
HOUSE BILL 1984

State of Washington

56th Legislature

1999 Regular Session

By Representatives Boldt, Koster, Carrell, Mielke, Lambert, Bush, Schindler, Mulliken and Dunn

Read first time 02/12/1999. Referred to Committee on Judiciary.

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; prescribing penalties; and
5 declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** As used in sections 1 through 5 of this act,
8 the following terms have the meanings indicated unless the context
9 clearly requires otherwise.

10 (1) "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 (2) "Matter" means a motion picture film, a publication, a sexual
11 device, or any combination thereof.

12 (3) "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) Videotape; or

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

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

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

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

29 (7) "Knowledge of its character" means that the person has
30 knowledge that the matter or performance contains, depicts, or
31 describes activity or conduct that may be found to be patently
32 offensive under subsection (1)(b) of this section. Such knowledge may
33 be proved by direct or circumstantial evidence, or both.

34 (8) "Minor" means any person under the age of eighteen years.

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

37 (10) "Sexual device" means any artificial device primarily
38 designed, promoted, or marketed to physically stimulate or manipulate
39 the human genitals.

1 (11) "Sexual excitement" means the condition of human male or
2 female genitals when in a state of sexual stimulation or arousal; or
3 the depiction of covered male genitals in a discernibly turgid state.

4 (12) "Sexually explicit conduct" means physical contact with a
5 person's clothed or unclothed genitals, pubic area, buttocks, perineum,
6 or, if such person is a female, breast.

7 (13) "Sexually explicit nudity" means the showing of the human male
8 or female genitals, pubic area, buttocks, or perineum with less than a
9 full opaque covering; or the showing of the female breast with less
10 than a full opaque covering of any portion thereof below the top of the
11 nipple.

12 NEW SECTION. **Sec. 2.** No person may with knowledge of its
13 character:

14 (1) Display matter that is harmful to minors in such a way that
15 minors, as part of the invited general public, will be exposed to view
16 the matter; however, a person is deemed not to have displayed matter
17 harmful to minors if:

18 (a) The matter is kept behind devices commonly known as blinder
19 racks so that the lower two-thirds of the matter is not exposed to
20 view; or

21 (b) In the case of an operator who transmits matter that is harmful
22 to minors via cable television transmissions, the operator first
23 notifies the subscriber of the availability of a device that allows a
24 subscriber to prohibit the viewing of a particular cable transmission;
25 or

26 (c) In the case of a person who provides a minor with access to a
27 computer containing matter that is harmful to minors stored locally, or
28 that can be connected to the Internet, the computer is equipped with
29 specialized filtering software actively installed for the purpose of
30 protecting minors from accessing matter that is harmful to minors; or

31 (d) In the case of a person publishing a World Wide Web page
32 containing matter that is harmful to minors, the web page contains
33 codes or hidden comments that trigger the blocking mechanisms of any
34 browser-filtering software that is designed for the purpose of
35 protecting minors from accessing matter that is harmful to minors; or

36 (e) In the case of a person hosting or mirroring Internet content
37 on servers located within the state of Washington, the person mandates
38 the inclusion in all web pages of codes or hidden comments that trigger

1 the blocking mechanisms of any browser-filtering software that is
2 designed for the purpose of protecting minors from accessing matter
3 that is harmful to minors; or

4 (f) In the case of a person providing electronic communications or
5 telecommunications access or connection to or from a facility, system,
6 or network, whether one-way or interactive, including transmission,
7 downloading, storage, navigational tools, and related capabilities that
8 are incidental to the provision of the electronic communications or
9 telecommunications access or connection, the person mandates the
10 inclusion in all web pages of codes or hidden comments that trigger the
11 blocking mechanisms of any browser-filtering software that is designed
12 for the purpose of protecting minors from accessing matter that is
13 harmful to minors;

14 (2) Sell, furnish, present, distribute, allow to view or hear, or
15 otherwise disseminate to a minor, with or without consideration, any
16 matter that is harmful to minors; or

17 (3) Present to a minor or participate in presenting to a minor,
18 with or without consideration, any live performance that is harmful to
19 minors.

20 NEW SECTION. **Sec. 3.** In any prosecution for violation of section
21 2 of this act, it is an affirmative defense that:

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

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

28 (3) The person made a reasonable good faith attempt to ascertain
29 the true age of the minor by requiring production of a driver's
30 license, marriage license, birth certificate, or other governmental or
31 educational identification card or paper, or copy thereof if supplied
32 by mail or electronic facsimile when in-person production thereof is
33 impractical, and not relying solely on the oral allegations or apparent
34 age of the minor; or

35 (4) If engaged in the commercial distribution of material that is
36 harmful to minors by electronic or telephonic transmission, access by
37 persons under eighteen years of age is restricted by requiring use of

1 a verified credit card, debit account, adult access code, or adult
2 personal identification number before transmission of the material.

3 NEW SECTION. **Sec. 4.** (1) A person who is convicted of violating
4 section 2 of this act is guilty of a gross misdemeanor.

5 (2) Each day that a violation of section 2 of this act occurs or
6 continues is a separate offense and is punishable as a separate
7 violation.

8 (3) Every act, thing, or transaction prohibited by section 2 of
9 this act is a separate offense as to each item, issue, or title
10 involved and is punishable as such.

11 (4) For the purpose of this section, multiple copies of the same
12 identical title, monthly issue, volume, and number issue, or other such
13 identical material are a single offense.

14 NEW SECTION. **Sec. 5.** (1) The state of Washington fully occupies
15 and preempts within the boundaries of the state the entire field of
16 regulation and sanctions for displaying, selling, furnishing,
17 presenting, or otherwise distributing matter or performances that are
18 harmful to minors.

19 (2) Counties, cities, towns, or other municipalities may enact only
20 those laws and ordinances relating to matter and performances harmful
21 to minors that are consistent with this chapter.

22 (3) Local laws and ordinances that are inconsistent with, more
23 restrictive than, or exceed the requirements of this chapter may not be
24 enacted and are preempted and repealed, regardless of the nature of the
25 code, charter, or home rule status of such county, city, town, or
26 municipality.

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

29 (1) RCW 9.68.015 (Obscene literature, shows, etc.--Exemptions) and
30 1959 c 260 s 2;

31 (2) RCW 9.68.050 ("Erotic material"--Definitions) and 1992 c 5 s 1
32 & 1969 ex.s. c 256 s 13;

33 (3) RCW 9.68.060 ("Erotic material"--Determination by court--
34 Labeling--Penalties) and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;

35 (4) RCW 9.68.070 (Prosecution for violation of RCW 9.68.060--
36 Defense) and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;

- 1 (5) RCW 9.68.080 (Unlawful acts) and 1969 ex.s. c 256 s 16;
2 (6) RCW 9.68.090 (Civil liability of wholesaler or wholesaler-
3 distributor) and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;
4 (7) RCW 9.68.100 (Exceptions to RCW 9.68.050 through 9.68.120) and
5 1969 ex.s. c 256 s 18;
6 (8) RCW 9.68.110 (Motion picture operator or projectionist exempt,
7 when) and 1969 ex.s. c 256 s 19;
8 (9) RCW 9.68.120 (Provisions of RCW 9.68.050 through 9.68.120
9 exclusive) and 1969 ex.s. c 256 s 20;
10 (10) RCW 9.68.130 ("Sexually explicit material"--Defined--Unlawful
11 display) and 1975 1st ex.s. c 156 s 1;
12 (11) RCW 9.68A.140 (Definitions) and 1987 c 396 s 1;
13 (12) RCW 9.68A.150 (Allowing minor on premises of live erotic
14 performance) and 1987 c 396 s 2; and
15 (13) RCW 9.68A.160 (Penalty) and 1987 c 396 s 3.

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

18 NEW SECTION. **Sec. 8.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 immediately.

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