

HOUSE BILL NO. 675

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PRIVATE RIGHT OF ACTION AGAINST DRAG KING OR DRAG QUEEN PERFORMANCES OR A PERSON WHO PROMOTES OR CONDUCTS A DRAG PERFORMANCE; PROVIDING DEFINITIONS; AND AMENDING SECTION 45-8-117, MCA."

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

NEW SECTION. **Section 1. Private right of action -- definitions.** (1) (a) A minor who attends a performance in violation of 20-7-135 or a minor or adult who attends a performance of a drag queen or drag king may bring an action against a person who knowingly promotes, conducts, or participates as a performer in the performance.

(b) A minor's parent or legal guardian may bring an action in the name of the minor for an action commenced under this section.

(2) If a person prevails in an action brought under this section, the court shall award:

(a) actual damages, including damages for psychological, emotional, economic, and physical harm;

(b) reasonable attorney fees and costs incurred in bringing the action; and

(c) statutory damages of \$5,000.

(3) A person may bring an action under this section not later than 2 years from the date the cause of action accrues.

(4) As used in this section, the following definitions apply:

(a) "Drag king" means a female or male performer who embodies an exaggerated masculine persona with a strong emphasis on sexual energy, eroticism, and provocative performance art. Their acts often

1 include sexually suggestive movements, stripping, fetish-inspired attire, and themes of dominance or seduction.
 2 They have been known to historically perform in libraries, schools, adult entertainment venues, burlesque
 3 shows, and private events where explicit content is expected. Their performances often challenge gender
 4 norms while incorporating elements of sexual fantasy and desire.

5 (b) "Drag queen" means a male or female performer who embraces an ultra-feminine,
 6 hypersexualized drag persona, incorporating overtly erotic themes into their act. Their performances may
 7 include sensual dancing, provocative costuming, striptease, and adult humor. Drag queens have been known to
 8 historically perform in libraries, schools, nightclubs, burlesque shows, and adult-only events where their acts
 9 cater to an audience expecting bold, risque entertainment.

10 (c) "Stripping" means the removal or simulated removal of clothing in a sexual manner for the
 11 entertainment of one or more individuals.

12

13 **Section 2.** Section 45-8-117, MCA, is amended to read:

14 **"45-8-117. Definitions.** As used in 45-8-117 and ~~45-8-118~~, the following definitions apply:

15 (1) ~~"Drag king" means a male or female performer who adopts a flamboyant or parodic male~~
 16 ~~persona with glamorous or exaggerated costumes and makeup~~ means a female or male performer who
 17 embodies an exaggerated masculine persona with a strong emphasis on sexual energy, eroticism, and
 18 provocative performance art. Their acts often include sexually suggestive movements, stripping, fetish-inspired
 19 attire, and themes of dominance or seduction. They have been known to historically perform in libraries,
 20 schools, adult entertainment venues, burlesque shows, and private events where explicit content is expected.
 21 Their performances often challenge gender norms while incorporating elements of sexual fantasy and desire.

22 (2) ~~"Drag queen" means a male or female performer who adopts a flamboyant or parodic feminine~~
 23 ~~persona with glamorous or exaggerated costumes and makeup~~ means a male or female performer who
 24 embraces an ultra-feminine, hypersexualized drag persona, incorporating overtly erotic themes into their act.
 25 Their performances may include sensual dancing, provocative costuming, striptease, and adult humor. Drag
 26 queens have been known to historically perform in libraries, schools, nightclubs, burlesque shows, and adult-
 27 only events where their acts cater to an audience expecting bold, risque entertainment.

28 (3) "Drag story hour" means an event hosted by a drag queen or drag king who reads children's

1 books and engages in other ~~learning~~sexual activities with minor children present.

2 (4) "Nude" means:

3 (a) entirely unclothed; or

4 (b) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing

5 any portion of the breast below the top of the areola of the breasts if the person is female or any portion of the

6 genitals or buttocks.

7 (5) "Prurient interest in sex" has the same meaning as provided in 45-8-205.

8 (6) "Public property" means any real property owned or leased, in whole or part, by the state or a
9 political subdivision, as defined in 2-9-101, or held in the name of a political subdivision by a department, board,
10 or authority of the state or a political subdivision.

11 (7) "Obscene" has the same meaning as provided in 45-8-201.

12 (8) "Sexually oriented" means any simulation of sexual activity, stripping, salacious dancing, any
13 lewd or lascivious depiction or description of human genitals or of sexual conduct as defined in 45-5-625.

14 (9) "Sexually oriented business" means a nightclub, bar, restaurant, or similar commercial
15 enterprise that:

16 (a) provides for an audience of two or more individuals:

17 (i) live nude entertainment or live nude performances; or

18 (ii) a sexually oriented performance; and

19 (b) authorizes on-premises consumption of alcoholic beverages.

20 (10) "Sexually oriented performance" means a performance that, regardless of whether performed
21 for consideration, is intended to appeal to a prurient interest in sex and features:

22 (a) the purposeful exposure, whether complete or partial, of:

23 (i) a human genital, the pubic region, the human buttocks, or a female breast, if the breast is
24 exposed below a point immediately above the top of the areola; or

25 (ii) prosthetic genitalia, breasts, or buttocks;

26 (b) stripping; or

27 (c) sexual conduct.

28 (11) "Stripping" means removal or simulated removal of clothing in a sexual manner for the

1 entertainment of one or more individuals."

2

3 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
4 integral part of Title 27, chapter 1, part 5, and the provisions of Title 27, chapter 1, part 5, apply to [section 1].

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6 NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
8 the part remains in effect in all valid applications that are severable from the invalid applications.

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