



2020 South Dakota Legislature

House Bill 1277

SENATE STATE AFFAIRS ENGROSSED

Introduced by: **Representative** Latterell

1 **An Act to prevent trafficking, coercion, and exploitation that occurs under the guise**
 2 **of obscene content.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That a NEW SECTION be added:

5 **22-24-69. Receipt of revenue from obscene material--Prohibitions--Violation**
 6 **as misdemeanor--Civil action--Civil damages.**

7 In the absence of a contract authorized under this section or a contract executed
 8 prior to July 1, 2020, that is neither prohibited by federal law nor avoided, rescinded,
 9 unlawful or void under the provisions of title 53, no person other than the person whose
 10 face or likeness is depicted in obscene material—created, filmed, or produced in this state
 11 may has the right to receive any revenue generated in connection with the distribution or
 12 exhibition of the obscene material, and this right may not be sold, transferred, assigned,
 13 pledged, attached, garnished, encumbered, or otherwise alienated nor may the right be
 14 taken, voluntarily or involuntarily, for the satisfaction of any debt or claim against the
 15 person, including a claim for alimony, support, separate maintenance or a claim in a
 16 bankruptcy proceeding. Any person receiving or attempting to receive revenue in violation
 17 of this section is guilty of a Class 1 misdemeanor.

18 A person who is represented by independent legal counsel and whose income is
 19 greater than the median family income, as defined in 11 U.S.C. § 101, may transfer or
 20 assign up to ninety percent of that person's right to revenue for a period of up to one year
 21 through a contract otherwise permitted by law. A contract authorized by this section may
 22 not be automatically renewed and may be unconditionally rescinded at any time within
 23 ninety days of the creation of the obscene material that is the subject of the contract.

24 A person whose face or likeness is depicted in obscene material may bring a civil
 25 action against a person who receives or attempts to receive revenue in violation of this
 26 section and recover an amount equal to the sum of:

- 1 (1) Actual damages;
- 2 (2) Statutory damages in the amount of fifty thousand dollars;
- 3 (3) Attorney's fees, costs, and disbursements as allowed by § 15-6-54(d); and
- 4 (4) Punitive damages as allowed by ~~law~~ § 21-3-2.

5 In an action brought under this section, the court may grant additional relief,
 6 including injunctive relief and declaratory relief.

7 This section does not affect a right or remedy available under law of this state other
 8 than this section.

9 **Section 2.** That a NEW SECTION be added:

10 **22-24-69.1. Plaintiff privacy.**

11 In an action under § 22-24-69:

- 12 (1) The court may exclude or redact from all pleadings and documents filed in the
 13 action other identifying characteristics of the plaintiff under § 15-15-11;
- 14 (2) A plaintiff to whom paragraph (1) applies shall file with the court and serve on the
 15 defendant a confidential information form that includes the excluded or redacted
 16 plaintiff's name and other identifying characteristics; and
- 17 (3) The court may make further orders as necessary to protect the identity and privacy
 18 of a plaintiff.

19 **Section 3.** That § 22-24-27 be AMENDED:

20 **22-24-27. Definitions.**

21 Terms used in §§ 22-24-25 to 22-24-37, inclusive, and § 22-24-69 mean:

- 22 (1) "Contemporary community standard," the contemporary community standard of
 23 the state in which the question of obscenity is to be tested, by the average person,
 24 of the state;
- 25 (2) "Distributed," to transfer possession of, whether with or without consideration;
- 26 (3) "Exhibit," to show or display;
- 27 (4) "Harmful to minors," includes in its meaning the quality of any material or of any
 28 performance or of any description or representation, in whatever form, of nudity,
 29 sexual conduct, sexual excitement, or sado-masochistic abuse, if it:
 - 30 (a) Predominantly appeals to the prurient, shameful, or morbid interest of
 31 minors; and
 - 32 (b) Is patently offensive to prevailing standards in the adult community as a
 33 whole with respect to what is suitable material for minors; and

- 1 (c) Is without serious literary, artistic, political, or scientific value;
- 2 (5) "Magistrate," any circuit court or magistrate judge;
- 3 (6) "Material," anything tangible which is harmful to minors, whether derived through
- 4 the medium of reading, observation, or sound;
- 5 (7) "Matter" or "material," any book, magazine, newspaper, or other printed or written
- 6 material; or any picture, drawing, photograph, motion picture, or other pictorial
- 7 representation; or any statue or other figure; or recording, transcription or
- 8 mechanical, chemical, or electrical reproduction; or any other articles, equipment,
- 9 machines, or materials;
- 10 (8) "Minor," any person less than eighteen years of age;
- 11 (9) "Nudity," within the meaning of subdivision (4) of this section, the showing of the
- 12 human male or female genitals, pubic area, or buttocks with less than a full opaque
- 13 covering, or the showing of the female breast with less than a full opaque covering
- 14 or any portion thereof below the top of the nipple, or the depiction of covered male
- 15 genitals in a discernibly turgid state;
- 16 (10) "Obscene live conduct," any physical human body activity, whether performed or
- 17 engaged in alone or with other persons, including singing, speaking, dancing,
- 18 acting, simulation, or pantomiming, where:
- 19 (a) The dominant theme of such conduct, taken as a whole, appeals to a prurient
- 20 interest;
- 21 (b) The conduct is patently offensive because it affronts contemporary
- 22 community standards relating to the description or representation of sexual
- 23 matters; and
- 24 (c) The conduct is without serious literary, artistic, political, or scientific value.
- 25 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances
- 26 of production, presentation, advertising, or exhibition indicate that live
- 27 conduct is being commercially exploited by the defendant for the sake of its
- 28 prurient appeal, such evidence is probative with respect to the nature of the
- 29 conduct;
- 30 (11) "Obscene material," material:
- 31 (a) The dominant theme of which, taken as a whole, appeals to the prurient
- 32 interest;
- 33 (b) Which is patently offensive because it affronts contemporary community
- 34 standards relating to the description or representation of sado-masochistic
- 35 abuse or sexual conduct; and

- 1 (c) Lacks serious literary, artistic, political, or scientific value.
2 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances
3 of production, presentation, sale, dissemination, or publicity indicate that the
4 matter is being commercially exploited by the defendant for the sake of its
5 prurient appeal, such evidence is probative with respect to the nature of the
6 matter;
- 7 (12) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion, which
8 goes substantially beyond customary limits of candor in description or
9 representation of such matters. If it appears from the character of the material or
10 the circumstances of its dissemination that the subject matter is designed for a
11 specially susceptible audience or clearly defined deviant sexual group, the appeal
12 of the subject matter shall be judged with reference to such audience or group;
- 13 (13) "Sado-masochistic abuse," flagellation or torture by or upon a person who is nude
14 or clad in undergarments, a mask or bizarre costume, or the condition of being
15 fettered, bound, or otherwise physically restrained on the part of one who is nude
16 or so clothed;
- 17 (14) "Sexual conduct," within the meaning of subdivision (4) of this section, any act of
18 masturbation, homosexuality, sexual intercourse, or physical contact with a
19 person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a
20 female, the breast;
- 21 (15) "Sexual excitement," the condition of human male or female genitals when in a
22 state of sexual stimulation or arousal.