

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

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

5           **12.1-27.1-03.5. Public libraries and school districts prohibited from maintaining**  
6 **explicit sexual material - Report.**

7           1.    As used in this section:

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

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

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

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

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

15           c.    "School district" includes a school library or classroom library under the control of  
16                    the school district.

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

20           3.    By January 1, ~~2024~~2026, each public library and school district shall develop a policy  
21                    and process for reviewing library collections to ensure conformance with the  
22                    requirements of this section. The policy must include a procedure:

23           a.    For the ~~removal or~~ relocation of explicit sexual material in the ~~public~~ library to an  
24                    area in the library inaccessible to minors;

25           b.    For the development of a book and media collection that is appropriate for the  
26                    age and maturity levels of the individuals who may access the materials, and  
27                    which is suitable for, and consistent with, the purpose of the library or school  
28                    district;

29           c.    For the public library ~~to receive, evaluate, and respond to~~ school district to  
30                    relocate materials to an area inaccessible to minors or refer an individual to the  
31                    attorney general under section 7 of this Act, upon a request from an individual

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.