

SENATE BILL REPORT

ESSB 5466

As Passed Senate, March 11, 1995

Title: An act relating to the well-being of children.

Brief Description: Protecting children from sexually explicit films, publications, and devices.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Smith, Oke, Heavey, Winsley and Franklin).

Brief History:

Committee Activity: Law & Justice: 2/9/95, 3/1/95 [DPS, DNP].
Passed Senate, 3/11/95, 41-6.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5466 be substituted therefor, and the substitute bill do pass.

Signed by Senators Smith, Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Quigley, Roach and Schow.

Minority Report: Do not pass substitute.

Signed by Senator C. Anderson, Vice Chair.

Staff: Dick Armstrong (786-7460)

Background: Washington law prohibits the sale, distribution, or exhibition of erotic materials to minors. The prohibition applies only to materials which have been determined by a court to be erotic. Erotic materials are those that appeal to the prurient interest of minors in sex, are patently offensive, and are utterly without redeeming social value. A person who violates these provisions is guilty of a misdemeanor for the first offense, a gross misdemeanor for the second offense, and a felony for the third and subsequent offenses.

In 1994, the Washington Supreme Court held that, while the Legislature may regulate speech it considers "harmful to minors," the present statute is unconstitutional because it violates a variety of procedural due process requirements.

Summary of Bill: The statutory prohibitions on distribution or display of erotic materials to minors are repealed and replaced with provisions prohibiting the display, sale, or distribution of materials harmful to minors. Material that may be harmful to minors includes written, auditory, and visual materials and live performances which: (1) the average adult person, applying contemporary community standards, would find appeals to the prurient interest of minors; (2) depict conduct that under prevailing adult community standards is patently offensive for minors; and (3) lack serious literary, artistic, political, or scientific value for minors.

Materials that can be harmful to minors include movies, books, magazines, sexual devices, telephonic communications, and coin-operated machines. Sound recordings are not subject to the act.

A person who knowingly displays, sells, or distributes such material to minors, or presents to a minor a live performance which is harmful to minors is guilty of a gross misdemeanor.

It is an affirmative defense to an alleged violation of the act if a parent or guardian of the minor gives permission for the minor to view the material, or a reasonable attempt is made to ascertain the true age of the minor.

All local ordinances relating to harmful to minor statutes must be consistent with the provisions of the bill.

Libraries, museums, contraceptive devices, instructional material approved by a public school district, distributions by public health care providers, and depictions of the female breast feeding an infant are exempt from the provisions of the bill. Also exempt, under certain circumstances, are transmissions by franchised cable operators and providers of on-line computer services.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Children should receive greater protection from the state from pornographic material. This bill is not a censorship bill, but only restricts minors from seeing inappropriate material. Similar laws exist in other states and books, videos, magazines and records are still being sold to the public without any injury to business.

Testimony Against: The arts community is active in promoting activities to combat violence against women. Artists should be free to express themselves without government interference. The bill is too vague. The bill is harmful to all citizens. Music and sound recordings should be excluded from the bill.

Testified: Dick Garrett, UWSA, 8th Congressional District Coordinator (pro); Stu Halsan, Recording Industry Association of America (con); Winnie Boland, WA Coalition Against Censorship (con); Jerry Sheehan, ACLU (con); Richard T. White, WA Music Industry Coalition (con); Gretta Hanley (pro); Michele Ray (pro); Samuel P. Woodard, Citizens Alliance of Washington (pro); John Peppent, Department of Health; Sandra Youngen, Department of Social and Health Services; Andrea Vangor, Washington Together Against Pornography (pro).

House Amendment(s): The following changes are made: (1) sound recordings are included; (2) exemptions for transmissions by cable operators, providers of on-line services, public school instructional materials, health care providers, contraceptive devices, and depictions of breast-feeding are deleted; (3) provides that materials are not displayed to minors, in the case of on-line access to electronic information, if access is stored in a restricted area or if it is not reasonably

possible to restrict access; (4) deletes the provision that provides that materials are not deemed to be displayed to minors if they are transmitted by a franchised cable operator and the operator provides a device by which a subscriber can prohibit viewing of a particular service; (5) adds an emergency clause; and (6) revises various definitions, including the definition of "knowledge of its character."