

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 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.

1 Whether material or a performance is obscene must be judged with reference to
2 ~~ordinary~~reasonable 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 ~~e.d.~~ The above ~~shall~~may not be construed to include a ~~bona fide school~~, college,
6 university, museum, ~~public library~~, or art gallery.

7 2. A person is guilty of a class B misdemeanor if the person willfully displays at
8 newsstands or any other business establishment frequented by minors, or where
9 minors are or may be invited as a part of the general public, any photograph, book,
10 paperback book, pamphlet, or magazine, the exposed cover or available content of
11 which is explicit sexual material or exploits, is devoted to, or is principally made up of
12 depictions of nude or partially denuded human figures posed or presented in a manner
13 to exploit sex, lust, or perversion for commercial gain.

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

16 **12.1-27.1-03.5. Public libraries and school districts prohibited from maintaining**
17 **explicit sexual material - Report.**

18 1. As used in this section:

19 a. "Explicit sexual material" means any material which:

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

21 (2) Is patently offensive to prevailing standards in the adult community in North
22 Dakota as a whole with respect to what is suitable material for minors; and

23 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
24 for minors.

25 b. "Public library" means a library established under chapter 40-38.

26 c. "School district" includes a school library or classroom library under the control of
27 the school district.

28 2. A public library or a school district may not maintain in its children's collection-
29 inventory books an area easily accessible to minors ~~a book or any other medium that~~
30 ~~contains~~ contains explicit sexual material.

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

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

1 **12.1-27.1-11. Exceptions to criminal liability.**

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

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

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

12 1. As used in this section:

13 a. "Explicit sexual material" means the term as defined under section
14 12.1-27.1-03.5.

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

16 c. "State agency" does not include the state library.

17 2. A school district, state agency, or public library may offer digital or online library
18 database resources to students in kindergarten through grade twelve if the person
19 providing the resources verifies all the resources comply with subsection 23.

20 2.3. Digital or online library database resources offered by a school district, state agency,
21 or public library to students in kindergarten through grade twelve must have safety
22 policies and technology protection measures that:

23 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
24 downloading materials constituting an obscene performance or explicit sexual
25 material; and

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

27 3.4. Notwithstanding any contract provision, if a provider of digital or online library
28 resources fails to comply with subsection 23, the school district, state agency, or public
29 library shall withhold any further payments to the provider pending verification of
30 compliance.

1 4.5. If a provider of digital or online library database resources fails to timely verify the
2 provider is in compliance with the safety policies and requirements of subsection 23,
3 the school district, state agency, or public library shall consider the provider's act of
4 noncompliance a breach of contract.

5 5.6. A public school library and a public library shall submit an aggregate written report to
6 the legislative management no later than December first of each year regarding any:

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

9 b. Incidents of complaints regarding accessible materials.

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

11 ~~a. "Explicit sexual material" means the term as defined under section~~
12 ~~12.1-27.1-03.5.~~

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

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

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

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

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

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

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

1 **Attorney general - Obscenity review procedure - School districts - State agencies -**
2 **Public libraries - Penalty.**

- 3 1. Any interested ~~person~~ individual who has exhausted the procedures under
4 12.1-27.1-03.5 or section 6 of this Act may request an attorney general's opinion to
5 review an alleged violation under section 12.1-27.1-03.5 or section 6 of this Act. Within
6 thirty days of receiving the request, the attorney general shall issue an opinion on the
7 alleged violation to the interested ~~person~~ individual, the provider of digital or online
8 library database resources, if any, and the school district, state agency, or public
9 library under review.
- 10 2. If the attorney general determines a public library or state agency has violated this
11 section, the attorney general shall notify the state treasurer.
- 12 3. If the attorney general determines a school district has violated this section, the
13 attorney general shall notify the superintendent of public instruction.
- 14 4. After receiving notice under subsection 2 or 3, the state treasurer or superintendent of
15 public instruction may not distribute funds to the school district, state agency, or public
16 library until the attorney general has determined the school district, state agency, or
17 public library is in compliance with the relevant statute and has notified the state
18 treasurer or superintendent of public instruction accordingly.