

25.376.13 100th Legislative Session 1239



2025 South Dakota Legislature

House Bill 1239

Introduced by: **Representative Soye**

An Act to revise certain affirmative defenses to dissemination of material harmful to minors and obscenity offenses.

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

Section 1. That § 22-24-31 be AMENDED:

22-24-31. In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:

- (1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or more of age or older. A draft card, driver's driver license, birth certificate, or other official or apparently official document is evidence establishing that the minor was eighteen years of age or older;
- (2) The minor involved was accompanied by ~~a~~:
 - (a) A parent or guardian, or by an;
 - (b) An adult and the adult represented that ~~he or she~~ the adult was the minor's parent or guardian; ~~or an~~
 - (c) An adult and the adult signed a written statement ~~to that effect stating~~ that the adult was the minor's parent or guardian; or
- (3) The defendant was the parent or guardian of the minor involved; ~~or~~
- (4) ~~The defendant was a bona fide school, college, university, museum, or public library, or was acting in the capacity of an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.~~

Section 2. That § 22-24-37 be AMENDED:

~~22-24-37~~. The provisions of §§ 22-24-27 to ~~22-24-37~~ 22-24-34, inclusive, do not apply to any ~~persons~~ person who ~~may possess~~ possesses or ~~distribute~~ distributes obscene matter, or ~~participate~~ participates in conduct; otherwise proscribed by those sections, if ~~such the~~ the possession, distribution, or conduct occurs:

(1) In the course of law enforcement ~~and or~~ or judicial activities;

~~(2) In the course of bona fide school, college, university, museum, or public library activities or in the course of employment of such an organization or retail outlet affiliated with and serving the educational purposes of such an organization; or~~

~~(3)~~(2) In the course of employment as a moving picture machine operator; or assistant operator; in a motion picture theater in connection with a motion picture film or show exhibited in ~~such the~~ the theater, if ~~such the~~ the operator or assistant operator has no financial interest in the motion picture theater wherein ~~that the~~ the operator or assistant operator is ~~so~~ employed, other than wages received or owed;

~~or like circumstances of justification if the possession, distribution, or conduct is not limited to the subject matter's appeal to prurient interests.~~

Underscores indicate new language.

Overstrikes indicate deleted language.