



# Senator Scott Jiu Wo Kawasaki

Serving Fairbanks, Fort Wainwright & Badger Road

## Senate Bill 238 Version I

*“An Act relating to access to library material; and relating to affirmative defenses to the offenses of enticement of a minor, contributing to the delinquency of a minor, and distribution of indecent material to minors.”*

### SECTIONAL ANALYSIS

**Section 1:** Amends AS 11.41.452 by adding a new subsection (f) establishing an affirmative defense to prosecution for an employee or official of a school, museum, or public library if they are acting in the course of their employment.

**Section 2:** Amends AS 11.51.130 by adding a new subsection (c) establishing an affirmative defense to prosecution for an employee or official of a school, museum, or public library if they are acting in the course of their employment.

**Section 3:** Amends AS 11.61.128 by adding a new subsection (f) establishing an affirmative defense to prosecution for an employee or official of a school, museum, or public library if they are acting in the course of their employment.

**Section 4:** Adds Article 7 – Access to Library Material – under Title 14 – Education, Libraries, and Museums, Chapter 56 – State and Community Libraries.

### Sec. 14.56.450 – Public library material policy

**Subsection (a):** Provides that a librarian employed by a public library may curate the library’s collection in accordance with the public library’s policy.

**Subsection (b):** Requires the commissioner (Commissioner of Education and Early Development) to establish and update, as necessary, a model policy on the curation and reconsideration of library materials that establishes criteria to remove existing library materials, provide protection against censorship, and adhere to paragraphs (1) - (6) of this subsection.

**Paragraph (1):** States that the role of a public library is a center for voluntary inquiry, the dissemination of information, and a marketplace for ideas.

**Paragraph (2):** States that a library serves to promote free expression and free access to ideas by prohibiting censorship of library materials.

**Paragraph (3):** Prohibits the removal of library material based on the origin, background, or views expressed by the material or by those contributing to its creation.

**Paragraph (4):** States that library material is provided for the interest, information, and enlightenment of all people and should present a wide range of points of view.



## Senator Scott Jiu Wo Kawasaki

Serving Fairbanks, Fort Wainwright & Badger Road

**Paragraph (5):** Requires the model policy to establish a procedure for a librarian to review the inclusion of library materials in a public library on an ongoing basis. This policy must include consideration of subparagraphs (A) – (E).

**Subparagraphs (A) – (E):** Requires consideration of the relevance, condition, availability of duplicates, availability of more recent material, and continued demand for the library material.

**Paragraph (6):** Requires the establishment of a model form and a procedure for an individual to request a public library to reconsider library material. The procedure must include requirements set out in subparagraphs (A) – (E).

**Subparagraph (A):** Limits reconsideration requests to individuals who have used the services of the public library within the past five years, and who reside in the library's designated service area.

**Subparagraph (B):** Requires that the individual submitting a reconsideration request review the library material as a whole and not base the challenge on passages taken out of context.

**Subparagraph (C):** Requires that during the review process, the library material being reconsidered may not be removed from circulation and must remain available to reserve, check out, or access

**Subparagraph (D):** Requires that at least one librarian employed at the public library where the request was submitted formally participate in the review process.

**Subparagraph (E):** States there must be an appeal process to challenge a reconsideration decision. This appeal process must use the standards set out in (5)(A)–(E) of this subsection.

**Subsection (c):** Requires that a public library adopt the model policy established by the commissioner under subsection (b) and any updates. If the public library already has a policy that adheres to the model policy, no further action is required.

**Subsection (d):** Stipulates that the governing body of a public library may not remove library material from circulation based on the origin, background, or views expressed in the material or disagreements with the ideas or concepts expressed in the material. Nor can they prohibit the public library from acquiring, maintaining, or displaying specific material. Access to library materials must not be restricted, and parental permission is not required for minors.

**Subsection (e):** Stipulates that a governing body of a public library may not prohibit, restrict access to, or require parental permission to library materials based on objections to their sexual content unless the material meets the stipulations in paragraphs (1) – (3) of this section.



# Senator Scott Jiu Wo Kawasaki

Serving Fairbanks, Fort Wainwright & Badger Road

**Paragraph (1):** States that library material is not protected by this policy if an average citizen of the community, while considering the material as a whole, finds that the work is solely meant to trigger sexual desire rather than inform or educate.

**Paragraph (2):** States that library material is not protected by this policy if the material depicts or describes sexual conduct as defined by AS 11.66.150 in a clearly offensive manner.

**Paragraph (3):** States that library material is not protected by this policy if the material, when considered as a whole, lacks serious literary, artistic, political, or scientific value.

**Subsection (f):** States that funding cannot be reduced for a public library based on its compliance with this section.

**Subsection (g):** Provides immunity from civil and criminal liability for public library employees for good faith actions performed under this section.

## Sec. 14.56.455 – School library material policy

**Subsection (a):** Provides that a librarian employed by a school library may curate the library's collection in accordance with the school library's policy.

**Subsection (b):** Requires the commissioner (Commissioner of Education and Early Development) to establish and update, as necessary, a model policy on the curation and reconsideration of library materials that establishes criteria to remove existing library materials, provide protection against censorship, and adhere to paragraphs (1) - (7) of this subsection.

**Paragraph (1):** Recognizes that library materials representing a wide range of views should be available to all students for the purposes of information, interest, and enlightenment.

**Paragraph (2):** Prohibits the removal of library material based on the origin, background, or views expressed by the material or by those contributing to its creation.

**Paragraph (3):** Recognizes the importance of a school library as a center for accessing information, ideas, and voluntary inquiry.

**Paragraph (4):** States that a library serves to promote free expression and free access to ideas for students by prohibiting censorship of library materials.

**Paragraph (5):** Acknowledges that a school librarian is professionally trained to curate a school library collection that simultaneously provides students with the widest array of developmentally relevant library material and is age-appropriate for the grade levels the school library serves.



## Senator Scott Jiu Wo Kawasaki

Serving Fairbanks, Fort Wainwright & Badger Road

**Paragraph (6):** Requires the model policy to establish a procedure for a librarian to review the inclusion of library materials in a school library on an ongoing basis. This policy must include consideration of subparagraphs (A) – (E).

**Subparagraphs (A) – (E):** Requires consideration of the relevance, condition, availability of duplicates, availability of more recent developmentally relevant material that is age-appropriate for the grade levels the school library serves, and continued demand for the library material.

**Paragraph (7):** Requires the establishment of a model form and a procedure for an individual to request a school library to reconsider library material. The procedure must include requirements set out in subparagraphs (A) – (E).

**Subparagraph (A):** Limits reconsideration requests to teaching staff, parents and guardians of students, and students who either work or are served by the school district. These requests must be submitted to the principal of the school in which the challenged library material resides.

**Subparagraph (B):** Requires that the individual submitting a reconsideration request review the library material as a whole and not base the challenge on passages taken out of context.

**Subparagraph (C):** Requires that during the review process, the library material being reconsidered may not be removed from circulation and must remain available to reserve, check out, or access

**Subparagraph (D):** Requires that at least one school librarian employed and trained to the school district's satisfaction formally participate in the review process.

**Subparagraph (E):** States there must be an appeal process to challenge a reconsideration decision. This appeal process must use the standards set out in (6)(A)–(E) of this subsection.

**Subsection (c):** Requires that a school board adopt the model policy established by the commissioner under subsection (b) and any updates. If the school board already has a policy that adheres to the model policy, no further action is required.

**Subsection (d):** Stipulates that a school board may not remove library material from circulation based on the origin, background, or views expressed in the material or disagreements with the ideas or concepts expressed in the material. Nor can they prohibit the school library from acquiring, maintaining, or displaying specific material. Access to library materials must not be restricted, and parental permission is not required for minors.



# Senator Scott Jiu Wo Kawasaki

Serving Fairbanks, Fort Wainwright & Badger Road

**Subsection (e):** Provides immunity from civil and criminal liability for school library employees for good faith actions performed under this section.

## Sec. 14.56.460 – Private right of action

**Subsection (a):** States that a government entity at the state or local level that exercises authority over the purchase, selection, curation, and location of library material may not perform the actions described in paragraphs (1)-(2) of this subsection.

**Paragraph (1):** States that a government entity cannot censor or order another person to censor library material.

**Paragraph (2):** States that a government entity cannot discipline, threaten discipline, or terminate a school or library employee for refusing to censor library material.

**Subsection (b):** Authorizes a school or library employee to bring a civil action against a government entity that disciplines, terminates, or threatens adverse employment action for refusing to censor library material. The employee may seek punitive damages, declaratory and injunctive relief, and other appropriate remedies.

**Subsection (c):** Authorizes a student or the student's parent or guardian to bring a civil action against a government entity that violates (a)(1) by censoring library material or directing another person to do so. Provides for declaratory and injunctive relief and statutory damages of not less than \$451 and not more than \$1,451 per censored work.

**Subsection (d):** Authorizes an author, bookseller, or publisher to bring a civil action against a government entity that violates (a)(1) by censoring library material created, sold, or published by the plaintiff. Provides for declaratory and injunctive relief and statutory damages of not less than \$451 and not more than \$1,451 per censored work.

**Subsection (e):** States that a prevailing plaintiff may be awarded attorney fees and costs, including expert witness fees.

**Subsection (f):** States that a government entity may not use funds to pay damages, attorney fees, or other related costs that were previously appropriated or allocated to a library.

**Subsection (g):** Establishes an affirmative defense to a civil action under this section if, at the time of the offense, the government employee was acting in compliance with binding state or federal law.

**Subsection (h):** States that a civil case under this section must commence within three years of the date of the violation.



# Senator Scott Jiu Wo Kawasaki

Serving Fairbanks, Fort Wainwright & Badger Road

## Sec. 14.56.465 – Definitions

**Paragraphs (1) – (6):** Provides definitions for “block”, “censor”, “librarian”, “library material”, “public library”, and “reconsider”.