

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2266**

Introduced by

Senators Unruh, Campbell, Oban

Representatives Delmore, Kempenich, Rohr

1 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,
2 12.1-27.2-04, and 12.1-27.2-05 of the North Dakota Century Code, relating to the use of minors
3 in sexual performances; and to provide a penalty.

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

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

7 **12.1-27.2-01. Definitions.**

8 As used in this chapter:

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

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

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

6 **12.1-27.2-02. Use of a minor in a sexual performance.**

7 1. A person is guilty of a class ~~BA~~ felony if, knowing the character and content of a
8 performance, that person employs, authorizes, or induces a minor to engage in sexual
9 conduct during a performance or, if being a parent, legal guardian, or custodian of a
10 minor, that person consents to the participation by the minor in sexual conduct during
11 a performance.

12 2. An adult is guilty of a class A felony if, with the intent to persuade, induce, entice, or
13 coerce a minor to engage in a sexual performance, the adult portrays the adult to be a
14 minor.

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

17 **12.1-27.2-03. Promoting or directing an obscene sexual performance by a minor.**

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

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

23 **12.1-27.2-04. Promoting a sexual performance by a minor.**

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

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

29 **12.1-27.2-05. Sexual performance by a minor - Affirmative defenses.**

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

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