



2023 South Dakota Legislature

House Bill 1125

Introduced by: **Representative Odenbach**

1 **An Act to expand provisions regarding the protection of minors from certain**
 2 **exhibitions.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 22-24-27 be AMENDED:**

5 **22-24-27.** Terms used in §§ 22-24-25 to 22-24-37, inclusive, mean:

6 (1) "Contemporary community standard," the contemporary community standard of
 7 the state in which the question of obscenity is to be tested, by the average person,
 8 of the state;

9 (2) "Distributed," to transfer possession of, whether with or without consideration;

10 (3) "Drag performance," singing, speaking, dancing, acting, simulation, or
 11 pantomiming, where a performer, in a lewd and lascivious manner, and in the
 12 presence of others, exhibits a gender identity that is different from the performer's
 13 biological sex through the use of clothing, makeup, or other physical markers;

14 ~~(3)~~(4) "Exhibit," to show or display;

15 ~~(4)~~(5) "Harmful to minors," includes in its meaning the quality of any material or of any
 16 performance or of any description or representation, in whatever form, of nudity,
 17 sexual conduct, sexual excitement, ~~or~~sado-masochistic abuse, or drag
 18 performance, if it:

19 (a) Predominantly appeals to the prurient, shameful, or morbid interest of
 20 minors; and

21 (b) Is patently offensive to prevailing standards in the adult community as a
 22 whole with respect to what is suitable material for minors; and

23 (c) Is without serious literary, artistic, political, or scientific value;

24 ~~(5)~~(6) "Magistrate," any circuit court or magistrate judge;

25 ~~(6)~~(7) "Material," anything tangible which is harmful to minors, whether derived through
 26 the medium of reading, observation, or sound;

- 1 ~~(7)~~(8) "Matter" or "material," any book, magazine, newspaper, or other printed or written
2 material; or any picture, drawing, photograph, motion picture, or other pictorial
3 representation; or any statue or other figure; or recording, transcription or
4 mechanical, chemical, or electrical reproduction; or any other articles, equipment,
5 machines, or materials;
- 6 ~~(8)~~(9) "Minor," any person less than eighteen years of age;
- 7 ~~(9)~~(10) "Nudity," within the meaning of subdivision (4) of this section, the showing of
8 the human male or female genitals, pubic area, or buttocks with less than a full
9 opaque covering, or the showing of the female breast with less than a full opaque
10 covering or any portion thereof below the top of the nipple, or the depiction of
11 covered male genitals in a discernibly turgid state;
- 12 ~~(10)~~(11) "Obscene live conduct," any physical human body activity, whether performed
13 or engaged in alone or with other persons, including singing, speaking, dancing,
14 acting, simulation, or pantomiming, where:
- 15 (a) The dominant theme of such conduct, taken as a whole, appeals to a
16 prurient interest;
- 17 (b) The conduct is patently offensive because it affronts contemporary
18 community standards relating to the description or representation of sexual
19 matters; and
- 20 (c) The conduct is without serious literary, artistic, political, or scientific value.
21 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of
22 production, presentation, advertising, or exhibition indicate that live
23 conduct is being commercially exploited by the defendant for the sake of its
24 prurient appeal, such evidence is probative with respect to the nature of the
25 conduct;
- 26 ~~(11)~~(12) "Obscene material," material:
- 27 (a) The dominant theme of which, taken as a whole, appeals to the prurient
28 interest;
- 29 (b) Which is patently offensive because it affronts contemporary community
30 standards relating to the description or representation of sado-masochistic
31 abuse or sexual conduct; and
- 32 (c) Lacks serious literary, artistic, political, or scientific value.
33 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of
34 production, presentation, sale, dissemination, or publicity indicate that the
35 matter is being commercially exploited by the defendant for the sake of its

1 prurient appeal, such evidence is probative with respect to the nature of the
2 matter;

3 ~~(12)~~(13) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion,
4 which goes substantially beyond customary limits of candor in description or
5 representation of such matters. If it appears from the character of the material or
6 the circumstances of its dissemination that the subject matter is designed for a
7 specially susceptible audience or clearly defined deviant sexual group, the appeal
8 of the subject matter shall be judged with reference to such audience or group;

9 ~~(13)~~(14) "Sado-masochistic abuse," flagellation or torture by or upon a person who is
10 nude or clad in undergarments, a mask or bizarre costume, or the condition of
11 being fettered, bound, or otherwise physically restrained on the part of one who is
12 nude or so clothed;

13 ~~(14)~~(15) "Sexual conduct," within the meaning of subdivision (4) of this section, any act
14 of masturbation, homosexuality, sexual intercourse, or physical contact with a
15 person's clothed or unclothed genitals, pubic area, buttocks, or if such person be
16 a female, the breast;

17 ~~(15)~~(16) "Sexual excitement," the condition of human male or female genitals when in
18 a state of sexual stimulation or arousal.

19 **Section 2. That § 22-24-30 be AMENDED:**

20 **22-24-30.** A person is guilty of disseminating material harmful to minors if, with
21 reference to a motion picture, show, or other presentation which depicts nudity, sexual
22 conduct, ~~or~~ sado-masochistic abuse, or drag performance, and which is harmful to minors,
23 that person knowingly:

- 24 (1) Exhibits such motion picture, show, or other presentation to a minor;
25 (2) Sells or gives to a minor an admission ticket or pass to premises whereon there is
26 exhibited such motion picture, show, or other presentation; or
27 (3) Admits a minor for a monetary consideration to premises whereon there is
28 exhibited or to be exhibited such motion picture, show, or other presentation.