

1 Senate BILL NO. 250
 2 INTRODUCED BY Chiswick Turnage Murphy
 3 LYNCH Kristal Drake Flynn
 4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE REVISION OF THE
 5 LAWS RELATING TO OBSCENITY AND INDECENT EXPOSURE; REPEALING
 6 SECTIONS 94-5-504, 94-8-110 AND 94-8-110.1, R.C.M. 1947."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 9 Section 1. Short title. This act shall be known and
 10 may be cited as the "Montana Anti Obscenity and Offensive
 11 Conduct Act".

12 Section 2. Definitions. As used in this act:

13 (1) "Obscene material" means any picture, film,
 14 writing, painting, drawing, engraving, sculpture, oral
 15 utterance, or other depiction or description of hard core
 16 sexual conduct which taken as a whole:

- 17 (a) appeals to the prurient interest in sex;
- 18 (b) portrays sexual conduct in a patently offensive
 19 way; and
- 20 (c) does not have serious literary, artistic,
 21 political, or scientific value.

22 (2) "Hard core sexual conduct" means:

- 23 (a) any touching of the sexual or other intimate parts
 24 of the person of another; or
- 25 (b) penetration, actual or simulated, of the vulva,

1 anus, or mouth of one person by the penis of another person;
 2 or penetration, actual or simulated, of the vulva or anus of
 3 one person by any body member of another person; or
 4 penetration, actual or simulated, of the vulva or anus of
 5 one person by any foreign instrument or object manipulated
 6 by another person; or

7 (c) conduct described in (a) or (b) above with any
 8 animal; or

9 (d) masturbation, excretory functions or lewd
 10 exhibition of the genitals.

11 (3) "Offensive conduct" means:

- 12 (a) any physical exhibition of the nude human body; or
- 13 (b) any physical exhibition of sado-masochistic abuse;

14 or

15 (c) any physical exhibition of hard core sexual
 16 conduct.

17 (4) "Minor" means any person under the age of eighteen
 18 (18).

19 (5) "Nude" means uncovered, or less than opaquely
 20 covered, post-pubertal human genitals, pubic areas, the
 21 post-pubertal human female breast below a point immediately
 22 above the top of the areola, or the covered human male
 23 genitals in a discernibly turgid state. For purposes of
 24 this definition, a female breast is considered uncovered if
 25 the nipple only or the nipple and the areola only are

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1 covered.

2 (6) "Sado-masochistic abuse" means flagellation or
3 torture by or upon a person who is nude or clad in
4 undergarments or in revealing or bizarre costume, or the
5 condition of being fettered, bound, or otherwise physically
6 restrained on the part of one so clothed.

7 Section 3. Offensive conduct. (1) A person is guilty
8 of offensive conduct when, with knowledge of the offensive
9 nature thereof, he purposely or knowingly:

10 (a) performs or otherwise participates in offensive
11 conduct in a public place; or

12 (b) presents or directs a play, dance, show, or other
13 performance in a public place, which in whole or in part,
14 displays or exhibits offensive conduct; or

15 (c) if he, as an owner or manager of a public
16 establishment, allows the performance of offensive conduct
17 within the establishment.

18 (2) If the person who presents or directs in (1)(b) or
19 the owner or manager in (1)(c) allows any minor to view or
20 participate in offensive conduct described in [section
21 2(3)(c) of this act], he is guilty of a felony.

22 (3) Each other violation of this section is a
23 misdemeanor.

24 Section 4. Obscenity. (1) A person is guilty of
25 obscenity when, with knowledge of the obscene nature thereof,

1 he purposely or knowingly:

2 (a) sells, delivers, or provides, or offers or agrees
3 to sell, deliver, or provide any obscene material to any
4 person; or

5 (b) exhibits or displays, or permits to be exhibited
6 or displayed any obscene material in a public place; or

7 (c) creates, buys, procures, or possesses obscene
8 material with the purpose of disseminating it to any person;
9 or

10 (d) advertises or otherwise promotes the sale of
11 obscene material or materials represented or held out by him
12 to be obscene.

13 (2) A person who sells, delivers, or provides obscene
14 material to a minor is guilty of a felony.

15 (3) Each other violation of this section is a
16 misdemeanor.

17 Section 5. Trier of fact in obscenity cases. In order
18 to conclude that a work is obscene, the trier of fact must
19 find that:

20 (1) The average person in Montana, applying
21 contemporary community standards, would find that the work,
22 taken as a whole, appeals to the prurient interest;

23 (2) The work depicts or describes, in a patently
24 offensive way, sexual conduct specifically defined in
25 [section 2(2) of this act]; and

1 (3) The work taken as a whole, lacks serious literary,
2 artistic, political, or scientific value.

3 Section 6. Severability. It is the intent of the
4 legislature that if a part of this act is invalid, all valid
5 parts that are severable from the invalid part remain in
6 effect. If a part of this act is invalid in one or more of
7 its applications, the part remains in effect in all the
8 valid applications that are severable from the invalid
9 applications.

10 Section 7. Sections 94-5-504, 94-8-110 and 94-8-110.1,
11 R.C.M. 1947, are repealed.

-End-

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SECOND READING

MISSING

1 SENATE BILL NO. 250
 2 INTRODUCED BY THIESSEN: TURNAGE, MURPHY,
 3 LYNCH, KOLSTAD, DRAKE, FLYNN
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE REVISION OF THE
 6 LAWS RELATING TO OBSCENITY AND INDECENT EXPOSURE; ~~REPEALING~~
 7 ~~SECTIONS--94-5-504,--94-8-110--AND--94-8-110.1,--R.C.M.--1947~~
 8 AMENDING SECTIONS 94-8-110 AND 94-8-110.1, R.C.M. 1947."
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 (Strike everything after the enacting clause and insert:)

12 Section 1. Section 94-8-110, R.C.M. 1947, is amended
 13 to read as follows:

14 "94-8-110. Obscenity. (1) A person commits the
 15 offense of obscenity when, with knowledge of the obscene
 16 nature thereof, he purposely or knowingly:

17 (a) Sells, delivers or provides, or offers or agrees
 18 to sell, deliver or provide any obscene writing, picture,
 19 record or other representation or embodiment of the obscene
 20 to anyone under the age of eighteen (18); or

21 (b) Presents or directs an obscene play, dance or
 22 other performance or participates in that portion thereof
 23 which makes it obscene to anyone under the age of eighteen
 24 (18); or

25 (c) Publishes, exhibits or otherwise makes available

1 anything obscene to anyone under the age of eighteen (18);
 2 or

3 (d) Performs an obscene act or otherwise presents an
 4 obscene exhibition of his body to anyone under the age of
 5 eighteen (18); or

6 (e) Creates, buys, procures or possesses obscene
 7 matter or material with the purpose to disseminate it to
 8 anyone under the age of eighteen (18); or

9 (f) Advertises or otherwise promotes the sale of
 10 obscene material or materials represented or held out by him
 11 to be obscene.

12 ~~{2}--A-thing-is-obscene-if~~
 13 ~~{a}--the-dominant-theme-of--the--material--taken--as--a~~
 14 ~~whole--appeals-to-a-prurient-interest,-that-is,-a-shameful-or~~
 15 ~~morbid-interest-in-violence,-nudity,-sex-or-excretion,-and~~
 16 ~~{b}--the--material--is--patently--offensive--because-it~~
 17 ~~affronts-contemporary-community-standards--relating--to--the~~
 18 ~~description-or-representation-of-sexual-matters,-and~~
 19 ~~{c}--the--material--is--utterly-without-redeeming-social~~
 20 ~~value.~~

21 (2) A THING IS OBSCENE IF:
 22 (A) IT IS A REPRESENTATION OR DESCRIPTION OF PERVERTED
 23 ULTIMATE SEXUAL ACTS, ACTUAL OR SIMULATED, OR
 24 (B) IT IS A PATENTLY OFFENSIVE REPRESENTATION OR
 25 DESCRIPTION OF NORMAL ULTIMATE SEXUAL ACTS, ACTUAL OR

1 SIMULATED, OR

2 (C) IT IS A PATENTLY OFFENSIVE REPRESENTATION OR
 3 DESCRIPTION OF MASTURBATION, EXCRETORY FUNCTIONS OR LEWD
 4 EXHIBITION OF THE GENITALS, AND

5 (D) TAKEN AS A WHOLE THE MATERIAL:

6 (I) APPLYING CONTEMPORARY MONTANA STANDARDS, APPEALS
 7 TO THE PRURIENT INTEREST IN SEX,

8 (II) PORTRAYS CONDUCT DESCRIBED IN (A), (B), OR (C)
 9 ABOVE IN A PATENTLY OFFENSIVE WAY, AND

10 (III) LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR
 11 SCIENTIFIC VALUE.

12 (3) In any prosecution for an offense under this
 13 section evidence shall be admissible to show:

14 (a) The predominant appeal of the material, and what
 15 effect if any, it would probably have on the behavior of
 16 people;

17 (b) The artistic, literary, scientific, educational or
 18 other merits of the material;

19 (c) The degree of public acceptance of the material in
 20 this state;

21 (d) Appeal to prurient interest, or absence thereof,
 22 in advertising or other promotion of the material; or

23 (e) Purpose of the author, creator, publisher or
 24 disseminator.

25 (4) A person convicted of obscenity shall be fined ~~not~~

1 to-exceed at least five hundred dollars (\$500) but not more
 2 than one thousand dollars (\$1,000), or be imprisoned in the
 3 county jail for a term not to exceed six (6) months, or
 4 both."

5 Section 2. Section 94-8-110.1, R.C.M. 1947, is amended
 6 to read as follows:

7 "94-8-110.1. Public display of offensive sexual
 8 material. (1) A person is guilty of public display of
 9 offensive sexual material when, with knowledge of its
 10 character and content, he displays or permits to be
 11 displayed in or on any window, showcase, newsstand, display
 12 rack, wall, door, billboard, drive-in movie screen, marquee
 13 or similar place, ~~in-such-manner-that-the-display-is-easily~~
 14 ~~visible--from--or--in--any--public--street,--sidewalk,--or~~
 15 ~~thoroughfare--or--transportation--facility,~~ any pictorial,
 16 three-dimensional or other visual representation of a person
 17 or a portion thereof of the human body that predominantly
 18 appeals to prurient interest in sex, and is patently
 19 offensive to prevailing standards in the adult community as
 20 a whole with respect to what is suitable material for
 21 minors, and is utterly without redeeming social importance
 22 for minors; and does not

23 (a) separate that material by an opaque structure from
 24 other materials displayed, and

25 (b) establish, by official identification, that each

1 person viewing the displayed material is at least eighteen
2 (18) years of age.

3 (2) A theater may not display previews or projections
4 advertising or promoting motion pictures if such previews or
5 projections contain a display of offensive sexual material
6 and if minors are permitted to attend the showing of the
7 motion picture then being featured.

8 (3) A person convicted of the public display of
9 offensive sexual material shall be fined not-to-exceed at
10 least five hundred dollars (\$500) but not more than one
11 thousand dollars (\$1,000), or imprisoned in the county jail
12 for a term not to exceed six (6) months, or both."

-End-

COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 250

Be amended in the third reading bill as follows:

1. Amend title, page 1, line 6.
Following: "OBSCENITY"
Strike: "AND INDECENT EXPOSURE"
2. Amend title, page 1, line 8.
Following: "1947"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
3. Amend page 4, section 1, subsection (4), following line 4.
Insert: A new subsection (5) to read as follows:
"(5) No city or municipal ordinance may be adopted which is more restrictive as to obscenity than the provisions of this section and section 94-8-110.1."
4. Amend page 4, section 2, subsection (1), line 12.
Following: "billboard"
Strike: "drive-in movie screen,"
5. Amend page 5, section 2, subsection (2), following line 7.
Insert: A new subsection (3) to read as follows:
"(3) A drive-in movie screen may not display any material prohibited by this section in such manner that the display is easily visible from any public street, sidewalk, thoroughfare or transportation facility."
Renumber: Subsequent subsection.
6. Amend page 4, section 2, following line 12.
Insert: A new section 3 to read as follows:
"Section 3. This act is effective upon passage and approval."

AS SO AMENDED

BE CONCURRED IN

1 SENATE BILL NO. 250

2 INTRODUCED BY THIESSEN, TURNAGE, MURPHY,

3 LYNCH, KOLSTAD, DRAKE, FLYNN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE REVISION OF THE
6 LAWS RELATING TO OBSCENITY ~~AND INDECENT EXPOSURE; REPEALING~~
7 ~~SECTIONS 94-5-504, 94-8-110 AND 94-8-110.1, R.C.M. 1947~~
8 AMENDING SECTIONS 94-8-110 AND 94-8-110.1, R.C.M. 1947; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11 (Strike everything after the enacting clause and insert:)

12 Section 1. Section 94-8-110, R.C.M. 1947, is amended
13 to read as follows:

14 "94-8-110. Obscenity. (1) A person commits the
15 offense of obscenity when, with knowledge of the obscene
16 nature thereof, he purposely or knowingly:

17 (a) Sells, delivers or provides, or offers or agrees
18 to sell, deliver or provide any obscene writing, picture,
19 record or other representation or embodiment of the obscene
20 to anyone under the age of eighteen (18); or

21 (b) Presents or directs an obscene play, dance or
22 other performance or participates in that portion thereof
23 which makes it obscene to anyone under the age of eighteen
24 (18); or

1 (c) Publishes, exhibits or otherwise makes available
2 anything obscene to anyone under the age of eighteen (18);
3 or

4 (d) Performs an obscene act or otherwise presents an
5 obscene exhibition of his body to anyone under the age of
6 eighteen (18); or

7 (e) Creates, buys, procures or possesses obscene
8 matter or material with the purpose to disseminate it to
9 anyone under the age of eighteen (18); or

10 (f) Advertises or otherwise promotes the sale of
11 obscene material or materials represented or held out by him
12 to be obscene.

13 ~~(2) A thing is obscene if:~~

14 ~~(a) the dominant theme of the material taken as a~~
15 ~~whole appeals to a prurient interest, that is, a shameful or~~
16 ~~morbid interest in violence, nudity, sex or excretion; and~~

17 ~~(b) the material is patently offensive because it~~
18 ~~affronts contemporary community standards relating to the~~
19 ~~description or representation of sexual matters; and~~

20 ~~(c) the material is utterly without redeeming social~~
21 ~~value;~~

22 (2) A THING IS OBSCENE IF:

23 (A) IT IS A REPRESENTATION OR DESCRIPTION OF PERVERTED
24 ULTIMATE SEXUAL ACTS, ACTUAL OR SIMULATED, OR

25 (B) IT IS A PATENTLY OFFENSIVE REPRESENTATION OR

1 DESCRIPTION OF NORMAL ULTIMATE SEXUAL ACTS, ACTUAL OR
2 SIMULATED, OR

3 (C) IT IS A PATENTLY OFFENSIVE REPRESENTATION OR
4 DESCRIPTION OF MASTURBATION, EXCRETORY FUNCTIONS OR LEWD
5 EXHIBITION OF THE GENITALS, AND

6 (D) TAKEN AS A WHOLE THE MATERIAL :

7 (I) APPLYING CONTEMPORARY MONTANA STANDARDS, APPEALS
8 TO THE PRURIENT INTEREST IN SEX,

9 (II) PORTRAYS CONDUCT DESCRIBED IN (A), (B), OR (C)
10 ABOVE IN A PATENTLY OFFENSIVE WAY, AND

11 (III) LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR
12 SCIENTIFIC VALUE.

13 (3) In any prosecution for an offense under this
14 section evidence shall be admissible to show:

15 (a) The predominant appeal of the material, and what
16 effect if any, it would probably have on the behavior of
17 people;

18 (b) The artistic, literary, scientific, educational or
19 other merits of the material;

20 (c) The degree of public acceptance of the material in
21 this state;

22 (d) Appeal to prurient interest, or absence thereof,
23 in advertising or other promotion of the material; or

24 (e) Purpose of the author, creator, publisher or
25 disseminator.

1 (4) A person convicted of obscenity shall be fined ~~not~~
2 ~~to-exceed~~ at least five hundred dollars (\$500) but not more
3 than one thousand dollars (\$1,000), or be imprisoned in the
4 county jail for a term not to exceed six (6) months, or
5 both.

6 (5) NO CITY OR MUNICIPAL ORDINANCE MAY BE ADOPTED
7 WHICH IS MORE RESTRICTIVE AS TO OBSCENITY THAN THE PROVISIONS
8 OF THIS SECTION AND SECTION 94-8-110.1."

9 Section 2. Section 94-8-110.1, R.C.M. 1947, is amended
10 to read as follows:

11 "94-8-110.1. Public display of offensive sexual
12 material. (1) A person is guilty of public display of
13 offensive sexual material when, with knowledge of its
14 character and content, he displays or permits to be
15 displayed in or on any window, showcase, newsstand, display
16 rack, wall, door, billboard, ~~drive-in-movie-screen~~, marquee
17 or similar place, ~~in-such-manner-that-the-display-is--easily~~
18 ~~visible---from---or---in---any---public---street,---sidewalk,---or~~
19 ~~thoroughfare---or---transportation---facility~~, any pictorial,
20 three-dimensional or other visual representation of a person
21 or a portion thereof of the human body that predominantly
22 appeals to prurient interest in sex, and is patently
23 offensive to prevailing standards in the adult community as
24 a whole with respect to what is suitable material for
25 minors, and is utterly without redeeming social importance

1 for minors; and does not

2 (a) separate that material by an opaque structure from
3 other materials displayed, and

4 (b) establish, by official identification, that each
5 person viewing the displayed material is at least eighteen
6 (18) years of age.

7 (2) A theater may not display previews or projections
8 advertising or promoting motion pictures if such previews or
9 projections contain a display of offensive sexual material
10 and if minors are permitted to attend the showing of the
11 motion picture then being featured.

12 (3) A DRIVE-IN MOVIE SCREEN MAY NOT DISPLAY ANY
13 MATERIAL PROHIBITED BY THIS SECTION IN SUCH MANNER THAT THE
14 DISPLAY IS EASILY VISIBLE FROM ANY PUBLIC STREET, SIDEWALK,
15 THOROUGHFARE OR TRANSPORTATION FACILITY.

16 (4) A person convicted of the public display of
17 offensive sexual material shall be fined ~~not to exceed~~ at
18 least five hundred dollars (\$500) but not more than one
19 thousand dollars (\$1,000), or imprisoned in the county jail
20 for a term not to exceed six (6) months, or both."

21 SECTION 3. THIS ACT IS EFFECTIVE UPON PASSAGE AND
22 APPROVAL.

-End-