

1 **ESB 6079 - H AMD 961 ADOPTED 5/23/95**

2 By Representatives McMahan and Sheahan

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) Film or plate negative;
- 2 (b) Film or plate positive;
- 3 (c) Film designed to be projected on a screen for exhibition;
- 4 (d) Film, glass slides, or transparencies, either in negative
- 5 or positive form, designed for exhibition by projection on a
- 6 screen;
- 7 (e) Video tape; or
- 8 (f) Any other medium used to electronically transmit or
- 9 reproduce images on a screen.

10 (5) "Publication" means any book, magazine, article, pamphlet,  
11 writing, printing illustration, picture, sound recording,  
12 telephonic communication, or coin-operated machine.

13 (6) "Sexual device" means any artificial device primarily  
14 designed, promoted, or marketed to physically stimulate or  
15 manipulate the human genitals.

16 (7) "Live performance" means any play, show, skit, dance, or  
17 other exhibition performed or presented to or before an audience of  
18 one or more, in person or by electronic transmission, or by  
19 telephonic communication, with or without consideration.

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

22 (9) "Knowledge of its character" means that the person has  
23 knowledge that the matter or performance contains, depicts, or  
24 describes activity or conduct that is patently offensive under  
25 subsection (2)(b) of this section. Such knowledge may be proved by  
26 direct or circumstantial evidence, or both.

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

29 (11) "Community" means the state-wide community.

30  
31 NEW SECTION. **Sec. 2.** No person shall with knowledge of its  
32 character:

1 (1) Display matter that 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;  
4 however, a person shall be deemed not to have displayed matter  
5 harmful to minors if the matter is kept behind devices commonly  
6 known as blinder racks so that the lower two-thirds of the matter  
7 is not exposed to view. In the case of on-line accessibility to  
8 information stored in an electronic form, a person shall be deemed  
9 not to have displayed matter harmful to minors if:

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

15 (b) It is not reasonably possible to restrict access in the  
16 manner described in (a) of this subsection;

17 (2) Sell, furnish, present, distribute, allow to view or hear,  
18 or otherwise disseminate to a minor, with or without consideration,  
19 any matter that is harmful to minors as defined in section 1(2) of  
20 this act; or

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

24  
25 NEW SECTION. **Sec. 3.** In any prosecution for violation of  
26 section 2 of this act, it shall be an affirmative defense that:

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

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

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

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

20  
21           NEW SECTION.   **Sec. 5.** Nothing in this chapter shall apply to  
22 the official distribution of material by a recognized historical  
23 society or museum, a library of a college or university, or an  
24 archive or library under the supervision and control of the state,  
25 county, municipality, or other political subdivision of the state.

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27           NEW SECTION.   **Sec. 6.** The state of Washington hereby fully  
28 occupies and preempts within the boundaries of the state the entire  
29 field of regulation and sanctions for displaying, selling,  
30 furnishing, presenting, or otherwise distributing matter or  
31 performances that are harmful to minors. Counties, cities, towns,  
32 or other municipalities may enact only those laws and ordinances  
33 relating to matter and performances harmful to minors that are

1 consistent with this chapter. Local laws and ordinances that are  
2 inconsistent with, more restrictive than, or exceed the  
3 requirements of this chapter shall not be enacted and are preempted  
4 and repealed, regardless of the nature of the code, charter, or  
5 home rule status of such county, city, town, or municipality.

6  
7 NEW SECTION. **Sec. 7.** The following acts or parts of acts are  
8 each repealed:

- 9 (1) RCW 9.68.015 and 1959 c 260 s 2;  
10 (2) RCW 9.68.050 and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;  
11 (3) RCW 9.68.060 and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;  
12 (4) RCW 9.68.070 and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;  
13 (5) RCW 9.68.080 and 1969 ex.s. c 256 s 16;  
14 (6) RCW 9.68.090 and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;  
15 (7) RCW 9.68.100 and 1969 ex.s. c 256 s 18;  
16 (8) RCW 9.68.110 and 1969 ex.s. c 256 s 19;  
17 (9) RCW 9.68.120 and 1969 ex.s. c 256 s 20;  
18 (10) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1;  
19 (11) RCW 9.68A.140 and 1987 c 396 s 1;  
20 (12) RCW 9.68A.150 and 1987 c 396 s 2; and  
21 (13) RCW 9.68A.160 and 1987 c 396 s 3.

22  
23 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act are  
24 each added to chapter 9.68 RCW.

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26 NEW SECTION. **Sec. 9.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30  
31 NEW SECTION. **Sec. 10.** This act is necessary for the  
32 immediate preservation of the public peace, health, or safety, or

1 support of the state government and its existing public  
2 institutions, and shall take effect immediately."

3

4 Correct the title

**EFFECT:** Replaces the bill's provisions with ESSB 5466 as passed the Legislature.

The striking amendment applies to sound recordings, telephonic communications, live performances, and any medium used to electronically transmit or reproduce images on a screen. The striker repeals 9.68A.140, 9.68A.150, and 9.68A.160, provisions which make it a crime for a person to knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing erotic material. The underlying bill does not apply to sound recordings, telephonic communications, live performances, and some types of media used to electronically transmit or reproduce images on a screen. The underlying bill does not repeal 9.68A.140, 9.68A.150, and 9.68A.160.

The striker exempts museums, historical societies, college and university libraries, and government operated or controlled archives and libraries. In addition to these exemptions, the underlying bill also exempts: (1) the provision of electronic communication access; (2) instructional materials reviewed by a school's board of directors; (3) health care providers under the supervision of, or funded in whole or in part by, the state or a political subdivision; and 4) devices designed for contraception or the prevention of sexually transmitted diseases.

The striker provides that, in the case of on-line access to matter stored in an electronic form, matter is deemed not to be displayed if it is stored in a restricted area or it is not possible to restrict access. The underlying bill does not contain this provision, but does provide that matter is deemed not to be displayed if it is transmitted by cable and the cable operator provides a device which can block a particular cable service.

The striker does not amend RCW 9.68A.090, communicating with a minor for immoral purposes. The underlying bill amends this section to provide that any sexual offense, not just felony sexual offenses, and any violation of the provisions of the

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bill, will make a violation of the communicating with a minor for immoral purposes statute a class C felony rather than a gross misdemeanor.