

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1186
(Representatives Delmore, DeKrey, Griffin, Mock)
(Senators Lyson, Nelson)

AN ACT to create and enact a new subsection to section 12.1-27.1-01 and section 12.1-27.1-03.3 of the North Dakota Century Code, relating to sexually expressive images; to repeal section 12.1-31-08 of the North Dakota Century Code, relating to possession or distribution of certain photographs or other visual representations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-27.1-01 of the North Dakota Century Code is created and enacted as follows:

As used in this chapter, "sexually expressive image" means a photograph or visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, or sexual conduct.

SECTION 2. Section 12.1-27.1-03.3 of the North Dakota Century Code is created and enacted as follows:

Creation, possession, or dissemination of sexually expressive images prohibited - Exception.

1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:
 - a. Without written consent from each individual in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or
 - b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.
2. A person is guilty of a class B misdemeanor if, knowing of its character and content, that person acquires and knowingly distributes any sexually expressive image that was created without the consent of the subject of the image.
3. This section does not authorize any act prohibited by any other law. If the sexually expressive image is of a minor and possession does not violate section 12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to possess or distribute the sexually expressive image.
4. This section does not apply to any book, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by an attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that individual's scope of employment.

SECTION 3. REPEAL. Section 12.1-31-08 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1186.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State