

CS FOR SENATE BILL NO. 238(EDC)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE EDUCATION COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR KAWASAKI

A BILL

FOR AN ACT ENTITLED

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

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 11.41.452 is amended by adding a new subsection to read:

6 (f) It is an affirmative defense to a prosecution under this section that, at the
7 time of the offense, the defendant was acting in the course of employment as an
8 employee or official of a school, museum, or public library.

9 *** Sec. 2.** AS 11.51.130 is amended by adding a new subsection to read:

10 (c) It is an affirmative defense to a prosecution under this section that, at the
11 time of the offense, the defendant was acting in the course of employment as an
12 employee or official of a school, museum, or public library.

13 *** Sec. 3.** AS 11.61.128 is amended by adding a new subsection to read:

14 (f) It is an affirmative defense to a prosecution under this section that, at the

1 time of the offense, the defendant was acting in the course of employment as an
2 employee or official of a school, museum, or public library.

3 * **Sec. 4.** AS 14.56 is amended by adding new sections to read:

4 **Article 7. Access to Library Material.**

5 **Sec. 14.56.450. Public library material policy.** (a) A librarian employed by a
6 public library may curate library material for inclusion in the public library according
7 to the policy approved by the governing body of the public library.

8 (b) The director shall establish and update as necessary a model policy on the
9 curation and reconsideration of library material within a public library. The policy
10 must provide standards for the selection and curation of library material, establish
11 criteria for the removal of existing library material, and provide protection against
12 attempts to censor library material. At a minimum, the policy must

13 (1) recognize that a public library serves as a center for voluntary
14 inquiry and the dissemination of information and is the marketplace of ideas;

15 (2) promote the free expression of, and free access to, ideas by
16 prohibiting the censorship of library material;

17 (3) prohibit the removal of library material from a public library based
18 on the origin of, background of, or views expressed by the library material or of those
19 contributing to its creation;

20 (4) recognize that library material is provided for the interest,
21 information, and enlightenment of all people and should present a wide range of points
22 of view;

23 (5) establish a procedure, based on professional standards, for a
24 librarian to review the inclusion of library material within a public library on an
25 ongoing basis, which must include consideration of

26 (A) the relevance of the library material;

27 (B) the condition of the library material;

28 (C) the availability of duplicates of the library material;

29 (D) the availability of a more recent library material; and

30 (E) the continued demand for the library material;

31 (6) establish a model form and a procedure for an individual to request

1 a public library to reconsider library material; the procedure must

2 (A) allow an individual who has held a current library card
3 issued by the public library for at least six months and who resides in the
4 public library's designated service area to initiate the review of a specific
5 library material by submitting a request for the public library to reconsider the
6 library material;

7 (B) require that an individual submitting a request for a public
8 library to reconsider library material review the library material as a whole and
9 not challenge library material based on selective passages that are taken out of
10 context;

11 (C) provide that, during the review process, the library material
12 subject to reconsideration may not be removed from its location within the
13 public library and must remain available for a patron to reserve, check out, or
14 access;

15 (D) require that at least one librarian employed at the public
16 library where the request was submitted formally participate in the review
17 process; and

18 (E) provide a process by which an individual can appeal a
19 decision made on reconsideration, using the standards set out in (5)(A) - (E) of
20 this subsection.

21 (c) The governing body of a public library shall adopt the model policy
22 established by the director under (b) of this section, as well as any updates to the
23 model policy. The governing body of a public library that has a policy that meets the
24 requirements set out in (b) of this section on the effective date of this section is not
25 required to take further action.

26 (d) The governing body of a public library may not remove library material
27 from a public library based on the origin of, background of, or views expressed by the
28 library material or of those contributing to its creation. The governing body of a public
29 library may not, based on disagreement with the ideas or concepts expressed by the
30 library material, including objections to a depiction of race, gender, sexuality, or
31 religious or political views, prohibit the public library from acquiring, maintaining, or

1 displaying a specific work or subject matter, restrict access or searchability of library
2 material, or require parental permission for a minor to access library material.

3 (e) The governing body of a public library may not, based on objections to
4 sexual content, prohibit the public library from acquiring, maintaining, or displaying a
5 specific work or subject matter, restrict access or searchability of library material, or
6 require parental permission for a minor to access library material unless, with respect
7 to the specific population to which the library material is made available,

8 (1) the average person, applying contemporary community standards,
9 would find the library material, taken as a whole, appeals to the prurient interest;

10 (2) the library material depicts or describes, in a patently offensive
11 way, sexual conduct defined by AS 11.66.150; and

12 (3) the library material, taken as a whole, lacks serious literary, artistic,
13 political, or scientific value.

14 (f) A government entity that exercises authority over the purchase, selection,
15 curation, and location of library material at the state or municipal level may not reduce
16 funding for a public library because of the public library's compliance with this
17 section.

18 (g) An employee of a public library is immune from civil and criminal liability
19 arising from good faith actions performed under this section.

20 **Sec. 14.56.455. School library material policy.** (a) A librarian employed at a
21 school library may select, purchase, and acquire library material for inclusion in the
22 school library according to the policy approved by the governing body of the school
23 library.

24 (b) The director shall establish and update as necessary a model policy on the
25 curation and reconsideration of library material within a school library. The policy
26 must provide standards for the selection and curation of library material, establish
27 criteria for the removal of existing library material, and provide protection against
28 attempts to censor library material. At a minimum, the policy must

29 (1) recognize that library material is provided for the interest,
30 information, and enlightenment of all students and should present a wide range of
31 points of view in the collection;

1 (2) prohibit the removal of library material from a school library based
2 on the origin of, background of, or views expressed by the library material or of those
3 contributing to its creation;

4 (3) recognize the importance of a school library as a center for
5 voluntary inquiry and the dissemination of information and ideas;

6 (4) promote the free expression of, and free access to, ideas by students
7 by prohibiting the censorship of library material;

8 (5) acknowledge that a school librarian is professionally trained to
9 curate and develop a school library collection that provides students with access to the
10 widest array of developmentally relevant library material created for the chronological
11 ages and grade levels of students in the school;

12 (6) establish a procedure, based on professional standards, for a
13 librarian to review the inclusion of library material within a school library on an
14 ongoing basis, which must include consideration of

15 (A) the relevance of the library material;

16 (B) the condition of the library material;

17 (C) the availability of duplicates of the library material;

18 (D) the availability of more recent developmentally relevant
19 library material created for the chronological ages and grade levels of students
20 in the school; and

21 (E) the continued demand for the library material; and

22 (7) establish a model form and procedure for an individual to request a
23 school library to reconsider library material; the procedure must

24 (A) allow teaching staff employed by the school district,
25 parents and guardians of a student enrolled in the school district, and students
26 enrolled in the school district to initiate the review of a specific library material
27 by submitting to the principal of the school in which the library material is
28 challenged a request for the school library to reconsider the library material;

29 (B) require that an individual submitting a request for a school
30 library to reconsider library material review the library material as a whole and
31 not challenge library material based on selective passages that are taken out of

context;

(C) provide that, during the review process, the library material subject to reconsideration may not be removed from its location within the library and must remain available for students to reserve, check out, or access;

(D) require that at least one school librarian employed at the school and professionally trained to a level determined by the school district formally participate in the review process; and

(E) provide a process by which an individual can appeal a decision made on reconsideration, using the standards set out in (6)(A) - (E) of this subsection.

(c) A school board shall adopt the model policy established by the director under (b) of this section, as well as any updates to the model policy. A school board that has adopted a policy that meets the requirements set out in (b) of this section on the effective date of this section is not required to take further action.

(d) A school board may not remove library material from a school library based on the origin of, background of, or views expressed by the library material or of those contributing to its creation. The school board may not, based on disagreement with the ideas or concepts expressed by the library material, including objections to a depiction of race, gender, sexuality, or religious or political views, prohibit a school library from acquiring, maintaining, or displaying a specific work or subject matter, restrict access or searchability of library material, or require parental permission for a minor to access library material.

(e) An employee of a school library is immune from civil and criminal liability arising from good faith actions performed under this section.

Sec. 14.56.460. Private right of action. (a) A government entity that exercises authority over the purchase, selection, curation, and location of library material at the state or local level may not

(1) censor or order another person to censor library material; or

(2) impose discipline, threaten to impose discipline, or terminate a school or library employee for refusing to censor library material.

(b) A school or library employee may bring an action in a court of competent

1 jurisdiction for damages, including punitive damages, and for declaratory and
2 injunctive relief and other remedies as may be appropriate against a government entity
3 that violates (a)(2) of this section by disciplining, terminating, or threatening to
4 discipline or terminate the librarian for the librarian's refusal to censor library material.

5 (c) A student, or the student's parent or guardian, may bring an action in a
6 court of competent jurisdiction for declaratory and injunctive relief and for damages
7 against a government entity that violates (a)(1) of this section by censoring or ordering
8 another person to censor library material within a school attended by the student.
9 Damages shall be awarded at a minimum of \$451, but not more than \$1,451, for each
10 censored work.

11 (d) An author, bookseller, or publisher may bring an action in a court of
12 competent jurisdiction for declaratory and injunctive relief and for damages against a
13 government entity that violates (a)(1) of this section by censoring or ordering another
14 person to censor library material written, sold, or published by the author, bookseller,
15 or publisher. Damages shall be awarded at a minimum of \$451, but not more than
16 \$1,451, for each censored work.

17 (e) In an action under this section, the court shall grant a prevailing plaintiff
18 reasonable attorney fees and costs, including expert witness fees.

19 (f) A government entity may not use funds that would otherwise have been
20 appropriated or allocated to a library to pay damages, attorney fees, or other related
21 costs.

22 (g) It is an affirmative defense to an action brought under this section that, at
23 the time of the conduct giving rise to the action, the government actor or member of
24 the government was acting under direct compulsion from binding state or federal
25 government authority.

26 (h) An action to enforce this section must be commenced within three years
27 after the date on which the violation of this section occurred.

28 **Sec. 14.56.465. Definitions.** In AS 14.56.450 - 14.56.465,

29 (1) "block" means to prohibit the acquiring, maintaining, or displaying
30 of a specific work or subject matter, restricting access to or searchability of works, or
31 to require parental permission to access works;

1 (2) "censor" means to block library material based on disagreement
2 with the ideas or concepts expressed by the material, or based on objections to sexual
3 content, without having made a finding that, with respect to the specific population to
4 which the material is made available,

5 (A) the average person, applying contemporary community
6 standards, would find the library material, taken as a whole, appeals to the
7 prurient interest;

8 (B) the library material depicts or describes, in a patently
9 offensive way, sexual conduct defined by AS 11.66.150; and

10 (C) the library material, taken as a whole, lacks serious literary,
11 artistic, political, or scientific value;

12 (3) "director" means the director of the division of the department that
13 has responsibility for state libraries, archives, and museums;

14 (4) "librarian" means an employee who is trained as required by the
15 employer and who is responsible for the purchase, selection, curation, removal, and
16 display of library material;

17 (5) "library material" means a book, video, subscription or locally
18 curated database, periodical, chart, graph, movie, game, map, interactive application
19 and software, other enrichment or entertainment material, and, for a school library,
20 other material not required as part of classroom instruction, in a printed or electronic
21 format belonging to, on loan to, or otherwise in the custody of a public library or
22 school library;

23 (6) "public library" means a library established under AS 14.56.400;

24 (7) "reconsider" means to reclassify, move to a different section of the
25 library, or remove from the library an item in the library's collection.