

**FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1351**

Introduced by

Representatives Satrom, Christy, Ostlie, Schneider

Senators Clemens, Conley

1 A BILL for an Act to create and enact a new section to chapter 12.1-27.1 of the North Dakota  
2 Century Code, relating to prohibiting sexually explicit deep fake videos and images; to amend  
3 and reenact section 12.1-32-15 of the North Dakota Century Code, relating to sexual offenders  
4 and registration requirements; and to provide a penalty.

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

6 **SECTION 1.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is  
7 created and enacted as follows:

8 **Sexually explicit deep fake videos or images prohibited - Penalty - Civil action.**

9 1. As used in this section:

10 a. "Sexual performance" means any performance that includes sexual conduct.

11 b. "Sexually explicit deep fake video or image" means any video recording, motion-  
12 picture film, electronic image, or photograph created with the intent to deceive,  
13 which appears to depict an individual engaging in sexual conduct or a sexual  
14 performance that did not occur in reality or that the individual did not actually  
15 perform, and whose appearance in the video recording, motion-picture film,  
16 electronic image, or photograph is a result of digitization.

17 2. It is a class A misdemeanor for a person to knowingly produce, possess, distribute,  
18 promote, advertise, sell, exhibit, broadcast, or transmit a sexually explicit deep fake  
19 video or image.

20 3. A depicted individual who is identifiable and who suffers harm from a person's violation  
21 of this section has a cause of action against the person if the person produced,  
22 possessed, distributed, promoted, advertised, sold, exhibited, broadcasted, or

1 transmitted the sexually explicit deep fake video or image for the purpose of sexual  
2 arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

3 a. The court may exclude or redact from all pleadings and documents filed in the  
4 action other identifying characteristics of the plaintiff under rule 3.4 of the North  
5 Dakota Rules of Court.

6 b. A plaintiff to whom subdivision a applies shall file with the court and serve on the  
7 defendant a confidential information form that includes the excluded or redacted  
8 plaintiff's name and other identifying characteristics.

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

11 4. In an action under subsection 4, a prevailing plaintiff may recover:

12 a. The greater of:

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

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

18 b. An amount equal to any monetary gain made by the defendant from the  
19 distribution, promotion, advertising, sale, exhibition, broadcasting, or transmission  
20 of the sexually explicit deep fake video or image; and

21 c. Exemplary damages.

22 5. In an action under subsection 4, the court may award a prevailing plaintiff:

23 a. Reasonable attorney's fees and costs; and

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

25 6. This chapter does not affect or preclude any other right or remedy available under  
26 federal law or a law of this state other than this section.

27 **SECTION 2. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **12.1-32-15. Offenders against children and sexual offenders - Sexually violent**  
30 **predators - Registration requirement - Penalty.**

31 1. As used in this section:

- 1           a. "A crime against a child" means a violation of chapter 12.1-16, section  
2           12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,  
3           subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,  
4           12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of  
5           section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense  
6           from another court in the United States, a tribal court, or court of another country,  
7           in which the victim is a minor or is otherwise of the age required for the act to be  
8           a crime or an attempt or conspiracy to commit these offenses.
- 9           b. "Department" means the department of corrections and rehabilitation.
- 10          c. "Homeless" means an individual who is physically present in this state, but is  
11          living in a park, under a bridge, on the streets, in a vehicle or camper, or is  
12          otherwise without a traditional dwelling, and also one who resides in this state but  
13          does not maintain a permanent address. The term does not include individuals  
14          who are temporarily domiciled or individuals residing in public or private shelters  
15          that provide temporary living accommodations.
- 16          d. "Mental abnormality" means a congenital or acquired condition of an individual  
17          that affects the emotional or volitional capacity of the individual in a manner that  
18          predisposes that individual to the commission of criminal sexual acts to a degree  
19          that makes the individual a menace to the health and safety of other individuals.
- 20          e. "Predatory" means an act directed at a stranger or at an individual with whom a  
21          relationship has been established or promoted for the primary purpose of  
22          victimization.
- 23          f. "Reside" means to live permanently or be situated for a considerable time in a  
24          home or a particular place.
- 25          g. "Sexual offender" means a person who has pled guilty to or been found guilty,  
26          including juvenile delinquent adjudications, of a violation of section 12.1-20-03,  
27          12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1,  
28          12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1,  
29          12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and  
30          subdivision b of subsection 1 if the offense involves only a demand for money,  
31          section 1 of this Act, chapter 12.1-27.2, subsection 2 of section 12.1-22-03.1,

1 subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04,  
2 12.1-41-05, or 12.1-41-06, or an equivalent offense from another court in the  
3 United States, a tribal court, or court of another country, or an attempt or  
4 conspiracy to commit these offenses.

5 h. "Sexually dangerous individual" means an individual who meets the definition  
6 specified in section 25-03.3-01.

7 i. "Temporarily domiciled" means staying or being physically present in this state for  
8 more than thirty days in a calendar year or at a location for longer than ten  
9 consecutive days, attending school for longer than ten days, or maintaining  
10 employment in the jurisdiction for longer than ten days, regardless of the state of  
11 the residence.

12 2. The court shall impose, in addition to any penalty provided by law, a requirement that  
13 the individual register, within three days of coming into a county in which the individual  
14 resides, is homeless, or within the period identified in this section that the individual  
15 becomes temporarily domiciled. The individual must register with the chief of police of  
16 the city of the individual's place of residence, or the sheriff of the county if the  
17 individual resides in an area other than a city. A homeless individual shall register  
18 every three days with the sheriff or chief of police of the jurisdiction in which the  
19 individual is physically present. The court shall require an individual to register by  
20 stating this requirement on the court records, if that individual:

21 a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual  
22 offender or an attempted felonious sexual offender, including juvenile delinquent  
23 adjudications of equivalent offenses unless the offense is listed in subdivision c.

24 b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender  
25 for, a misdemeanor or attempted misdemeanor. The court may deviate from  
26 requiring an individual to register if the court first finds the individual is no more  
27 than three years older than the victim if the victim is a minor, the individual has  
28 not previously been convicted as a sexual offender or of a crime against a child,  
29 and the individual did not exhibit mental abnormality or predatory conduct in the  
30 commission of the offense.

- 1           c.   Is a juvenile found delinquent under subdivision d of subsection 1 of section  
2           12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual  
3           offender for a misdemeanor. The court may deviate from requiring the juvenile to  
4           register if the court first finds the juvenile has not previously been convicted as a  
5           sexual offender or for a crime against a child, and the juvenile did not exhibit  
6           mental abnormality or predatory conduct in the commission of the offense.
- 7           d.   Has pled guilty or nolo contendere to, or been found guilty of, a crime against a  
8           child or an attempted crime against a child, including juvenile delinquent  
9           adjudications of equivalent offenses. Except if the offense is described in section  
10          12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent  
11          of the victim, the court may deviate from requiring an individual to register if the  
12          court first finds the individual has not previously been convicted as a sexual  
13          offender or for a crime against a child, and the individual did not exhibit mental  
14          abnormality or predatory conduct in the commission of the offense.
- 15          e.   Has pled guilty or nolo contendere, been found guilty, or been adjudicated  
16          delinquent of any crime against another individual which is not otherwise  
17          specified in this section if the court determines that registration is warranted by  
18          the nature of the crime and therefore orders registration for the individual. If the  
19          court orders an individual to register as an offender under this section, the  
20          individual shall comply with all of the registration requirements in this chapter.
- 21        3.   If a court has not ordered an individual to register in this state, an individual who  
22        resides, is homeless, or is temporarily domiciled in this state shall register if the  
23        individual:
- 24           a.   Is incarcerated or is on probation or parole after July 31, 1995, for a crime  
25           against a child described in section 12.1-29-02, or section 12.1-18-01 or  
26           12.1-18-02 if the individual was not the parent of the victim, or as a sexual  
27           offender;
- 28           b.   Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,  
29           an offense in a court of this state for which registration is mandatory under this  
30           section or an offense from another court in the United States, a tribal court, or  
31           court of another country equivalent to those offenses set forth in this section; or

- 1           c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against  
2           a child or as a sexual offender for which registration is mandatory under this  
3           section if the conviction occurred after July 31, 1985.
- 4           4. In its consideration of mental abnormality or predatory conduct, the court shall  
5           consider the age of the offender, the age of the victim, the difference in ages of the  
6           victim and offender, the circumstances and motive of the crime, the relationship of the  
7           victim and offender, and the mental state of the offender. The court may order an  
8           offender to be evaluated by a qualified counselor, psychologist, or physician before  
9           sentencing. Except as provided under subdivision e of subsection 2, the court shall  
10          state on the record in open court its affirmative finding for not requiring an offender to  
11          register.
- 12          5. When an individual is required to register under this section, the official in charge of a  
13          facility or institution where the individual required to register is confined, or the  
14          department, shall, before the discharge, parole, or release of that individual, inform the  
15          individual of the duty to register pursuant to this section. The official or the department  
16          shall require the individual to read and sign a form as required by the attorney general,  
17          stating that the duty of the individual to register has been explained to that individual.  
18          The official in charge of the place of confinement, or the department, shall obtain the  
19          address where the individual expects to reside, attend school, or work upon discharge,  
20          parole, or release and shall report the address to the attorney general. The official in  
21          charge of the place of confinement, or the department, shall give three copies of the  
22          form to the individual and shall send three copies to the attorney general no later than  
23          forty-five days before the scheduled release of that individual. The attorney general  
24          shall forward one copy to the law enforcement agency having jurisdiction where the  
25          individual expects to reside, attend school, or work upon discharge, parole, or release,  
26          one copy to the prosecutor who prosecuted the individual, and one copy to the court in  
27          which the individual was prosecuted. All forms must be transmitted and received by  
28          the law enforcement agency, prosecutor, and court thirty days before the discharge,  
29          parole, or release of the individual.
- 30          6. An individual who is required to register pursuant to this section who is released on  
31          probation or discharged upon payment of a fine must, before the release or discharge,

1 be informed of the duty to register under this section by the court in which that  
2 individual is convicted. The court shall require the individual to read and sign a form as  
3 required by the attorney general, stating that the duty of the individual to register under  
4 this section has been explained to that individual. The court shall obtain the address  
5 where the individual expects to reside, attend school, or work upon release or  
6 discharge and shall report the address to the attorney general within three days. The  
7 court shall give one copy of the form to the individual and shall send two copies to the  
8 attorney general. The attorney general shall forward one copy to the appropriate law  
9 enforcement agency having jurisdiction where the individual expects to reside, attend  
10 school, or work upon discharge, parole, or release.

- 11 7. Registration consists of a written or electronic statement signed by the individual,  
12 giving the information required by the attorney general, and the biometric data and  
13 photograph of the individual. An individual who is not required to provide a sample of  
14 blood and other body fluids under section 31-13-03 or by the individual's state or court  
15 of conviction or adjudication shall submit a sample of blood and other body fluids for  
16 inclusion in a centralized database of DNA identification records under section  
17 31-13-05. The collection, submission, testing and analysis of, and records produced  
18 from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence  
19 of the DNA profile comparison is admissible in accordance with section 31-13-02. A  
20 report of the DNA analysis certified by the state crime laboratory is admissible in  
21 accordance with section 31-13-05. A district court shall order an individual who refuses  
22 to submit a sample of blood or other body fluids for registration purposes to show  
23 cause at a specified time and place why the individual should not be required to  
24 submit the sample required under this subsection. Within three days after registration,  
25 the registering law enforcement agency shall forward the statement, biometric data,  
26 and photograph to the attorney general and shall submit the sample of the individual's  
27 blood and body fluids to the state crime laboratory. If an individual required to register  
28 under this section has a change in vehicle or computer online identity, the individual  
29 shall register, within three days after the change, with the law enforcement agency  
30 having local jurisdiction of the individual's place of residence of the individual's new  
31 vehicle or computer online identity. If an individual required to register pursuant to this

1 section has a change in name, school, or residence or employment address, that  
2 individual shall register, at least ten days before the change, with the law enforcement  
3 agency having local jurisdiction of the individual's place of residence of the individual's  
4 new name, school, residence address, or employment address. A change in school or  
5 employment address includes the termination of school or employment for which an  
6 individual required to register under this section, the individual shall register within  
7 three days of the termination with the law enforcement agency having local jurisdiction  
8 of the individual's place of residence. The law enforcement agency, within three days  
9 after receipt of the information, shall forward it to the attorney general. The attorney  
10 general shall forward the appropriate registration data to the law enforcement agency  
11 having local jurisdiction of the new place of residence, school, or employment. Upon a  
12 change of address, the individual required to register also shall register within three  
13 days at the law enforcement agency having local jurisdiction of the new place of  
14 residence. If an individual required to register in North Dakota, including in a tribal  
15 registry, resides in another state or on tribal lands, that individual shall register  
16 employment and school addresses and any changes in required registration  
17 information with the law enforcement agency having local jurisdiction over the school  
18 or employment address. The individual registering under this section shall periodically  
19 confirm the information required under this subsection in a manner and at an interval  
20 determined by the attorney general. A law enforcement agency that has previously  
21 registered an offender may omit the biometric data portion of the registration if that  
22 agency has a set of biometric data on file for that individual and is personally familiar  
23 with and can visually identify the offender. These provisions also apply in any other  
24 state that requires registration.

- 25 8. An individual required to register under this section shall comply with the registration  
26 requirement for the longer of the following periods:
- 27 a. A period of fifteen years after the date of sentence or order deferring or  
28 suspending sentence upon a plea or finding of guilt or after release from  
29 incarceration, whichever is later;
  - 30 b. A period of twenty-five years after the date of sentence or order deferring or  
31 suspending sentence upon a plea or finding of guilt or after release from

- 1           incarceration, whichever is later, if the offender is assigned a moderate risk by the  
2           attorney general as provided in subsection 12; or
- 3           c. For the life of the individual, if that individual:
- 4           (1) On two or more occasions has pled guilty or nolo contendere to, or been  
5           found guilty of a crime against a child or as a sexual offender. If all qualifying  
6           offenses are misdemeanors, this lifetime provision does not apply unless a  
7           qualifying offense was committed after August 1, 1999;
- 8           (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense  
9           committed after August 1, 1999, which is described in subdivision a of  
10          subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of  
11          subsection 1 of section 12.1-20-03 if the person is an adult and the victim is  
12          under age twelve, or section 12.1-18-01 if that individual is an adult other  
13          than a parent of the victim, or an equivalent offense from another court in  
14          the United States, a tribal court, or court of another country; or
- 15          (3) Is assigned a high risk by the attorney general as provided in subsection 12.
- 16          9. An individual required to register under this section who violates this section is guilty of  
17          a class C felony. The failure of a homeless individual to register as required in  
18          subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of  
19          court shall forward all warrants issued for a violation of this section to the county  
20          sheriff, who shall enter all such warrants into the national crime information center  
21          wanted person file. A court may not relieve an individual, other than a juvenile, who  
22          violates this section from serving a term of at least ninety days in jail and completing  
23          probation of one year.
- 24          10. When an individual is released on parole or probation and is required to register  
25          pursuant to this section, but fails to do so within the time prescribed, the court shall  
26          order the probation, or the parole board shall order the parole, of the individual  
27          revoked.
- 28          11. If an individual required to register pursuant to this section is temporarily sent outside  
29          the facility or institution where that individual is confined under conviction or sentence,  
30          the local law enforcement agency having jurisdiction over the place where that  
31          individual is being sent must be notified within a reasonable time period before that

1 individual is released from the facility or institution. This subsection does not apply to  
2 any individual temporarily released under guard from the facility or institution in which  
3 that individual is confined.

4 12. The attorney general, with the assistance of the department and the juvenile courts,  
5 shall develop guidelines for the risk assessment of sexual offenders who are required  
6 to register, with a low-risk, moderate-risk, or high-risk level being assigned to each  
7 offender as follows:

8 a. The department shall conduct a risk assessment of sexual offenders who are  
9 incarcerated in institutions under the control of the department and sexual  
10 offenders who are on supervised probation. The department, in a timely manner,  
11 shall provide the attorney general any information, including the offender's level  
12 of risk and supporting documentation, concerning individuals required to be  
13 registered under this section who are about to be released or placed into the  
14 community.

15 b. The attorney general shall conduct a risk assessment of sexual offenders who  
16 are not under the custody or supervision of the department. The attorney general  
17 may adopt a law enforcement agency's previous assignment of risk level for an  
18 individual if the assessment was conducted in a manner substantially similar to  
19 the guidelines developed under this subsection.

20 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct  
21 a risk assessment of juvenile sexual offenders who are required to register under  
22 this section. The juvenile courts or the agency having legal custody of a juvenile  
23 shall provide the attorney general any information, including the offender's level  
24 of risk and supporting documentation, concerning juveniles required to register  
25 and who are about to be released or placed into the community.

26 d. The attorney general shall notify the offender of the risk level assigned to that  
27 offender. An offender may request a review of that determination with the attorney  
28 general's sexual offender risk assessment committee and may present any  
29 information that the offender believes may lower the assigned risk level.

- 1       13. An individual assessed as a high-risk sexual offender in accordance with  
2           subsection 12, may not reside within five hundred feet [152.4 meters] of a public or  
3           nonpublic preschool or elementary, middle, or high school.
- 4       14. Relevant and necessary conviction and registration information must be disclosed to  
5           the public by a law enforcement agency if the individual is a moderate or high risk and  
6           the agency determines that disclosure of the conviction and registration information is  
7           necessary for public protection. The attorney general shall develop guidelines for  
8           public disclosure of offender registration information. Public disclosure may include  
9           internet access if the offender:
- 10           a. Is required to register for a lifetime under subsection 8;  
11           b. Has been determined to be a high risk to the public by the department, the  
12           attorney general, or the courts, according to guidelines developed by those  
13           agencies; or  
14           c. Has been determined to be a high risk to the public by an agency of another state  
15           or the federal government.
- 16           If the offender has been determined to be a moderate risk, public disclosure must  
17           include, at a minimum, notification of the offense to the victim registered under chapter  
18           12.1-34 and to any agency, civic organization, or group of persons who have  
19           characteristics similar to those of a victim of the offender. Upon request, law  
20           enforcement agencies may release conviction and registration information regarding  
21           low-risk, moderate-risk, or high-risk offenders.
- 22       15. A state officer, law enforcement agency, or public school district or governing body of a  
23           nonpublic school or any appointee, officer, or employee of those entities is not subject  
24           to civil or criminal liability for making risk determinations, allowing a sexual offender to  
25           attend a school function under section 12.1-20-25, or for disclosing or for failing to  
26           disclose information as permitted by this section.
- 27       16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual  
28           offender or as an offender against a child under this section, the juvenile shall comply  
29           with the registration requirements in this section. Notwithstanding any other provision  
30           of law, a law enforcement agency shall register a juvenile offender in the same manner  
31           as adult offenders and may release any relevant and necessary information on file to

1 other law enforcement agencies, the department of health and human services, or the  
2 public if disclosure is necessary to protect public health or safety. The law enforcement  
3 agency shall release any relevant and necessary information on file to the  
4 superintendent or principal of the school the juvenile attends. The school  
5 administration shall notify others in similar positions if the juvenile transfers to another  
6 learning institution in or outside the state.

7 17. If an individual has been required to register as a sexual offender or an offender  
8 against a child under section 12.1-32-15 or former section 27-20-52.1 before August 1,  
9 1999, the individual may petition the court to be removed from the offender list if  
10 registration is no longer mandatory for that individual. In considering the petition, the  
11 court shall comply with the requirements of this section.

12 18. A sexual offender who is currently assigned a moderate or high-risk level by the  
13 attorney general may not use a state park of this state as a residence or residential  
14 address to comply with the registration requirements of this section. Before arriving at  
15 a state park for overnight lodging or camping, a sexual offender who is assigned a  
16 moderate or high-risk level by the attorney general shall notify a parks and recreation  
17 department law enforcement officer at the state park where the sexual offender will be  
18 staying.

19 19. When an individual who is required to register pursuant to this section plans to travel  
20 outside of the United States, at least twenty-one days before the intended travel, the  
21 individual shall inform the agency with which the individual last registered the  
22 individual's residence address the details of the intended travel. Upon receipt of the  
23 information from the registering law enforcement agency, the attorney general shall  
24 report the travel to the United States marshal service.