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Sixty-fourth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2266

Introduced by

Senators Unruh, Campbell, Oban

Representatives Delmore, Kempenich, Rohr

A BILL for an Act to amend and reenact sections 12.1-27.2-01, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, and 12.1-27.2-05 of the North Dakota Century Code, relating to the use of minors in sexual performances; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-01. Definitions.

As used in this chapter:

1. "Obscene sexual performance" means any performance which includes sexual conduct by a minor in any obscene material or obscene performance, as defined in section 12.1-27.1-01.
2. "Performance" means any play, motion picture, photograph, dance, or other visual representation, or any part of a performance.
3. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, <u>ship, transport,</u> publish, distribute, circulate, disseminate, present, exhibit, or advertise.
4. "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the buttocks, breasts, or genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.
5. "Sexual performance" means any performance which includes sexual conduct by a minor.

6. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1-27.1-03.1.

SECTION 2. AMENDMENT. Section 12.1-27.2-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-02. Use of a minor in a sexual performance.

1. A person is guilty of a class ~~B~~A felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a minor, that person consents to the participation by the minor in sexual conduct during a performance.
2. An adult is guilty of a class A felony if, with the intent to persuade, induce, entice, or coerce a minor to engage in sexual conduct during a performance the adult portrays himself or herself as a minor.

SECTION 3. AMENDMENT. Section 12.1-27.2-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-03. Promoting or directing an obscene sexual performance by a minor.

A person is guilty of a class ~~B~~A felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a person who was a minor at the time of the performance.

SECTION 4. AMENDMENT. Section 12.1-27.2-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-04. Promoting a sexual performance by a minor.

A person is guilty of a class ~~C~~B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a person who was a minor at the time of the performance.

SECTION 5. AMENDMENT. Section 12.1-27.2-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-05. Sexual performance by a minor - Affirmative defenses.

It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was eighteen years of age or older, if the minor was in fact fifteen years of age or older; or
2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance.