
ENGROSSED SENATE BILL 6079

State of Washington 54th Legislature 1995 1st Special Session

By Senators Smith and Gaspard

Read first time 5/15/95.

1 AN ACT Relating to the well-being of children; amending RCW
2 9.68A.090; adding new sections to chapter 9.68 RCW; repealing RCW
3 9.68.015, 9.68.050, 9.68.060, 9.68.070, 9.68.080, 9.68.090, 9.68.100,
4 9.68.110, 9.68.120, and 9.68.130; 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:

11 (a) Which the average adult person, applying contemporary community
12 standards, would find, when considered as a whole, appeals primarily to
13 the 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; or

18 (e) Video tape.

19 (5) "Publication" means any book, magazine, article, pamphlet,
20 writing, printing, illustration, picture, or coin-operated machine.

21 (6) "Sexual device" means any artificial device primarily designed,
22 promoted, or marketed to physically stimulate or manipulate the human
23 genitals.

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

26 (8) "Knowledge of its character" means that the person has
27 knowledge that the matter contains, depicts, or describes activity or
28 conduct that is patently offensive under subsection (2)(b) of this
29 section. Such knowledge may be proved by direct or circumstantial
30 evidence, or both.

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

32 (10) "Community" means the state-wide community.

33 NEW SECTION. **Sec. 2.** No person shall with knowledge of its
34 character:

35 (1) Display matter which is harmful to minors, as defined in
36 section 1(2) of this act, in such a way that minors, as part of the
37 invited general public, will be exposed to view such matter; however,
38 a person shall be deemed not to have displayed matter harmful to minors

1 if the matter: (a) Is kept behind devices commonly known as blinder
2 racks so that the lower two-thirds of the matter is not exposed to
3 view; or (b) is transmitted by cable by a franchised cable operator,
4 and the operator provides, by sale, lease, or otherwise, a device by
5 which a subscriber can prohibit viewing of a particular cable service;
6 or

7 (2) Sell, furnish, present, distribute, allow to view, or otherwise
8 disseminate to a minor, with or without consideration, any matter which
9 is harmful to minors as defined in section 1(2) of this act.

10 NEW SECTION. **Sec. 3.** In any prosecution for violation of section
11 2 of this act, it shall be an affirmative defense that:

12 (1) The matter involved was displayed or otherwise disseminated to
13 a minor by the minor's parent or legal guardian, for bona fide
14 purposes;

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

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

23 NEW SECTION. **Sec. 4.** Any person who is convicted of violating any
24 provision of section 2 of this act is guilty of a gross misdemeanor.
25 Each day that any violation of section 2 of this act occurs or
26 continues shall constitute a separate offense and shall be punishable
27 as a separate violation. Every act, thing, or transaction prohibited by
28 section 2 of this act shall constitute a separate offense as to each
29 item, issue, or title involved and shall be punishable as such. For
30 the purpose of this section, multiple copies of the same identical
31 title, monthly issue, volume, and number issue, or other such identical
32 material shall constitute a single offense.

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

34 (1) The official circulation of matter by a recognized historical
35 society or museum, a library of a college or university, or an archive

1 or library under the supervision and control of the state, county,
2 municipality, or other political subdivision of the state;

3 (2) The provision of electronic communication access, including
4 transmission, downloading, storage, or navigational tools, and related
5 capabilities that are incidental to the transmission of such electronic
6 communications;

7 (3) Matter reviewed and recommended by an instructional materials
8 committee and approved by the local school district's board of
9 directors in accordance with RCW 28A.320.230 and matter obtained
10 through electronic telecommunication networks designed for educational
11 use and school-approved bulletin board systems;

12 (4) The official distribution or use of matter by a health care
13 provider, or health agency under the supervision and control, or funded
14 in whole or in part by the state, county, municipality, or other
15 political division of the state; and

16 (5) Devices or matter designed or distributed for contraceptive
17 purposes or for the purpose of preventing sexually transmitted disease.

18 NEW SECTION. **Sec. 6.** The state of Washington hereby fully
19 occupies and preempts within the boundaries of the state the entire
20 field of regulation and sanctions for displaying, selling, furnishing,
21 presenting, or otherwise distributing matter that is harmful to minors.
22 Counties, cities, towns, or other municipalities may enact only those
23 laws and ordinances relating to matter harmful to minors that are
24 consistent with this chapter. Local laws and ordinances that are
25 inconsistent with, more restrictive than, or exceed the requirements of
26 this chapter shall not be enacted and are preempted and repealed,
27 regardless of the nature of the code, charter, or home rule status of
28 such county, city, town, or municipality.

29 **Sec. 7.** RCW 9.68A.090 and 1989 c 32 s 7 are each amended to read
30 as follows:

31 A person who communicates with a minor for immoral purposes is
32 guilty of a gross misdemeanor, unless that person has previously been
33 convicted under this section or of a ((felony)) sexual offense under
34 chapter 9.68A, 9A.44, or 9A.64 RCW or of any other ((felony)) sexual
35 offense in this or any other state, or if the person has previously
36 been convicted under or concurrently violated chapter 9.68 RCW, in

1 which case the person is guilty of a class C felony punishable under
2 chapter 9A.20 RCW.

3 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
4 repealed:

- 5 (1) RCW 9.68.015 and 1959 c 260 s 2;
- 6 (2) RCW 9.68.050 and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;
- 7 (3) RCW 9.68.060 and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;
- 8 (4) RCW 9.68.070 and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;
- 9 (5) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
- 10 (6) RCW 9.68.090 and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;
- 11 (7) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
- 12 (8) RCW 9.68.110 and 1969 ex.s. c 256 s 19;
- 13 (9) RCW 9.68.120 and 1969 ex.s. c 256 s 20; and
- 14 (10) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1.

15 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act are each
16 added to chapter 9.68 RCW.

17 NEW SECTION. **Sec. 10.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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