

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

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| 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. |

IN THE HOUSE

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| FEBRUARY 21, 1989 | INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. |
| | FIRST READING. |
| MARCH 27, 1989 | COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED. |
| MARCH 28, 1989 | SECOND READING, CONCURRED IN AS AMENDED. |
| MARCH 29, 1989 | THIRD READING, CONCURRED IN. AYES, 97; NOES, 0. |
| | RETURNED TO SENATE WITH AMENDMENTS. |

IN THE SENATE

APRIL 3, 1989

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

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.

1 Senate BILL NO. 342
2 INTRODUCED BY Hyman H. Gold
3 Harry H. Gold Rich. J.
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY
5 AND DISSEMINATION OF MATERIAL HARMFUL TO MINORS; AMENDING
6 SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING SECTION
7 45-8-202, 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) "Harmful to minors" means that quality 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
18 minor's prurient interest in sex;

19 (b) it depicts or describes nudity, sexual conduct,
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.

25 (2) "Material" means a book, magazine, newspaper,

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

4 (3) "Minor" means an unmarried person under 18 years of
5 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 sells
18 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 full opaque covering, or the depiction of covered male genitals in a discernibly turgid state.

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

1 videotape, phonograph record, compact disk, tape recording,
2 preview, trailer, play, show, skit, dance, or other
3 exhibition played or performed before an audience of one or
4 more, with or without consideration.

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

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

13 (10) "Sexual conduct" includes:

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

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

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

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

25 NEW SECTION. **Section 2.** Public display or

1 dissemination of material harmful to minors. A person having
2 custody, control, or supervision of any commercial
3 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 NEW SECTION. **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

1 [section 2] constitutes a separate offense to each item,
2 issue, or title involved and is punishable as a separate
3 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:

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

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

18 (c) publishes, exhibits, or otherwise makes available
19 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;

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

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

4 (2) A thing is obscene if:

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, appeals
15 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, or
20 scientific value.

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

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

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

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

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

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

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

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

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 342

INTRODUCED BY HOFMAN, HANNAH, LEE, WALLIN, CLARK, KEATING,
HARDING, DEBRUYCKER, KELLER, HOFFMAN, ELLISON, ZOOK, RICE,
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A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY
AND DISSEMINATION OF MATERIAL HARMFUL TO MINORS; AMENDING
SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING SECTION
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description, exhibition, presentation, or representation, in
whatever form, of nudity, sexual conduct, sexual excitement,
or sadomasochistic abuse when the material or performance,
taken as a whole, has the following characteristics:

(a) it has a predominant tendency to appeal to a
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

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

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

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

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

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

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

(5) "Newsstand" means a stand that distributes or
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

1 full opaque covering, or the depiction of covered male
2 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
11 ascertain the true age of the minor by requiring production
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 actual
18 or simulated, normal or perverted;

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

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

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

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

3 NEW SECTION. **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.

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

~~{2}--Each day that a violation of [section 2] occurs or continues--constitutes--a separate offense and is punishable as a separate violation;~~

~~{3}--Every act, thing, or transaction prohibited by [section 2] constitutes a separate offense to each item, issue, or title involved and is punishable as a separate offense;~~

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

Section 4. 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 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;

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

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of

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:

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

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

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

(b) taken as a whole the material:

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

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

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

(3) In any prosecution for an offense under this

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 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

1 financial interest in or control over the selection of the
2 motion pictures shown in the theater, and is working within
3 the motion picture theater where he is regularly employed.
4 "Employee" does not include a manager of the motion picture
5 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."

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

14 **NEW SECTION. 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-

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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

1 financial interest in or control over the selection of the
2 motion pictures shown in the theater, and is working within
3 the motion picture theater where he is regularly employed.
4 "Employee" does not include a manager of the motion picture
5 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."

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

14 **NEW SECTION. 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-

STANDING COMMITTEE REPORT

March 27, 1989
Page 2 of 4

March 27, 1989
Page 1 of 4

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

Signed: 
Dave 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.

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"

16. 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."

March 27, 1989
Page 3 of 4

17. Page 4, line 4.
Following: "of"
Insert: "obscene"
Strike: "harmful"
Following: "to minors."
Insert: "(1)"
Re-number: subsequent subsections (1) through (3) as (a) through (c)

18. Page 4, line 6.
Strike: "negligently"
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 violate 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, educational 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 fide 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.

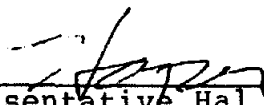
NEW SECTION. Section 3. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of [section 2], he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. 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

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

REJECT

HOUSE
SB 342

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

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY
AND DISSEMINATION OF OBSCENE MATERIAL HARMFUL TO MINORS;
AMENDING SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING
SECTION 45-8-202, MCA."

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

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

(1) "Harmful DISPLAY OR DISSEMINATION OF OBSCENE
MATERIAL to minors" means that quality of a description,
exhibition, presentation, or representation, in whatever
form, of nudity, sexual conduct, ~~sexual excitement~~, or
somasochistic abuse when the material or performance,
taken as a whole, has the following characteristics:

(a) ~~it has a predominant tendency to appeal~~ ITS
DOMINANT THEME APPEALS to a minor's prurient interest in
sex;

(b) it depicts or describes nudity, sexual conduct,
~~sexual excitement~~, or somasochistic abuse in a manner that

is patently offensive to prevailing CONTEMPORARY standards
in the adult community with respect to what is suitable for
minors; and

(c) it lacks serious literary, scientific, artistic,
or political value for minors. IF THE COURT FINDS THAT THE
MATERIAL OR PERFORMANCE HAS SERIOUS LITERARY, SCIENTIFIC,
ARTISTIC, OR POLITICAL VALUE FOR A SIGNIFICANT PERCENTAGE OF
NORMAL OLDER MINORS, THE MATERIAL OR PERFORMANCE MAY NOT BE
FOUND TO LACK SUCH VALUE FOR THE ENTIRE CLASS OF MINORS.

(2) "Material" means a book, magazine, newspaper,
pamphlet, poster, print, picture, figure, image,
description, motion picture film, record, recording tape, or
videotape (EXCEPT A MOTION PICTURE OR VIDEOTAPE RATED G, PG,
PG-13, OR R BY THE MOTION PICTURE ASSOCIATION OF AMERICA).

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

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

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

~~(b) the age of the minor. However, an honest mistake
will constitute an excuse from liability if the defendant~~

1 made-a-reasonable-bona-fide-attempt-to--ascertain--the--true
 2 age-of-the-minor;
 3 {5}{4} "Newsstand" means a stand that distributes or
 4 sells newspapers or magazines.
 5 {6}--"Nudity"--means-the-showing-of-the--human--male--or
 6 female--genitals--pubic--area--or--buttocks--with--less--than--a
 7 full--opaque--covering--the--showing--of--any--portion--of--the
 8 female--breast--below--the--top--of--the--nipple--with--less--than--a
 9 full--opaque--covering--or--the--depiction--of--covered--male
 10 genitals--in--a--discernibly--turgid--state;
 11 {7}{5} "Performance" means any motion picture, film,
 12 OR videotape (EXCEPT A MOTION PICTURE OR VIDEOTAPE RATED G,
 13 PG, PG-13, OR R BY THE MOTION PICTURE ASSOCIATION OF
 14 AMERICA); phonograph record; compact disk; tape
 15 recording; preview; trailer; play; show; skit; dance;
 16 or other exhibition played or performed before an audience
 17 of one or more, with or without consideration.
 18 {8}{6} "Person" means any individual, partnership,
 19 association, corporation, or other legal entity of any kind.
 20 {9}{7} "Reasonable-bona-fide-attempt"--means-an-attempt
 21 to--ascertain--the--true--age--of--the--minor--by--requiring
 22 production-of-a-driver's-license--marriage--license--birth
 23 certificate--or--a-governmental--or--educational--identification
 24 card--or--paper--rather--than--relying--solely--on--the--oral
 25 allegations-or-apparent-age-of-the-minor "PRURIENT INTEREST

1 IN SEX" MEANS A SHAMEFUL OR MORBID INTEREST IN SEX OR
 2 EXCRETION.
 3 {10}{8} "Sexual conduct" includes:
 4 (a) vaginal, anal, or oral intercourse, whether actual
 5 or simulated, normal or perverted; A SEXUAL ACT IS
 6 SIMULATED WHEN IT GIVES THE APPEARANCE OF DEPICTING ACTUAL
 7 SEXUAL ACTIVITY OR THE CONSUMMATION OF AN ULTIMATE SEXUAL
 8 ACT.
 9 (b) masturbation, excretory functions, or lewd
 10 exhibition of uncovered genitals OR FEMALE BREASTS;
 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 {11}--"Sexual--excitement"--means-the-condition-of-human
 16 male--or--female--genitals--when--in--a--state--of--sexual
 17 stimulation-or-arousal;
 18 (9) "ULTIMATE SEXUAL ACT" MEANS VAGINAL OR ANAL SEXUAL
 19 INTERCOURSE, FELLATIO, CUNNILINGUS, OR BESTIALITY.
 20 NEW SECTION. Section 2. Public display or
 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
 24 KNOWINGLY OR PURPOSELY:
 25 {1}{A} display OBSCENE material that--is-harmful to

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

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

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

(2) A PERSON DOES NOT VIOLATE 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, EDUCATIONAL 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 FIDE 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;

(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 VIOLATION CONTINUED FOR AT LEAST 3 DAYS AFTER NOTICE WAS RECEIVED. THE PERSON MAY SEEK A DECLARATORY JUDGMENT ON THE QUESTION WHETHER THE MATERIAL OR PERFORMANCE

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.

4 NEW SECTION. Section 4. Penalties. (1) A person who
 5 is convicted of violating [section 2] is guilty of a
 6 misdemeanor and may be fined an amount not less than TO
 7 EXCEED \$500 or BE imprisoned for A TERM not more--than--1
 8 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.

19 **Section 5.** Section 45-8-201, MCA, is amended to read:

20 **"45-8-201. Obscenity.** (1) A person commits the offense
 21 of obscenity when, with knowledge of the obscene nature
 22 thereof, he purposely or knowingly:

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

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

25 (b) taken as a whole the material:

1 (i) applying contemporary community standards, appeals
 2 to the prurient interest in sex;
 3 (ii) portrays conduct described in subsection
 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.
 8 (3) In any prosecution for an offense under this
 9 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 in
 18 advertising or other promotion of the material; or
 19 (e) purpose of the author, creator, publisher, or
 20 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 or
 25 resolutions which are more restrictive as to obscenity than

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
 4 not liable for prosecution. (1) As used in this section,
 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
 8 ownership or operation of the motion picture theater, has no
 9 financial interest in or control over the selection of the
 10 motion pictures shown in the theater, and is working within
 11 the motion picture theater where he is regularly employed.
 12 "Employee" does not include a manager of the motion picture
 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 NEW SECTION. **Section 7. Repealer.** Section 45-8-202,
 21 MCA, is repealed.

22 NEW SECTION. **Section 8. Codification instruction.**
 23 [Sections 1 through 3 4] 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

SB 0342/03

1 [sections 1 through 3 4].

-End-

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

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DISPLAY
AND DISSEMINATION OF OBSCENE MATERIAL ~~HARMPUL~~ TO MINORS;
AMENDING SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING
SECTION 45-8-202, MCA."

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

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

(1) "~~Harmful~~ DISPLAY OR DISSEMINATION OF OBSCENE
MATERIAL to minors" means that quality of a description,
exhibition, presentation, or representation, in whatever
form, of nudity, sexual conduct, ~~sexual excitement~~, or
sodomasochistic abuse when the material or performance,
taken as a whole, has the following characteristics:

(a) ~~it has a predominant tendency to appeal ITS~~
DOMINANT THEME APPEALS to a minor's prurient interest in
sex;

(b) it depicts or describes nudity, sexual conduct,
~~sexual excitement~~, or sodomasochistic abuse in a manner that

is patently offensive to ~~prevailing~~ CONTEMPORARY standards
in the adult community with respect to what is suitable for
minors; and

(c) it lacks serious literary, scientific, artistic,
or political value for minors. IF THE COURT FINDS THAT THE
MATERIAL OR PERFORMANCE HAS SERIOUS LITERARY, SCIENTIFIC,
ARTISTIC, OR POLITICAL VALUE FOR A SIGNIFICANT PERCENTAGE OF
NORMAL OLDER MINORS, THE MATERIAL OR PERFORMANCE MAY NOT BE
FOUND TO LACK SUCH VALUE FOR THE ENTIRE CLASS OF MINORS.

(2) "Material" means a book, magazine, newspaper,
pamphlet, poster, print, picture, figure, image,
description, motion picture film, record, recording tape, or
videotape (EXCEPT A MOTION PICTURE OR VIDEOTAPE RATED G, PG,
PG-13, OR R BY THE MOTION PICTURE ASSOCIATION OF AMERICA).

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

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

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

~~(b) the age of the minor. However, an honest mistake~~
~~will constitute an excuse from liability if the defendant~~

1 ~~made-a-reasonable-bona-fide-attempt-to--ascertain--the--true~~
2 ~~age-of-the-minor;~~

3 †5†(4) "Newsstand" means a stand that distributes or
4 sells newspapers or magazines.

5 †6†--"Nudity"--means-the-showing-of-the--human--male--or
6 ~~female--genitals--pubic--area--or--buttocks-with-less-than-a~~
7 ~~full-opaque-covering--the-showing--of--any--portion--of--the~~
8 ~~female--breast--below-the-top-of-the-nipple-with-less-than-a~~
9 ~~full-opaque-covering--or--the--depiction--of--covered--male~~
10 ~~genitals-in-a-discernibly-turgid-state;~~

11 †7†(5) "Performance" means any motion picture, film,
12 OR videotape (EXCEPT A MOTION PICTURE OR VIDEOTAPE RATED G,
13 PG, PG-13, OR R BY THE MOTION PICTURE ASSOCIATION OF
14 AMERICA); phonograph record; compact disk; tape
15 recording; preview; trailer; play; show; skit; dance;
16 or other exhibition played or performed before an audience
17 of one or more, with or without consideration.

18 †8†(6) "Person" means any individual, partnership,
19 association, corporation, or other legal entity of any kind.

20 †9†(7) "Reasonable-bona-fide-attempt"--means-an-attempt
21 ~~to--ascertain--the--true--age--of--the--minor--by--requiring~~
22 ~~production-of-a-driver's-license--marriage--license--birth~~
23 ~~certificate--or--a-governmental--or--educational--identification~~
24 ~~card--or--paper--rather--than--relying--solely--on--the--oral~~
25 ~~allegations--or--apparent--age--of--the--minor~~ "PRURIENT INTEREST

1 IN SEX" MEANS A SHAMEFUL OR MORBID INTEREST IN SEX OR
2 EXCRETION.

3 †10†(8) "Sexual conduct" includes:

4 (a) vaginal, anal, or oral intercourse, whether actual
5 or simulated, normal or perverted; A SEXUAL ACT IS
6 SIMULATED WHEN IT GIVES THE APPEARANCE OF DEPICTING ACTUAL
7 SEXUAL ACTIVITY OR THE CONSUMMATION OF AN ULTIMATE SEXUAL
8 ACT.

9 (b) masturbation, excretory functions, or lewd
10 exhibition of uncovered genitals OR FEMALE BREASTS;

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 †11†--"Sexual--excitement"--means-the-condition-of-human
16 ~~male--or--female--genitals--when--in--a--state--of--sexual~~
17 ~~stimulation--or--arousal;~~

18 (9) "ULTIMATE SEXUAL ACT" MEANS VAGINAL OR ANAL SEXUAL
19 INTERCOURSE, FELLATIO, CUNILINGUS, OR BESTIALITY.

20 NEW SECTION. Section 2. public display or
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
24 KNOWINGLY OR PURPOSELY:

25 †1†(A) display OBSCENE material that--is-harmful to

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

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

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

(2) A PERSON DOES NOT VIOLATE 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, EDUCATIONAL 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 FIDE 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;

(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 VIOLATION CONTINUED FOR AT LEAST 3 DAYS AFTER NOTICE WAS RECEIVED. THE PERSON MAY SEEK A DECLARATORY JUDGMENT ON THE QUESTION WHETHER THE MATERIAL OR PERFORMANCE

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.

4 NEW SECTION. Section 4. Penalties. (1) A person who
 5 is convicted of violating [section 2] is guilty of a
 6 misdemeanor and may be fined an amount not less than TO
 7 EXCEED \$500 or BE imprisoned for A TERM not more--than--1
 8 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.

19 **Section 5.** Section 45-8-201, MCA, is amended to read:

20 **"45-8-201. Obscenity.** (1) A person commits the offense
 21 of obscenity when, with knowledge of the obscene nature
 22 thereof, he purposely or knowingly:

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

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

25 (b) taken as a whole the material:

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

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

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

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

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

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

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

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

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

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

Section 6. 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 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.

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

NEW SECTION. Section 7. Repealer. Section 45-8-202, MCA, is repealed.

NEW SECTION. 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

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1 [sections 1 through 3 4].

-End-