
SUBSTITUTE HOUSE BILL 1448

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives McMahan, Sheldon, Stevens, Padden, Campbell, Koster, D. Schmidt, Pelesky, Talcott, Hickel, Lambert, McMorris, Fuhrman, Silver, Mitchell, Basich, Hatfield, Benton, Johnson, Buck, Smith, Chandler, Robertson, Delvin, Hargrove, Sherstad, Boldt, Chappell, Schoesler, Hymes and Backlund)

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 9.68.050, 9.68.060, 9.68.070,
3 9.68.080, 9.68.090, 9.68.100, 9.68.110, 9.68.120, 9.68.130, 9.68A.140,
4 9.68A.150, and 9.68A.160; prescribing penalties; and declaring an
5 emergency.

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

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

10 (1) "Minor" means any person under the age of eighteen 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

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

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

16 (5) "Sexually explicit nudity" means the showing of the human male
17 or female genitals, pubic area, buttocks, or perineum with less than a
18 full opaque covering; or the showing of the female breast with less
19 than a full opaque covering of any portion thereof below the top of the
20 nipple.

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

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

24 (a) Film or plate negative;

25 (b) Film or plate positive;

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

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

29 (e) Video tape; or

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

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

35 (9) "Sexual device" means any artificial human penis, vagina, or
36 anus, or other device primarily designed, promoted, or marketed to
37 physically stimulate or manipulate the human genitals, pubic area,
38 perineum, or anal area, including dildoes, penisators, vibrators,

1 vibrillators, penis rings, and erection enlargement or prolonging
2 creams, jellies, or other such chemicals or preparations.

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

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

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

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

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

17 (1) Display matter which is harmful to minors, as defined in
18 section 1(2) of this act, in such a way that minors, as part of the
19 invited general public, will be exposed to view such matter; however,
20 a person shall be deemed not to have displayed matter harmful to minors
21 if the matter is kept behind devices commonly known as blinder racks so
22 that the lower two-thirds of the matter is not exposed to view. In the
23 case of on-line accessibility to information stored in an electronic
24 form, a person shall be deemed not to have displayed matter harmful to
25 minors if:

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

31 (b) Where it is not reasonably possible to restrict access in the
32 manner described in (a) of this subsection, the matter is stored in an
33 area labelled "adults only";

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

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

4 NEW SECTION. **Sec. 3.** In any prosecution for violation of section
5 2 of this act, it shall be an affirmative defense that:

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

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

12 (3) The person made a reasonable bona fide attempt to ascertain the
13 true age of the minor by requiring production of a driver's license,
14 marriage license, birth certificate, or other governmental or
15 educational identification card or paper, or copy thereof if supplied
16 by mail or electronic facsimile when in-person production thereof is
17 impractical, and not relying solely on the oral allegations or apparent
18 age of the minor.

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

29 NEW SECTION. **Sec. 5.** Nothing in this chapter applies to the
30 circulation of any material by any recognized historical society or
31 museum, any library of any college or university, or to any archive or
32 library under the supervision and control of the state, county,
33 municipality, or other political subdivision.

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

- 1 (1) RCW 9.68.050 and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;
- 2 (2) RCW 9.68.060 and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;
- 3 (3) RCW 9.68.070 and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;
- 4 (4) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
- 5 (5) RCW 9.68.090 and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;
- 6 (6) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
- 7 (7) RCW 9.68.110 and 1969 ex.s. c 256 s 19;
- 8 (8) RCW 9.68.120 and 1969 ex.s. c 256 s 20;
- 9 (9) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1;
- 10 (10) RCW 9.68A.140 and 1987 c 396 s 1;
- 11 (11) RCW 9.68A.150 and 1987 c 396 s 2; and
- 12 (12) RCW 9.68A.160 and 1987 c 396 s 3.

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

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

19 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and shall take
22 effect immediately.

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