SENATE BILL NO. 342

INTRODUCED BY HOFMAN, HANNAH, LEE, WALLIN, CLARK, KEATING, HARDING, DEBRUYCKER, KELLER, HOFFMAN, ELLISON, ZOOK, RICE, ANDERSON, SPRING, HIMSL, AAFEDT, VAUGHN, OWENS, THOMAS, PINSONEAULT, CRIPPEN, HARP, RASMUSSEN, GAGE

IN THE SENATE

FEBRUARY 4, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

FIRST READING.

FEBRUARY 15, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 16, 1989 PRINTING REPORT.

FEBRUARY 17, 1989 SECOND READING, DO PASS.

FEBRUARY 18, 1989 ENGROSSING REPORT.

FEBRUARY 20, 1989 THIRD READING, PASSED. AYES, 50; NOES, 0.

TRANSMITTED TO HOUSE.

ON JUDICIARY.

FIRST READING.

ADOPTED.

AMENDED.

IN THE HOUSE

FEBRUARY 21, 1989

MARCH 27, 1989

MARCH 28, 1989

MARCH 29, 1989

THIRD READING, CONCURRED IN. AYES, 97; NOES, 0.

COMMITTEE RECOMMEND BILL BE

CONCURRED IN AS AMENDED. REPORT

SECOND READING, CONCURRED IN AS

RETURNED TO SENATE WITH AMENDMENTS.

INTRODUCED AND REFERRED TO COMMITTEE

IN THE SENATE

APRIL 3, 1989 ON MOTION, CONSIDERATION PASSED UNTIL THE 77TH LEGISLATIVE DAY.

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APRIL 6, 1989 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 10, 1989

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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Harding KAST BILL NO. 7/10 1 DUCED BY A 2 з AOT ENTITLED. "AN ACT TO PROHIBIT THE DISPLAY// MUL AND DISSEMINATION OF MATERIAL HARMFUL TO MINORS; AMENDING 5 SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING SECTION 6 7 45-8-202, MCA." 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 NEW SECTION. Section 1. Definitions. As used in {this 10 act], the following definitions apply: 11 12 (1) "Harmful to minors" means that guality of a 13 description, exhibition, presentation, or representation, in 14 whatever form, of nudity, sexual conduct, sexual excitement, 15 or sadomasochistic abuse when the material or performance, 16 taken as a whole, has the following characteristics: 17 (a) it has a predominant tendency to appeal to a minor's prurient interest in sex; 18 (b) it depicts or describes nudity, sexual conduct, 19 20 sexual excitement, or sadomasochistic abuse in a manner that 21 is patently offensive to prevailing standards in the adult 22 community with respect to what is suitable for minors; and 23 (c) it lacks serious literary, scientific, artistic, or 24 political value for minors. (2) "Material" 25 means a book, magazine, newspaper,

pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape.

4 (3) "Minor" means an unmarried person under 18 years of5 age.

6 (4) "Negligently" means consciously disregarding a risk 7 or existence of circumstances of which a person should be 8 aware to the degree that the risk deviates from the conduct 9 of a reasonable person concerning:

10 (a) the character and content of any material or 11 performance that is reasonably susceptible to examination; 12 and

13 (b) the age of the minor. However, an honest mistake 14 will constitute an excuse from liability if the defendant 15 made a reasonable bona fide attempt to ascertain the true 16 age of the minor.

17 (5) "Newsstand" means a stand that distributes or sells18 newspapers or magazines.

19 (6) "Nudity" means the showing of the human male or 20 female genitals, pubic area, or buttocks with less than a 21 full opaque covering, the showing of any portion of the 22 female breast below the top of the nipple with less than a 23 full opaque covering, or the depiction of covered male 24 genitals in a discernibly turgid state.

25 (7) "Performance" means any motion picture, film,

INTRODUCED BILL -2-5B342

videotape, phonograph record, compact disk, 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.

(8) "Person" means any individual, partnership, 5 association, corporation, or other legal entity of any kind. 6 (9) "Reasonable bona fide attempt" means an attempt to 7 ascertain the true age of the minor by requiring production 8 9 of a driver's license, marriage license, birth certificate, or a governmental or educational identification card or 10 paper rather than relying solely on the oral allegations or 11 apparent age of the minor. 12

13 (10) "Sexual conduct" includes:

14 (a) vaginal, anal, or oral intercourse, whether actual15 or simulated, normal or perverted;

16 (b) masturbation, excretory functions, or lewd17 exhibition of uncovered genitals;

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

25 NEW SECTION. Section 2. Public display or

LC 1355/01

dissemination of material harmful to minors. A person having
 custody, control, or supervision of any commercial
 establishment or newsstand may not negligently:

4 (1) display material that is harmful to minors in such 5 a way that minors, as a part of the invited public, will be 6 able to view the material; provided, however, that a person 7 is considered not to have displayed material harmful to 8 minors if the material is kept behind devices commonly known 9 as blinder racks so that the lower two-thirds of the 10 material is not exposed to view;

11 (2) sell, furnish, present, distribute, or otherwise 12 disseminate to a minor or allow a minor to view, with or 13 without consideration, any material that is harmful to 14 minors; or

15 (3) present to a minor or participate in presenting to
16 a minor, with or without consideration, any performance that
17 is harmful to minors.

18 <u>NEW SECTION.</u> Section 3. Penalties. (1) A person who is
19 convicted of violating [section 2] is guilty of a
20 misdemeanor and may be fined an amount not less than \$500 or
21 imprisoned for not more than 1 month, or both.

22 (2) Each day that a violation of [section 2] occurs or
23 continues constitutes a separate offense and is punishable
24 as a separate violation.

25 (3) Every act, thing, or transaction prohibited by

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[section 2] constitutes a separate offense to each item,
 issue, or title involved and is punishable as a separate
 offense.

4 (4) For purposes of [section 2], multiple copies of the 5 same title, monthly issue, volume and number issue, or other 6 identical material constitutes a single offense.

7 Section 4. Section 45-8-201, MCA, is amended to read:
8 "45-8-201. Obscenity. (1) A person commits the offense
9 of obscenity when, with knowledge of the obscene nature
10 thereof, he purposely or knowingly:

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

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

18 (c) publishes, exhibits, or otherwise makes available19 anything obscene to anyone under the age of 18;

20 (d) performs an obscene act or otherwise presents an
21 obscene exhibition of his body to anyone under the age of
22 18;

(e) creates, buys, procures, or possesses obscene
matter or material with the purpose to disseminate it to
anyone under the age of 18; or

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

(2) A thing is obscene if:

4

5 (a) (i) it is a representation or description of
6 perverted ultimate sexual acts, actual or simulated;

7 (ii) it is a patently offensive representation or
8 description of normal ultimate sexual acts, actual or
9 simulated; or

10 (iii) it is a patently offensive representation or 11 description of masturbation, excretory functions, or lewd 12 exhibition of the genitals; and

13 (b) taken as a whole the material:

14 (i) applying contemporary community standards, appeals15 to the prurient interest in sex;

16 (ii) portrays conduct described in subsection (2)(a)(i),

17 (ii), or (iii) of-this-section in a patently offensive way; 18 and

19 (iii) lacks serious literary, artistic, political, or20 scientific value.

21 (3) In any prosecution for an offense under this22 section, evidence shall be admissible to show:

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

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LC 1355/01

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

3 (c) the degree of public acceptance of the material in 4 the community;

5 (d) appeal to prurient interest or absence thereof in 6 advertising or other promotion of the material; or

7 (e) purpose of the author, creator, publisher, or8 disseminator.

9 (4) A person convicted of obscenity shall be fined at 10 least \$500 but not more than \$1,000 or imprisoned in the 11 county jail for a term not to exceed 6 months, or both.

12 (5) Cities, towns, or counties may adopt ordinances or
13 resolutions which are more restrictive as to obscenity than
14 the provisions of this section and 45-8-202 [section 2]."

Section 5. Section 45-8-203, MCA, is amended to read: 15 "45-8-203. Certain motion picture theater employees not 16 liable for prosecution. (1) As used in this section, 17 18 "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no 19 20 financial interest other than salary or wages in the 21 ownership or operation of the motion picture theater, has no 22 financial interest in or control over the selection of the 23 motion pictures shown in the theater, and is working within 24 the motion picture theater where he is regularly employed. 25 "Employee" does not include a manager of the motion picture LC 1355/01

1 theater.

2 (2) No employee is liable to prosecution under 45-8-201
3 and 45-8-202 [section 2] or under any city or county
4 ordinance for exhibiting or possessing with intent to
5 exhibit any obscene motion picture provided the employee is
6 acting within the scope of his regular employment at a
7 showing open to the public."

NEW SECTION. Section 6. Repealer. Section 45-8-202,
MCA, is repealed.

NEW SECTION. Section 7. Codification instruction.
Sections 1 through 3] are intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [sections 1 through 3].

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-8-

-7-

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51st Legislature

APPROVED BY COMMITTEE On Judiciary

1	SENATE BILL NO. 342			
2	INTRODUCED BY HOFMAN, HANNAH, LEE, WALLIN, CLARK, KEATING,			
3	HARDING, DEBRUYCKER, KELLER, HOFFMAN, ELLISON, ZOOK, RICE,			
4	ANDERSON, SPRING, HIMSL, AAFEDT, VAUGHN, OWENS, THOMAS,			
5	PINSONEAULT, CRIPPEN, HARP, RASMUSSEN, GAGE			
6				
7	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY			
8	AND DISSEMINATION OF MATERIAL HARMFUL TO MINORS; AMENDING			
9	SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING SECTION			
10	45-8-202, MCA."			
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12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:			
13	NEW SECTION. Section 1. Definitions. As used in [this			
14	act), the following definitions apply:			
15	(1) "Harmful to minors" means that quality of a			
16	description, exhibition, presentation, or representation, in			
17	whatever form, of nudity, sexual conduct, sexual excitement,			

18 or sadomasochistic abuse when the material or performance,19 taken as a whole, has the following characteristics:

20 (a) it has a predominant tendency to appeal to a21 minor's prurient interest in sex;

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

Montana Legislative Council

(c) it lacks serious literary, scientific, artistic,
 or political value for minors.

3 (2) "Material" means a book, magazine, newspaper,
4 pamphlet, poster, print, picture, figure, image,
5 description, motion picture film, record, recording tape, or
6 videotape.

7 (3) "Minor" means an unmarried person under 18 years8 of age.

9 (4) "Negligently" means consciously disregarding a 10 risk or existence of circumstances of which a person should 11 be aware to the degree that the risk deviates from the 12 conduct of a reasonable person concerning:

13 (a) the character and content of any material or
14 performance that is reasonably susceptible to examination;
15 and

16 (b) the age of the minor. However, an honest mistake 17 will constitute an excuse from liability if the defendant 18 made a reasonable bona fide attempt to ascertain the true 19 age of the minor.

20 (5) "Newsstand" means a stand that distributes or21 sells newspapers or magazines.

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

-2-

SECOND READING

SB 342

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full opaque covering, or the depiction of covered male
 genitals in a discernibly turgid state.

3 (7) "Performance" means any motion picture, film,
4 videotape, phonograph record, compact disk, tape recording,
5 preview, trailer, play, show, skit, dance, or other
6 exhibition played or performed before an audience of one or
7 more, with or without consideration.

8 (8) "Person" means any individual, partnership. 9 association, corporation, or other legal entity of any kind. 10 (9) "Reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production 11 12 of a driver's license, marriage license, birth certificate, 13 or a governmental or educational identification card or 14 paper rather than relying solely on the oral allegations or 15 apparent age of the minor.

16 (10) "Sexual conduct" includes:

17 (a) vaginal, anal, or oral intercourse, whether actual18 or simulated, normal or perverted;

19 (b) masturbation, excretory functions, or lewd 20 exhibition of uncovered genitals;

(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.
(11) "Sexual excitement" means the condition of human

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male or female genitals when in a state of sexual
 stimulation or arousal.

3 <u>NEW SECTION.</u> Section 2. Public display or 4 dissemination of material harmful to minors. A person having 5 custody, control, or supervision of any commercial 6 establishment or newsstand may not negligently:

7 (1) display material that is harmful to minors in such 8 a way that minors, as a part of the invited public, will be 9 able to view the material; provided, however, that a person 10 is considered not to have displayed material harmful to 11 minors if the material is kept behind devices commonly known 12 as blinder racks so that the lower two-thirds of the 13 material is not exposed to view;

(2) sell, furnish, present, distribute, or otherwise
disseminate to a minor or allow a minor to view, with or
without consideration, any material that is harmful to
minors; or

(3) present to a minor or participate in presenting to
a minor, with or without consideration, any performance that
is harmful to minors.

<u>NEW SECTION.</u> Section 3. Penalties. (1) A person who
is convicted of violating [section 2] is guilty of a
misdemeanor and may be fined an amount not less-than TO
<u>EXCEED</u> \$500 or <u>BE</u> imprisoned for <u>A TERM</u> not more-than--1
month TO EXCEED 6 MONTHS, or both.

-4-

SB 342

SB 342

1	(2) Each-day-that-a-violation-of-{section-2}-occurs-or	1
2	continuesconstitutesa-separate-offense-and-is-punishable	2
3	as-a-separate-violation.	3
4	(3)Every-act,-thing,ortransactionprohibitedby	4
5	{section2}constitutesaseparate-offense-to-each-item;	5
6	issuer-or-title-involved-and-ispunishableasaseparate	6
7	offense.	7
8	(4)(2) For purposes of [section 2], multiple copies of	8
9	the same title, monthly issue, volume and number issue, or	9
10	other identical material constitutes a single offense.	10
11	Section 4. Section 45-8-201, MCA, is amended to read:	11
12	*45-8-201. Obscenity. (1) A person commits the offense	12
13	of obscenity when, with knowledge of the obscene nature	13
14	thereof, he purposely or knowingly:	14
15	(a) sells, delivers, or provides or offers or agrees	15
16	to sell, deliver, or provide any obscene writing, picture,	16
17	record, or other representation or embodiment of the obscene	17
18	to anyone under the age of 18;	18
19	(b) presents or directs an obscene play, dance, or	19
20	other performance, or participates in that portion thereof	20
21	which makes it obscene, to anyone under the age of 18;	21
2 2	(c) publishes, exhibits, or otherwise makes available	22
23	anything obscene to anyone under the age of 18;	23
24	(d) performs an obscene act or otherwise presents an	24
25	obscene exhibition of his body to anyone under the age of	25

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1 18;

2 (e) creates, buys, procures, or possesses obscene
3 matter or material with the purpose to disseminate it to
4 anyone under the age of 18; or
5 (f) advertises or otherwise promotes the sale of

6 obscene material or materials represented or held out by him 7 to be obscene.

3 (2) A thing is obscene if:

9 (a) (i) it is a representation or description of
 0 perverted ultimate sexual acts, actual or simulated;

11 (ii) it is a patently offensive representation or 12 description of normal ultimate sexual acts, actual or 13 simulated; or

4 (iii) it is a patently offensive representation or 5 description of masturbation, excretory functions, or lewd 6 exhibition of the genitals; and

7 (b) taken as a whole the material:

18 (i) applying contemporary community standards, appeals19 to the prurient interest in sex;

20 (ii) portrays conduct described in <u>subsection</u>
21 (2)(a)(i), (ii), or (iii) of--this--section in a patently
22 offensive way; and

23 (iii) lacks serious literary, artistic, political, or24 scientific value.

(3) In any prosecution for an offense under this

-6-

1 section, evidence shall be admissible to show:

2 (a) the predominant appeal of the material and what 3 effect, if any, it would probably have on the behavior of 4 people;

5 (b) the artistic, literary, scientific, educational,6 or other merits of the material;

7 (c) the degree of public acceptance of the material in8 the community;

9 (d) appeal to prurient interest or absence thereof in10 advertising or other promotion of the material; or

11 (e) purpose of the author, creator, publisher, or 12 disseminator.

(4) A person convicted of obscenity shall be fined at
least \$500 but not more than \$1,000 or imprisoned in the
county jail for a term not to exceed 6 months, or both.

16 (5) Cities, towns, or counties may adopt ordinances or
17 resolutions which are more restrictive as to obscenity than
18 the provisions of this section and 45-0-202 [section 2]."

Section 5. Section 45-8-203, MCA, is amended to read: "45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no

-7-

SB 342

financial interest in or control over the selection of the
 motion pictures shown in the theater, and is working within
 the motion picture theater where he is regularly employed.
 "Employee" does not include a manager of the motion picture
 theater.

6 (2) No employee is liable to prosecution under 7 45-8-201 and 45-8-202 [section 2] or under any city or 8 county ordinance for exhibiting or possessing with intent to 9 exhibit any obscene motion picture provided the employee is 10 acting within the scope of his regular employment at a 11 showing open to the public."

<u>NEW SECTION.</u> Section 6. Repealer. Section 45-8-202,
 MCA, is repealed.

14 <u>NEW SECTION.</u> Section 7. Codification instruction. 15 [Sections 1 through 3] are intended to be codified as an 16 integral part of Title 45, chapter 8, part 2, and the 17 provisions of Title 45, chapter 8, part 2, apply to 18 [sections 1 through 3].

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SB 0342/02

-8-

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1 (c) it lacks serious literary, scientific, artistic, 1 SENATE BILL NO. 342 2 or political value for minors. 2 INTRODUCED BY HOFMAN, HANNAH, LEE, WALLIN, CLARK, KEATING, (2) "Material" means a book, magazine, newspaper, 3 HARDING, DEBRUYCKER, KELLER, HOFFMAN, ELLISON, ZOOK, RICE, 3 4 pamphlet, poster, print, picture, 4 ANDERSON, SPRING, HIMSL, AAFEDT, VAUGHN, OWENS, THOMAS, figure, image, description, motion picture film, record, recording tape, or 5 PINSONEAULT, CRIPPEN, HARP, RASMUSSEN, GAGE 5 6 videotape. б 7 7 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY (3) "Minor" means an unmarried person under 18 years B of age. 8 AND DISSEMINATION OF MATERIAL HARMFUL TO MINORS; AMENDING 9 (4) "Negligently" means consciously disregarding a 9 SECTIONS 45-8-201 AND 45-8-203. MCA; AND REPEALING SECTION 10 risk or existence of circumstances of which a person should 10 45-8-202, MCA." be aware to the degree that the risk deviates from the 11 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 conduct of a reasonable person concerning: 12 13 (a) the character and content of any material or 13 NEW SECTION. Section 1. Definitions. As used in (this 14 performance that is reasonably susceptible to examination; 14 act), the following definitions apply: 15 and (1) "Harmful to minors" means that quality of a 15 16 (b) the age of the minor. However, an honest mistake 16 description, exhibition, presentation, or representation, in will constitute an excuse from liability if the defendant 17 17 whatever form, of nudity, sexual conduct, sexual excitement, 18 made a reasonable bona fide attempt to ascertain the true or sadomasochistic abuse when the material or performance, 18 19 age of the minor. 19 taken as a whole, has the following characteristics: 20 (5) "Newsstand" means a stand that distributes or 20 (a) it has a predominant tendency to appeal to a 21 sells newspapers or magazines. 21 minor's prurient interest in sex; 22 (6) "Nudity" means the showing of the human male or (b) it depicts or describes nudity, sexual conduct, 22 23 female genitals, pubic area, or buttocks with less than a sexual excitement, or sadomasochistic abuse in a manner that 23 24 full opaque covering, the showing of any portion of the 24 is patently offensive to prevailing standards in the adult 25 female breast below the top of the nipple with less than a

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SB 342

-2-

THIRD READING

SB 342

full opaque covering, or the depiction of covered male
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3 (7) "Performance" means any motion picture, film,
4 videotape, phonograph record, compact disk, tape recording,
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that depicts torture, physical restraint by being fettered
or bound, or flagellation of or by a nude person or a person
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male or female genitals when in a state of sexual
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3 <u>NEW SECTION.</u> Section 2. Public display or 4 dissemination of material harmful to minors. A person having 5 custody, control, or supervision of any commercial 6 establishment or newsstand may not negligently:

7 (1) display material that is harmful to minors in such 8 a way that minors, as a part of the invited public, will be 9 able to view the material; provided, however, that a person 10 is considered not to have displayed material harmful to 11 minors if the material is kept behind devices commonly known 12 as blinder racks so that the lower two-thirds of the 13 material is not exposed to view;

14 (2) sell, furnish, present, distribute, or otherwise
15 disseminate to a minor or allow a minor to view, with or
16 without consideration, any material that is harmful to
17 minors: or

18 (3) present to a minor or participate in presenting to
19 a minor, with or without consideration, any performance that
20 is harmful to minors.

NEW SECTION. Section 3. Penalties. (1) A person who is convicted of violating [section 2] is guilty of a misdemeanor and may be fined an amount not less-than TO EXCEED \$500 or BE imprisoned for <u>A TERM</u> not more-than--1 month TO EXCEED 6 MONTHS, or both.

-4-

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	1	t2}Bach-day-that-a-violation-of-fsection-2}-occurs-or
	2	continuesconstitutesa-separate-offense-and-is-punishable
	3	as-a-separate-violation;
	4	(3)Bvery-act;-thing;ortransactionprohibitedby
	5	fsection2constitutesaseparate-offense-to-each-item,
	6	issue;-or-title-involved-and-ispunishableasaseparate
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	8	(4)(2) For purposes of (section 2), multiple copies of
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	10	other identical material constitutes a single offense.
	11	Section 4. Section 45-8-201, MCA, is amended to read:
	12	"45-8-201. Obscenity. (1) A person commits the offense
	13	of obscenity when, with knowledge of the obscene nature
	14	thereof, he purposely or knowingly:
•	15	(a) sells, delivers, or provides or offers or agrees
	16	to sell, deliver, or provide any obscene writing, picture,
	17	record, or other representation or embodiment of the obscene
	18	to anyone under the age of 18;
	19	(b) presents or directs an obscene play, dance, or
	20	other performance, or participates in that portion thereof
	21	which makes it obscene, to anyone under the age of 18;
	22	(c) publishes, exhibits, or otherwise makes available
	23	anything obscene to anyone under the age of 18;
	24	(d) performs an obscene act or otherwise presents an
	25	obscene exhibition of his body to anyone under the age of

1 18;

17

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2 (e) creates, buys, procures, or possesses obscene 3 matter or material with the purpose to disseminate it to 4 anyone under the age of 18; or

· 5 (f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him 6 7 to be obscene.

8 (2) A thing is obscene if:

9 (a) (i) it is a representation or description of 10 perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or 11 description of normal ultimate sexual acts, actual or 12 13 simulated; or

14 (iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd 15 16 exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals 18 19 to the prurient interest in sex;

described in subsection 20 (ii) portrays conduct (2)(a)(i), (ii), or (iii) of--this--section in a patently 21 22 offensive way; and

23 (iii) lacks serious literary, artistic, political, or 24 scientific value.

25 (3) In any prosecution for an offense under this

-6-

SB 342

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SB 342

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SB 0342/02

1 section, evidence shall be admissible to show:

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2 (a) the predominant appeal of the material and what
3 effect, if any, it would probably have on the behavior of
4 people;

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6 or other merits of the material;

7 (c) the degree of public acceptance of the material in 8 the community;

9 (d) appeal to prurient interest or absence thereof in
10 advertising or other promotion of the material; or

11 (e) purpose of the author, creator, publisher, or 12 disseminator.

13 (4) A person convicted of obscenity shall be fined at
14 least \$500 but not more than \$1,000 or imprisoned in the
15 county jail for a term not to exceed 6 months, or both.

16 (5) Cities, towns, or counties may adopt ordinances or
17 resolutions which are more restrictive as to obscenity than
18 the provisions of this section and 45-8-202 [section 2]."

19 Section 5. Section 45-8-203, MCA, is amended to read: 20 "45-8-203. Certain motion picture theater employees 21 not liable for prosecution. (1) As used in this section, 22 "employee" means any person regularly employed by the owner 23 or operator of a motion picture theater if he has no 24 financial interest other than salary or wages in the 25 ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the
 motion pictures shown in the theater, and is working within
 the motion picture theater where he is regularly employed.
 "Employee" does not include a manager of the motion picture
 theater.

6 (2) No employee is liable to prosecution under 7 45-8-201 and 45-8-202 [section 2] or under any city or 8 county ordinance for exhibiting or possessing with intent to 9 exhibit any obscene motion picture provided the employee is 10 acting within the scope of his regular employment at a 11 showing open to the public."

NEW SECTION. Section 6. Repealer. Section 45-8-202,
MCA, is repealed.

14 <u>NEW SECTION.</u> Section 7. codification instruction.
15 [Sections 1 through 3] are intended to be codified as an
16 integral part of Title 45, chapter 8, part 2, and the
17 provisions of Title 45, chapter 8, part 2, apply to
18 [sections 1 through 3].

-End-

-8-

-7-

STANDING COMMITTEE REPORT

March 27, 1989 Page 1 of 4

Mr. Speaker: We, the committee on <u>Judiciary</u> report that <u>SENATE BILL 342</u> (third reading copy -- blue) <u>be concurred in</u> as amended.

Brown', Chairman

And, that such amendments read:

1. Title, line 8. Following: "OF" Insert: "OBSCENE" Following: "MATERIAL" Strike: "HARMFUL"

2. Page 1, line 15. Strike: "Harmful" Insert: "Display or dissemination of obscene material"

3. Page 1, line 17. Strike: "nudity," Strike: ", sexual excitement,"

4. Page 1, line 20. Strike: "it has a predominant tendency to appeal" Insert: "its dominant theme appeals"

5. Page 1, line 22. Strike: "nudity," Following: "conduct" Strike: ","

6. Page 1, line 23.
Strike: "sexual excitement,"

7. Page 1, line 24.

March 27, 1989 Page 2 of 4

Strike: "prevailing" Insert: "contemporary" 8. Page 2, line 2. Following: "minors." Insert: "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." 9. Page 2, line 6 and page 3, line 4. Following: "videotape" Insert: "(except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America)" 10. Page 2, line 7. Strike: "an unmarried" Insert: "a" 11. Page 2, lines 9 through 19. Strike: subsection (4) in its entirety Renumber: subsequent subsections 12. Page 2, line 22 through line 2 of page 3. Strike: subsection (6) in its entirety Renumber: subsequent subsections 13. Page 3, lines 10 through 15. Strike: "Reasonable" on line 10 through "minor" on line 15 Insert: "Prurient interest in sex" means a shameful or morbid interest in sex or excretion" 14. Page 3, line 18. Following: "perverted" Strike: ";" Insert: ". A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act." 15. Page 3, line 20. Following: "genitals" Insert: "or female breasts"

 Page 3, line 25 through page 4, line 2.
 Strike: subsection (11) in its entirety Insert: "(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality."



HOUSE

March 27, 1989 Page 3 of 4

17. Page 4, 11me 4. Following: "of" Insert: "obscene" Strike: "harmful" Following: "to minors." Insert: "(1)" Renumber: Subsequent subsections (1) through (3) as (a) through i(c) 18, Page 4, line 6. Strike: "megligently" Insert: "knowingly or purposely" 19. Page 4, line 10. "Following: "displayed" Insert: "obscene" Following: "material" Strike: "harmful" 20. Page 4, line 13. Following: "view" Insert: "or other reasonable efforts were made to prevent view of the material by a minor" 21. Page 4, Line 16. Following: "any" Insert: "obscene" Following: "material" Strike: "that is harmful" 22. Page 4, line 20. Strike: "harmful" Insert: "obscene" 23. Page 4, line 21. Insert: "(2) A person does not wiolate this section if: (a) he had reasonable cause to believe the minor was 18 years of age. ""Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, aducational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age; (b) the person is, or is acting as, an employee of a bona file public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

March 27, 1989 Page 4 of 4

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

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

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

NEW SECTION. Section 3. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of [section 2], he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the will be prosecuted. The does not desist, and determine that the will be prosecuted. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending."

24. Page 8, lines 15 and 18. Strike: "3" Insert: "4"

COMMITTEE OF THE WHOLE AMENDMENT SENATE BILL 342 Representative Hal Harper

March 28, 1989 11:31 am Page 1 of 1

HOUSE

Mr. Chairman: I move to amend SENATE BILL 342 (third reading copy -- blue).

Signed: Representative Hal Harper

And, that such amendment to SENATE BILL 342 read as follows:

1. Page 4, line 7.
Following: "display"
Insert: "obscene"
Following: "material"
Strike: "that is harmful"

ADOPT

1	SENATE BILL NO. 342	1	is patently offensive to prevailing <u>CONTEMPORARY</u> standards
2	INTRODUCED BY HOFMAN, HANNAH, LEE, WALLIN, CLARK, KEATING,	2	in the adult community with respect to what is suitable for
3	HARDING, DEBRUYCKER, KELLER, HOFFMAN, ELLISON, ZOOK, RICE,	3	minors; and
4	ANDERSON, SPRING, HIMSL, AAFEDT, VAUGHN, OWENS, THOMAS,	4	(c) it lacks serious literary, scientific, artistic,
5	PINSONEAULT, CRIPPEN, HARP, RASMUSSEN, GAGE	5	or political value for minors. IF THE COURT FINDS THAT THE
6		6	MATERIAL OR PERFORMANCE HAS SERIOUS LITERARY, SCIENTIFIC,
7	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY	7	ARTISTIC, OR POLITICAL VALUE FOR A SIGNIFICANT PERCENTAGE OF
8	AND DISSEMINATION OF OBSCENE MATERIAL HARMPUL TO MINORS;	8	NORMAL OLDER MINORS, THE MATERIAL OR PERFORMANCE MAY NOT BE
9	AMENDING SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING	9	FOUND TO LACK SUCH VALUE FOR THE ENTIRE CLASS OF MINORS.
10	SECTION 45-8-202, MCA."	10	(2) "Material" means a book, magazine, newspaper,
11		11	pamphlet, poster, print, picture, figure, image,
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	description, motion picture film, record, recording tape, or
13	NEW SECTION. Section 1. Definitions. As used in [this	13	videotape (EXCEPT A MOTION PICTURE OR VIDEOTAPE RATED G, PG,
14	act), the following definitions apply:	14	PG-13, OR R BY THE MOTION PICTURE ASSOCIATION OF AMERICA).
15	(1) "Harmful DISPLAY OR DISSEMINATION OF OBSCENE	15	(3) "Minor" means an-unmarried A person under 18 years
16	MATERIAL to minors" means that quality of a description,	16	of age.
17	exhibition, presentation, or representation, in whatever	17	<pre>(4)"Negligently"meansconsciouslydisregardinga</pre>
18	form, of mudity; sexual conduct;sexualexcitement; or	18	risk-or-existence-of-circumstances-of-which-a-personshould
19	sadomasochistic abuse when the material or performance,	19	beawaretothedegreethat-~the-risk-deviates-from-the
20	taken as a whole, has the following characteristics:	20	conduct-of-a-reasonable-person-concerning;
21	(a) ithasapredominanttendencytoappeal <u>ITS</u>	21	<pre>(a)the-characterandcontentofanymaterialor</pre>
22	DOMINANT THEME APPEALS to a minor's prurient interest in	22	performancethatis-reasonably-susceptible-to-examination;
23	sex;	23	and
24	(b) it depicts or describes nudity, sexual conduct,	24	(b)the-age-of-the-minorHoweveranhonestmistake
25	sexual-excitement; or sadomasochistic abuse in a manner that	25	willconstituteanexcuse-from-liability-if-the-defendant

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> -2-SB 342 REFERENCE BILL AS AMENDED

SB 342

1	made-a-reasonable-bona-fide-attempt-toascertainthetrue	1
2	age-of-the-minor-	2
3	<pre>(5)(4) "Newsstand" means a stand that distributes or</pre>	3
4	sells newspapers or magazines.	4
5	<pre>(6)"Nudity"-means-the-showing-of-thehumanmaleor</pre>	5
6	femalegenitals;pubicarea;-or-buttocks-with-less-than-a	6
7	full-opaque-covering;-the-showingofanyportionofthe	7
8	femalebreastbelow-the-top-of-the-mipple-with-less-than-a	8
9	full-opaque-covering;orthedepictionofcoveredmale	9
10	genitals-in-a-discernibly-turgid-state-	10
11	<pre>(7)(5) "Performance" means any motion picture, film,</pre>	11
12	OR videotape (EXCEPT A MOTION PICTURE OR VIDEOTAPE RATED G,	12
13	PG, PG-13, OR R BY THE MOTION PICTURE ASSOCIATION OF	13
14	<u>AMERICA);</u> phonograph record; compact disk; tape	14
15	<pre>recording; preview; trailer; play; show; skit; dance;</pre>	15
16	or other exhibition played or performed before an audience	16
17	of one or more, with or without consideration.	17
18	<pre>(6) "Person" means any individual, partnership,</pre>	18
19	association, corporation, or other legal entity of any kind.	19
20	<pre>f9;(7) "Reasonable-bona-fide-attempt"-means-an-attempt</pre>	20
21	toascertainthetrueageoftheminorbyrequiring	21

(c) sadomasochistic abuse, meaning an act or condition 1 that depicts torture, physical restraint by being fettered 2 or bound, or flagellation of or by a nude person or a person 3 clad in undergarments or in a revealing or bizarre costume. 4 .5 fill-"Sexual--excitement"--means-the-condition-of-human 6 male--or--female--genitals--when--in--a--state---of---sexual 7 stimulation-or-arousal-B (9) "ULTIMATE SEXUAL ACT" MEANS VAGINAL OR ANAL SEXUAL 9 INTERCOURSE, FELLATIO, CUNNILINGUS, OR BESTIALITY. NEW SECTION. Section 2. Public 20 display 21 dissemination of OBSCENE material harmful to minors. (1) A 22 person having custody, control, or supervision of any 23 commercial establishment or newsstand may not negligently KNOWINGLY OR PURPOSELY: 24 25 (1)(A) display OBSCENE material that--is-harmful to

IN SEX" MEANS A SHAMEFUL OR MORBID INTEREST IN SEX OR

SIMULATED WHEN IT GIVES THE APPEARANCE OF DEPICTING ACTUAL SEXUAL ACTIVITY OR THE CONSUMMATION OF AN ULTIMATE SEXUAL

(b) masturbation, excretory functions, or

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exhibition of uncovered genitals OR FEMALE BREASTS;

(a) vaginal, anal, or oral intercourse, whether actual simulated, normal or perverted; A SEXUAL ACT IS

(10) "Sexual conduct" includes:

EXCRETION.

or

ACT.

-3-

production-of-a-driver's-license;--marriage--license;--birth

certificate7-or-a-governmental-or-educational-identification

card--or--paper--rather--than--relying--solely--on--the-oral

allegations-or-apparent-age-of-the-minor "PRURIENT INTEREST

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SB 342

SB 0342/03

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1 minors in such a way that minors, as a part of the invited 2 public, will be able to view the material; provided, 3 however, that a person is considered not to have displayed 4 <u>OBSCENE</u> material harmful to minors if the material is kept 5 behind devices commonly known as blinder racks so that the 6 lower two-thirds of the material is not exposed to view <u>OR</u> 7 <u>OTHER REASONABLE EFFORTS WERE MADE TO PREVENT VIEW OF THE</u>

8 MATERIAL BY A MINOR;

9 (2)(B) sell, furnish, present, distribute, or
10 otherwise disseminate to a minor or allow a minor to view,
11 with or without consideration, any <u>OBSCENE</u> material that-is
12 harmful to minors; or

13 (3)(C) present to a minor or participate in presenting
14 to a minor, with or without consideration, any performance
15 that is harmful OBSCENE to minors.

16 (2) A PERSON DOES NOT VIOLATE THIS SECTION IF:

17 (A) HE HAD REASONABLE CAUSE TO BELIEVE THE MINOR WAS 18 18 YEARS OF AGE. "REASONABLE CAUSE" INCLUDES BUT IS NOT 19 LIMITED TO BEING SHOWN A DRAFT CARD, DRIVER'S LICENSE, 20 MARRIAGE LICENSE, BIRTH CERTIFICATE, EDUCATIONAL 21 IDENTIFICATION CARD, GOVERNMENTAL IDENTIFICATION CARD, OR 22 OTHER OFFICIAL OR APPARENTLY OFFICIAL CARD OR DOCUMENT 23 PURPORTING TO ESTABLISH THAT THE PERSON IS 18 YEARS OF AGE; 24 (B) THE PERSON IS, OR IS ACTING AS, AN EMPLOYEE OF A 25 BONA FIDE PUBLIC SCHOOL, COLLEGE, OR UNIVERSITY OR A RETAIL

-5-

SB 342

OUTLET AFFILIATED WITH AND SERVING THE EDUCATIONAL PURPOSES
OF A SCHOOL, COLLEGE, OR UNIVERSITY AND THE MATERIAL OR
PERFORMANCE WAS DISSEMINATED IN ACCORDANCE WITH POLICIES
APPROVED BY THE GOVERNING BODY OF THE INSTITUTION;
(C) THE PERSON IS AN OFFICER, DIRECTOR, TRUSTEE, OR
EMPLOYEE OF A PUBLIC LIBRARY OR MUSEUM AND THE MATERIAL OR
PERFORMANCE WAS ACQUIRED BY THE LIBRARY OR MUSEUM AND
DISSEMINATED IN ACCORDANCE WITH POLICIES APPROVED BY THE
GOVERNING BODY CF THE LIBRARY OR MUSEUM;
(D) AN EXHIBITION IN A STATE OF NUDITY IS FOR A BONA
FIDE SCIENTIFIC OR MEDICAL PURPOSE FOR A BONA FIDE SCHOOL,
LIBRARY, OR MUSEUM; OR
(E) THE PERSON IS A RETAIL SALES CLERK WITH NO
FINANCIAL INTEREST IN THE MATERIAL OR PERFORMANCE OR IN THE
ESTABLISHMENT DISPLAYING OR SELLING THE MATERIAL OR
PERFORMANCE.
NEW SECTION. Section 3. NOTICE OF VIOLATION. BEFORE A
COUNTY ATTORNEY MAY PROSECUTE A PERSON FOR A CONTINUING
VIOLATION OF [SECTION 2], HE SHALL DETERMINE THAT THE
MATERIAL OR PERFORMANCE IS OBSCENE TO MINORS, GIVE THE
ALLEGED VIOLATOR ACTUAL NOTICE OF THE DETERMINATION AND
NOTICE " 'AT HE WILL BE PROSECUTED IF HE DOES NOT DESIST, AND
DETERMI: ; THAT THE VIOLATION CONTINUED FOR AT LEAST 3 DAYS

24 AFTER NOTICE WAS RECEIVED. THE PERSON MAY SEEK A DECLARATORY

25 JUDGMENT ON THE QUESTION WHETHER THE MATERIAL OR PERFORMANCE

-6-

SB 342

1 IS OBSCENE TO MINORS. THE STATUTE OF LIMITATIONS FOR THE 2 OFFENSE IS TOLLED WHILE THE DECLARATORY JUDGMENT OR AN 3 APPEAL FROM IT IS PENDING.

<u>NEW SECTION.</u> Section 4. Penalties. (1) A person who
is convicted of violating [section 2] is guilty of a
misdemeanor and may be fined an amount not less-than TO
<u>EXCEED</u> \$500 or <u>BE</u> imprisoned for <u>A TERM</u> not more--than--1
month TO EXCEED 6 MONTHS, or both.

9 (2)--Each-day-that-a-violation-of-{section-2}-occurs-or
10 continues--constitutes--a-separate-offense-and-is-punishable
11 as-a-separate-violation-

12 (3)--Every-act_-thing_-or--transaction--prohibited--by 13 (section--2)--constitutes--a--separate-offense-to-each-item_ 14 issue_-or-title-involved-and-is--punishable--as--a--separate 15 offense-

16 (4)(2) For purposes of [section 2], multiple copies of
17 the same title, monthly issue, volume and number issue, or
18 other identical material constitutes a single offense.

Section 5. Section 45-8-201, MCA, is amended to read:
"45-8-201. Obscenity. (1) A person commits the offense
of obscenity when, with knowledge of the obscene nature
thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees
to sell, deliver, or provide any obscene writing, picture,
record, or other representation or embodiment of the obscene

SB 0342/03

1 to anyone under the age of 18;

2 (b) presents or directs an obscene play, dance, or
3 other performance, or participates in that portion thereof
4 which makes it obscene, to anyone under the age of 18;

5 (c) publishes, exhibits, or otherwise makes available
6 anything obscene to anyone under the age of 18;

7 (d) performs an obscene act or otherwise presents an
8 obscene exhibition of his body to anyone under the age of
9 18;

10 (e) creates, buys, procures, or possesses obscene 11 matter or material with the purpose to disseminate it to 12 anyone under the age of 18; or

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

16 (2) A thing is obscene if:

17 (a) (i) it is a representation or description of18 perverted ultimate sexual acts, actual or simulated;

19 (ii) it is a patently offensive representation or 20 description of normal ultimate sexual acts, actual or 21 simulated; or

22 (iii) it is a patently offensive representation or
23 description of masturbation, excretory functions, or lewd
24 exhibition of the genitals; and

25 (b) taken as a whole the material:

-7-

SB 342

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(i) applying contemporary community standards, appeals
 to the prurient interest in sex;

3 (ii) portrays conduct described in <u>subsection</u>
4 (2)(a)(i), (ii), or (iii) of--this--section in a patently
5 offensive way; and

6 (iii) lacks serious literary, artistic, political, or7 scientific value.

8 (3) In any prosecution for an offense under this9 section, evidence shall be admissible to show:

10 (a) the predominant appeal of the material and what 11 effect, if any, it would probably have on the behavior of 12 people;

13 (b) the artistic, literary, scientific, educational,14 or other merits of the material;

15 (c) the degree of public acceptance of the material in 16 the community;

17 (d) appeal to prurient interest or absence thereof in18 advertising or other promotion of the material; or

19 (e) purpose of the author, creator, publisher, or20 disseminator.

(4) A person convicted of obscenity shall be fined at
least \$500 but not more than \$1,000 or imprisoned in the
county jail for a term not to exceed 6 months, or both.

24 (5) Cities, towns, or counties may adopt ordinances or25 resolutions which are more restrictive as to obscenity than

-9-

SB 342

1 the provisions of this section and 45-8-202 [section 2]."

2 Section 6. Section 45-8-203, MCA, is amended to read: 3 "45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, 4 5 "employee" means any person regularly employed by the owner 6 or operator of a motion picture theater if he has no 7 financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no 8 financial interest in or control over the selection of the 9 10 motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. 11 12 "Employee" does not include a manager of the motion picture theater. 13

14 (2) No employee is liable to prosecution under
15 45-8-201 and 45-8-202 [section 2] or under any city or
16 county ordinance for exhibiting or possessing with intent to
17 exhibit any obscene motion picture provided the employee is
18 acting within the scope of his regular employment at a
19 showing open to the public."

20 <u>NEW SECTION.</u> Section 7. Repealer. Section 45-8-202,
21 MCA, is repealed.

22 <u>NEW SECTION.</u> Section 8. Codification instruction. 23 (Sections 1 through 3 ± 1) are intended to be codified as an 24 integral part of Title 45, chapter 8, part 2, and the 25 provisions of Title 45, chapter 8, part 2, apply to

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1 [sections 1 through $\exists 4$].

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		_	
1	SENATE BILL NO. 342	1	is patently offensive to prevailing <u>CONTEMPORARY</u> standards
2	INTRODUCED BY HOFMAN, HANNAH, LEE, WALLIN, CLARK, KEATING,	2	in the adult community with respect to what is suitable for
3	HARDING, DEBRUYCKER, KELLER, HOFFMAN, ELLISON, ZOOK, RICE,	3	minors; and
4	ANDERSON, SPRING, HIMSL, AAFEDT, VAUGHN, OWENS, THOMAS,	4	(c) it lacks serious literary, scientific, artistic,
5	PINSONEAULT, CRIPPEN, HARP, RASMUSSEN, GAGE	5	or political value for minors. IF THE COURT FINDS THAT THE
6		6	MATERIAL OR PERFORMANCE HAS SERIOUS LITERARY, SCIENTIFIC,
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9	AMENDING SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING	9	FOUND TO LACK SUCH VALUE FOR THE ENTIRE CLASS OF MINORS.
10	SECTION 45-8-202, MCA."	10	(2) "Material" means a book, magazine, newspaper,
11		11	pamphlet, poster, print, picture, figure, image,
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	description, motion picture film, record, recording tape, or
13	NEW SECTION. Section 1. Definitions. As used in [this	13	videotape (EXCEPT A MOTION PICTURE OR VIDEOTAPE RATED G, PG,
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15	(1) "Harmful DISPLAY OR DISSEMINATION OF OBSCENE	15	(3) "Minor" means an-unmarried <u>A</u> person under 18 years
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17	exhibition, presentation, or representation, in whatever	17	(4)Negligently"meansconsciouslydisregardinga
18	form, of mudity; sexual conduct;sexualexcitement; or	18	risk-or-existence-of-circumstances-of-which-a-personshould
19	sadomasochistic abuse when the material or performance,	19	beawaretothedegreethatthe-risk-deviates from-the
20	taken as a whole, has the following characteristics:	20	conduct-of-a-reasonable-person-concerning:
21	(a) ithasapredominanttendencytoappeal <u>ITS</u>	21	{a}the-characterandcontentofanymaterialor
22	DOMINANT THEME APPEALS to a minor's prurient interest in	22	performancethatis-reasonably-susceptible-to-examination;
23	sex;	23	and
24	(b) it depicts or describes nudity7 sexual conduct7	24	<pre>the-age-of-the-minorHoweveranhonestmistake</pre>
25	sexual-excitement; or sadomasochistic abuse in a manner that	25	willconstituteanexcuse-from-liability-if the-defendant
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l	made-a-reasonable-bona-fide-attempt-toascertainthetrue	1	IN SEX" MEANS A SHA
2	age-of-the-minor-	2	EXCRETION.
3	<pre>f5;(4) "Newsstand" means a stand that distributes or</pre>	3	†10;<u>(8)</u> "Sex ua
4	sells newspapers or magazines.	4	(a) vaginal, a
5	<pre>(6)"Nudity"-means-the-showing-of-thehumanmaleor</pre>	5	or simulated, nor
6	femalegenitals,pubicarea,-or-buttocks-with-less-than-a	6	SIMULATED WHEN IT GI
7	full-opaque-covering7-the-showingofanyportionofthe	7	SEXUAL ACTIVITY OR
8	femalebreastbelow-the-top-of-the-nipple-with-less-than-a	8	ACT.
9	full-opaque-covering;orthedepictionofcoveredmale	9	(b) masturbati
10	genitals-in-a-discernibly-turgid-state-	10	exhibition of uncove
11	<pre>(7)(5) "Performance" means any motion picture, film,</pre>	11	(c) sadomasoch
12	OR videotape (EXCEPT A MOTION PICTURE OR VIDEOTAPE RATED G,	12	that depicts tortu
13	PG, PG-13, OR R BY THE MOTION PICTURE ASSOCIATION OF	13	or bound, or flagell
14	<u>AMERICA);</u> phonograph record; compact disk; tape	14	clad in undergarment
15	recording; preview; trailer; play; show; skit; dance;	15	(11)-"Sexuale
16	or other exhibition played or performed before an audience	16	maleorfemalege
17	of one or more, with or without consideration.	17	stimulation-or-arous
18	<pre>(6) "Person" means any individual, partnership,</pre>	18	(9) "ULTIMATE
19	association, corporation, or other legal entity of any kind.	19	INTERCOURSE, FELLATI
20	(9)(<u>(7)</u> "Reasonable-bona-fide-attempt"-means-an-attempt	20	NEW SECTION.
21	toascertainthetrueageoftheminorbyrequiring	21	dissemination of OB
22	production-of-a-driveris-license;marriagelicense;birth	22	person having cus
23	certificate;-or-a-governmental-or-educational-identification	23	commercial establis
24	cardorpaperratherthanrelyingsolelyonthe-oral	24	KNOWINGLY OR PURPOS
25	allegations-or-apparent-age-of-the-minor "PRURIENT INTEREST	25	(l) displa

SB 342

SB 0342/03

AMEFUL OR MORBID INTEREST IN SEX OR al conduct" includes: anal, or oral intercourse, whether actual ormal or perverted; A SEXUAL ACT IS SIVES THE APPEARANCE OF DEPICTING ACTUAL OR THE CONSUMMATION OF AN ULTIMATE SEXUAL tion, excretory functions, or lewd vered genitals OR FEMALE BREASTS; chistic abuse, meaning an act or condition ture, physical restraint by being fettered llation of or by a nude person or a person nts or in a revealing or bizarre costume. -excitement^u--means-the-condition-of-human genitals--when--in--a--state---of---sexual usal. E SEXUAL ACT" MEANS VAGINAL OR ANAL SEXUAL TIO, CUNNILINGUS, OR BESTIALITY. Section 2. Public display οε BSCENE material harmfel to minors. (1) A stody, control, or supervision of any shment or newsstand may not negligently DSELY:

tit(A) display OBSCENE material that--is-harmful to

-4-

SB 342

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SB 342

1 minors in such a way that minors, as a part of the invited 2 public, will be able to view the material; provided, 3 however, that a person is considered not to have displayed 4 OBSCENE material harmful to minors if the material is kept 5 behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view OR 6 OTHER REASONABLE EFFORTS WERE MADE TO PREVENT VIEW OF THE 7 MATERIAL BY A MINOR; 8

9 (2)(B) sell, furnish, present, distribute, or
10 otherwise disseminate to a minor or allow a minor to view,
11 with or without consideration, any <u>OBSCENE</u> material that--is
12 harmful-to-minors; or

13 (3)(C) present to a minor or participate in presenting
14 to a minor, with or without consideration, any performance
15 that is harmful OBSCENE to minors.

(2) A PERSON DOES NOT VIOLATE THIS SECTION IF:

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17 (A) HE HAD REASONABLE CAUSE TO BELIEVE THE MINOR WAS 18 18 YEARS OF AGE. "REASONABLE CAUSE" INCLUDES BUT IS NOT LIMITED TO BEING SHOWN A DRAFT CARD, DRIVER'S LICENSE, 19 MARRIAGE LICENSE, BIRTH CERTIFICATE, 20 EDUCATIONAL IDENTIFICATION CARD, GOVERNMENTAL IDENTIFICATION CARD, OR 21 22 OTHER OFFICIAL OR APPARENTLY OFFICIAL CARD OR DOCUMENT PURPORTING TO ESTABLISH THAT THE PERSON IS 18 YEARS OF AGE; 23 (B) THE PERSON IS, OR IS ACTING AS, AN EMPLOYEE OF A 24 BONA FIDE PUBLIC SCHOOL, COLLEGE, OR UNIVERSITY OR A RETAIL 25

-5-

OUTLET AFFILIATED WITH AND SERVING THE EDUCATIONAL PURPOSES 1 OF A SCHOOL, COLLEGE, OR UNIVERSITY AND THE MATERIAL OR 2 PERFORMANCE WAS DISSEMINATED IN ACCORDANCE WITH POLICIES 3 APPROVED BY THE GOVERNING BODY OF THE INSTITUTION: 4 5 (C) THE PERSON IS AN OFFICER, DIRECTOR, TRUSTEE, OR 6 EMPLOYEE OF A PUBLIC LIBRARY OR MUSEUM AND THE MATERIAL OR 7 PERFORMANCE WAS ACQUIRED BY THE LIBRARY OR MUSEUM AND DISSEMINATED IN ACCORDANCE WITH POLICIES APPROVED BY THE R 9 GOVERNING BODY OF THE LIBRARY OR MUSEUM; 10 (D) AN EXHIBITION IN A STATE OF NUDITY IS FOR A BONA 11 FIDE SCIENTIFIC OR MEDICAL PURPOSE FOR A BONA FIDE SCHOOL, 12 LIBRARY, OR MUSEUM; OR 13 (E) THE PERSON IS A RETAIL SALES CLERK WITH NO 14 FINANCIAL INTEREST IN THE MATERIAL OR PERFORMANCE OR IN THE ESTABLISHMENT DISPLAYING OR SELLING THE MATERIAL OR 15 16 PERFORMANCE. NEW SECTION. Section 3. NOTICE OF VIOLATION. BEFORE A 17 18 COUNTY ATTORNEY MAY PROSECUTE A PERSON FOR A CONTINUING 19 VIOLATION OF [SECTION 2], HE SHALL DETERMINE THAT THE 20 MATERIAL OR PERFORMANCE IS OBSCENE TO MINORS, GIVE THE 21 ALLEGED VIOLATOR ACTUAL NOTICE OF THE DETERMINATION AND NOTICE " 'AT HE WILL BE PROSECUTED IF HE DOES NOT DESIST, AND 22 23 DETERMING THAT THE VIOLATION CONTINUED FOR AT LEAST 3 DAYS 24 AFTER NOTICE WAS RECEIVED. THE PERSON MAY SEEK A DECLARATORY 25 JUDGMENT ON THE OUESTION WHETHER THE MATERIAL OR PERFORMANCE

-6-

SB 342

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 IS OBSCENE TO MINORS. THE STATUTE OF LIMITATIONS FOR THE

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 OFFENSE IS TOLLED WHILE THE DECLARATORY JUDGMENT OR AN

 3
 APPEAL FROM IT IS PENDING.

<u>NEW SECTION.</u> Section 4. Penalties. (1) A person who
is convicted of violating [section 2] is guilty of a
misdemeanor and may be fined an amount not less-than TO
<u>EXCEED</u> \$500 or <u>BE</u> imprisoned for <u>A TERM</u> not more--than--1
month TO EXCEED 6 MONTHS, or both.

9 (2)--Each-day-that-a-violation-of-fsection-2)-occurs-or
10 continues--constitutes--a-separate-offense-and-is-punishable
11 as-a-separate-violation-

12 (3)--Every-act₇-thing₇--or--transaction--prohibited--by 13 (section--2)--constitutes--a--separate-offense-to-each-item₇ 14 issue₇-or-title-involved-and-is--punishable--as--a--separate 15 offense₇

16 (4)(2) For purposes of [section 2], multiple copies of 17 the same title, monthly issue, volume and number issue, or 18 other identical material constitutes a single offense.

Section 5. Section 45-8-201, MCA, is amended to read:
"45-8-201. Obscenity. (1) A person commits the offense
of obscenity when, with knowledge of the obscene nature
thereof, he purposely or knowingly;

(a) sells, delivers, or provides or offers or agrees
to sell, deliver, or provide any obscene writing, picture,
record, or other representation or embodiment of the obscene

-7-

1 to anyone under the age of 18;

2 (b) presents or directs an obscene play, dance, or
3 other performance, or participates in that portion thereof
4 which makes it obscene, to anyone under the age of 18;

5 (c) publishes, exhibits, or otherwise makes available
6 anything obscene to anyone under the age of 18;

7 (d) performs an obscene act or otherwise presents an
8 obscene exhibition of his body to anyone under the age of
9 18;

10 (e) creates, buys, procures, or possesses obscene
11 matter or material with the purpose to disseminate it to
12 anyone under the age of 18; or

13 (f) advertises or otherwise promotes the sale of
14 obscene material or materials represented or held out by him
15 to be obscene.

16 (2) A thing is obscene if:

17 (a) (i) it is a representation or description of
18 perverted ultimate sexual acts, actual or simulated;

19 (ii) it is a patently offensive representation or 20 description of normal ultimate sexual acts, actual or 21 simulated; or

22 (iii) it is a patently offensive representation or
23 description of masturbation, excretory functions, or lewd
24 exhibition of the genitals; and

-8-

25 (b) taken as a whole the material:

SB 342

SB 342

2 to the prurient interest in sex;
3 (ii) portrays conduct described in <u>subsection</u>
4 (2)(a)(i), (ii), or (iii) of--this--section in a patently
5 offensive way; and
6 (iii) lacks serious literary, artistic, political, or
7 scientific value.

(i) applying contemporary community standards, appeals

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B (3) In any prosecution for an offense under this9 section, evidence shall be admissible to show:

10 (a) the predominant appeal of the material and what 11 effect, if any, it would probably have on the behavior of 12 people;

13 (b) the artistic, literary, scientific, educational,14 or other merits of the material;

15 (c) the degree of public acceptance of the material in 16 the community; ,

17 (d) appeal to prurient interest or absence thereof in18 advertising or other promotion of the material; or

19 (e) purpose of the author, creator, publisher, or20 disseminator.

21 (4) A person convicted of obscenity shall be fined at
22 least \$500 but not more than \$1,000 or imprisoned in the
23 county jail for a term not to exceed 6 months, or both.

24 (5) Cities, towns, or counties may adopt ordinances or25 resolutions which are more restrictive as to obscenity than

-9-

1 the provisions of this section and 45-8-202 [section 2]."

2 Section 6. Section 45-8-203, MCA, is amended to read: 3 *45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, 4 5 "employee" means any person regularly employed by the owner б or operator of a motion picture theater if he has no 7 financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no 8 9 financial interest in or control over the selection of the 10 motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. 11 "Employee" does not include a manager of the motion picture 12 13 theater.

14 (2) No employee is liable to prosecution under 15 45-8-201 and 45-8-202 [section 2] or under any city or 16 county ordinance for exhibiting or possessing with intent to 17 exhibit any obscene motion picture provided the employee is 18 acting within the scope of his regular employment at a 19 showing open to the public."

20 <u>NEW SECTION.</u> Section 7. Repealer. Section 45-8-202,
21 MCA, is repealed.

<u>NEW SECTION.</u> Section 8. Codification instruction.
[Sections 1 through 3 4] are intended to be codified as an
integral part of Title 45, chapter 8, part 2, and the
provisions of Title 45, chapter 8, part 2, apply to

-10-

SB 342

and the second descendences and a second s

1 [sections 1 through $\exists 4$].

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-11-- 5

SB 342