23.0672.07000

Sixty-eighth Legislative Assembly of North Dakota

## FIRST ENGROSSMENT with House Amendments ENGROSSED SENATE BILL NO. 2360

Introduced by

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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	for application.

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

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

**SECTION 2.** A new subsection to section 12.1-27.1-01 of the North Dakota Century Code is 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		sup	porte	d 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.	Ар	A person is guilty of a class B misdemeanor if hethe person willfully displays at			
9		nev	vsstar	nds 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 depictions of nude or partially denuded human				
14		figures posed or presented in a manner to exploit sex, lust, or perversion for				
15		con	commercial gain.			
16	2.	As	As used in this section:			
17		a.	<u>"Ex</u>	plicit sexual material" means any material which:		
18			<u>(1)</u>	Taken as a whole, appeals to the prurient interest of minors;		
19			<u>(2)</u>	Is patently offensive under prevailing standards in the adult community in		
20				North Dakota as a whole with respect to what is suitable material for minors;		
21				<u>and</u>		
22			<u>(3)</u>	Taken as a whole, lacks serious literary, artistic, political, or scientific value		
23				for minors.		
24		<u>b.</u>	"Nu	de or partially denuded human figures" means less than completely and		
25			opa	quely covered human genitals, pubic regions, female breasts or a female		
26			brea	ast, 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			disc	cernibly turgid state even if completely and opaquely covered.		
29	1	<del>b.</del> c.	"Wh	nere minors are or may be invited as a part of the general public" includes any		
30			pub	lic roadway ef, public walkway, public library, or public school library.		

1	e	<u>d.</u> The above shallmay not be construed to include a bona fide school, college,				
2		university, museum, <del>public library,</del> or art gallery.				
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4	<b>SECTION 4. AMENDMENT.</b> Section 12.1-27.1-11 of the North Dakota Century Code is amended and reenacted as follows:					
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	12.1-27.1-11. Exceptions to criminal liability.					
6		ions 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of				
7	material in the course of law enforcement, judicial, or legislative activities; or to the possession					
8	of material by a <del>bona fide school,</del> college, university, museum, or public library for limited					
9	access for educational research purposes carried on at such an institution by adults only.					
10	Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning					
11	material, found to be obscene, to the distributor or publisher initially delivering it to the person					
12	returning it.					
13	SECTION 5. A new section to chapter 12.1-27.1 of the North Dakota Century Code is					
14	created and enacted as follows:					
15	Safe	ty policies and technology protection measures required - Report - Penalty.				
16	<u>1.</u>	A school district, state agency, or public library may offer digital or online library				
17		database resources to students in kindergarten through twelfth grade if the person				
18		providing the resources verifies all the resources comply with subsection 2.				
19	<u>2.</u>	Digital or online library database resources offered by a school district, state agency,				
20		or public library to students in kindergarten through twelfth grade must have safety				
21		policies and technology protection measures that:				
22		a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or				
23		downloading materials constituting an obscene performance or explicit sexual				
24		material; and				
25		b. Filter or block access to explicit sexual material.				
26	<u>3.</u>	Notwithstanding any contract provision, if a provider of digital or online library				
27		resources fails to comply with subsection 2, the school district, state agency, or public				
28		library shall withhold any further payments to the provider pending verification of				
29		compliance.				
30	<u>4.</u>	If a provider of digital or online library database resources fails to timely verify the				
31		provider is in compliance with the safety policies and requirements of subsection 2, the				

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1 school district, state agency, or public library shall consider the provider's act of 2 noncompliance a breach of contract. 3 A public school library and a public library shall submit an aggregate written report to <u>5.</u> 4 the legislative management no later than December first of each year regarding any 5 issues related to provider compliance with technology protection measures required by 6 subsection 2. 7 An employee of a school district, state agency, or public library who willfully exposes 6. 8 explicit sexual material to a minor in violation of this section is guilty of a class B 9 misdemeanor. 10 As used in this section, the term "public library" or "state agency" does not include the <u>7.</u> 11 state library. 12 **SECTION 6. APPLICATION.** Sections 1, 3, and 4 of this Act do not apply to the state 13 library.