

1 *House* BILL NO. *454*  
 2 INTRODUCED BY *Proctor* *Abner Bergman* *Martin Adams*  
*Stewart* *Winters* *Jeffrey* *Wright* *Gurtiss* *James* *Rohrer* *ORR*  
 3 *Smith* *Kenon* *Burnett* *Mc* *Gar* *James* *Rohrer* *ORR*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO OBSCENITY;  
 5 AMENDING SECTION 45-8-201, MCA, AND REPEALING SECTION 45-8-203, MCA."  
 6 *Wiseman* *Moore* *Knox* *Robert* *Winters* *Estes* *Mc* *James*

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

*Wm. E. Boharski*

9 Section 1. Section 45-8-201, MCA, is amended to read:

10 "45-8-201. **Obscenity.** (1) A person commits the offense of obscenity ~~when~~ if the person, with  
 11 knowledge of the ~~obscene nature thereof, he purposely or~~ character of the item involved, knowingly:

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

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

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

19 (d) performs an obscene act or otherwise presents an obscene exhibition of ~~his~~ the person's body  
 20 to anyone under the age of 18;

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

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

25 (2) A thing is obscene if:

26 (a) (i) ~~it is a representation or description of~~ the average person, applying contemporary community  
 27 standards, would find that the material or performance depicts or describes, in a patently offensive way,  
 28 perverted ultimate sexual acts, actual or simulated; or

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

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

3 (b) taken as a whole ~~the material~~:

4 (i) the average person, applying contemporary community standards, would find that the material  
5 or performance appeals to the prurient interest in sex;

6 (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive  
7 way; and

8 (iii) to a reasonable person, the material or performance, lacks serious ~~literary~~, artistic, literary,  
9 political, or scientific value.

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

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

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

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

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

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

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

20 (5) Cities, towns, or counties may adopt ordinances or resolutions ~~which~~ that are more restrictive  
21 as to obscenity than the provisions of 45-8-206 and this section."

22

23 NEW SECTION. Section 2. Repealer. Section 45-8-203, MCA, is repealed.

24

-END-