

**Amendment - 1st Reading/2nd House-blue - Requested by: Daniel Salomon - (S) Education and Cultural Resources**

- 2023

68th Legislature 2023

Drafter: Pad McCracken, 406-444-3595

HB0234.002.001

1 HOUSE BILL NO. 234  
2 INTRODUCED BY B. PHALEN, J. SCHILLINGER, S. ESSMANN, B. MITCHELL, B. LER, G. OBLANDER, J.  
3 BERGSTROM, G. KMETZ  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING THE PUBLIC DISPLAY OR  
6 DISSEMINATION OF OBSCENE MATERIAL TO MINORS; ~~REMOVING EXCEPTIONS FOR EMPLOYEES OF~~  
7 ~~PUBLIC SCHOOLS; REMOVING EXCEPTIONS FOR OFFICERS AND EMPLOYEES OF PUBLIC LIBRARIES~~  
8 ~~AND MUSEUMS; AND AMENDING SECTION 45-8-206, MCA; CLARIFYING THE DISTINCTION BETWEEN~~  
9 ~~TWO CRIMINAL OFFENSES, OBSCENITY AND THE DISPLAY OR DISSEMINATION OF OBSCENE~~  
10 ~~MATERIAL TO MINORS; REVISING THE DEFINITION OF "NEWSSTAND" AND PROVIDING A DEFINITION~~  
11 ~~OF "COMMERCIAL ESTABLISHMENT" AND PROVIDING THAT NEITHER TERM INCLUDES SCHOOLS,~~  
12 ~~LIBRARIES, OR MUSEUMS; AMENDING SECTIONS 45-8-201, 45-8-205, AND 45-8-206, MCA."~~  
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
15

16 **Section 1.** Section 45-8-201, MCA, is amended to read:

17 **"45-8-201. Obscenity.** (1) A person commits the offense of obscenity when, with knowledge of the  
18 obscene nature of the material, the person purposely or knowingly:  
19 (a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing,  
20 picture, record, or other representation or embodiment of the obscene to anyone under 18 years of age;  
21 (b) presents or directs an obscene play, dance, or other performance, or participates in that portion  
22 of the performance that makes it obscene, to anyone under 18 years of age;  
23 (c) publishes, exhibits, or otherwise makes available anything obscene to anyone under 18 years  
24 of age;  
25 (d) performs an obscene act or otherwise presents an obscene exhibition of the person's body to  
26 anyone under 18 years of age;  
27 (e) creates, buys, procures, or possesses obscene matter or material with the purpose to

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- 1 disseminate it to anyone under 18 years of age; or
- 2 (f) advertises or otherwise promotes the sale of obscene material or materials represented or held
- 3 out by the person to be obscene.
- 4 (2) A thing is obscene if:
- 5 (a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;
- 6 (ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or
- 7 simulated; or
- 8 (iii) it is a patently offensive representation or description of masturbation, excretory functions, or
- 9 lewd exhibition of the genitals; and
- 10 (b) taken as a whole the material:
- 11 (i) applying contemporary community standards, appeals to the prurient interest in sex;
- 12 (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive
- 13 way; and
- 14 (iii) lacks serious literary, artistic, political, or scientific value.
- 15 (3) In any prosecution for an offense under this section, evidence is admissible to show:
- 16 (a) the predominant appeal of the material and what effect, if any, it would probably have on the
- 17 behavior of people;
- 18 (b) the artistic, literary, scientific, educational, or other merits of the material;
- 19 (c) the degree of public acceptance of the material in the community;
- 20 (d) the appeal to prurient interest or absence of that appeal in advertising or other promotion of the
- 21 material; or
- 22 (e) the purpose of the author, creator, publisher, or disseminator.
- 23 (4) A person convicted of obscenity shall be fined at least \$500 but not more than \$1,000 or be
- 24 imprisoned in the county jail for a term not to exceed 6 months, or both.
- 25 (5) Cities, towns, ~~or counties~~, or school districts may adopt ordinances, ~~or resolutions~~, or policies
- 26 that are more restrictive as to obscenity than the provisions of ~~45-8-206 and~~ this section."
- 27

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1 **Section 2.** Section 45-8-205, MCA, is amended to read:

2 **"45-8-205. Definitions.** As used in 45-8-205 through 45-8-208, the following definitions apply:

3 (1) "Commercial establishment" means a place of business that invites the general public for the  
4 primary purpose of selling goods or offering entertainment. The term does not include a school, library, or  
5 museum.

6 ~~(1)~~(2) "Display or dissemination of obscene material to minors" means that quality of a description,  
7 exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when  
8 the material or performance, taken as a whole, has the following characteristics:

9 (a) its dominant theme appeals to a minor's prurient interest in sex;

10 (b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently  
11 offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

12 (c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the  
13 material or performance has serious literary, scientific, artistic, or political value for a significant percentage of  
14 normal older minors, the material or performance may not be found to lack such value for the entire class of  
15 minors.

16 ~~(2)~~(3) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image,  
17 description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated  
18 G, PG, PG-13, or R by the motion picture association of America).

19 ~~(3)~~(4) "Minor" means a person under 18 years of age.

20 ~~(4)~~(5) "Newsstand" means a stand that distributes or sells newspapers or magazines. The term does  
21 not include a school, library, or museum.

22 ~~(5)~~(6) "Performance" means any motion picture, film, or videotape (except a motion picture or  
23 videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record;  
24 compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed  
25 before an audience of one or more, with or without consideration.

26 ~~(6)~~(7) "Person" means any individual, partnership, association, corporation, or other legal entity of  
27 any kind.

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1 ~~(7)~~(8) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

2 ~~(8)~~(9) "Sexual conduct" includes:

3 (a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual  
4 act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an  
5 ultimate sexual act.

6 (b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

7 (c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by  
8 being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a  
9 revealing or bizarre costume.

10 ~~(9)~~(10) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or  
11 bestiality."

12

13 **Section 3.** Section 45-8-206, MCA, is amended to read:

14 **"45-8-206. Public display or dissemination of obscene material to minors.** (1) A person having  
15 custody, control, or supervision of ~~any~~a commercial establishment or newsstand may not knowingly or  
16 purposely:

17 (a) display obscene material to minors in such a way that minors, as a part of the invited public, will  
18 be able to view the material. However, a person is considered not to have displayed obscene material to minors  
19 if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the  
20 material is not exposed to view or other reasonable efforts were made to prevent view of the material by a  
21 minor.

22 (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view,  
23 with or without consideration, any obscene material; or

24 (c) present to a minor or participate in presenting to a minor, with or without consideration, any  
25 performance that is obscene to minors.

26 (2) A person does not violate this section if:

27 (a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable

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1 cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate,  
2 educational identification card, governmental identification card, tribal identification card, or other official or  
3 apparently official card or document purporting to establish that the person is 18 years of age; or

4 ~~(b) — the person is, or is acting as, an employee of a bona fide public school, college, or university or~~  
5 ~~a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the~~  
6 ~~material or performance was disseminated in accordance with policies approved by the governing body of the~~  
7 ~~institution;~~

8 ~~(c) — the person is an officer, director, trustee, or employee of a public library or museum and the~~  
9 ~~material or performance was acquired by the library or museum and disseminated in accordance with policies~~  
10 ~~approved by the governing body of the library or museum;~~

11 ~~(c) — THE PERSON IS AN OFFICER, DIRECTOR, TRUSTEE, OR EMPLOYEE OF A PUBLIC LIBRARY OR MUSEUM~~  
12 ~~AND THE MATERIAL OR PERFORMANCE WAS ACQUIRED BY THE LIBRARY OR MUSEUM AND DISSEMINATED IN ACCORDANCE~~  
13 ~~WITH POLICIES APPROVED BY THE GOVERNING BODY OF THE LIBRARY OR MUSEUM;~~

14 ~~(d)(c)(D) — an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a~~  
15 ~~bona fide school, LIBRARY, OR MUSEUM, library, or museum; or~~

16 ~~(e)(d)(E)(b)~~ the person is a retail sales clerk with no financial interest in the material or performance  
17 or in the establishment displaying or selling the material or performance.

18 ~~(3) — The offense of public display or dissemination of obscene material to minors under this section~~  
19 ~~is separate from and may not be construed to negate or limit the provisions of 45-8-201 regarding the offense of~~  
20 ~~obscenity.~~

21 ~~(4) — Cities, towns, counties, or school districts may adopt ordinances, resolutions, or policies that~~  
22 ~~are more restrictive as to the display or dissemination of obscene material to minors than the provisions of this~~  
23 ~~section."~~

24

25

- END -