

1 *Senate* BILL NO. *341*
 2 INTRODUCED BY *Orin Thinner* *Patt Kolstad* *Aber*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
 5 ENJOINING AND RESTRAINING OF OBSCENE MOTION PICTURES IN
 6 MONTANA COMMUNITIES; PROVIDING A PROCEDURE TO ENJOIN OR
 7 RESTRAIN THE DISPLAY OR PRESENTATION OF AN OBSCENE MOTION
 8 PICTURE; PROVIDING STANDARDS FOR EVALUATION; AND PROVIDING A
 9 PENALTY."

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

12 Section 1. Purpose, intent, and findings. The purpose
 13 of this act is to prohibit the display and presentation of
 14 obscene motion pictures within the communities of Montana.
 15 The legislature finds that obscene motion pictures are
 16 public nuisances and endanger the health and safety of the
 17 community and obstruct the use of community property so as
 18 to interfere with the comfortable enjoyment of community
 19 life.

20 The legislature takes all necessary cognizance of the
 21 constitutional guidelines set forth by the United States
 22 Supreme Court in the case styled Miller v. California, 413
 23 U.S. 15 (1973) and subsequent cases to which it is
 24 progenitor. And it is the intent of the legislature to
 25 conform each section of this act to current constitutional

1 strictures. Finding that obscene motion pictures have
 2 adverse effects upon the citizens and families of
 3 communities within Montana, the legislature considers this
 4 act to be a necessary and proper exercise of the state's
 5 police powers.

6 Section 2. Definitions. As used in this act, the
 7 following definitions apply:

8 (1) "Display or present" means to show, project,
 9 communicate, reveal, or in any other way make available and
 10 permit to be seen or viewed a motion picture.

11 (2) "Motion picture" means a series of pictures, film,
 12 or any other visual aid device which is projected or set
 13 forth in any way upon a screen or other surface with objects
 14 shown so as to create a visual image.

15 (3) "Obscene motion picture" means any motion picture
 16 which contains material which:

17 (a) considered as a whole, appeals predominantly and
 18 in a patently offensive way to prurient, shameful, or morbid
 19 interest in nudity, sex, excretion, sadism, or masochism;

20 (b) goes substantially beyond customary limits of
 21 candor in describing or representing such matters; and

22 (c) taken as a whole, is without redeeming social
 23 value and lacks serious literary, governmental, educational,
 24 artistic, political, or scientific value.

25 (4) "Person" means any individual, firm, fiduciary,

1 corporation, trust, organization, association, or other
2 legal entity, however formed.

3 Section 3. Standards for determining obscenity.
4 Prurient interest shall be judged with reference to ordinary
5 adults unless it appears from the character of the material
6 or the circumstances of its dissemination to be designed for
7 some other specially susceptible audience. Whether a motion
8 picture is obscene shall be judged by ordinary adults
9 applying contemporary community standards. Each city or town
10 is considered to be the community.

11 Section 4. Display of an obscene motion picture —
12 public nuisance. A person who is found, pursuant to this
13 act, to have displayed or presented an obscene motion
14 picture is guilty of the offense of maintaining a public
15 nuisance under 94-8-107.

16 Section 5. Duty of county attorney. It is the duty of
17 the county attorney to take all actions and pursue all
18 remedies made available to him in this act.

19 Section 6. Institution of action for injunction by the
20 county attorney. (1) Whenever a county attorney has
21 reasonable cause to believe a person is knowingly displaying
22 or presenting any obscene motion picture to the public, he
23 shall institute an action for an injunction in the district
24 court.

25 (2) The complaint shall:

1 (a) be directed against the displaying or presenting
2 of the obscene motion picture;

3 (b) designate as defendants and list the names and
4 addresses, if known, of the persons responsible for the
5 display of the obscene motion picture;

6 (c) allege its obscene nature;

7 (d) seek an adjudication of its obscenity and an
8 injunction against its display; and

9 (e) seek its surrender, seizure, destruction, or
10 termination.

11 Section 7. Presentation of motion picture —
12 preliminary finding as to probable cause. (1) The county
13 attorney, at the time of presenting the complaint, shall
14 present the subpoenaed motion picture to the court.

15 (2) If after examination, the court finds no probable
16 cause to believe the motion picture obscene, the court shall
17 proceed as in denials of other applications for injunction.

18 (3) If the court finds probable cause to believe the
19 motion picture obscene, the person sought to be enjoined is
20 entitled to a trial of the issue commencing within 1 day
21 after the close of all pleadings, and any decision by the
22 court shall be rendered within 2 days of the conclusion of
23 the trial.

24 Section 8. Third-party intervention. On or before the
25 date set for trial, any person who has a material interest

1 in the motion picture or any resident of the community who
 2 has complained of the motion picture's display may file a
 3 motion to intervene and be made a party to the proceedings.

4 Section 9. Jury trial. A defendant is entitled, upon
 5 request, to a trial by jury. The district court may, upon
 6 motion or its own initiative, order a trial of any issue to
 7 the jury.

8 Section 10. Evidence. At the trial all parties may
 9 submit evidence, including the testimony of experts,
 10 pertaining but not limited to the following:

11 (1) the elements or standards specified in the
 12 definition of an obscene motion picture in [section 2];

13 (2) the artistic, literary, governmental, educational,
 14 political, or scientific merits of the motion picture; and

15 (3) the intent and knowledge of the defendant.

16 Section 11. Judgment. (1) If the court or jury, as the
 17 case may be, finds the motion picture not to be obscene, the
 18 court shall enter judgment accordingly.

19 (2) If the court or jury, as the case may be, finds
 20 the motion picture to be obscene, the court shall enter
 21 judgment to that effect and may in such judgment or in
 22 subsequent orders:

23 (a) enter an injunction or restraining order against
 24 the defendant prohibiting him from displaying or presenting
 25 the motion picture under conditions that the court

1 considers, in its discretion, to be necessary;

2 (b) direct the defendant to dispose of all copies of
 3 the motion picture in his possession or under his control
 4 under conditions that the court considers, in its
 5 discretion, to be necessary; or

6 (c) if any defendant fails to fully comply with the
 7 judgment or order of the court, direct any law enforcement
 8 officer to seize and destroy each copy of the obscene motion
 9 picture in the possession or under the control of the
 10 defendant and within the jurisdiction of the court.

11 Section 12. Contents of injunction or restraining
 12 order. Each order granting an injunction and each
 13 restraining order shall set forth the reasons for its
 14 issuance and describe with reasonable precision the obscene
 15 motion picture and the displaying or presenting sought to be
 16 enjoined or restrained.

17 Section 13. Persons bound by injunction or order. The
 18 injunction or restraining order is binding only upon the
 19 defendants to the action, their officers, agents, servants,
 20 and employees and upon those persons in active concert or
 21 participating by contract or arrangement with them who
 22 receive notice of the order by personal service or
 23 otherwise.

24 Section 14. Service of process on nonresidents. (1)
 25 Each nonresident person, whether acting personally or

1 through his agent, who promotes the display or presentation
 2 of an obscene motion picture is considered to have appointed
 3 the clerk of the county in which the motion picture is
 4 displayed as his agent for the purpose of service of
 5 process.

6 (2) Process shall be served by delivering a true and
 7 attested copy thereof to the office of the county clerk and
 8 by sending to the defendant at his last known address, by
 9 certified mail, postage prepaid, a like, true, and attested
 10 copy with an endorsement thereon of the service upon the
 11 county clerk.

12 (3) The county clerk shall keep a record of each such
 13 process and the day and hour of service.

14 Section 15. Violation of injunction or restraining
 15 order. It is unlawful for any defendant or any agent of the
 16 defendant or any person in active concert or participation
 17 by contract or arrangement with the defendant, who receives
 18 notice, by personal service or otherwise, of any injunction
 19 or restraining order entered pursuant to this act to disobey
 20 any of the provisions of the injunction or restraining
 21 order.

22 Section 16. Penalty. A person convicted of a violation
 23 of [section 15] shall be fined not more than \$1,000 or
 24 imprisoned in the state prison for a term not to exceed 2
 25 years, or both.

1 Section 17. Levy of fine as lien against property. Any
 2 fine against any person pursuant to this act may be levied
 3 as a lien against any of his real or personal property,
 4 including debts owing to him, which may be found in this
 5 state.

6 Section 18. Defense. In any prosecution under this
 7 act, it is a defense that the persons who allegedly viewed
 8 the obscene motion picture had a legitimate, scientific,
 9 educational, or governmental purpose and were justified in
 10 possessing and viewing the motion picture.

11 Section 19. Severability. If a part of this act is
 12 invalid, all valid parts that are severable from the invalid
 13 part remain in effect. If a part of this act is invalid in
 14 one or more of its applications, the part remains in effect
 15 in all valid applications that are severable from the
 16 invalid applications.

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