

1 **SHB 2267 - H AMD 283**

2 By Representatives Costa, Brown and others

3 Strike everything after the enacting clause and insert the
4 following:

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

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

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

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

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

16 (i) Ultimate sexual acts, normal or perverted, actual or
17 simulated; or

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

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

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

28 (3) "Matter" means a motion picture film, publication, sexual
29 device, or any combination thereof.

30 (4) "Motion picture film" means any:

31 (a) Film or plate negative;

- 1 (b) Film or plate positive;
- 2 (c) Film designed to be projected on a screen for exhibition;
- 3 (d) Film, glass slides, or transparencies, either in negative
- 4 or positive form, designed for exhibition by projection on a
- 5 screen;
- 6 (e) Video tape; or
- 7 (f) Any other medium used to transmit or reproduce images
- 8 electronically on a screen.
- 9 (5) "Publication" means any book, magazine, article, pamphlet,
- 10 writing, printing illustration, picture, telephonic communication,
- 11 or coin-operated machine.
- 12 (6) "Sexual device" means any artificial device primarily
- 13 designed, promoted, or marketed to physically stimulate or
- 14 manipulate the human genitals.
- 15 (7) "Live performance" means any play, show, skit, dance, or
- 16 other exhibition performed or presented to or before an audience of
- 17 one or more, in person or by electronic transmission, or by
- 18 telephonic communication, with or without consideration.
- 19 (8) "Sexual conduct" means sexual intercourse or sexual
- 20 contact as defined in RCW 9A.44.010.
- 21 (9) "Knowledge of its character" means that the person has
- 22 knowledge that the matter or performance contains, depicts, or
- 23 describes activity or conduct that is patently offensive under
- 24 subsection (2)(b) of this section. Such knowledge may be proved by
- 25 direct or circumstantial evidence, or both.
- 26 (10) "Knowledge" means knowledge as defined in RCW
- 27 9A.08.010(1)(b).

28
29 NEW SECTION. **Sec. 2.** (1) No person may, with knowledge of
30 its character:

31 (a) Present, furnish, or display to a minor any matter that is
32 harmful to minors for the purpose of promoting, encouraging,
33 inducing, facilitating, or coercing the minor's exposure to and

1 involvement in sexual conduct with that person or a third party or
2 for that person's sexual gratification;

3 (b) Present to a minor or participate in presenting to a minor
4 any live performance that is harmful to minors for the purpose of
5 promoting, encouraging, inducing, facilitating, or coercing the
6 minor's exposure to and involvement in sexual conduct with that
7 person or a third party or for that person's sexual gratification.

8 (2) A violation of this section is a class B felony.
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10 NEW SECTION. **Sec. 3.** In any prosecution for a violation of
11 section 2 of this act, it shall not be a defense that the defendant
12 did not know that the victim was a minor, unless the defendant
13 proves by a preponderance of the evidence that at the time of the
14 offense the defendant reasonably believed the victim to be eighteen
15 years of age or older based on the victim's declarations as to his
16 or her age.
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18 NEW SECTION. **Sec. 4.** In any case where a person who has
19 violated section 2 of this act also commits any sexual offense
20 under chapter 9.68A, 9A.44, or 9A.64 RCW, the perpetrator shall be
21 prosecuted for a violation of section 2 of this act in addition to
22 the prosecution for the sexual offense.
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24 NEW SECTION. **Sec. 5.** The following acts or parts of acts are
25 each repealed:

- 26 (1) RCW 9.68.015 and 1959 c 260 s 2;
27 (2) RCW 9.68.050 and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;
28 (3) RCW 9.68.060 and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;
29 (4) RCW 9.68.070 and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;
30 (5) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
31 (6) RCW 9.68.090 and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;
32 (7) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
33 (8) RCW 9.68.110 and 1969 ex.s. c 256 s 19;

- 1 (9) RCW 9.68.120 and 1969 ex.s. c 256 s 20;
- 2 (10) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1;
- 3 (11) RCW 9.68A.140 and 1987 c 396 s 1;
- 4 (12) RCW 9.68A.150 and 1987 c 396 s 2; and
- 5 (13) RCW 9.68A.160 and 1987 c 396 s 3.

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7 NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act are
8 each added to chapter 9.68 RCW.

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10 NEW SECTION. **Sec. 7.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

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15 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of
17 the state government and its existing public institutions, and
18 shall take effect immediately."

EFFECT: Removes sound recordings from the list of publications that may be found to be "harmful to minors." Replaces the current criminal provisions with a new crime: no person may present, furnish, or display to a minor any matter or live performance that is harmful to minors for the purpose of promoting, encouraging, inducing, facilitating, or coercing the minor's exposure to and involvement in sexual conduct with the person or a third party or for the sexual gratification of that person. It is not a defense that the defendant did not know the victim was a minor unless the defendant proves by a preponderance of the evidence that the defendant reasonably believed the victim to be eighteen years of age or older based on the minor's declarations as to his or her age. A person who violates this act must be prosecuted for this violation in addition to any prosecution for a sexual offense also committed by the person. Deletes the sections providing for affirmative defenses, exemptions, and state preemption.