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**SENATE BILL 5466**

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**State of Washington                      54th Legislature                      1995 Regular Session**

**By Senators Smith, Oke, Heavey, Winsley and Franklin**

Read first time 01/24/95. Referred to Committee on Law & 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; 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) Violent or destructive sexual acts, including but not limited  
5 to human or animal mutilation, dismemberment, rape, or torture; and

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

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

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

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

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

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

23 (a) Film or plate negative;

24 (b) Film or plate positive;

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

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

28 (e) Video tape; or

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

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

34 (9) "Sexual device" means any artificial human penis, vagina, or  
35 anus, or other device primarily designed, promoted, or marketed to  
36 physically stimulate or manipulate the human genitals, pubic area,  
37 perineum, or anal area, including dildoes, penisators, vibrators,  
38 vibrillators, penis rings, and erection enlargement or prolonging  
39 creams, jellies, or other such chemicals or preparations.

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

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

7 (12) "Knowledge of its character" means that the person knows or is  
8 aware, or has reason to know, that the matter or performance contains,  
9 depicts, or describes any of the activity or conduct which may be found  
10 to be patently offensive under subsection (2)(b) of this section,  
11 regardless of whether such person has actual or specific knowledge of  
12 its precise contents or that the matter or performance is "harmful to  
13 minors" under subsection (2) of this section. Such knowledge may be  
14 proved by direct or circumstantial evidence, or both.

15 NEW SECTION. **Sec. 2.** No person shall recklessly and with  
16 knowledge of its 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  
11 by 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.** Nothing in this chapter applies to the  
17 circulation of any material by any recognized historical society or  
18 museum, any library of any college or university, or to any archive or  
19 library under the supervision and control of the state, county,  
20 municipality, or other political subdivision.

21 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each  
22 repealed:

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

1        NEW SECTION.    **Sec. 7.**    Sections 1 through 5 of this act are each  
2 added to chapter 9.68 RCW.

3        NEW SECTION.    **Sec. 8.**    If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

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