

SENATE BILL 307

Introduced by Hofman, S., et al.

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| 2/01 | Introduced |
| 2/01 | Referred to Judiciary |
| 2/09 | Hearing |
| 2/16 | Committee Report--Bill Passed |
| 2/17 | 2nd Reading Passed |
| 2/20 | 3rd Reading Passed |

Transmitted to House

| | |
|------|--------------------------------------|
| 2/21 | Referred to Judiciary |
| 3/21 | Hearing |
| 3/23 | Tabled in Committee |
| 3/28 | Motion Failed To Take From Committee |
| | Died in Committee |

1 Senate BILL NO. 307
2 INTRODUCED BY Hofman Keating Anderson
3 ^{WOLFE} Rasmussen Glenn Harding Baylon Lin Samuel Thompson
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A PERSON
5 FROM EXHIBITING OR DISSEMINATING OBSCENITY TO ANY PERSON
6 REGARDLESS OF AGE; AMENDING SECTION 45-8-203, MCA; AND
7 REPEALING SECTION 45-8-201, MCA."

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

10 NEW SECTION. **Section 1.** Definitions. As used in [this
11 act], the following definitions apply:

12 (1) "Material" means any magazine or other printed or
13 written matter, picture, photograph, motion picture film,
14 videotape, sound record, object, representation, or
15 description.

16 (2) "Obscenity" means material or a performance which,
17 if taken as a whole:

18 (a) the average person applying contemporary community
19 standards would consider a patently offensive depiction or
20 description of sexual conduct;

21 (b) the average person applying contemporary community
22 standards relating to the depiction or description of sexual
23 conduct would find appealing to the prurient interest in
24 sex; and

25 (c) a reasonable person would find lacking in serious

1 literary, artistic, political, or scientific value.

2 (3) "Performance" means any play, dance, or other live
3 exhibition performed before an audience.

4 (4) "Person" means an individual, partnership,
5 corporation, association, or other entity.

6 (5) "Sexual conduct" includes:

7 (a) vaginal, anal, or oral intercourse, whether actual
8 or simulated, normal or perverted;

9 (b) masturbation, excretory functions, or lewd
10 exhibition or uncovered genitals;

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

15 NEW SECTION. **Section 2.** Exhibition or dissemination
16 of obscenity -- penalty. (1) A person commits the offense of
17 obscenity if he knowingly or purposely:

18 (a) sells, rents, delivers, provides, or offers or
19 agrees to sell, rent, deliver, or provide any obscene
20 material or performance;

21 (b) presents, participates in, or directs an obscene
22 play, dance, or other performance;

23 (c) publishes, exhibits, or otherwise makes available
24 any obscene material or performance; or

25 (d) exhibits, presents, rents, sells, delivers, or

1 provides or offers or agrees to exhibit, present, rent,
2 sell, or provide any obscene material or performance.

3 (2) Obscenity will be judged with reference to
4 ordinary adults except that it will be judged with reference
5 to children or other especially susceptible audiences if it
6 appears from the character of the material or the
7 circumstances of its dissemination to be especially designed
8 for or directed to children or susceptible audiences.

9 (3) A person is guilty of the offense of obscenity if
10 he knowingly or purposely creates, buys, procures, or
11 possesses obscene material for dissemination.

12 (4) A person convicted of obscenity shall for each
13 violation be fined a minimum of \$500 but not more than
14 \$5,000, imprisoned in the county jail for a term not to
15 exceed 6 months, or both. Upon a second conviction, a
16 person is guilty of a felony and may be fined an amount not
17 to exceed \$50,000, imprisoned for a term not to exceed 10
18 years, or both.

19 (5) A person who knowingly imports or causes obscene
20 material to be brought into the state for sale, rent,
21 delivery, or exhibition is guilty of a felony and may be
22 fined an amount not to exceed \$50,000, imprisoned for a term
23 not to exceed 10 years, or both.

24 (6) Obscene material disseminated, procured, or
25 promoted in violation of this section is contraband.

1 (7) Cities, towns, or counties may adopt ordinances or
2 resolutions that are more restrictive as to obscenity than
3 the provisions of this section and 45-8-202.

4 **Section 3.** Section 45-8-203, MCA, is amended to read:

5 "45-8-203. Certain motion picture theater employees
6 not liable for prosecution. (1) As used in this section,
7 "employee" means any person regularly employed by the owner
8 or operator of a motion picture theater if he has no
9 financial interest other than salary or wages in the
10 ownership or operation of the motion picture theater, has no
11 financial interest in or control over the selection of the
12 motion pictures shown in the theater, and is working within
13 the motion picture theater where he is regularly employed.
14 "Employee" does not include a manager of the motion picture
15 theater.

16 (2) ~~No~~ An employee is not liable to prosecution under
17 ~~45-8-201~~ [section 2] and 45-8-202 or under any city or
18 county ordinance for exhibiting or possessing with intent to
19 exhibit any obscene motion picture provided the employee is
20 acting within the scope of his regular employment at a
21 showing open to the public."

22 **NEW SECTION. Section 4. Repealer.** Section 45-8-201,
23 MCA, is repealed.

24 **NEW SECTION. Section 5. Codification instruction.**
25 [Sections 1 and 2] are intended to be codified as an

LC 0751/01

1 integral part of Title 45, chapter 8, part 2, and the
2 provisions of Title 45, chapter 8, part 2, apply to
3 [sections 1 and 2].

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

Senate BILL NO. 307

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A PERSON
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(a) the average person applying contemporary community standards would consider a patently offensive depiction or description of sexual conduct;

(b) the average person applying contemporary community standards relating to the depiction or description of sexual conduct would find appealing to the prurient interest in sex; and

(c) a reasonable person would find lacking in serious

literary, artistic, political, or scientific value.

(3) "Performance" means any play, dance, or other live exhibition performed before an audience.

(4) "Person" means an individual, partnership, corporation, association, or other entity.

(5) "Sexual conduct" includes:

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(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.

NEW SECTION. Section 2. Exhibition or dissemination of obscenity -- penalty. (1) A person commits the offense of obscenity if he knowingly or purposely:

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(b) presents, participates in, or directs an obscene play, dance, or other performance;

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-End-

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 2 INTRODUCED BY *Hoffman* *Feeling Androgen Bigger*
 3 *Rasmussen* *Mark Harding* *Boyle* *for several things*
 4 *Wasson* *Dee* *Hoffman* *Richard* *Emphatic* *Dring*
 5 *Tom NELSON* *and* *Mark* *M-Hansen* *Rice*
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