



2020 South Dakota Legislature

House Bill 1277

HOUSE 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 No person other than the person whose face is depicted in obscene material
 8 created, filmed, or produced in this state may receive any revenue generated in
 9 connection with the distribution or exhibition of the obscene material. With the exception
 10 of a contract authorized under this section, the right of the person to receive revenue
 11 under this section may not be sold, transferred, assigned, pledged, attached, garnished,
 12 encumbered, or otherwise alienated nor may the right be taken, voluntarily or
 13 involuntarily, for the satisfaction of any debt or claim against the person, including a claim
 14 for alimony, support, separate maintenance or a claim in a bankruptcy proceeding. Any
 15 person receiving or attempting to receive revenue in violation of this section is guilty of a
 16 Class 1 misdemeanor.

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 22 be unconditionally rescinded at any time within ninety days of the creation of the obscene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

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

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

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

6 **22-24-27. Definitions.**

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

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

- 1 (10) "Obscene live conduct," any physical human body activity, whether performed or
2 engaged in alone or with other persons, including singing, speaking, dancing,
3 acting, simulation, or pantomiming, where:
- 4 (a) The dominant theme of such conduct, taken as a whole, appeals to a prurient
5 interest;
- 6 (b) The conduct is patently offensive because it affronts contemporary
7 community standards relating to the description or representation of sexual
8 matters; and
- 9 (c) The conduct is without serious literary, artistic, political, or scientific value.
10 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances
11 of production, presentation, advertising, or exhibition indicate that live
12 conduct is being commercially exploited by the defendant for the sake of its
13 prurient appeal, such evidence is probative with respect to the nature of the
14 conduct;
- 15 (11) "Obscene material," material:
- 16 (a) The dominant theme of which, taken as a whole, appeals to the prurient
17 interest;
- 18 (b) Which is patently offensive because it affronts contemporary community
19 standards relating to the description or representation of sado-masochistic
20 abuse or sexual conduct; and
- 21 (c) Lacks serious literary, artistic, political, or scientific value.
22 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances
23 of production, presentation, sale, dissemination, or publicity indicate that the
24 matter is being commercially exploited by the defendant for the sake of its
25 prurient appeal, such evidence is probative with respect to the nature of the
26 matter;
- 27 (12) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion, which
28 goes substantially beyond customary limits of candor in description or
29 representation of such matters. If it appears from the character of the material or
30 the circumstances of its dissemination that the subject matter is designed for a
31 specially susceptible audience or clearly defined deviant sexual group, the appeal
32 of the subject matter shall be judged with reference to such audience or group;
- 33 (13) "Sado-masochistic abuse," flagellation or torture by or upon a person who is nude
34 or clad in undergarments, a mask or bizarre costume, or the condition of being

- 1 fettered, bound, or otherwise physically restrained on the part of one who is nude
2 or so clothed;
- 3 (14) "Sexual conduct," within the meaning of subdivision (4) of this section, any act of
4 masturbation, homosexuality, sexual intercourse, or physical contact with a
5 person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a
6 female, the breast;
- 7 (15) "Sexual excitement," the condition of human male or female genitals when in a
8 state of sexual stimulation or arousal.