney general under section 7 of this Act,
18 upon a request from an individual regarding the removal or relocation of to
19 ~~relocate one or more of the books or other materials~~ media in the library collection-
20 ~~containing the individual believes contains~~ explicit sexual material in the library
21 collection; and
- 22 d. For the activation of a diverse decisionmaking committee to reconsider the
23 relocation of explicit sexual material in the library collection, if the individual is
24 unsatisfied with the result under subdivision c;
- 25 e. To refer an individual to section 7 of this Act, if the individual is unsatisfied with
26 the result of the reconsideration under subdivision d; and
- 27 f. To periodically review the library collection to ensure the library collection does-
28 ~~not contain explicit sexual material in the children's collection~~ compliance with this
29 section.
- 30 4. Each public library and school district shall provide a compliance report to the
31 legislative management before May 1, ~~2024~~2026, on the implementation of collection

1 development and relocation of materials policies as required by this section and to
2 ensure sufficient compliance with this section.

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

5 **12.1-27.1-11. Exceptions to criminal liability.**

6 Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall~~may not apply to the possession or distribution
7 of material in the course of law enforcement, judicial, or legislative activities; or to the
8 possession of material by a ~~bona fide school~~, college, university, museum, or public library for
9 limited access for educational research purposes carried on at ~~such an~~the institution by adults
10 only. Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall also~~may not apply to a person who is
11 returning material, found to be obscene, to the distributor or publisher initially delivering it to the
12 person returning it.

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

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

16 1. As used in this section:

17 a. "Explicit sexual material" means the term as defined under section

18 12.1-27.1-03.5.

19 b. "Public library" does not include the state library.

20 c. "State agency" does not include the state library or institutions of higher
21 education.

22 2. A school district, state agency, or public library may offer digital or online library

23 database resources to students in kindergarten through grade twelve if the person

24 providing the resources verifies all the resources comply with subsection ~~23.~~

25 ~~2.3.~~ Digital or online library database resources offered by a school district, state agency,

26 or public library to students in kindergarten through grade twelve must have safety
27 policies and technology protection measures that:

28 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
29 downloading materials constituting an obscene performance or explicit sexual

30 material; and

31 b. Filter or block access to explicit sexual material.

1 3.4. Notwithstanding any contract provision, if a provider of digital or online library
2 resources fails to comply with subsection 23, the school district, state agency, or public
3 library shall withhold any further payments to the provider pending verification of
4 compliance.

5 4.5. If a provider of digital or online library database resources fails to timely verify the
6 provider is in compliance with the safety policies and requirements of subsection 23,
7 the school district, state agency, or public library shall consider the provider's act of
8 noncompliance a breach of contract.

9 5.6. A public school library and a public library shall submit an aggregate written report to
10 the legislative management no later than December first of each year regarding any:

11 a. Issues related to provider compliance with technology protection measures
12 required by subsection 23; and

13 b. Incidents of complaints regarding accessible materials.

14 ~~6. As used in this section:~~

15 ~~a. "Explicit sexual material" means the term as defined under section-~~
16 ~~12.1-27.1-03.5.~~

17 ~~b. "Public library" does not include the state library.~~

18 ~~c. "State agency" does not include the state library.~~

19 7. By January 1, 2026, each school district, state agency, or public library offering digital
20 or online library database resources to students in kindergarten through grade twelve
21 shall develop a policy and process for reviewing digital or online library database
22 resources to ensure conformance with this section. The policy must include a
23 procedure:

24 a. For an individual to report to the school district, state agency, or public library
25 materials containing explicit sexual material or an obscene performance in the
26 digital or online library database resources;

27 b. Upon receipt of a report under subdivision a, for the school district, state agency,
28 or public library, to provide the report to the provider of digital or online library
29 database resources and apprise the individual of the actions taken to comply with
30 this section; and

1 c. To refer an individual to section 7 of this Act, if the individual believes this section
2 is being violated after being apprised of the actions taken to comply with the
3 section.

4 **SECTION 7.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Attorney generalState's attorney - Obscenity review procedure - School districts -**
7 **State agencies - Public libraries - Penalty.**

- 8 1. Any interested ~~person~~individual who has exhausted the procedures under section
9 12.1-27.1-03.5 or section 6 of this Act may request~~an attorney general's,~~ in the
10 manner prescribed by the local state's attorney, the local state's attorney's opinion to
11 review an alleged violation under section 12.1-27.1-03.5 or section 6 of this Act. Within
12 thirtysixty days of receiving the request, the ~~attorney general~~state's attorney shall
13 issue an opinion on the alleged violation to the interested ~~person~~individual, the
14 provider of digital or online library database resources, if any, and the school district,
15 state agency, or public library under review.
- 16 2. If the ~~attorney general~~state's attorney determines a public library or state agency has
17 violated ~~this section~~section 12.1-27.1-03.5 or section 6 of this Act, the ~~attorney-~~
18 ~~general~~state's attorney shall defer any prosecution and notify the ~~state treasurer~~public
19 library or state agency. After receiving notice, the public library or state agency shall
20 take corrective action to comply with the violated law within ten days. If the public
21 library or state agency fails to comply with the law within ten days, the state's attorney:
22 a. Shall notify the state treasurer who shall withhold and return funds allocated to
23 the state agency or public library, until the state's attorney has determined the
24 state agency or public library is in compliance with the relevant statute and has
25 notified the state treasurer accordingly; and
26 b. May prosecute for failure to comply with the law.
- 27 3. If the ~~attorney general~~state's attorney determines a school district has violated ~~this-~~
28 ~~section~~section 12.1-27.1-03.5 or section 6 of this Act, the ~~attorney general~~state's
29 attorney shall defer any prosecution and notify the ~~superintendent of public-~~
30 instructionschool district. After receiving notice, the school district shall take corrective

- 1 action to comply with the violated law within ten days. If the school district fails to
2 comply with the law within ten days, the state's attorney:
- 3 a. Shall notify the superintendent of public instruction who shall withhold funds
4 allocated to the school district until the state's attorney has determined the state
5 agency or public library is in compliance with the relevant statute and has notified
6 the superintendent of public instruction accordingly; and
- 7 b. May prosecute for failure to comply with the law.
- 8 ~~4. After receiving notice under subsection 2 or 3, the state treasurer or superintendent of~~
9 ~~public instruction may not distribute funds to the school district, state agency, or public~~
10 ~~library until the attorney general has determined the school district, state agency, or~~
11 ~~public library is in compliance with the relevant statute and has notified the state~~
12 ~~treasurer or superintendent of public instruction accordingly.~~