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HOUSE BILL 1448

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State of Washington

54th Legislature

1995 Regular Session

By Representatives McMahan, Sheldon, Stevens, Padden, Campbell, Koster, D. Schmidt, Pelesky, Talcott, Hickel, Lambert, McMorris, Fuhrman, Silver, Mitchell, Basich, Hatfield, Benton, Johnson, Buck, Smith, Chandler, Robertson, Delvin, Hargrove, Sherstad, Boldt, Chappell, Schoesler, Hymes and Backlund

Read first time 01/25/95. Referred to Committee on Law and Justice.

1 AN ACT Relating to the well-being of children; adding new sections  
2 to chapter 9.68 RCW; repealing RCW 9.68.050, 9.68.060, 9.68.070,  
3 9.68.080, 9.68.090, 9.68.100, 9.68.110, 9.68.120, 9.68.130, 9.68A.140,  
4 9.68A.150, and 9.68A.160; prescribing penalties; and declaring an  
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** As used in sections 1 through 4 of this act,  
8 the following terms have the meanings indicated unless the context  
9 clearly requires otherwise.

10 (1) "Minor" means any person under the age of eighteen years.

11 (2) "Harmful to minors" means any matter or live performance:

12 (a) Which the average adult person, applying contemporary community  
13 standards, would find, when considered as a whole, appeals to the  
14 prurient interest of minors; and

15 (b) Which explicitly depicts or describes, by prevailing standards  
16 in the adult community with respect to what is suitable for minors,  
17 patently offensive representations or descriptions of:

18 (i) Ultimate sexual acts, normal or perverted, actual or simulated;

19 or

1 (ii) Masturbation, fellatio, cunnilingus, bestiality, excretory  
2 functions, lewd exhibition of the genitals or genital area, sexually  
3 explicit conduct, sexual excitement, or sexually explicit nudity; or

4 (iii) Sexual acts that are violent or destructive, including but  
5 not limited to human or animal mutilation, dismemberment, rape, or  
6 torture; and

7 (c) Which, when considered as a whole, and in the context in which  
8 it is used, lacks serious literary, artistic, political, or scientific  
9 value for minors.

10 (3) "Sexually explicit conduct" means physical contact with a  
11 person's clothed or unclothed genitals, pubic area, buttocks, perineum,  
12 or, if such person be a female, breast.

13 (4) "Sexual excitement" means the condition of human male or female  
14 genitals when in a state of sexual stimulation or arousal; or the  
15 depiction of covered male genitals in a discernibly turgid state.

16 (5) "Sexually explicit nudity" means the showing of the human male  
17 or female genitals, pubic area, buttocks, or perineum with less than a  
18 full opaque covering; or the showing of the female breast with less  
19 than a full opaque covering of any portion thereof below the top of the  
20 nipple.

21 (6) "Matter" means a motion picture film, a publication, a sexual  
22 device, or any combination thereof.

23 (7) "Motion picture film" means any:

24 (a) Film or plate negative;

25 (b) Film or plate positive;

26 (c) Film designed to be projected on a screen for exhibition;

27 (d) Film, glass slides, or transparencies, either in negative or  
28 positive form, designed for exhibition by projection on a screen;

29 (e) Video tape; or

30 (f) Any other medium used to electronically transmit or reproduce  
31 images on a screen.

32 (8) "Publication" means any book, magazine, article, pamphlet,  
33 writing, printing, illustration, picture, sound recording, telephonic  
34 communication, or coin-operated machine.

35 (9) "Sexual device" means any artificial human penis, vagina, or  
36 anus, or other device primarily designed, promoted, or marketed to  
37 physically stimulate or manipulate the human genitals, pubic area,  
38 perineum, or anal area, including dildoes, penisators, vibrators,

1 vibrillators, penis rings, and erection enlargement or prolonging  
2 creams, jellies, or other such chemicals or preparations.

3 (10) "Live performance" means any play, show, skit, dance, or other  
4 exhibition performed or presented to or before an audience of one or  
5 more, in person or by electronic transmission, or by telephonic  
6 communication, with or without consideration.

7 (11) "Person" means any individual, partnership, firm, association,  
8 corporation, or other legal entity.

9 (12) "Knowledge of its character" means that the person has  
10 knowledge that the matter or performance contains, depicts, or  
11 describes activity or conduct which may be found to be patently  
12 offensive under subsection (2)(b) of this section. Such knowledge may  
13 be proved by direct or circumstantial evidence, or both.

14 (13) "Knowledge" means knowledge as defined in RCW 9A.08.010(1)(b).

15 NEW SECTION. **Sec. 2.** No person shall with knowledge of its  
16 character:

17 (1) Display matter which is harmful to minors, as defined in  
18 section 1(2) of this act, in such a way that minors, as part of the  
19 invited general public, will be exposed to view such matter; however,  
20 a person shall be deemed not to have displayed matter harmful to minors  
21 if the matter is kept behind devices commonly known as blinder racks so  
22 that the lower two-thirds of the matter is not exposed to view;

23 (2) Sell, furnish, present, distribute, allow to view or hear, or  
24 otherwise disseminate to a minor, with or without consideration, any  
25 matter which is harmful to minors as defined in section 1(2) of this  
26 act; or

27 (3) Present to a minor or participate in presenting to a minor,  
28 with or without consideration, any live performance which is harmful to  
29 minors as defined in section 1(2) of this act.

30 NEW SECTION. **Sec. 3.** In any prosecution for violation of section  
31 2 of this act, it shall be an affirmative defense that:

32 (1) The matter or performance involved was displayed or otherwise  
33 disseminated to a minor by the minor's parent or legal guardian, for  
34 bona fide purposes;

35 (2) The matter or performance involved was displayed or otherwise  
36 disseminated to a minor with the written permission of the minor's  
37 parent or legal guardian, for bona fide purposes; or

1 (3) The person made a reasonable bona fide attempt to ascertain the  
2 true age of the minor by requiring production of a driver's license,  
3 marriage license, birth certificate, or other governmental or  
4 educational identification card or paper and not relying solely on the  
5 oral allegations or apparent age of the minor.

6 NEW SECTION. **Sec. 4.** Any person who is convicted of violating any  
7 provision of section 2 of this act is guilty of a gross misdemeanor.  
8 Each day that any violation of section 2 of this act occurs or  
9 continues shall constitute a separate offense and shall be punishable  
10 as a separate violation. Every act, thing, or transaction prohibited by  
11 section 2 of this act shall constitute a separate offense as to each  
12 item, issue, or title involved and shall be punishable as such. For  
13 the purpose of this section, multiple copies of the same identical  
14 title, monthly issue, volume, and number issue, or other such identical  
15 material shall constitute a single offense.

16 NEW SECTION. **Sec. 5.** The following acts or parts of acts are each  
17 repealed:

- 18 (1) RCW 9.68.050 and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;
- 19 (2) RCW 9.68.060 and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;
- 20 (3) RCW 9.68.070 and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;
- 21 (4) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
- 22 (5) RCW 9.68.090 and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;
- 23 (6) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
- 24 (7) RCW 9.68.110 and 1969 ex.s. c 256 s 19;
- 25 (8) RCW 9.68.120 and 1969 ex.s. c 256 s 20;
- 26 (9) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1;
- 27 (10) RCW 9.68A.140 and 1987 c 396 s 1;
- 28 (11) RCW 9.68A.150 and 1987 c 396 s 2; and
- 29 (12) RCW 9.68A.160 and 1987 c 396 s 3.

30 NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act are each  
31 added to chapter 9.68 RCW.

32 NEW SECTION. **Sec. 7.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 8.**    This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect immediately.

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