

2024 South Dakota Legislature

Senate Bill 184**AMENDMENT 184A
FOR THE INTRODUCED BILL**

1 **An Act to expand provisions regarding the protection of minors from certain**
2 **exhibitions.**

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

4 **Section 1. That § 22-24-27 be AMENDED:**

5 **22-24-27.** Terms used in §§ 22-24-25 to 22-24-37, inclusive, mean:

6 (1) "Contemporary community standard," the contemporary community standard of
7 the state in which the question of obscenity is to be tested, by the average person,
8 of the state;

9 (2) "Distributed," to transfer possession of, whether with or without consideration;

10 ~~(3) "Drag performance," singing, speaking, dancing, acting, simulating, or~~
11 ~~pantomiming, where a performer, in a lewd and lascivious manner that is offensive~~
12 ~~to contemporary community standards because of the description or~~
13 ~~representation of sexual matters, and in the presence of others, exhibits a gender~~
14 ~~identity that is different from the performer's biological sex through the use of~~
15 ~~clothing, makeup, or other physical markers;~~

16 ~~(3)(4)~~ "Exhibit," to show or display;

17 ~~(4)(5)~~ "Harmful to minors," includes in its meaning the quality of any material or of any
18 performance or of any description or representation, in whatever form, of nudity,
19 sexual conduct, sexual excitement, ~~or~~ sado-masochistic abuse, or drag
20 performance, if it:

21 (a) Predominantly appeals to the prurient, shameful, or morbid interest of
22 minors; and

23 (b) Is patently offensive to prevailing standards in the adult community as a
24 whole with respect to what is suitable material for minors; and

25 (c) Is without serious literary, artistic, political, or scientific value;

26 ~~(5)(6)~~ "Magistrate," any circuit court or magistrate judge;

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

1 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of
 2 production, presentation, sale, dissemination, or publicity indicate that the
 3 matter is being commercially exploited by the defendant for the sake of its
 4 prurient appeal, such evidence is probative with respect to the nature of the
 5 matter;

6 ~~(12)~~(13) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion,
 7 which goes substantially beyond customary limits of candor in description or
 8 representation of such matters. If it appears from the character of the material or
 9 the circumstances of its dissemination that the subject matter is designed for a
 10 specially susceptible audience or clearly defined deviant sexual group, the appeal
 11 of the subject matter shall be judged with reference to such audience or group;

12 ~~(13)~~(14) "Sado-masochistic abuse," flagellation or torture by or upon a person who is
 13 nude or clad in undergarments, a mask or bizarre costume, or the condition of
 14 being fettered, bound, or otherwise physically restrained on the part of one who is
 15 nude or so clothed;

16 ~~(14)~~(15) "Sexual conduct," within the meaning of subdivision (4) of this section, any act
 17 of masturbation, homosexuality, sexual intercourse, or physical contact with a
 18 person's clothed or unclothed genitals, pubic area, buttocks, or if such person be
 19 a female, the breast; and

20 ~~(15)~~(16) "Sexual excitement," the condition of human male or female genitals when in
 21 a state of sexual stimulation or arousal.

22 **Section 2. That § 22-24-29 be AMENDED:**

23 **22-24-29.** A person is guilty of disseminating material harmful to minors if that
 24 person knowingly gives or makes available to a minor or promotes or possesses with intent
 25 to promote to minors, or if that person knowingly sells or loans to a minor for monetary
 26 consideration any material described in subdivision-~~§ 22-24-27(4)~~ 22-24-27(5).

27 **Section 3. That § 22-24-30 be AMENDED:**

28 **22-24-30.** A person is guilty of disseminating material harmful to minors if, with
 29 reference to a motion picture, show, or other presentation-~~which that~~ depicts nudity,
 30 sexual conduct, ~~or~~ sado-masochistic abuse, or drag performance, and-~~which~~ is harmful to
 31 minors, that person knowingly:

32 (1) Exhibits-~~such~~ the motion picture, show, or other presentation to a minor;

- 1 (2) Sells or gives to a minor an admission ticket or pass to premises whereon there is
2 exhibited ~~such~~ the motion picture, show, or other presentation; or
3 (3) Admits a minor for a monetary consideration to premises whereon there is
4 exhibited or to be exhibited ~~such~~ the motion picture, show, or other presentation.

5 **Section 4. That § 22-24-58 be AMENDED:**

- 6 **22-24-58.** For the purposes of §§ 22-24-55 to 22-24-59, inclusive, obscene
7 material is defined pursuant to ~~subdivision 22-24-27(11)~~ § 22-24-27.