

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2360

Introduced by

Senators Boehm, Beard, Hogue, Paulson, Wobbema

Representative Kasper

1 A BILL for an Act to create and enact a new subsection to section 12.1-27.1-01 and a new
2 section to chapter 12.1-27.1 of the North Dakota Century Code, relating to the definition of a
3 public library and required safety policies and technology protection measures; to amend and
4 reenact subsection 5 of section 12.1-27.1-01, sections 12.1-27.1-03.1, and 12.1-27.1-11 of the
5 North Dakota Century Code, relating to obscenity control; to provide a penalty; and to provide
6 an effective date.

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

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

10 5. As used in this chapter, the terms "obscene material" and "obscene performance"
11 mean material or a performance which:

12 a. Taken as a whole, the average person, applying contemporary North Dakota
13 standards, would find predominantly appeals to a prurient interest;

14 b. Depicts or describes in a patently offensive manner sexual conduct, whether
15 normal or perverted; and

16 c. Taken as a whole, the reasonable person would find lacking in serious literary,
17 artistic, political, or scientific value.

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

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

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

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

6 **12.1-27.1-03.1. Objectionable materials or performance - Display to minors -**
7 **Definitions - Penalty.**

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

16 2. As used in this section:
17 a. "Explicit sexual material" means any written, pictorial, three-dimensional, or visual
18 depiction that is patently offensive, including any photography, picture, or
19 computer-generated image, showing or describing:

- 20 (1) Human masturbation;
21 (2) Deviant sexual intercourse;
22 (3) Sexual intercourse;
23 (4) Direct physical stimulation of genitals;
24 (5) Sadomasochistic abuse;
25 (6) Postpubertal human genitals;
26 (7) Sexual activity;
27 (8) Sexual perversion; or
28 (9) Sex-based classifications.

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.

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 **SECTION 4. AMENDMENT.** Section 12.1-27.1-11 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-27.1-11. Exceptions to criminal liability.**

10 Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of
11 material in the course of law enforcement, judicial, or legislative activities; or to the possession
12 of material by a ~~bona fide school~~, college, university, or museum, ~~or public library for limited~~
13 ~~access for educational research purposes carried on at such an institution by adults only.~~

14 Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning
15 material, found to be obscene, to the distributor or publisher initially delivering it to the person
16 returning it.

17 **SECTION 5.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
18 created and enacted as follows:

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

- 20 1. A school district, state agency, or public library may offer digital or online library
21 database resources to students in kindergarten through twelfth grade if the person
22 providing the resources verifies all the resources comply with subsection 2.
- 23 2. Digital or online library database resources offered by a school district, state agency,
24 or public library to students in kindergarten through twelfth grade must have safety
25 policies and technology protection measures that:
- 26 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
27 downloading materials constituting child sexual abuse material, an obscene
28 performance, or pornography; and
- 29 b. Filter or block access to pornography and child sexual abuse material.
- 30 3. Notwithstanding any contract provision, if a provider of digital or online library
31 resources fails to comply with subsection 2, the school district, state agency, or public

- 1 library shall withhold any further payments to the provider pending verification of
2 compliance.
- 3 4. If a provider of digital or online library database resources fails to timely verify the
4 provider is in compliance with the safety policies and requirements of subsection 2, the
5 school district, state agency, or public library shall consider the provider's act of
6 noncompliance a breach of contract.
- 7 5. A public school library and a public library shall submit an aggregate written report to
8 the attorney general no later than December first of each year regarding any issues
9 related to provider compliance with technology protection measures required by
10 subsection 2.
- 11 6. An employee of a school district, state agency, or public library is not exempt from
12 prosecution for willful indecent exposure of child sexual abuse material or pornography
13 to a minor.

14 **SECTION 6. EFFECTIVE DATE.** This Act is effective August 20, 2023.