



## 2020 South Dakota Legislature

# House Bill 1277

Introduced by: **Representative** Latterell

1 **An Act to only authorize a person whose face is depicted in certain obscene material**  
 2 **to receive revenue generated by the distribution or exhibition of the material.**

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 No person other than the person whose face is depicted in obscene material  
 8 distributed or exhibited in this state may receive any revenue generated in connection  
 9 with the distribution or exhibition of the obscene material. The right of the person to  
 10 receive revenue under this section may not be sold, transferred, assigned, pledged,  
 11 attached, garnished, encumbered, or otherwise alienated nor may the right be taken,  
 12 voluntarily or involuntarily, for the satisfaction of any debt or claim against the person,  
 13 including a claim for alimony, support, separate maintenance or a claim in a bankruptcy  
 14 proceeding. A violation of this section is a Class 1 misdemeanor.

15 A person whose face is depicted in obscene material may bring a civil action against  
 16 a person who violates the person's rights under this section and recover an amount equal  
 17 to the sum of:

- 18 (1) Actual damages;  
 19 (2) Statutory damages in the amount of ten thousand dollars;  
 20 (3) Attorney fees; and  
 21 (4) Costs and disbursements as allowed by law.

22 **Section 2.** That § 22-24-27 be AMENDED:

23 **22-24-27. Definitions.**

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

- 1 (1) "Contemporary community standard," the contemporary community standard of  
2 the state in which the question of obscenity is to be tested, by the average person,  
3 of the state;
- 4 (2) "Distributed," to transfer possession of, whether with or without consideration;
- 5 (3) "Exhibit," to show or display;
- 6 (4) "Harmful to minors," includes in its meaning the quality of any material or of any  
7 performance or of any description or representation, in whatever form, of nudity,  
8 sexual conduct, sexual excitement, or sado-masochistic abuse, if it:
- 9 (a) Predominantly appeals to the prurient, shameful, or morbid interest of  
10 minors; and
- 11 (b) Is patently offensive to prevailing standards in the adult community as a  
12 whole with respect to what is suitable material for minors; and
- 13 (c) Is without serious literary, artistic, political, or scientific value;
- 14 (5) "Magistrate," any circuit court or magistrate judge;
- 15 (6) "Material," anything tangible which is harmful to minors, whether derived through  
16 the medium of reading, observation, or sound;
- 17 (7) "Matter" or "material," any book, magazine, newspaper, or other printed or written  
18 material; or any picture, drawing, photograph, motion picture, or other pictorial  
19 representation; or any statue or other figure; or recording, transcription or  
20 mechanical, chemical, or electrical reproduction; or any other articles, equipment,  
21 machines, or materials;
- 22 (8) "Minor," any person less than eighteen years of age;
- 23 (9) "Nudity," within the meaning of subdivision (4) of this section, the showing of the  
24 human male or female genitals, pubic area, or buttocks with less than a full opaque  
25 covering, or the showing of the female breast with less than a full opaque covering  
26 or any portion thereof below the top of the nipple, or the depiction of covered male  
27 genitals in a discernibly turgid state;
- 28 (10) "Obscene live conduct," any physical human body activity, whether performed or  
29 engaged in alone or with other persons, including singing, speaking, dancing,  
30 acting, simulation, or pantomiming, where:
- 31 (a) The dominant theme of such conduct, taken as a whole, appeals to a prurient  
32 interest;
- 33 (b) The conduct is patently offensive because it affronts contemporary  
34 community standards relating to the description or representation of sexual  
35 matters; and

- 1 (c) The conduct is without 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, advertising, or exhibition indicate that live  
4 conduct 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 conduct;
- 7 (11) "Obscene material," material:  
8 (a) The dominant theme of which, taken as a whole, appeals to the prurient  
9 interest;  
10 (b) Which is patently offensive because it affronts contemporary community  
11 standards relating to the description or representation of sado-masochistic  
12 abuse or sexual conduct; and  
13 (c) Lacks serious literary, artistic, political, or scientific value.  
14 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances  
15 of production, presentation, sale, dissemination, or publicity indicate that the  
16 matter is being commercially exploited by the defendant for the sake of its  
17 prurient appeal, such evidence is probative with respect to the nature of the  
18 matter;
- 19 (12) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion, which  
20 goes substantially beyond customary limits of candor in description or  
21 representation of such matters. If it appears from the character of the material or  
22 the circumstances of its dissemination that the subject matter is designed for a  
23 specially susceptible audience or clearly defined deviant sexual group, the appeal  
24 of the subject matter shall be judged with reference to such audience or group;
- 25 (13) "Sado-masochistic abuse," flagellation or torture by or upon a person who is nude  
26 or clad in undergarments, a mask or bizarre costume, or the condition of being  
27 fettered, bound, or otherwise physically restrained on the part of one who is nude  
28 or so clothed;
- 29 (14) "Sexual conduct," within the meaning of subdivision (4) of this section, any act of  
30 masturbation, homosexuality, sexual intercourse, or physical contact with a  
31 person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a  
32 female, the breast;
- 33 (15) "Sexual excitement," the condition of human male or female genitals when in a  
34 state of sexual stimulation or arousal.