

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5466

54th Legislature
1995 Regular Session

Passed by the Senate April 23, 1995
YEAS 38 NAYS 7

President of the Senate

Passed by the House April 22, 1995
YEAS 71 NAYS 18

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5466** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5466

AS AMENDED BY THE HOUSE

Passed Legislature - 1995 Regular Session

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 6 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) That 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) That 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) That, 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, sound recording, telephonic
23 communication, or coin-operated machine.

24 (6) "Sexual device" means any artificial device primarily designed,
25 promoted, or marketed to physically stimulate or manipulate the human
26 genitals.

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

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

33 (9) "Knowledge of its character" means that the person has
34 knowledge that the matter or performance contains, depicts, or
35 describes activity or conduct that is patently offensive under
36 subsection (2)(b) of this section. Such knowledge may be proved by
37 direct or circumstantial evidence, or both.

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

39 (11) "Community" means the state-wide community.

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

3 (1) Display matter that is harmful to minors, as defined in section
4 1(2) of this act, in such a way that minors, as part of the invited
5 general public, will be exposed to view such matter; however, a person
6 shall be deemed not to have displayed matter harmful to minors if the
7 matter is kept behind devices commonly known as blinder racks so that
8 the lower two-thirds of the matter is not exposed to view. In the case
9 of on-line accessibility to information stored in an electronic form,
10 a person shall be deemed not to have displayed matter harmful to minors
11 if:

12 (a) The matter is stored in a restricted area where access is
13 allowed only to persons who are reasonably believed to be eighteen
14 years of age or older based on information supplied as provided for in
15 section 3(3) of this act and who have obtained a password or other
16 authorization necessary for access to the matter; or

17 (b) It is not reasonably possible to restrict access in the manner
18 described in (a) of this subsection;

19 (2) Sell, furnish, present, distribute, allow to view or hear, or
20 otherwise disseminate to a minor, with or without consideration, any
21 matter that is harmful to minors as defined in section 1(2) of this
22 act; or

23 (3) Present to a minor or participate in presenting to a minor,
24 with or without consideration, any live performance that is harmful to
25 minors as defined in section 1(2) of this act.

26 NEW SECTION. **Sec. 3.** In any prosecution for violation of section
27 2 of this act, it shall be an affirmative defense that:

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

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

34 (3) The person made a reasonable bona fide attempt to ascertain the
35 true age of the minor by requiring production of a driver's license,
36 marriage license, birth certificate, or other governmental or
37 educational identification card or paper, or copy thereof if supplied
38 by mail or electronic facsimile when in-person production thereof is

1 impractical, and not relying solely on the oral allegations or apparent
2 age of the minor.

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

13 NEW SECTION. **Sec. 5.** Nothing in this chapter shall apply to the
14 official distribution of material by a recognized historical society or
15 museum, a library of a college or university, or an archive or library
16 under the supervision and control of the state, county, municipality,
17 or other political subdivision of the state.

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 or performances that are
22 harmful to minors. Counties, cities, towns, or other municipalities
23 may enact only those laws and ordinances relating to matter and
24 performances harmful to minors that are consistent with this chapter.
25 Local laws and ordinances that are inconsistent with, more restrictive
26 than, or exceed the requirements of this chapter shall not be enacted
27 and are preempted and repealed, regardless of the nature of the code,
28 charter, or home rule status of such county, city, town, or
29 municipality.

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

- 32 (1) RCW 9.68.015 and 1959 c 260 s 2;
33 (2) RCW 9.68.050 and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;
34 (3) RCW 9.68.060 and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;
35 (4) RCW 9.68.070 and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;

- 1 (5) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
- 2 (6) RCW 9.68.090 and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;
- 3 (7) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
- 4 (8) RCW 9.68.110 and 1969 ex.s. c 256 s 19;
- 5 (9) RCW 9.68.120 and 1969 ex.s. c 256 s 20;
- 6 (10) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1;
- 7 (11) RCW 9.68A.140 and 1987 c 396 s 1;
- 8 (12) RCW 9.68A.150 and 1987 c 396 s 2; and
- 9 (13) RCW 9.68A.160 and 1987 c 396 s 3.

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

12 NEW SECTION. **Sec. 9.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and shall take
19 effect immediately.

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