

**Sixty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2025**

HOUSE BILL NO. 1351
(Representatives Satrom, Christy, Ostlie, Schneider)
(Senators Clemens, Conley)

AN ACT to amend and reenact subsection 13 of section 12.1-27.1-01 and section 12.1-27.1-03.3 of the North Dakota Century Code, relating to sexually expressive images; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:
 - a. Without written consent from each individual who has a reasonable expectation of privacy in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or
 - b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image who has a reasonable expectation of privacy in the image, or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.
2. A person is guilty of a class B misdemeanor if, knowing of its character and content, that person acquires and knowingly distributes any sexually expressive image that was created without the consent of the subject of the image.
3. This section does not authorize any act prohibited by any other law. If the sexually expressive image is of a minor and possession does not violate section 12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to possess or distribute the sexually expressive image.
4. This section does not apply to any book, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by an attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that individual's scope of employment.
5. Nothing in this section may be construed to impose liability on a provider of an interactive computer service, as defined under 47 U.S.C. 230, or an information service or

telecommunication service, as defined under 47 U.S.C. 153, for content provided by another person.

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

 - a. The court may order the filing party to redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff.
 - b. A party to whom subdivision a applies shall file with the court and serve on all other parties a redacted and unredacted version of the filing and a confidential information form that includes the redacted plaintiff's name and other identifying characteristics.
 - c. The court may make further orders as necessary to protect the identity and privacy of a plaintiff.
7. In an action under subsection 6, a prevailing plaintiff may recover:

 - a. The greater of:

 - (1) Economic and noneconomic damages proximately caused by the defendant's violation of this section, including damages for emotional distress whether or not accompanied by other damages; or
 - (2) Statutory damages not to exceed ten thousand dollars against each defendant found liable under this section;
 - b. An amount equal to any monetary gain made by the defendant from the distribution, promotion, advertising, sale, exhibition, broadcasting, or transmission of the sexually expressive image; and
 - c. Exemplary damages.
8. In an action under subsection 6, the court may award a prevailing plaintiff:

 - a. Reasonable attorney fees and costs; and
 - b. Other remedies available by law, including injunctive relief.
9. This chapter does not affect or preclude any other right or remedy available under federal law or a law of this state other than this section.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1351.

House Vote: Yeas 93 Nays 1 Absent 0

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2025.

Approved at _____ M. on _____, 2025.

Governor

Filed in this office this _____ day of _____, 2025,

at _____ o'clock _____ M.

Secretary of State