



April 26, 2023

The Honorable Tammy Miller  
President of the Senate  
North Dakota Senate Chambers  
State Capitol  
Bismarck, ND

Re: Senate Bill 2360

Dear President Miller:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2360 and return it to the Senate.

Protecting children from explicit sexual material is common sense, and I have signed House Bill 1205, which prohibits books containing explicit sexual material from being kept in the children's collection at public libraries. House Bill 1205 also standardizes the process for local public libraries to review material when requested by parents, library users or other members of the public – a process already in place and working at nearly all public libraries across the state.

Senate Bill 2360, on the other hand, creates an enormous burden for our 84 local public libraries and hundreds of K-12 school libraries by imposing, through the threat of criminal prosecution, a de facto requirement that libraries conduct an expensive review of library materials that have already been through a screening process to protect young people from objectionable material.

While some will argue that such a review isn't necessary because the bill states that a librarian must "willfully" display explicit sexual material in order to be in violation of the law, librarians cannot reasonably be expected to take their chances with what's currently displayed on the shelves and assume the risk of criminal prosecution based on that subjective standard.

For their own legal protection, librarians will understandably want to review every word and image of every book, magazine, video and other piece of material to ensure it conforms to the law's standards. Senate Bill 2360 goes too far in criminalizing potential disagreements over what constitutes material that is harmful to minors, based on the bill's subjectivity.

Senate Bill 2360 also fails to provide an appropriation to cover the considerable expense of this review process, making this an unfunded mandate that local and school libraries are ill-equipped to afford and manage.

A fiscal note prepared by the North Dakota State Library stated that the bill would require the implementation of a statewide authentication system for access to databases, at a cost of \$300,000 initially and \$150,000 per year in annual, ongoing subscription costs. While the State Library was ultimately exempted from the bill's requirements, its fiscal note outlined numerous, substantial costs for local libraries to comply with the bill, including additional staff, extra cataloging and new software systems. Exempting the State Library and excluding private school K-12 libraries from having to comply with this bill creates further inequities.

America is built on a foundation of freedom of speech, the free exchange of ideas and the freedom from government interference to read – or not to read – books that share ideas and stories across the spectrum of human nature and experience.

The best way we protect our youth is through involved and caring parents making decisions in the best interests of their children, whether at home, online or in a public or school library – not with unfunded, one-size-fits-all government mandates.

For the reasons stated above, Senate Bill 2360 is vetoed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Burgum". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Doug Burgum  
Governor

**Sixty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2023**

SENATE BILL NO. 2360  
(Senators Boehm, Beard, Hogue, Paulson, Wobbema)  
(Representative Kasper)

AN ACT to create and enact a new subsection to section 12.1-27.1-01 and a new section to chapter 12.1-27.1 of the North Dakota Century Code, relating to the definition of a public library and required safety policies and technology protection measures; to amend and 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 North Dakota Century Code, relating to obscenity control; to provide a penalty; and to provide for application.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 12.1-27.1-01 of the North Dakota 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;
  - b. 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 ~~ordinary~~reasonable 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:

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

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

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

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



2. As used in this section:

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

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

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

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

b. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.

b.c. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway, public library, or public school library.

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

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

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

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

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

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

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

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

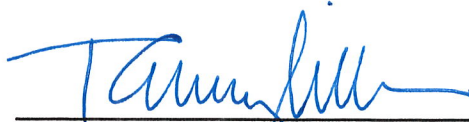
a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or downloading materials constituting an obscene performance or explicit sexual material; and


b. Filter or block access to explicit sexual material.

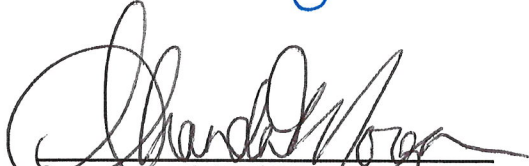
3. Notwithstanding any contract provision, if a provider of digital or online library resources fails to comply with subsection 2, the school district, state agency, or public library shall withhold any further payments to the provider pending verification of compliance.

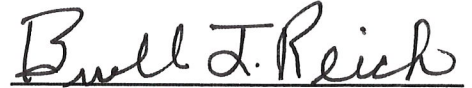
4. If a provider of digital or online library database resources fails to timely verify the provider is in compliance with the safety policies and requirements of subsection 2, the school district, state agency, or public library shall consider the provider's act of noncompliance a breach of contract.
5. A public school library and a public library shall submit an aggregate written report to the legislative management no later than December first of each year regarding any issues related to provider compliance with technology protection measures required by subsection 2.
6. An employee of a school district, state agency, or public library who willfully exposes explicit sexual material to a minor in violation of this section is guilty of a class B misdemeanor.
7. As used in this section, the term "public library" or "state agency" does not include the state library.

**SECTION 6. APPLICATION.** Sections 1, 3, and 4 of this Act do not apply to the state library.

  
President of the Senate

  
Speaker of the House


  
Secretary of the Senate

  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2360.

Senate Vote:    Yeas 33            Nays 14            Absent 0

House Vote:    Yeas 54            Nays 38            Absent 2

  
Secretary of the Senate

Received by the Governor at 9:05 AM. on April 24, 2023.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Governor

Filed in this office this 28 day of April, 2023,

at 2:15 o'clock P M.


  
Secretary of State

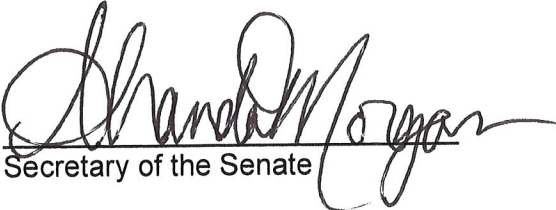


Honorable Michael Howe  
Secretary of State  
Bismarck, North Dakota

I certify this Act, House/Senate Bill No. 2360, together with the objections of Governor Burgum, was returned to the House/Senate, being the body in which it originated, on April 26, 2023; that the objections of the Governor were read at length on April 26, 2023, and entered upon the Journal; that the Bill was taken up for reconsideration; that the motion for reconsideration prevailed on April 26, 2023, at 1:10 p.m.; and the roll was called and the Bill did pass, with more two-thirds of the members-elect voting in the affirmative.

Vote:	Yeas	33
	Nays	14
	Absent and not voting	0

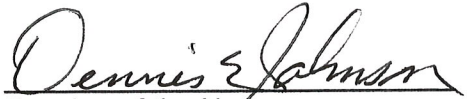
  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Secretary of the Senate

Honorable Michael Howe  
Secretary of State  
Bismarck, North Dakota

I certify this Act, House/Senate Bill No. 2360, together with the objections of Governor Burgum, was received from the House/Senate, being the body in which it originated, on April 26, 2023; that the objections of the Governor were read at length on April 27, 2023, and entered upon the Journal; that the Bill was taken up for reconsideration; that the motion for reconsideration failed on April 27, 2023, at 5:50 p.m.; and the roll was called and the Bill failed to pass, with less than two-thirds of the members-elect voting in the affirmative.

Vote:	Yeas	53
	Nays	41
	Absent and not voting	0

  
Speaker of the House

  
Chief Clerk of the House