

CERTIFICATION OF ENROLLMENT

SENATE BILL 6003

53rd Legislature
1994 Regular Session

Passed by the Senate March 9, 1994
YEAS 45 NAYS 0

President of the Senate

Passed by the House March 9, 1994
YEAS 82 NAYS 13

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6003** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 6003

AS AMENDED BY THE HOUSE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By Senators A. Smith, Quigley, L. Smith, Haugen, Oke, Nelson,
McAuliffe, Ludwig and Franklin

Read first time 01/10/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to the well-being of children; amending RCW
2 9A.08.030; adding new sections to chapter 9.68 RCW; repealing RCW
3 9.68.050, 9.68.060, 9.68.070, 9.68.080, 9.68.090, 9.68.100, 9.68.110,
4 9.68.120, 9.68.130, 9.68A.140, 9.68A.150, and 9.68A.160; and
5 prescribing penalties.

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 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

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;

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

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

30 NEW SECTION. **Sec. 3.** In any prosecution for violation of section
31 2 of this act, it shall be an affirmative defense that:

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

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

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

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

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

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

21 (1) As used in this section:

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

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

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

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

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

34 (b) The conduct constituting the offense is engaged in, authorized,
35 solicited, requested, commanded, or tolerated by the board of directors

1 or by a high managerial agent acting within the scope of his employment
2 and on behalf of the corporation; or

3 (c) The conduct constituting the offense is engaged in by an agent
4 of the corporation, other than a high managerial agent, while acting
5 within the scope of his employment and in behalf of the corporation and
6 (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the
7 offense is one defined by a statute which clearly indicates a
8 legislative intent to impose such criminal liability on a corporation.
9 This subsection (2)(c) shall not apply to violations of section 2 of
10 this act.

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

15 (4) Whenever a duty to act is imposed by law upon a corporation,
16 any agent of the corporation who knows he has or shares primary
17 responsibility for the discharge of the duty is criminally liable for
18 a reckless or, if a high managerial agent, criminally negligent
19 omission to perform the required act to the same extent as if the duty
20 were by law imposed directly upon such agent.

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

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

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

31 (2) The official distribution or use of material by a public
32 school;

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

37 (4) Devices designed for contraceptive purposes; or

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

1 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
2 repealed:

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

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

17 NEW SECTION. **Sec. 10.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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