

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 review of public libraries, school districts, and state agencies for compliance with
5 statutes protecting minors from explicit sexual material; to amend and reenact subsection 5 of
6 section 12.1-27.1-01 and sections 12.1-27.1-03.1, 12.1-27.1-03.5, and 12.1-27.1-11 of the North
7 Dakota Century Code, relating to obscenity control; to provide for a report to the legislative
8 management; and to provide a penalty.

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

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

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

20 Whether material or a performance is obscene must be judged with reference to
21 ordinary reasonable adults, unless it appears from the character of the material or the
22 circumstances of its dissemination that the material or performance is designed for
23 minors or other specially susceptible audience, in which case the material or
24 performance must be judged with reference to that type of audience.

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

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

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

8 **12.1-27.1-03.1. Objectionable materials or performance - Display to minors -**
9 **Definitions - Penalty.**

- 10 1. A person is guilty of a class B misdemeanor if ~~he~~the person willfully displays at
11 newsstands or any other business establishment frequented by minors, or where
12 minors are or may be invited as a part of the general public, any photograph, book,
13 paperback book, pamphlet, or magazine, the exposed cover or available content of
14 which either contains explicit material harmful to minors or exploits, is devoted to, or is
15 principally made up of depictions of nude or partially denuded human figures posed or
16 presented in a manner to exploit sex, lust, or perversion for commercial gain.
- 17 2. As used in this section:
- 18 a. "Explicit sexual material" means any material that:
- 19 (1) Taken as a whole, appeals to the prurient interest of minors;
20 (2) Is patently offensive under prevailing standards in the adult community in
21 North Dakota as a whole regarding what is suitable for minors; and
22 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
23 for minors.
- 24 b. "Nude or partially denuded human figures" means less than completely and
25 opaquely covered human genitals, pubic regions, female breasts or a female
26 breast, if the breast or breasts are exposed below a point immediately above the
27 top of the areola, or human buttocks; and includes human male genitals in a
28 discernibly turgid state even if completely and opaquely covered.
- 29 ~~b-c.~~ "Where minors are or may be invited as a part of the general public" includes any
30 public roadway ~~or~~, public walkway, public library, or public school library.

1 ~~regarding the removal or relocation of~~ relocate one or more of the books or
2 other ~~materials~~ media in the library collection ~~containing~~ the individual believes
3 contains explicit sexual material; and
4 d. To periodically review the library collection to ensure ~~the library collection does~~
5 ~~not contain explicit sexual material in the children's collection~~ compliance with this
6 section.

7 4. Each public library and school district shall provide a compliance report to the
8 legislative management before May 1, ~~2024~~ 2026, on the implementation of collection
9 development and relocation of materials policies as required by this section and to
10 ensure sufficient compliance with this section.

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

13 **12.1-27.1-11. Exceptions to criminal liability.**

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

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

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

- 24 1. A school district, state agency, or public library may offer digital or online library
25 database resources to students in kindergarten through grade twelve if the person
26 providing the resources verifies all the resources comply with subsection 2.
27 2. Digital or online library database resources offered by a school district, state agency,
28 or public library to students in kindergarten through grade twelve must have safety
29 policies and technology protection measures that:

- 1 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
- 2 downloading materials constituting an obscene performance or explicit sexual
- 3 material; and
- 4 b. Filter or block access to explicit sexual material.
- 5 3. Notwithstanding any contract provision, if a provider of digital or online library
- 6 resources fails to comply with subsection 2, the school district, state agency, or public
- 7 library shall withhold any further payments to the provider pending verification of
- 8 compliance.
- 9 4. If a provider of digital or online library database resources fails to timely verify the
- 10 provider is in compliance with the safety policies and requirements of subsection 2, the
- 11 school district, state agency, or public library shall consider the provider's act of
- 12 noncompliance a breach of contract.
- 13 5. A public school library and a public library shall submit an aggregate written report to
- 14 the legislative management no later than December first of each year regarding any:
- 15 a. Issues related to provider compliance with technology protection measures
- 16 required by subsection 2; and
- 17 b. Incidents of complaints regarding accessible materials.
- 18 6. As used in this section:
- 19 a. "Explicit sexual material" means the term as defined under section
- 20 12.1-27.1-03.5.
- 21 b. "Public library" does not include the state library.
- 22 c. "State agency" does not include the state library.

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

25 **Attorney general - Obscenity review procedure - School districts - State agencies -**
26 **Public libraries - Penalty.**

- 27 1. Any interested person may request an attorney general's opinion to review an alleged
- 28 violation under section 12.1-27.1-03.5 or section 6 of this Act. Within thirty days of
- 29 receiving the request, the attorney general shall issue an opinion on the alleged
- 30 violation to the interested person, the provider of digital or online library database
- 31 resources, if any, and the school district, state agency, or public library under review.

- 1 2. If the attorney general determines a public library or state agency has violated this
- 2 section, the attorney general shall notify the state treasurer.
- 3 3. If the attorney general determines a school district has violated this section, the
- 4 attorney general shall notify the superintendent of public instruction.
- 5 4. After receiving notice under subsection 2 or 3, the state treasurer or superintendent of
- 6 public instruction may not distribute funds to the school district, state agency, or public
- 7 library until the attorney general has determined the school district, state agency, or
- 8 public library is in compliance with the relevant statute and has notified the state
- 9 treasurer or superintendent of public instruction accordingly.