

HOUSE BILL NO. 359

INTRODUCED BY B. MITCHELL, E. BUTTREY, M. CUFFE, D. SALOMON, J. READ, T. MCGILLVRAY, K. REGIER, L. JONES, E. BUTCHER, B. KEENAN, C. GLIMM, G. HERTZ, M. LANG, D. LENZ, J. HINKLE, F. MANDEVILLE, T. MANZELLA, W. MCKAMEY, M. NOLAND, S. HINEBAUCH, S. GUNDERSON, M. REGIER, D. LOGE, R. FITZGERALD, F. ANDERSON, L. SHELDON-GALLOWAY, J. TREBAS, D. BARTEL, C. KNUDSEN, B. USHER, S. VINTON, B. BEARD, M. HOPKINS, N. DURAM, J. FULLER, R. KNUDSEN, K. BOGNER, B. GILLESPIE, J. KASSMIER, B. MERCER, T. MOORE, B. LER, B. PHALEN, F. NAVE, J. CARLSON, L. BREWSTER, K. ZOLNIKOV, A. REGIER, L. REKSTEN, P. FIELDER, S. KERNS, S. GALLOWAY, S. GIST, J. SCHILLINGER, K. SEEKINS-CROWE, M. MALONE, J. GILLETTE, C. HINKLE, M. BERTOGLIO, R. MARSHALL, C. FRIEDEL, S. ESSMANN, M. YAKAWICH, T. BROCKMAN, T. SMITH, R. MINER, G. PARRY, G. OBLANDER, N. NICOL, L. DEMING, D. EMRICH, S. VANCE, T. VERMEIRE, C. SPRUNGER, T. FALK, J. BERGSTROM, G. KMETZ, P. GREEN, J. ETCHART, B. BARKER, L. HELLEGAARD, Z. WIRTH, N. HASTINGS

A BILL FOR AN ACT ENTITLED: “AN ACT PROHIBITING MINORS FROM ATTENDING ~~DRAG ADULT-ORIENTED~~ SEXUALLY ORIENTED SHOWS; ~~PROHIBITING MINORS FROM ENTERING SEXUALLY ORIENTED ADULT-ORIENTED BUSINESSES~~ PROHIBITING DRAG STORY HOUR IN SCHOOLS AND LIBRARIES THAT RECEIVE PUBLIC FUNDING; PROHIBITING MINORS FROM ATTENDING SEXUALLY ORIENTED OR OBSCENE PERFORMANCES ON PUBLIC PROPERTY; PROHIBITING ~~DRAG ADULT-ORIENTED~~ SEXUALLY ORIENTED PERFORMANCES IN LIBRARIES OR SCHOOLS THAT RECEIVE STATE FUNDING; ~~PROHIBITING DRAG PERFORMANCES ON PUBLIC PROPERTY WHERE CHILDREN ARE PRESENT; PROHIBITING DRAG PERFORMANCES IN A LOCATION OWNED BY AN ENTITY THAT RECEIVES STATE FUNDING; PROHIBITING ADULT-ORIENTED~~ SEXUALLY ORIENTED PERFORMANCES ON PUBLIC PROPERTY WHERE CHILDREN ARE PRESENT; ~~PROHIBITING ADULT-ORIENTED PERFORMANCES IN A LOCATION OWNED BY AN ENTITY THAT RECEIVES STATE FUNDING;~~ PROVIDING DEFINITIONS; ~~AND AND~~ PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; ESTABLISHING A PRIVATE RIGHT OF ACTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

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

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

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

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

~~(1) "DRAG KING" MEANS A MALE OR FEMALE PERFORMER WHO ADOPTS A FLAMBOYANT OR PARODIC MALE PERSONA WITH GLAMOROUS OR EXAGGERATED COSTUMES AND MAKEUP.~~

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

~~(3) "DRAG STORY HOUR" MEANS AN EVENT HOSTED BY A DRAG QUEEN OR DRAG KING WHO READS CHILDREN'S BOOKS AND ENGAGES IN OTHER LEARNING ACTIVITIES WITH MINOR CHILDREN PRESENT.~~

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

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

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

~~(A) PROVIDES FOR AN AUDIENCE OF TWO OR MORE INDIVIDUALS;~~

~~(i) LIVE NUDE ENTERTAINMENT OR LIVE NUDE PERFORMANCES; OR~~

~~(ii) AN ADULT-ORIENTED PERFORMANCE; AND~~

1 ~~(B) AUTHORIZES ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES.~~

2 ~~(2) "ADULT-ORIENTED PERFORMANCE" MEANS A PERFORMANCE THAT, REGARDLESS OF WHETHER~~
3 ~~PERFORMED FOR CONSIDERATION, IS INTENDED TO APPEAL TO A PRURIENT INTEREST IN SEX AND FEATURES:~~

4 ~~(A) THE PURPOSEFUL EXPOSURE, WHETHER COMPLETE OR PARTIAL, OF:~~

5 ~~(i) A HUMAN GENITAL, THE PUBIC REGION, THE HUMAN BUTTOCKS, OR A FEMALE BREAST, IF THE BREAST IS~~
6 ~~EXPOSED BELOW A POINT IMMEDIATELY ABOVE THE TOP OF THE AREOLA; OR~~

7 ~~(ii) PROSTHETIC GENITALIA, BREASTS, OR BUTTOCKS; OR~~

8 ~~(B) SEXUAL CONDUCT.~~

9 ~~(2)(6)(3)(4)~~ "Nude" means:

10 (a) entirely unclothed; or

11 (b) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing
12 any portion of the breast below the top of the areola of the breasts if the person is female or any portion of the
13 genitals or buttocks.

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

15 ~~(3)(8)(4)(5) "PRURIENT INTEREST" MEANS HAVING A TENDENCY TO EXCITE LUSTFUL THOUGHTS.~~

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

17 ~~(5)(6) "PUBLIC PROPERTY" MEANS ANY REAL PROPERTY OWNED OR LEASED, IN WHOLE OR PART, BY THE~~
18 ~~STATE OR A POLITICAL SUBDIVISION, AS DEFINED IN 2-9-101, OR HELD IN THE NAME OF A POLITICAL SUBDIVISION BY A~~
19 ~~DEPARTMENT, BOARD, OR AUTHORITY OF THE STATE OR A POLITICAL SUBDIVISION.~~

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

21 ~~(3)(4)(9) "Sexually oriented business" means a nightclub, bar, restaurant, or similar commercial~~
22 ~~enterprise that:~~

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

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

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

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

27 ~~(8) "SEXUALLY ORIENTED" MEANS ANY SIMULATION OF SEXUAL ACTIVITY, STRIPPING, SALACIOUS DANCING,~~
28 ~~ANY LEWD OR LASCIVIOUS DEPICTION OR DESCRIPTION OF HUMAN GENITALS OR OF SEXUAL CONDUCT AS DEFINED IN 45-~~

1 5-625.

2 (9) "SEXUALLY ORIENTED BUSINESS" MEANS A NIGHTCLUB, BAR, RESTAURANT, OR SIMILAR COMMERCIAL
3 ENTERPRISE THAT:

4 (A) PROVIDES FOR AN AUDIENCE OF TWO OR MORE INDIVIDUALS:

5 (I) LIVE NUDE ENTERTAINMENT OR LIVE NUDE PERFORMANCES; OR

6 (II) A SEXUALLY ORIENTED PERFORMANCE; AND

7 (B) AUTHORIZES ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES.

8 (10) "SEXUALLY ORIENTED PERFORMANCE" MEANS A PERFORMANCE THAT, REGARDLESS OF WHETHER
9 PERFORMED FOR CONSIDERATION, IS INTENDED TO APPEAL TO A PRURIENT INTEREST IN SEX AND FEATURES:

10 (A) THE PURPOSEFUL EXPOSURE, WHETHER COMPLETE OR PARTIAL, OF:

11 (I) A HUMAN GENITAL, THE PUBIC REGION, THE HUMAN BUTTOCKS, OR A FEMALE BREAST, IF THE BREAST IS
12 EXPOSED BELOW A POINT IMMEDIATELY ABOVE THE TOP OF THE AREOLA; OR

13 (II) PROSTHETIC GENITALIA, BREASTS, OR BUTTOCKS;

14 (B) STRIPPING; OR

15 (C) SEXUAL CONDUCT.

16 (11) "STRIPPING" MEANS REMOVAL OR SIMULATED REMOVAL OF CLOTHING IN A SEXUAL MANNER FOR THE
17 ENTERTAINMENT OF ONE OR MORE INDIVIDUALS.

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19 **NEW SECTION. Section 2. Restrictions on ~~sexually oriented~~ ~~ADULT-ORIENTED~~ ~~SEXUALLY ORIENTED~~**

20 **businesses -- penalty.** (1) ~~A sexually oriented~~ ~~AN ADULT-ORIENTED~~ A SEXUALLY ORIENTED business may not
21 allow a person under 18 years of age to enter the premises of the business DURING A LIVE NUDE PERFORMANCE
22 OR DRAG AN ~~ADULT-ORIENTED~~ A SEXUALLY ORIENTED PERFORMANCE.

23 (2) The owner, operator, manager, or employee of a sexually oriented business who is convicted
24 of violating this section shall be fined not less than \$1,000 or more than \$5,000 for the first offense, not less
25 than \$2,500 or more than \$5,000 for the second offense, and for third and subsequent offenses be fined
26 \$10,000 and, if applicable, the county or municipality shall revoke the business license held by the offender.

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

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

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

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

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

~~1].~~

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

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

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

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

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

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

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

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.~~

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4 NEW SECTION. SECTION 4. PRIVATE RIGHT OF ACTION. (1) A MINOR WHO ATTENDS A PERFORMANCE IN
5 VIOLATION OF [SECTION 2] OR [SECTION 3] MAY BRING AN ACTION AGAINST A PERSON WHO KNOWINGLY PROMOTES,
6 CONDUCTS, OR PARTICIPATES AS A PERFORMER IN THE PERFORMANCE. THE MINOR'S PARENT OR LEGAL GUARDIAN MAY
7 BRING AN ACTION IN THE NAME OF THE MINOR FOR AN ACTION COMMENCED UNDER THIS SECTION.

8 (2) IF A PERSON PREVAILS IN AN ACTION BROUGHT UNDER THIS SECTION, THE COURT SHALL AWARD:
9 (A) ACTUAL DAMAGES, INCLUDING DAMAGES FOR PSYCHOLOGICAL, EMOTIONAL, ECONOMIC, AND PHYSICAL
10 HARM;
11 (B) REASONABLE ATTORNEY FEES AND COSTS INCURRED IN BRINGING THE ACTION; AND
12 (C) STATUTORY DAMAGES OF \$5,000.
13 (3) A PERSON MAY BRING AN ACTION UNDER THIS SECTION NOT LATER THAN 10 YEARS FROM THE DATE
14 THE CAUSE OF ACTION ACCRUES.

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

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

21 (3) [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 27, CHAPTER 1, AND THE
22 PROVISIONS OF TITLE 27, CHAPTER 1, APPLY TO [SECTION 4].

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24 NEW SECTION. Section 6. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
25 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
26 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
27 APPLICATIONS.

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

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3 ~~NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.~~

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- END -