

2 **SB 6003** - H COMM AMD
3 By Committee on Judiciary

4 ADOPTED AS AMENDED 3/4/94

5 Strike everything after the enacting clause and insert the
6 following:

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

10 (1) "Minor" means any person under the age of seventeen years.

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

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

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

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

20 (ii) Masturbation, fellatio, cunnilingus, bestiality, excretory
21 functions, lewd exhibition of the genitals or genital area, sexually
22 explicit conduct, sexual excitement, or sexually explicit nudity; or

23 (iii) Sexual acts that are violent or destructive, including but
24 not limited to human or animal mutilation, dismemberment, rape, or
25 torture; and

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

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

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

35 (5) "Sexually explicit nudity" means the showing of the human male
36 or female genitals, pubic area, buttocks, or perineum with less than a

1 full opaque covering; or the showing of the female breast with less
2 than a full opaque covering of any portion thereof below the top of the
3 nipple.

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

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

7 (a) Film or plate negative;

8 (b) Film or plate positive;

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

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

12 (e) Video tape; or

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

15 (8) "Publication" means any book, magazine, article, pamphlet,
16 writing, printing, illustration, picture, sound recording, telephonic
17 communication, or coin-operated machine.

18 (9) "Sexual device" means any artificial human penis, vagina, or
19 anus, or other device primarily designed, promoted, or marketed to
20 physically stimulate or manipulate the human genitals, pubic area,
21 perineum, or anal area, including dildoes, penisators, vibrators,
22 vibrillators, penis rings, and erection enlargement or prolonging
23 creams, jellies, or other such chemicals or preparations.

24 (10) "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 (11) "Person" means any individual, partnership, firm, association,
29 corporation, or other legal entity.

30 (12) "Knowledge of its character" means that the person has
31 knowledge that the matter or performance contains, depicts, or
32 describes activity or conduct which may be found to be patently
33 offensive under subsection (2)(b) of this section. Such knowledge may
34 be proved by direct or circumstantial evidence, or both.

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

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

1 (1) Display matter which is harmful to minors, as defined in
2 section 1(2) of this act, in such a way that minors, as part of the
3 invited general public, will be exposed to view such matter; however,
4 a person shall be deemed not to have displayed matter harmful to minors
5 if the matter is kept behind devices commonly known as blinder racks so
6 that the lower two-thirds of the matter is not exposed to view;

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

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

14 NEW SECTION. **Sec. 3.** In any prosecution for violation of section
15 2 of this act, it shall be an affirmative defense that:

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

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

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

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

1 NEW SECTION. **Sec. 5.** No person shall be vicariously liable for
2 the conduct of agents, employees, or employers who violate section 2 of
3 this act except as provided in RCW 9A.08.030(2)(b).

4 **Sec. 6.** RCW 9A.08.030 and 1975 1st ex.s. c 260 s 9A.08.030 are
5 each amended to read as follows:

6 (1) As used in this section:

7 (a) "Agent" means any director, officer, or employee of a
8 corporation, or any other person who is authorized to act on behalf of
9 the corporation;

10 (b) "Corporation" includes a joint stock association;

11 (c) "High managerial agent" means an officer or director of a
12 corporation or any other agent in a position of comparable authority
13 with respect to the formulation of corporate policy or the supervision
14 in a managerial capacity of subordinate employees.

15 (2) A corporation is guilty of an offense when:

16 (a) The conduct constituting the offense consists of an omission to
17 discharge a specific duty of performance imposed on corporations by
18 law; or

19 (b) The conduct constituting the offense is engaged in, authorized,
20 solicited, requested, commanded, or tolerated by the board of directors
21 or by a high managerial agent acting within the scope of his employment
22 and on behalf of the corporation; or

23 (c) The conduct constituting the offense is engaged in by an agent
24 of the corporation, other than a high managerial agent, while acting
25 within the scope of his employment and in behalf of the corporation and
26 (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the
27 offense is one defined by a statute which clearly indicates a
28 legislative intent to impose such criminal liability on a corporation.
29 This subsection (2)(c) shall not apply to violations of section 2 of
30 this act.

31 (3) A person is criminally liable for conduct constituting an
32 offense which he performs or causes to be performed in the name of or
33 on behalf of a corporation to the same extent as if such conduct were
34 performed in his own name or behalf.

35 (4) Whenever a duty to act is imposed by law upon a corporation,
36 any agent of the corporation who knows he has or shares primary
37 responsibility for the discharge of the duty is criminally liable for
38 a reckless or, if a high managerial agent, criminally negligent

1 omission to perform the required act to the same extent as if the duty
2 were by law imposed directly upon such agent.

3 (5) Every corporation, whether foreign or domestic, which shall
4 violate any provision of RCW 9A.28.040, shall forfeit every right and
5 franchise to do business in this state. The attorney general shall
6 begin and conduct all actions and proceedings necessary to enforce the
7 provisions of this subsection.

8 NEW SECTION. **Sec. 7.** Nothing in this chapter applies to:

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

13 (2) The official distribution or use of material by a public
14 school;

15 (3) The official distribution or use of material by a health care
16 provider, or health agency under the supervision and control, or funded
17 in whole or in part by the state, county, municipality, or other
18 political division of the state;

19 (4) Devices designed for contraceptive purposes; or

20 (5) The depiction of a female breast feeding an infant.

21 NEW SECTION. **Sec. 8.** 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.

35 NEW SECTION. **Sec. 9.** Sections 1 through 5 and 7 of this act are
36 each added to chapter 9.68 RCW.

1 NEW SECTION. **Sec. 10.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

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