

1 *Moore* *House* BILL NO. *453*  
 2 INTRODUCED BY *Curtiss Bergman* *Walters* *Jeff* *Adams*  
 3 *Keenan* *Burnett* *Johnson* *Rohrbaugh* *Boer* *Hugueny* *Oh*  
 4 A BILL FOR AN ACT ENTITLED, "AN ACT GENERALLY REVISING THE LAWS RELATING TO MATERIALS  
 5 HARMFUL TO MINORS; AMENDING SECTIONS 45-8-205 AND 45-8-206, MCA; AND REPEALING SECTION  
 6 45-8-207, MCA." *Rox* *Thatcher* *Mc* *ORR*

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

*Wm.E. Boharski*

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

11 **"45-8-205. Definitions.** As used in ~~45-8-205 through~~ 45-8-206, 45-8-208, and this section, the  
 12 following definitions apply:

13 (1) "Display or dissemination of ~~obscene~~ material harmful to minors" means that quality of a  
 14 description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual  
 15 excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the  
 16 following characteristics:

17 (a) ~~its dominant theme appeals~~ it has a predominant tendency to appeal to a minor's prurient  
 18 interest in sex;

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

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

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

29 (3) "Minor" means a an unmarried person under 18 years of age.

30 (4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(5) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering or the showing of any portion of the female breast below the top of the nipple with less than a full opaque covering.

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

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

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

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

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

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

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

(10) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

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

**Section 2.** Section 45-8-206, MCA, is amended to read:

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

(a) display ~~obscene~~ material harmful to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed ~~obscene~~ material harmful to minors if the material is kept behind devices commonly known as

1 blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts  
2 were made to prevent view of the material by a minor;

3 (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view,  
4 with or without consideration, any ~~obscene~~ material harmful to minors; or

5 (c) present to a minor or participate in presenting to a minor, with or without consideration, any  
6 performance that is ~~obscene~~ harmful to minors.

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

8 (a) ~~he~~ the person had reasonable cause to believe the minor was 18 years of age or married.  
9 "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage  
10 license, birth certificate, educational identification card, governmental identification card, or other official  
11 or apparently official card or document purporting to establish that the person is 18 years of age or  
12 married.

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

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

20 (d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide  
21 school, library, or museum; ~~or,~~

22 ~~(e) the person is a retail sales clerk with no financial interest in the material or performance or in~~  
23 ~~the establishment displaying or selling the material or performance."~~

24  
25 **NEW SECTION. Section 3. Repealer.** Section 45-8-207, MCA, is repealed.

26 -END-

## HOUSE BILL NO. 453

INTRODUCED BY ARNOTT, PROUSE, WALTERS, SOFT, MOLNAR, ADAMS, OHS, KEENAN, CURTISS,  
BERGMAN, DEVANEY, GRIMES, MESAROS, REHBEIN, BARNETT, BURNETT, BAER, AHNER, SMITH,  
WISEMAN, DEPRATU, ORR, MILLS, KNOX, ESTRADA, MCGEE, BOHARSKI, MOOD, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND EXPANDING THE REACH OF THE  
LAWS RELATING TO MATERIALS HARMFUL TO MINORS; AND AMENDING SECTIONS 45-8-205,  
45-8-207, AND 45-8-206, MCA; AND REPEALING SECTION 45-8-207, MCA."

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**"45-8-205. Definitions.** As used in ~~45-8-205 through~~ 45-8-206, 45-8-208, and this section, the  
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(1) "Display or dissemination of ~~obscene~~ material harmful to minors" means that quality of a  
description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual  
excitement, or sadomasochistic abuse when the material or performance, ~~taken as a whole,~~ has the  
following characteristics:

(a) ~~its dominant theme appeals it has a predominant tendency to appeal~~ THE AVERAGE PERSON  
APPLYING CONTEMPORARY COMMUNITY STANDARDS WOULD FIND THAT, TAKEN AS A WHOLE, IT  
APPEALS to a minor's prurient interest in sex;

(b) THE AVERAGE PERSON WOULD FIND THAT it depicts or describes nudity, sexual conduct,  
sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to contemporary  
COMMUNITY standards in the adult community with respect to what is suitable for minors; and

(c) A REASONABLE PERSON WOULD FIND THAT, TAKEN AS A WHOLE, it lacks serious literary,  
scientific, artistic, or political value for minors. ~~If the court finds that the material or performance has~~  
~~serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the~~  
~~material or performance may not be found to lack such value for the entire class of minors.~~

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image,  
description, motion picture film, record, recording tape, ~~or videotape,~~ or computer image ~~(except a motion~~

1 ~~picture or videotape rated G, PG, or PG-13, or R by the motion picture association of America).~~

2 (3) "Minor" means a ~~an unmarried~~ A person under 18 years of age.

3 ~~(4) "Newsstand" means a stand that distributes or sells newspapers or magazines.~~

4 ~~(5)(4) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks~~  
5 ~~with less than a full opaque covering or the showing of any portion of the female breast below the top of~~  
6 ~~the nipple with less than a full opaque covering.~~

7 ~~(6)(6)(5) "Performance" means any motion picture, film, or videotape (except a motion picture or~~  
8 ~~videotape rated G, PG, or PG-13, or R by the motion picture association of America); phonograph record;~~  
9 compact disk; computer image; tape recording; preview; trailer; play; show; skit; dance; or other exhibition  
10 played or performed before an audience of one or more, with or without consideration.

11 ~~(6)(7)(6) "Person" means any individual, partnership, association, corporation, or other legal entity~~  
12 of any kind.

13 ~~(7)(8)(7) "Prurient interest in sex" means a shameful or, morbid, LASCIVIOUS, UNHEALTHY, OR~~  
14 LUSTFUL interest in sex or excretion.

15 ~~(8)(9)(8) "Sexual conduct" includes:~~

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

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

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

23 ~~(10)(9) "Sexual excitement" means the condition of human male or female genitals when in a state~~  
24 of sexual stimulation or arousal.

25 ~~(9)(11)(10) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus,~~  
26 or bestiality."

27  
28 **Section 2.** Section 45-8-206, MCA, is amended to read:

29 **"45-8-206. Public display or dissemination of obscene material harmful to minors.** (1) A person  
30 ~~having custody, control, or supervision of any commercial establishment or newsstand~~ may not knowingly

1 or purposely:

2 (a) display ~~obscene~~ material harmful to minors in such a way that minors, as a part of the invited  
3 public, will be able to view the material; provided, however, that a person is considered not to have  
4 displayed ~~obscene~~ material harmful to minors if the material is kept behind devices commonly known as  
5 blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts  
6 were made to prevent view of the material by a minor;

7 (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view,  
8 with or without consideration, any ~~obscene~~ material harmful to minors; or

9 (c) present to a minor or participate in presenting to a minor, with or without consideration, any  
10 performance that is ~~obscene~~ harmful to minors.

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

12 (a) ~~he~~ the person had reasonable cause to believe the minor was 18 years of age ~~or married~~.  
13 "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage  
14 license, birth certificate, educational identification card, governmental identification card, or other official  
15 or apparently official card or document purporting to establish that the person is 18 years of age ~~or~~  
16 married;

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

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

24 ~~(d)~~ (B) an exhibition in a state of nudity is for a bona fide scientific or medical SERIOUS LITERARY,  
25 SCIENTIFIC, ARTISTIC, OR POLITICAL purpose for A MINOR AT a bona fide school, library, or museum;  
26 ~~or.~~

27 ~~(e) the person is a retail sales clerk with no financial interest in the material or performance or in~~  
28 ~~the establishment displaying or selling the material or performance.~~

29 (3) EVIDENCE IS ADMISSIBLE TO SHOW MOTION PICTURE ASSOCIATION OF AMERICA RATINGS  
30 OF A MOVIE OR VIDEOTAPE."

1 ~~NEW SECTION. Section 3. Repealer. Section 45-8-207, MCA, is repealed.~~

2  
3 **SECTION 3. SECTION 45-8-207, MCA, IS AMENDED TO READ:**

4 **"45-8-207. Notice of violation.** Before a county attorney may prosecute a person for a continuing  
5 violation of 45-8-206, ~~he~~ the county attorney shall determine that there is probable cause to believe that  
6 the material or performance is ~~obscene~~ harmful to minors, give the alleged violator person actual notice of  
7 the determination, and notice that he will be prosecuted if he does not desist, and determine that the  
8 violation continued for at least 3 days after notice was received. The person may seek a declaratory  
9 judgment on the question whether the material or performance is obscene to minors. The statute of  
10 limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending inform  
11 the person that the person should obtain the advice of an attorney as to whether the material or  
12 performance is harmful to minors in violation of 45-8-206."

13 -END-

## HOUSE BILL NO. 453

INTRODUCED BY ARNOTT, PROUSE, WALTERS, SOFT, MOLNAR, ADAMS, OHS, KEENAN, CURTISS,  
BERGMAN, DEVANEY, GRIMES, MESAROS, REHBEIN, BARNETT, BURNETT, BAER, AHNER, SMITH,  
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**Section 1.** Section 45-8-205, MCA, is amended to read:

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(1) "Display or dissemination of ~~obscene~~ material harmful to minors" means that quality of a  
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following characteristics:

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APPLYING CONTEMPORARY COMMUNITY STANDARDS WOULD FIND THAT, TAKEN AS A WHOLE, IT  
APPEALS to a minor's prurient interest in sex;

(b) THE AVERAGE PERSON WOULD FIND THAT it depicts or describes nudity, sexual conduct,  
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COMMUNITY standards in the adult community with respect to what is suitable for minors; and

(c) A REASONABLE PERSON WOULD FIND THAT, TAKEN AS A WHOLE, it lacks serious literary,  
scientific, artistic, or political value for minors. ~~If the court finds that the material or performance has~~  
~~serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the~~  
~~material or performance may not be found to lack such value for the entire class of minors.~~

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image,  
description, motion picture film, record, recording tape, ~~or videotape~~, or computer image ~~(except a motion~~



1 ~~picture or videotape rated G, PG, or PG-13, or R by the motion picture association of America).~~

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5 with less than a full opaque covering or the showing of any portion of the female breast below the top of  
6 the nipple with less than a full opaque covering.

7 ~~(5)(6)(5)~~ "Performance" means any motion picture, film, or videotape ~~(except a motion picture or~~  
8 ~~videotape rated G, PG, or PG-13, or R by the motion picture association of America);~~ phonograph record;  
9 compact disk; computer image; tape recording; preview; trailer; play; show; skit; dance; or other exhibition  
10 played or performed before an audience of one or more, with or without consideration.

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15 ~~(8)(9)(8)~~ "Sexual conduct" includes:

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

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

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21 being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a  
22 revealing or bizarre costume.

23 ~~(10)(9)~~ "Sexual excitement" means the condition of human male or female genitals when in a state  
24 of sexual stimulation or arousal.

25 ~~(9)(11)(10)~~ "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus,  
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28 **Section 2.** Section 45-8-206, MCA, is amended to read:

29 **"45-8-206. Public display or dissemination of ~~obscene~~ material harmful to minors.** (1) A person  
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3 public, will be able to view the material; provided, however, that a person is considered not to have  
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5 blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts  
6 were made to prevent view of the material by a minor;

7 (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view,  
8 with or without consideration, any ~~obscene~~ material harmful to minors; or

9 (c) present to a minor or participate in presenting to a minor, with or without consideration, any  
10 performance that is ~~obscene~~ harmful to minors.

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

12 (a) ~~he~~ the person had reasonable cause to believe the minor was 18 years of age ~~or married~~.  
13 "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage  
14 license, birth certificate, educational identification card, governmental identification card, or other official  
15 or apparently official card or document purporting to establish that the person is 18 years of age ~~or~~  
16 married;

17 ~~(b) the person is, or is acting as, an employee of a bona fide public school, college, or university~~  
18 ~~or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and~~  
19 ~~the material or performance was disseminated in accordance with policies approved by the governing body~~  
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21 ~~(c) the person is an officer, director, trustee, or employee of a public library or museum and the~~  
22 ~~material or performance was acquired by the library or museum and disseminated in accordance with~~  
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24 ~~(d)(B) an exhibition in a state of nudity is for a bona fide scientific or medical~~ SERIOUS LITERARY,  
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6 the material or performance is obscene harmful to minors, give the alleged violator person actual notice of  
7 the determination, and notice that he will be prosecuted if he does not desist, and determine that the  
8 violation continued for at least 3 days after notice was received. The person may seek a declaratory  
9 judgment on the question whether the material or performance is obscene to minors. The statute of  
10 limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending inform  
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21 being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a  
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24 of sexual stimulation or arousal.

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5 blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts  
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10 performance that is ~~obscene~~ harmful to minors.

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

12 (a) ~~he~~ the person had reasonable cause to believe the minor was 18 years of age or married.  
13 "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage  
14 license, birth certificate, educational identification card, governmental identification card, or other official  
15 or apparently official card or document purporting to establish that the person is 18 years of age or  
16 married;

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

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

24 (B) THE PERSON IS, OR IS ACTING AS, AN EMPLOYEE OF A BONA FIDE PUBLIC SCHOOL,  
25 COLLEGE, OR UNIVERSITY OR A RETAIL OUTLET AFFILIATED WITH AND SERVING THE EDUCATIONAL  
26 PURPOSES OF A SCHOOL, COLLEGE, OR UNIVERSITY AND THE MATERIAL OR PERFORMANCE WAS  
27 DISSEMINATED IN ACCORDANCE WITH POLICIES APPROVED BY THE GOVERNING BODY OF THE  
28 INSTITUTION;

29 (C) THE PERSON IS AN OFFICER, DIRECTOR, TRUSTEE, OR EMPLOYEE OF A PUBLIC LIBRARY  
30 OR MUSEUM AND THE MATERIAL OR PERFORMANCE WAS ACQUIRED BY THE LIBRARY OR MUSEUM

1 AND DISSEMINATED IN ACCORDANCE WITH POLICIES APPROVED BY THE GOVERNING BODY OF THE  
2 LIBRARY OR MUSEUM; OR

3 ~~(d)(B)(D)~~ an exhibition in a state of nudity is for a ~~bona fide scientific or medical~~ SERIOUS  
4 LITERARY, SCIENTIFIC, ARTISTIC, OR POLITICAL purpose for A MINOR AT a bona fide school, library, or  
5 museum; ~~or,~~

6 ~~(e) the person is a retail sales clerk with no financial interest in the material or performance or in~~  
7 ~~the establishment displaying or selling the material or performance.~~

8 (3) EVIDENCE IS ADMISSIBLE TO SHOW MOTION PICTURE ASSOCIATION OF AMERICA RATINGS  
9 OF A MOVIE OR VIDEOTAPE."

10  
11 ~~NEW SECTION. Section 3. Repealer. Section 45-8-207, MCA, is repealed.~~

12  
13 SECTION 3. SECTION 45-8-207, MCA, IS AMENDED TO READ:

14 "45-8-207. Notice of violation. Before a county attorney may prosecute a person for a continuing  
15 violation of 45-8-206, ~~he~~ the county attorney shall determine that there is probable cause to believe that  
16 the material or performance is ~~obscene~~ harmful to minors, give the ~~alleged violator~~ person actual notice of  
17 the determination, and ~~notice that he will be prosecuted if he does not desist, and determine that the~~  
18 ~~violation continued for at least 3 days after notice was received. The person may seek a declaratory~~  
19 ~~judgment on the question whether the material or performance is obscene to minors. The statute of~~  
20 ~~limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending~~ inform  
21 the person that the person should obtain the advice of an attorney as to whether the material or  
22 performance is harmful to minors in violation of 45-8-206."

23 -END-