

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.