

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2083

Introduced by

Judiciary Committee

(At the request of the Highway Patrol)

1 A BILL for an Act to create and enact a new subsection to section 44-04-18.7 of the North
2 Dakota Century Code, relating to the designation of a sensitive image as an exempt record; and
3 to amend and reenact section 44-04-17.1 of the North Dakota Century Code, relating to the
4 definition of a sensitive image.

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

6 **SECTION 1. AMENDMENT.** Section 44-04-17.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **44-04-17.1. Definitions.**

9 As used in this section through section 44-04-32:

- 10 1. "Closed meeting" means all or part of an exempt meeting that a public entity in its
11 discretion has not opened to the public, although any person necessary to carry out or
12 further the purposes of a closed meeting may be admitted.
- 13 2. "Closed record" means all or part of an exempt record that a public entity in its
14 discretion has not opened to the public.
- 15 3. "Confidential meeting" or "confidential record" means all or part of a record or meeting
16 that is either expressly declared confidential or is prohibited from being open to the
17 public.
- 18 4. "Executive session" means all or part of a meeting that is closed or confidential.
- 19 5. "Exempt meeting" or "exempt record" means all or part of a record or meeting that is
20 neither required by law to be open to the public, nor is confidential, but may be open in
21 the discretion of the public entity.

- 1 6. "Governing body" means the multimember body responsible for making a collective
2 decision on behalf of a public entity. "Governing body" also includes any group of
3 persons, regardless of membership, acting collectively pursuant to authority delegated
4 to that group by the governing body.
- 5 7. "Information technology resources" includes data processing hardware and software
6 or technology support services necessary to facilitate a response to a request for
7 electronic records.
- 8 8. "Law" includes federal statutes, applicable federal regulations, and state statutes.
- 9 9. a. "Meeting" means a formal or informal gathering or a work session, whether in
10 person or through any electronic means, of:
- 11 (1) A quorum of the members of the governing body of a public entity regarding
12 public business; or
- 13 (2) Less than a quorum of the members of the governing body of a public entity
14 regarding public business, if the members attending one or more of the
15 smaller gatherings collectively constitute a quorum and if the members hold
16 the gathering for the purpose of avoiding the requirements of section
17 44-04-19.
- 18 b. "Meeting" does not include:
- 19 (1) A chance or social gathering at which public business is not considered;
- 20 (2) Emergency operations during a disaster or emergency declared under
21 section 37-17.1-10 or an equivalent ordinance if a quorum of the members
22 of the governing body are present but are not discussing public business as
23 the full governing body or as a task force or working group;
- 24 (3) The attendance of members of a governing body at meetings of any
25 national, regional, or state association to which the public entity, the
26 governing body, or individual members belong;
- 27 (4) Training seminars at which no other public business is considered or
28 discussed; and
- 29 (5) Administration of examinations by a regulatory board when no other public
30 business is considered or discussed.

- 1 c. Notwithstanding subdivisions a and b, as applied to the legislative assembly,
2 "meeting" means any gathering subject to section 14 of article IV of the
3 Constitution of North Dakota.
- 4 d. Notwithstanding subdivisions a and b, "meeting" does not include any meeting of
5 the judicial branch or a committee or workgroup of the judicial branch. Such
6 meetings are governed by section 5 of article XI of the Constitution of North
7 Dakota.
- 8 10. "Organization or agency supported in whole or in part by public funds" means an
9 organization or agency in any form which has received public funds exceeding the fair
10 market value of any goods or services given in exchange for the public funds, whether
11 through grants, membership dues, fees, or any other payment. An exchange must be
12 conclusively presumed to be for fair market value, and does not constitute support by
13 public funds, when an organization or agency receives a benefit under any authorized
14 economic development program.
- 15 11. "Political subdivision" includes any county or city, regardless of the adoption of any
16 home rule charter, and any airport authority, township, school district, park district,
17 rural fire protection district, water resource district, solid waste management authority,
18 rural ambulance service district, irrigation district, hospital district, soil conservation
19 district, recreation service district, railroad authority, or district health unit.
- 20 12. "Public business" means all matters that relate or may foreseeably relate in any way
21 to:
22 a. The performance of the public entity's governmental functions, including any
23 matter over which the public entity has supervision, control, jurisdiction, or
24 advisory power; or
25 b. The public entity's use of public funds.
- 26 13. "Public entity" means all:
27 a. Public or governmental bodies, boards, bureaus, commissions, or agencies of
28 the state, including any entity created or recognized by the Constitution of North
29 Dakota, state statute, or executive order of the governor or any task force or
30 working group created by the individual in charge of a state agency or institution,
31 to exercise public authority or perform a governmental function;

- 1 b. Public or governmental bodies, boards, bureaus, commissions, or agencies of
2 any political subdivision of the state and any entity created or recognized by the
3 Constitution of North Dakota, state statute, executive order of the governor,
4 resolution, ordinance, rule, bylaw, or executive order of the chief executive
5 authority of a political subdivision of the state to exercise public authority or
6 perform a governmental function; and
- 7 c. Organizations or agencies supported in whole or in part by public funds, or
8 expending public funds.
- 9 14. "Public funds" means cash and other assets with more than minimal value received
10 from the state or any political subdivision of the state.
- 11 15. "Quorum" means one-half or more of the members of the governing body, or any
12 smaller number if sufficient for a governing body to transact business on behalf of the
13 public entity.
- 14 16. "Record" means recorded information of any kind, regardless of the physical form or
15 characteristic by which the information is stored, recorded, or reproduced, which is in
16 the possession or custody of a public entity or its agent and which has been received
17 or prepared for use in connection with public business or contains information relating
18 to public business. "Record" does not include unrecorded thought processes or mental
19 impressions, but does include preliminary drafts and working papers. "Record" also
20 does not include records in the possession of a court of this state.
- 21 17. "Sensitive image" means an image depicting an exposed intimate part, gruesome
22 injury, deceased individual, or a minor.
- 23 18. "Task force or working group" means a group of individuals who have been formally
24 appointed and delegated to meet as a group to assist, advise, or act on behalf of the
25 individual in charge of a state agency or institution when a majority of the members of
26 the group are not employees of the agency or institution.

27 **SECTION 2.** A new subsection to section 44-04-18.7 of the North Dakota Century Code is
28 created and enacted as follows:

29 Unless otherwise provided by law, a sensitive image as defined by section 44-04-17.1
30 is an exempt record.