

Sixty-ninth  
Legislative Assembly  
of North Dakota

**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.