

2 SB 6079 - S AMD - 444
3 By Senator Smith

4 ADOPTED 5/23/95

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 eighteen years.

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

12 (a) Which the average adult person, applying contemporary community
13 standards, would find, when considered as a whole, appeals primarily to
14 the 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) "Matter" means a motion picture film, a publication, a sexual
30 device, or any combination thereof.

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

32 (a) Film or plate negative;

33 (b) Film or plate positive;

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

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

1 (e) Video tape.

2 (5) "Publication" means any book, magazine, article, pamphlet,
3 writing, printing, illustration, picture, or coin-operated machine.

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

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

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

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

15 (10) "Community" means the state-wide community.

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

18 (1) Display matter which is harmful to minors, as defined in
19 section 1(2) of this act, in such a way that minors, as part of the
20 invited general public, will be exposed to view such matter; however,
21 a person shall be deemed not to have displayed matter harmful to minors
22 if the matter: (a) Is kept behind devices commonly known as blinder
23 racks so that the lower two-thirds of the matter is not exposed to
24 view; or (b) is transmitted by cable by a franchised cable operator,
25 and the operator provides, by sale, lease, or otherwise, a device by
26 which a subscriber can prohibit viewing of a particular cable service;
27 or

28 (2) Sell, furnish, present, distribute, allow to view, or otherwise
29 disseminate to a minor, with or without consideration, any matter which
30 is harmful to minors as defined in section 1(2) of this act.

31 NEW SECTION. **Sec. 3.** In any prosecution for violation of section
32 2 of this act, it shall be an affirmative defense that:

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

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

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

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

19 NEW SECTION. **Sec. 5.** This chapter shall not apply to:

20 (1) The official circulation of matter by a recognized historical
21 society or museum, a library of a college or university, or an archive
22 or library under the supervision and control of the state, county,
23 municipality, or other political subdivision of the state;

24 (2) The provision of electronic communication access, including
25 transmission, downloading, storage, or navigational tools, and related
26 capabilities that are incidental to the transmission of such electronic
27 communications;

28 (3) Matter reviewed and recommended by an instructional materials
29 committee and approved by the local school district's board of
30 directors in accordance with RCW 28A.320.230 and matter obtained
31 through electronic telecommunication networks designed for educational
32 use and school-approved bulletin board systems;

33 (4) The official distribution or use of matter 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; and

1 (5) Devices or matter designed or distributed for contraceptive
2 purposes or for the purpose of preventing sexually transmitted disease.

3 NEW SECTION. **Sec. 6.** The state of Washington hereby fully
4 occupies and preempts within the boundaries of the state the entire
5 field of regulation and sanctions for displaying, selling, furnishing,
6 presenting, or otherwise distributing matter that is harmful to minors.
7 Counties, cities, towns, or other municipalities may enact only those
8 laws and ordinances relating to matter harmful to minors that are
9 consistent with this chapter. Local laws and ordinances that are
10 inconsistent with, more restrictive than, or exceed the requirements of
11 this chapter shall not be enacted and are preempted and repealed,
12 regardless of the nature of the code, charter, or home rule status of
13 such county, city, town, or municipality.

14 **Sec. 7.** RCW 9.68A.090 and 1989 c 32 s 7 are each amended to read
15 as follows:

16 A person who communicates with a minor for immoral purposes is
17 guilty of a gross misdemeanor, unless that person has previously been
18 convicted under this section or of a ((felony)) sexual offense under
19 chapter 9.68A, 9A.44, or 9A.64 RCW or of any other ((felony)) sexual
20 offense in this or any other state, or if the person has previously
21 been convicted under or concurrently violated chapter 9.68 RCW, in
22 which case the person is guilty of a class C felony punishable under
23 chapter 9A.20 RCW.

24 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
25 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;
- 34 (9) RCW 9.68.120 and 1969 ex.s. c 256 s 20; and
- 35 (10) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1.

1 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act are each
2 added to chapter 9.68 RCW.

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

7 **SB 6079** - S AMD - 444
8 By Senator Smith

ADOPTED 5/23/95

10 On page 1, line 1 of the title, after "children;" strike the
11 remainder of the title and insert "amending RCW 9.68A.090; adding new
12 sections to chapter 9.68 RCW; repealing RCW 9.68.015, 9.68.050,
13 9.68.060, 9.68.070, 9.68.080, 9.68.090, 9.68.100, 9.68.110, 9.68.120,
14 and 9.68.130; and prescribing penalties."

--- END ---