

Amendment - 2nd Reading/2nd House-tan - Requested by: Chris Friedel - (S) Committee of Whole

- 2023

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

HB0359.003.002

1 HOUSE BILL NO. 359
2 INTRODUCED BY B. MITCHELL, E. BUTTREY, M. CUFFE, D. SALOMON, J. READ, T. MCGILLVRAY, K.
3 REGIER, L. JONES, E. BUTCHER, B. KEENAN, C. GLIMM, G. HERTZ, M. LANG, D. LENZ, J. HINKLE, F.
4 MANDEVILLE, T. MANZELLA, W. MCKAMEY, M. NOLAND, S. HINEBAUCH, S. GUNDERSON, M. REGIER,
5 D. LOGE, R. FITZGERALD, F. ANDERSON, L. SHELDON-GALLOWAY, J. TREBAS, D. BARTEL, C.
6 KNUDSEN, B. USHER, S. VINTON, B. BEARD, M. HOPKINS, N. DURAM, J. FULLER, R. KNUDSEN, K.
7 BOGNER, B. GILLESPIE, J. KASSMIER, B. MERCER, T. MOORE, B. LER, B. PHALEN, F. NAVE, J.
8 CARLSON, L. BREWSTER, K. ZOLNIKOV, A. REGIER, L. REKSTEN, P. FIELDER, S. KERNS, S.
9 GALLOWAY, S. GIST, J. SCHILLINGER, K. SEEKINS-CROWE, M. MALONE, J. GILLETTE, C. HINKLE, M.
10 BERTOGLIO, R. MARSHALL, C. FRIEDEL, S. ESSMANN, M. YAKAWICH, T. BROCKMAN, T. SMITH, R.
11 MINER, G. PARRY, G. OBLANDER, N. NICOL, L. DEMING, D. EMRICH, S. VANCE, T. VERMEIRE, C.
12 SPRUNGER, T. FALK, J. BERGSTROM, G. KMETZ, P. GREEN, J. ETCHART, B. BARKER, L.
13 HELLEGAARD, Z. WIRTH, N. HASTINGS
14

15 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING MINORS FROM ATTENDING ~~DRAG- ADULT-~~
16 ~~ORIENTED~~ SHOWS; PROHIBITING MINORS FROM ENTERING ~~SEXUALLY ORIENTED- ADULT-~~
17 ~~ORIENTED~~ BUSINESSES; PROHIBITING ~~DRAG-ADULT-ORIENTED~~ PERFORMANCES IN LIBRARIES OR
18 SCHOOLS THAT RECEIVE STATE FUNDING; ~~PROHIBITING DRAG PERFORMANCES ON PUBLIC~~
19 ~~PROPERTY WHERE CHILDREN ARE PRESENT; PROHIBITING DRAG PERFORMANCES IN A LOCATION~~
20 ~~OWNED BY AN ENTITY THAT RECEIVES STATE FUNDING; PROHIBITING ADULT-ORIENTED~~
21 ~~PERFORMANCES ON PUBLIC PROPERTY WHERE CHILDREN ARE PRESENT; PROHIBITING ADULT-~~
22 ~~ORIENTED PERFORMANCES IN A LOCATION OWNED BY AN ENTITY THAT RECEIVES STATE~~
23 ~~FUNDING;~~ PROVIDING DEFINITIONS; ~~AND-AND~~ PROVIDING PENALTIES; ~~AND PROVIDING AN~~
24 ~~IMMEDIATE EFFECTIVE DATE.~~"

25
26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
27

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1 NEW SECTION. Section 1. Definitions. As used in [sections 1 through ~~AND~~ 2], the following
2 definitions apply:

3 ~~(1) — "Drag performance" means a AN OBSCENE performance in which a performer exhibits a gender~~
4 ~~identity that is different than the performer's gender assigned at birth using clothing, makeup, or other physical~~
5 ~~markers and sings, lip syncs, dances, or otherwise performs for entertainment to appeal to a prurient interest~~
6 ~~THAT FEATURES DRAG QUEENS, TOPLESS DANCERS, EXOTIC DANCERS, STRIPPERS, OR MALE OR FEMALE~~
7 ~~IMPERSONATORS OR SIMILAR ENTERTAINERS WHO PROVIDE ENTERTAINMENT THAT APPEALS TO A PRURIENT INTEREST IN~~
8 ~~SEX, REGARDLESS OF WHETHER OR NOT PERFORMED FOR CONSIDERATION.~~

9 ~~(2) — "DRAG QUEEN" MEANS A MALE OR FEMALE PERFORMER WHO ADOPTS A FLAMBOYANT OR PARODIC~~
10 ~~FEMININE PERSONA WITH GLAMOROUS OR EXAGGERATED COSTUMES AND MAKEUP.~~

11 ~~(3) — "DRAG STORY HOUR" MEANS AN EVENT HOSTED BY A DRAG QUEEN WHO READS CHILDREN'S BOOKS.~~

12 ~~(4) — "EXOTIC DANCER" MEANS AN INDIVIDUAL WHO DANCES OR PERFORMS IN A SEDUCTIVE OR~~
13 ~~PROVOCATIVE MANNER WHILE SCANTILY DRESSED OR WHILE GRADUALLY REMOVING THEIR CLOTHES PIECE BY PIECE.~~

14 ~~(5) — "MINOR" MEANS AN INDIVIDUAL UNDER 18 YEARS OF AGE.~~

15 ~~(1) "Adult-oriented business" means a nightclub, bar, restaurant, or similar commercial enterprise~~
16 ~~that:~~

17 ~~(a) provides for an audience of two or more individuals:~~

18 ~~(i) live nude entertainment or live nude performances; or~~

19 ~~(ii) an adult-oriented performance; and~~

20 ~~(b) authorizes on-premises consumption of alcoholic beverages.~~

21 ~~(2) "Adult-oriented performance" means a performance that, regardless of whether performed for~~
22 ~~consideration, is intended to appeal to a prurient interest in sex and features:~~

23 ~~(a) the purposeful exposure, whether complete or partial, of:~~

24 ~~(i) a human genital, the pubic region, the human buttocks, or a female breast, if the breast is~~
25 ~~exposed below a point immediately above the top of the areola; or~~

26 ~~(ii) prosthetic genitalia, breasts, or buttocks; or~~

27 ~~(b) sexual conduct.~~

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1 ~~(2)(6)(3)~~ "Nude" means:

2 (a) entirely unclothed; or

3 (b) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing

4 any portion of the breast below the top of the areola of the breasts if the person is female or any portion of the
5 genitals or buttocks.

6 ~~(7) "OBSCENE" HAS THE SAME MEANING AS PROVIDED IN 45-8-201.~~

7 ~~(3)(8)(4) "PRURIENT INTEREST" MEANS HAVING A TENDENCY TO EXCITE LUSTFUL THOUGHTS.~~

8 "PRURIENT INTEREST IN SEX" HAS THE SAME MEANING AS PROVIDED IN 45-8-205.

9 ~~(5) "Public property" means any real property owned or leased, in whole or part, by the state or a~~
10 ~~political subdivision, as defined in 2-9-101, or held in the name of a political subdivision by a department, board,~~
11 ~~or authority of the state or a political subdivision.~~

12 ~~(3)(4)(9) "Sexually oriented business" means a nightclub, bar, restaurant, or similar commercial~~
13 ~~enterprise that:~~

14 ~~(a) provides for an audience of two or more individuals:~~

15 ~~(i) live nude entertainment or live nude performances; or~~

16 ~~(ii) a drag performance; and~~

17 ~~(b) authorizes on-premises consumption of alcoholic beverages.~~

18
19 NEW SECTION. Section 2. Restrictions on ~~sexually oriented~~ adult-oriented businesses --

20 **penalty.** (1) ~~A sexually oriented~~ An adult-oriented business may not allow a person under 18 years of age to
21 enter the premises of the business DURING A LIVE NUDE PERFORMANCE OR DRAG ~~an adult-oriented~~ PERFORMANCE.

22 (2) The owner, operator, manager, or employee of a sexually oriented business who is convicted
23 of violating this section shall be fined not less than \$1,000 or more than \$5,000 for the first offense, not less
24 than \$2,500 or more than \$5,000 for the second offense, and for third and subsequent offenses be fined
25 \$10,000 and, if applicable, the county or municipality shall revoke the business license held by the offender.

26 ~~(3) [Sections 1 through 3] are applicable and uniform throughout the state and any political~~
27 ~~subdivisions.~~

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1

2 NEW SECTION. Section 3. Drag ~~WHERE DRAG adult-oriented~~ performances ARE prohibited in
3 publicly funded libraries or schools. (1) A library that receives any form of funding from the state may not
4 allow a ~~drag-adult-oriented~~ performance OR DRAG STORY HOUR as defined in [section 1] on its premises ~~during its~~
5 ~~regular operating hours.~~

6 (2) A school, ~~AS DEFINED IN 20-6-501,~~ that receives any form of funding from the state may not
7 allow a ~~drag-an adult-oriented~~ performance OR DRAG STORY HOUR as defined in [section 1] on its premises
8 during school hours or at any school-sanctioned extracurricular activity.

9 ~~(3) A MUSEUM THAT RECEIVES ANY FORM OF FUNDING FROM THE STATE MAY NOT ALLOW A DRAG~~
10 ~~PERFORMANCE OR DRAG STORY HOUR AS DEFINED IN [SECTION 1] ON ITS PREMISES.~~

11 ~~(4) ANY FACILITY WHERE AT LEAST 10% OF ITS OPERATING BUDGET IS FUNDED BY THE STATE OR LOCAL~~
12 ~~GOVERNMENT OR MUNICIPALITY MAY NOT HOST A DRAG PERFORMANCE OR DRAG STORY HOUR AS DEFINED IN [SECTION~~

13 ~~1].~~

14 ~~(3) A DRAG PERFORMANCE IS PROHIBITED:~~

15 ~~(A) ON PUBLIC PROPERTY IN ANY LOCATION WHERE THE PERFORMANCE IS IN THE PRESENCE OF AN~~
16 ~~INDIVIDUAL UNDER THE AGE OF 18; AND~~

17 ~~(B) IN A LOCATION OWNED BY AN ENTITY THAT RECEIVES ANY FORM OF FUNDING FROM THE STATE.~~

18 ~~(3) An adult-oriented performance is prohibited:~~

19 ~~(a) on public property in any location where the performance is in the presence of an individual~~
20 ~~under the age of 18; and~~

21 ~~(b) in a location owned by an entity that receives any form of funding from the state.~~

22 ~~(3)(4) A library, a school, or OR library or school personnel; A PUBLIC EMPLOYEE, OR AN ENTITY~~
23 ~~DESCRIBED IN SUBSECTION (3)(B) OR AN EMPLOYEE OF THE ENTITY, a public employee, or an entity described in~~
24 ~~subsection (3)(b) or an employee of the entity~~ convicted of violating the prohibition under this section shall be
25 fined \$5,000 and, if applicable, the ~~board of public education shall initiate proceedings~~ MUST BE INITIATED to
26 suspend the teacher, administrator, or specialist certificate of the offender under 20-4-110 for 1 year. If an
27 offender's certificate has previously been suspended pursuant to this subsection ~~(3) (4), the board of public~~

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1 education shall initiate proceedings MUST BE INITIATED to permanently revoke the teacher, administrator, or
2 specialist certificate of the offender under 20-4-110 on a subsequent violation of this section.

3
4 NEW SECTION. SECTION 4. Codification instruction. (1) [Sections 1 and 2] are intended to be
5 codified as an integral part of Title 45, chapter 8, and the provisions of Title 45, chapter 8, apply to [sections 1
6 and 2].

7 (2) [Section 3] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the
8 provisions of Title 20, chapter 7, part 1, apply to [section 3].

9
10 NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
11 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
12 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
13 APPLICATIONS.

14
15 ~~NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.~~

16 - END -