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ENGROSSED SUBSTITUTE SENATE BILL 5466

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State of Washington

54th Legislature

1995 Regular Session

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

Read first time 03/01/95.

1 AN ACT Relating to the well-being of children; adding new sections  
2 to chapter 9.68 RCW; repealing RCW 9.68.015, 9.68.050, 9.68.060,  
3 9.68.070, 9.68.080, 9.68.090, 9.68.100, 9.68.110, 9.68.120, 9.68.130,  
4 9.68A.140, 9.68A.150, and 9.68A.160; and prescribing penalties.

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

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

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

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

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

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

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

18 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) "Matter" means a motion picture film, a publication, a sexual  
11 device, or any combination thereof.

12 (4) "Motion picture film" means any:

13 (a) Film or plate negative;

14 (b) Film or plate positive;

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

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

18 (e) Video tape; or

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

21 (5) "Publication" means any book, magazine, article, pamphlet,  
22 writing, printing, illustration, picture, telephonic communication, or  
23 coin-operated machine.

24 (6) "Sexual device" means any artificial human penis, vagina, or  
25 anus, or other device primarily designed, promoted, or marketed to  
26 physically stimulate or manipulate the human genitals, pubic area,  
27 perineum, or anal area, including dildoes, penisators, vibrators,  
28 vibrillators, penis rings, and erection enlargement or prolonging  
29 creams, jellies, or other such chemicals or preparations.

30 (7) "Live performance" means any play, show, skit, dance, or other  
31 exhibition performed or presented to or before an audience of one or  
32 more, in person or by electronic transmission, or by telephonic  
33 communication, with or without consideration.

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

36 (9) "Knowledge of its character" means that the person has  
37 knowledge of the content and character of the matter or performance  
38 that is patently offensive under subsection (2)(b) of this section.

1 Such knowledge may be proved by direct or circumstantial evidence, or  
2 both.

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

4 NEW SECTION. **Sec. 2.** No person shall with knowledge of its  
5 character:

6 (1) Display matter which is harmful to minors, as defined in  
7 section 1(2) of this act, in such a way that minors, as part of the  
8 invited general public, will be exposed to view such matter; however,  
9 a person shall be deemed not to have displayed matter harmful to minors  
10 if the matter: (a) Is kept behind devices commonly known as blinder  
11 racks so that the lower two-thirds of the matter is not exposed to  
12 view; or (b) is transmitted by cable by a franchised cable operator,  
13 and the operator provides, by sale, lease, or otherwise, a device by  
14 which a subscriber can prohibit viewing of a particular cable service;

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

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

22 NEW SECTION. **Sec. 3.** In any prosecution for violation of section  
23 2 of this act, it shall be an affirmative defense that:

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

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

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

35 NEW SECTION. **Sec. 4.** Any person who is convicted of violating any  
36 provision of section 2 of this act is guilty of a gross misdemeanor.

1 Each day that any violation of section 2 of this act occurs or  
2 continues shall constitute a separate offense and shall be punishable  
3 as a separate violation. Every act, thing, or transaction prohibited by  
4 section 2 of this act shall constitute a separate offense as to each  
5 item, issue, or title involved and shall be punishable as such. For  
6 the purpose of this section, multiple copies of the same identical  
7 title, monthly issue, volume, and number issue, or other such identical  
8 material shall constitute a single offense.

9 NEW SECTION. **Sec. 5.** This chapter shall not apply to:

10 (1) The official circulation of material by a recognized historical  
11 society or museum, a library of a college or university, or an archive  
12 or library under the supervision and control of the state, county,  
13 municipality, or other political subdivision of the state;

14 (2) Any transmissions by a franchised cable operator unless the  
15 franchised cable operator controls, or is capable of controlling, the  
16 content of that transmission. Pursuant to the federal communications  
17 act of 1934, the terms "transmission," "franchised," and "cable  
18 operator" are used as those terms are defined in federal legislation  
19 and federal communications commission rules or decisions;

20 (3) A provider of on-line services that allows another person  
21 access to information stored in an electronic form, such as an  
22 electronic bulletin board or the internet. For purposes of this  
23 subsection, a "provider" means a person who is in the business of  
24 providing access to information stored in an electronic form but who  
25 has no ability to control the content of the information and no ability  
26 to limit or restrict the viewing or displaying of such information;

27 (4) Instructional materials reviewed and recommended by an  
28 instructional materials committee and approved by the local school  
29 district's board of directors in accordance with RCW 28A.320.230;

30 (5) The official distribution or use of material by a health care  
31 provider, or health agency under the supervision and control, or funded  
32 in whole or in part by the state, county, municipality, or other  
33 political division of the state;

34 (6) Devices designed for contraceptive purposes; or

35 (7) The depiction of a female breast feeding an infant.

1        NEW SECTION.    **Sec. 6.**    The state of Washington hereby fully  
2 occupies and preempts within the boundaries of the state the entire  
3 field of regulation and sanctions for displaying, selling, furnishing,  
4 presenting, or otherwise distributing matter or performances that are  
5 harmful to minors. Counties, cities, towns, or other municipalities  
6 may enact only those laws and ordinances relating to matter and  
7 performances harmful to minors that are consistent with this chapter.  
8 Local laws and ordinances that are inconsistent with, more restrictive  
9 than, or exceed the requirements of this chapter shall not be enacted  
10 and are preempted and repealed, regardless of the nature of the code,  
11 charter, or home rule status of such county, city, town, or  
12 municipality.

13        NEW SECTION.    **Sec. 7.**    The following acts or parts of acts are each  
14 repealed:

- 15        (1) RCW 9.68.015 and 1959 c 260 s 2;
- 16        (2) RCW 9.68.050 and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;
- 17        (3) RCW 9.68.060 and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;
- 18        (4) RCW 9.68.070 and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;
- 19        (5) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
- 20        (6) RCW 9.68.090 and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;
- 21        (7) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
- 22        (8) RCW 9.68.110 and 1969 ex.s. c 256 s 19;
- 23        (9) RCW 9.68.120 and 1969 ex.s. c 256 s 20;
- 24        (10) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1;
- 25        (11) RCW 9.68A.140 and 1987 c 396 s 1;
- 26        (12) RCW 9.68A.150 and 1987 c 396 s 2; and
- 27        (13) RCW 9.68A.160 and 1987 c 396 s 3.

28        NEW SECTION.    **Sec. 8.**    Sections 1 through 6 of this act are each  
29 added to chapter 9.68 RCW.

30        NEW SECTION.    **Sec. 9.**    If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

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