



2025 South Dakota Legislature

House Bill 1239

Introduced by: **Representative** Soye

1 **An Act to revise certain affirmative defenses to dissemination of material harmful**
 2 **to minors and obscenity offenses.**

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

4 **Section 1. That § 22-24-31 be AMENDED:**

5 **22-24-31.** In any prosecution for disseminating material harmful to minors, it is
 6 an affirmative defense that:

7 (1) The defendant had reasonable cause to believe that the minor involved was
 8 ~~eighteen years old or more of age or older.~~ A draft card, driver's driver license,
 9 birth certificate, or other official or apparently official document is evidence
 10 establishing that the minor was eighteen years of age or older;

11 (2) The minor involved was accompanied by ~~a~~ i
 12 (a) A parent or guardian, or by an
 13 (b) An adult and the adult represented that he or she the adult was the minor's
 14 parent or guardian; or an

15 (c) An adult and the adult signed a written statement to that effect stating that
 16 the adult was the minor's parent or guardian; or

17 (3) The defendant was the parent or guardian of the minor involved; ~~or~~

18 ~~(4) The defendant was a bona fide school, college, university, museum, or public~~
 19 ~~library, or was acting in the capacity of an employee of such an organization or a~~
 20 ~~retail outlet affiliated with and serving the educational purposes of such an~~
 21 ~~organization.~~

22 **Section 2. That § 22-24-37 be AMENDED:**

23 **22-24-37.** The provisions of §§ 22-24-27 to ~~22-24-37~~ 22-24-34, inclusive, do not
 24 apply to any ~~persons~~ person who ~~may possess~~ possesses or ~~distribute~~ distributes obscene

1 matter, ~~or participate~~ participates in conduct, otherwise proscribed by those sections, if
2 ~~such the~~ possession, distribution, or conduct occurs:

3 (1) In the course of law enforcement ~~and or~~ judicial activities;

4 ~~(2) In the course of bona fide school, college, university, museum, or public library~~
5 ~~activities or in the course of employment of such an organization or retail outlet~~
6 ~~affiliated with and serving the educational purposes of such an organization; or~~

7 ~~(3)~~(2) In the course of employment as a moving picture machine operator, or assistant
8 operator, in a motion picture theater in connection with a motion picture film or
9 show exhibited in ~~such the~~ theater, ~~if such the~~ operator or assistant operator has
10 no financial interest in the motion picture theater wherein ~~that the~~ operator or
11 assistant operator is ~~so~~ employed, other than wages received or owed;

12 ~~or like circumstances of justification if the possession, distribution, or conduct is not limited~~
13 ~~to the subject matter's appeal to prurient interests.~~