

HOUSE BILL NO. 361
INTRODUCED BY B. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CRIME OF PUBLIC NUDITY; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Public nudity -- allowing public nudity. (1) A person commits the offense of public nudity if the person knowingly appears nude in a public place or in any other place that is readily visible to the public, except a place provided or set apart for nudity. A person or entity commits the offense of allowing public nudity if the person or entity owns, operates, or maintains a public place, except a place provided or set apart for nudity, and knowingly allows a person to appear nude in that place.

(2) A person convicted of public nudity or of allowing public nudity shall be fined an amount not to exceed \$500 or be incarcerated for a term not to exceed 6 months, or both. Upon a second conviction, the person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, the person shall be incarcerated in a state prison for a term of not less than 1 year or more than 5 years and may be fined an amount not to exceed \$10,000.

(3) This section does not prohibit:

- (a) photographs, movies, video presentations, or any other nonlive performances; or
- (b) live performances having serious artistic, social, scientific, or political value, including but not limited to ballet, opera, plays, musical drama, and live theater.

(4) As used in this section, the following definitions apply:

(a) "Entity" means a proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company, or other for-profit or nonprofit organization.

(b) (i) "Nude" means the showing of:

- (A) human male or female genitals or pubic area with less than a fully opaque covering;
- (B) any portion of the anal cleft or cleavage of the male or female buttocks. Attire that renders a person nude includes but is not limited to G-strings, T-backs, thongs, and any other clothing or covering that does not completely and opaquely cover the anal cleft or cleavage of the male or female buttocks.

(C) human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(D) the portion of the human female breast directly or laterally below a point immediately above the top of the areola with less than a fully opaque covering.

(ii) The term includes the entire lower portion of the human female breast.

(iii) The term does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other clothing if the areola is not exposed or include the breast feeding of babies in public.

(iv) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(c) "Person" means a live human being 7 or more years of age.

(d) "Place provided or set apart for nudity" means an enclosed single-sex public restroom; enclosed single-sex functional shower, locker room, or dressing room; enclosed motel room, hotel room, or other room for lodging designed and intended for sleeping accommodations; doctor's office; hospital; and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and within the sphere of privacy that is constitutionally protected with respect to those places. The term does not include a place where a person's nudity is used for the person's profit or where being nude is used for the promotion of business or is otherwise commercially exploited.

(e) "Public place" means a location:

(i) frequented by the public;

(ii) where the public is present or likely to be present; or

(iii) where a person may reasonably be expected to be observed by members of the public, including but not limited to a street; sidewalk; park; beach; hotel; motel; restaurant; bar; nightclub; country club; cabaret; meeting facility used by a religious, social, fraternal, or similar organization; or other for-profit or nonprofit business or commercial establishment, whether open to the public at large or whether entrance is limited by a cover charge or membership requirement.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45 apply to [section 1].

NEW SECTION. Section 3. Effective date. [This act] is effective 30 days after passage and approval.

- END -