

Sixty-ninth  
Legislative Assembly  
of North Dakota

**FIRST ENGROSSMENT  
with Senate Amendments**

**ENGROSSED HOUSE BILL NO. 1351**

Introduced by

Representatives Satrom, Christy, Ostlie, Schneider

Senators Clemens, Conley

1 A BILL for an Act to amend and reenact subsection 13 of section 12.1-27.1-01 and section  
2 12.1-27.1-03.3 of the North Dakota Century Code, relating to sexually expressive images; and  
3 to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 13 of section 12.1-27.1-01 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 13. As used in this chapter, "sexually expressive image" means a real, altered, or  
8 computer-generated photograph or visual representation that exhibits a nude or  
9 partially denuded human figure, as defined in section 12.1-27.1-03.1, or sexual  
10 conduct.

11 **SECTION 2. AMENDMENT.** Section 12.1-27.1-03.3 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **12.1-27.1-03.3. Creation, possession, or dissemination of sexually expressive images**  
14 **prohibited - Exception - Civil action.**

15 1. A person is guilty of a class A misdemeanor if, knowing of its character and content,  
16 that person:

17 a. Without written consent from each individual who has a reasonable expectation  
18 of privacy in the image, surreptitiously creates or willfully possesses a sexually  
19 expressive image that was surreptitiously created; or

20 b. Distributes or publishes, electronically or otherwise, a sexually expressive image  
21 with the intent to cause emotional harm or humiliation to any individual depicted  
22 in the sexually expressive image who has a reasonable expectation of privacy in

1           the image, or after being given notice by an individual or parent or guardian of the  
2           individual who is depicted in a sexually expressive image that the individual,  
3           parent, or guardian does not consent to the distribution or publication of the  
4           sexually expressive image.

5       2. A person is guilty of a class B misdemeanor if, knowing of its character and content,  
6       that person acquires and knowingly distributes any sexually expressive image that  
7       was created without the consent of the subject of the image.

8       3. This section does not authorize any act prohibited by any other law. If the sexually  
9       expressive image is of a minor and possession does not violate section  
10      12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to  
11      possess or distribute the sexually expressive image.

12      4. This section does not apply to any book, photograph, video recording, motion picture  
13      film, or other visual representation sold in the normal course of business through  
14      wholesale or retail outlets that possess a valid sales tax permit or used by an attorney,  
15      attorney's agent, or any other person obtaining evidence for a criminal investigation or  
16      pending civil action, or by a medical professional or a peace officer acting within that  
17      individual's scope of employment.

18      5. Nothing in this section may be construed to impose liability on a provider of an  
19      interactive computer service, as defined under 47 U.S.C. 230, or an information  
20      service or telecommunication service, as defined under 47 U.S.C. 153, for content  
21      provided by another person.

22      6. A depicted individual who is identifiable and who suffers harm from a person's violation  
23      of this section has a cause of action against the person if the person produced,  
24      possessed, distributed, promoted, advertised, sold, exhibited, broadcasted, or  
25      transmitted the sexually expressive image for the purpose of sexual arousal, sexual  
26      gratification, humiliation, degradation, or monetary or commercial gain.

27      a. The court may order the filing party to redact from all pleadings and documents  
28      filed in the action other identifying characteristics of the plaintiff.

29      b. A party to whom subdivision a applies shall file with the court and serve on all  
30      other parties a redacted and unredacted version of the filing and a confidential

1                    information form that includes the redacted plaintiff's name and other identifying  
2                    characteristics.

3                    c. The court may make further orders as necessary to protect the identity and  
4                    privacy of a plaintiff.

5                    7. In an action under subsection 6, a prevailing plaintiff may recover:

6                    a. The greater of:

7                    (1) Economic and noneconomic damages proximately caused by the  
8                    defendant's violation of this section, including damages for emotional  
9                    distress whether or not accompanied by other damages; or

10                   (2) Statutory damages not to exceed ten thousand dollars against each  
11                   defendant found liable under this section;

12                   b. An amount equal to any monetary gain made by the defendant from the  
13                   distribution, promotion, advertising, sale, exhibition, broadcasting, or transmission  
14                   of the sexually expressive image; and

15                   c. Exemplary damages.

16                   8. In an action under subsection 6, the court may award a prevailing plaintiff:

17                   a. Reasonable attorney fees and costs; and

18                   b. Other remedies available by law, including injunctive relief.

19                   9. This chapter does not affect or preclude any other right or remedy available under  
20                   federal law or a law of this state other than this section.