

Amendment - 1st Reading-white - Requested by: Braxton Mitchell - Free Conference
Committee on HB 359

- 2023

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

HB0359.004.001

1 HOUSE BILL NO. 359
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15 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING MINORS FROM ATTENDING ~~DRAG-ADULT-~~
16 ~~ORIENTED- SEXUALLY ORIENTED~~ SHOWS; ~~PROHIBITING MINORS FROM ENTERING SEXUALLY~~
17 ~~ORIENTED ADULT-ORIENTED BUSINESSES PROHIBITING DRAG STORY HOUR IN SCHOOLS AND~~
18 ~~LIBRARIES THAT RECEIVE PUBLIC FUNDING; PROHIBITING MINORS FROM ATTENDING SEXUALLY~~
19 ~~ORIENTED OR OBSCENE PERFORMANCES ON PUBLIC PROPERTY; PROHIBITING DRAG-ADULT-~~
20 ~~ORIENTED- SEXUALLY ORIENTED~~ PERFORMANCES IN LIBRARIES OR SCHOOLS THAT RECEIVE
21 STATE FUNDING; ~~PROHIBITING DRAG PERFORMANCES ON PUBLIC PROPERTY WHERE CHILDREN~~
22 ~~ARE PRESENT; PROHIBITING DRAG PERFORMANCES IN A LOCATION OWNED BY AN ENTITY THAT~~
23 ~~RECEIVES STATE FUNDING; PROHIBITING ADULT-ORIENTED- SEXUALLY ORIENTED~~
24 ~~PERFORMANCES ON PUBLIC PROPERTY WHERE CHILDREN ARE PRESENT; PROHIBITING ADULT-~~
25 ~~ORIENTED PERFORMANCES IN A LOCATION OWNED BY AN ENTITY THAT RECEIVES STATE~~
26 ~~FUNDING; PROVIDING DEFINITIONS; AND ~~AND~~ PROVIDING PENALTIES; ~~AND PROVIDING AN~~~~

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1 ~~IMMEDIATE EFFECTIVE DATE;~~ ESTABLISHING A PRIVATE RIGHT OF ACTION; AND PROVIDING AN
2 IMMEDIATE EFFECTIVE DATE."

3

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

5

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

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

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

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

17 (1) "Drag king" means a male or female performer who adopts a flamboyant or parodic male
18 persona with glamorous or exaggerated costumes and makeup.

19 (2) "Drag queen" means a male or female performer who adopts a flamboyant or parodic feminine
20 persona with glamorous or exaggerated costumes and makeup.

21 (3) "Drag story hour" means an event hosted by a drag queen or drag king who reads children's
22 books and engages in other learning activities with minor children present.

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

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

26 (1) ~~—"ADULT-ORIENTED BUSINESS" MEANS A NIGHTCLUB, BAR, RESTAURANT, OR SIMILAR COMMERCIAL~~
27 ~~ENTERPRISE THAT:~~

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- 1 ~~(A) PROVIDES FOR AN AUDIENCE OF TWO OR MORE INDIVIDUALS;~~
- 2 ~~(I) LIVE NUDE ENTERTAINMENT OR LIVE NUDE PERFORMANCES; OR~~
- 3 ~~(II) AN ADULT-ORIENTED PERFORMANCE; AND~~
- 4 ~~(B) AUTHORIZES ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES.~~
- 5 ~~(2) "ADULT-ORIENTED PERFORMANCE" MEANS A PERFORMANCE THAT, REGARDLESS OF WHETHER~~
- 6 ~~PERFORMED FOR CONSIDERATION, IS INTENDED TO APPEAL TO A PRURIENT INTEREST IN SEX AND FEATURES:~~
- 7 ~~(A) THE PURPOSEFUL EXPOSURE, WHETHER COMPLETE OR PARTIAL, OF:~~
- 8 ~~(I) A HUMAN GENITAL, THE PUBIC REGION, THE HUMAN BUTTOCKS, OR A FEMALE BREAST, IF THE BREAST IS~~
- 9 ~~EXPOSED BELOW A POINT IMMEDIATELY ABOVE THE TOP OF THE AREOLA; OR~~
- 10 ~~(II) PROSTHETIC GENITALIA, BREASTS, OR BUTTOCKS; OR~~
- 11 ~~(B) SEXUAL CONDUCT.~~
- 12 ~~(2)(6)(3)(4)~~ "Nude" means:
- 13 (a) entirely unclothed; or
- 14 (b) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing
- 15 any portion of the breast below the top of the areola of the breasts if the person is female or any portion of the
- 16 genitals or buttocks.
- 17 ~~(7) "OBSCENE" HAS THE SAME MEANING AS PROVIDED IN 45-8-201.~~
- 18 ~~(3)(8)(4)(5) "PRURIENT INTEREST" MEANS HAVING A TENDENCY TO EXCITE LUSTFUL THOUGHTS.~~
- 19 ~~"PRURIENT INTEREST IN SEX" HAS THE SAME MEANING AS PROVIDED IN 45-8-205.~~
- 20 ~~(5)(6) "PUBLIC PROPERTY" MEANS ANY REAL PROPERTY OWNED OR LEASED, IN WHOLE OR PART, BY THE~~
- 21 ~~STATE OR A POLITICAL SUBDIVISION, AS DEFINED IN 2-9-101, OR HELD IN THE NAME OF A POLITICAL SUBDIVISION BY A~~
- 22 ~~DEPARTMENT, BOARD, OR AUTHORITY OF THE STATE OR A POLITICAL SUBDIVISION.~~
- 23 ~~(7) "Obscene" has the same meaning as provided in 45-8-201.~~
- 24 ~~(3)(4)(9)~~ "Sexually oriented business" means a nightclub, bar, restaurant, or similar commercial
- 25 enterprise that:
- 26 (a) provides for an audience of two or more individuals:
- 27 (i) live nude entertainment or live nude performances; or

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1 (ii) ~~_____ a drag performance; and~~

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

3 (8) "Sexually oriented" means any simulation of sexual activity, stripping, salacious dancing, any
4 lewd or lascivious depiction or description of human genitals or of sexual conduct as defined in 45-5-625.

5 (9) "Sexually oriented business" means a nightclub, bar, restaurant, or similar commercial
6 enterprise that:

7 (a) _____ provides for an audience of two or more individuals:

8 (i) _____ live nude entertainment or live nude performances; or

9 (ii) _____ a sexually oriented performance; and

10 (b) _____ authorizes on-premises consumption of alcoholic beverages.

11 (10) "Sexually oriented performance" means a performance that, regardless of whether performed
12 for consideration, is intended to appeal to a prurient interest in sex and features:

13 (a) _____ the purposeful exposure, whether complete or partial, of:

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

16 (ii) _____ prosthetic genitalia, breasts, or buttocks;

17 (b) _____ stripping; or

18 (c) _____ sexual conduct.

19 (11) "Stripping" means removal or simulated removal of clothing in a sexual manner for the
20 entertainment of one or more individuals.

21

22 NEW SECTION. Section 2. Restrictions on ~~sexually oriented~~ ~~ADULT-ORIENTED~~ sexually oriented

23 businesses -- penalty. (1) A ~~sexually oriented~~ ~~AN ADULT-ORIENTED~~ A sexually oriented business may not allow

24 a person under 18 years of age to enter the premises of the business ~~DURING A LIVE NUDE PERFORMANCE OR~~

25 ~~DRAG AN ADULT-ORIENTED~~ a sexually oriented PERFORMANCE.

26 (2) The owner, operator, manager, or employee of a sexually oriented business who is convicted

27 of violating this section shall be fined not less than \$1,000 or more than \$5,000 for the first offense, not less

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1 than \$2,500 or more than \$5,000 for the second offense, and for third and subsequent offenses be fined
2 \$10,000 and, if applicable, the county or municipality shall revoke the business license held by the offender.

3 ~~(3) [SECTIONS 1 THROUGH 3 4] ARE APPLICABLE AND UNIFORM THROUGHOUT THE STATE AND ANY~~
4 ~~POLITICAL SUBDIVISIONS.~~

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

10 (2) A school, ~~AS DEFINED IN 20-6-501,~~ or library that receives any form of funding from the state may
11 not allow a drag ~~AN ADULT-ORIENTED- a sexually oriented~~ performance ~~OR DRAG STORY HOUR~~ or drag story hour,
12 as defined in [section 1], on its premises during ~~school-regular operating~~ hours or at any school-sanctioned
13 extracurricular activity.

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

16 ~~(4) ANY FACILITY WHERE AT LEAST 10% OF ITS OPERATING BUDGET IS FUNDED BY THE STATE OR LOCAL~~
17 ~~GOVERNMENT OR MUNICIPALITY MAY NOT HOST A DRAG PERFORMANCE OR DRAG STORY HOUR AS DEFINED IN [SECTION~~
18 ~~1].~~

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

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

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

23 ~~(3) AN ADULT-ORIENTED- A SEXUALLY ORIENTED PERFORMANCE IS PROHIBITED:~~

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

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

27 ~~(3)(4) A library, a school, or OR library or school personnel; A PUBLIC EMPLOYEE, OR AN ENTITY~~

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1 ~~DESCRIBED IN SUBSECTION (3)(B) OR AN EMPLOYEE OF THE ENTITY, A PUBLIC EMPLOYEE, OR AN ENTITY DESCRIBED IN~~
2 ~~SUBSECTION (3)(B) OR AN EMPLOYEE OF THE ENTITY~~ convicted of violating the prohibition under this section shall
3 be fined \$5,000 and, if applicable, ~~the board of public education shall initiate~~ proceedings MUST BE INITIATED to
4 suspend the teacher, administrator, or specialist certificate of the offender under 20-4-110 for 1 year. If an
5 offender's certificate has previously been suspended pursuant to this subsection ~~(3) (4), the board of public~~
6 ~~education shall initiate~~ proceedings MUST BE INITIATED to permanently revoke the teacher, administrator, or
7 specialist certificate of the offender under 20-4-110 on a subsequent violation of this section.

8
9 **NEW SECTION. Section 4. Private right of action.** (1) A minor who attends a performance in
10 violation of [section 2] or [section 3] may bring an action against a person who knowingly promotes, conducts,
11 or participates as a performer in the performance. The minor's parent or legal guardian may bring an action in
12 the name of the minor for an action commenced under this section.

- 13 (2) If a person prevails in an action brought under this section, the court shall award:
- 14 (a) actual damages, including damages for psychological, emotional, economic, and physical
 - 15 harm;
 - 16 (b) reasonable attorney fees and costs incurred in bringing the action; and
 - 17 (c) statutory damages of \$5,000.
- 18 (3) A person may bring an action under this section not later than 10 years from the date the cause
19 of action accrues.

20
21 **NEW SECTION. Section 5. Codification instruction.** (1) [Sections 1 and 2] are intended to be
22 codified as an integral part of Title 45, chapter 8, and the provisions of Title 45, chapter 8, apply to [sections 1
23 and 2].

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

26 (3) [Section 4] is intended to be codified as an integral part of Title 27, chapter 1, and the
27 provisions of Title 27, chapter 1, apply to [section 4].

