

**Chapter 9.68 RCW
OBSCENITY AND PORNOGRAPHY**

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RCW 9.68.015 Obscene literature, shows, etc.—Exemptions.

Nothing in chapter 260, Laws of 1959 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1959 c 260 § 2.]

RCW 9.68.030 Indecent articles, etc. Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. [1971 ex.s. c 185 § 2; 1909 c 249 § 208; RRS § 2460.]

RCW 9.68.050 "Erotic material"—Definitions. For the purposes of RCW 9.68.050 through 9.68.120:

- (1) "Minor" means any person under the age of eighteen years;
- (2) "Erotic material" means printed material, photographs, pictures, motion pictures, sound recordings, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it

affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;

(3) "Person" means any individual, corporation, or other organization;

(4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, motion pictures, or sound recordings. [1992 c 5 § 1; 1969 ex.s. c 256 § 13.]

Reviser's note: As to the constitutionality of this section, see *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

Severability—1969 ex.s. c 256: "If any provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances, is not affected." [1969 ex.s. c 256 § 21.]

RCW 9.68.060 "Erotic material"—Determination by court—Labeling—Penalties. (1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point boldface type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission

tickets are sold stating that it is unlawful for minors to misrepresent their age.

(4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

(a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned for up to three hundred sixty-four days;

(c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year. [2011 c 96 § 8; 2003 c 53 § 41; 1992 c 5 § 2; 1969 ex.s. c 256 § 14.]

Reviser's note: As to the constitutionality of this section, see *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

RCW 9.68.070 Prosecution for violation of RCW 9.68.060—Defense.

In any prosecution for violation of RCW 9.68.060, it shall be a defense that:

(1) If the violation pertains to a motion picture or sound recording, the minor was accompanied by a parent, parent's spouse, or guardian; or

(2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or

(3) Such minor was accompanied by a person who represented himself or herself to be a parent, or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation. [2011 c 336 § 318; 1992 c 5 § 4; 1969 ex.s. c 256 § 15.]

Reviser's note: As to the constitutionality of this section, see *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

RCW 9.68.080 Unlawful acts. (1) It shall be unlawful for any minor to misrepresent his or her true age or his or her true status as the child, stepchild, or ward of a person accompanying him or her, for

the purpose of purchasing or obtaining access to any material described in RCW 9.68.050.

(2) It shall be unlawful for any person accompanying such minor to misrepresent his or her true status as parent, spouse of a parent, or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in RCW 9.68.050. [2011 c 336 § 319; 1969 ex.s. c 256 § 16.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

RCW 9.68.090 Civil liability of wholesaler or wholesaler-distributor. No retailer, wholesaler, or exhibitor is to be deprived of service from a wholesaler or wholesaler-distributor of books, magazines, motion pictures, sound recordings, or other materials or subjected to loss of his or her franchise or right to deal or exhibit as a result of his or her attempts to comply with this statute. Any publisher, distributor, or other person, or combination of such persons, which withdraws or attempts to withdraw a franchise or other right to sell at retail, wholesale or exhibit materials on account of the retailer's, wholesaler's, or exhibitor's attempts to comply with RCW 9.68.050 through 9.68.120 shall incur civil liability to such retailer, wholesaler, or exhibitor for threefold the actual damages resulting from such withdrawal or attempted withdrawal. [2011 c 336 § 320; 1992 c 5 § 3; 1969 ex.s. c 256 § 17.]

Reviser's note: As to the constitutionality of this section, see *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

RCW 9.68.100 Exceptions to RCW 9.68.050 through 9.68.120. Nothing in RCW 9.68.050 through 9.68.120 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1969 ex.s. c 256 § 18.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

RCW 9.68.110 Motion picture operator or projectionist exempt, when. The provisions of RCW 9.68.050 through 9.68.120 shall not apply to acts done in the scope of his or her employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist has a financial interest in such theater or place wherein he or she is so employed or unless he or she caused to be performed or exhibited such performance or motion picture without the knowledge and consent of the manager or owner of the theater or other place of showing. [2011 c 336 § 321; 1969 ex.s. c 256 § 19.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

RCW 9.68.120 Provisions of RCW 9.68.050 through 9.68.120 exclusive. The provisions of RCW 9.68.050 through 9.68.120 shall be exclusive. [1969 ex.s. c 256 § 20.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

RCW 9.68.130 "Sexually explicit material"—Defined—Unlawful display. (1) A person is guilty of unlawful display of sexually explicit material if he or she knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.

(2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

(3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor. [2011 c 336 § 322; 1975 1st ex.s. c 156 § 1.]

RCW 9.68.140 Promoting pornography—Class C felony—Penalties. A person who, for profit-making purposes and with knowledge, sells, exhibits, displays, or produces any lewd matter as defined in RCW 7.48A.010 is guilty of promoting pornography. Promoting pornography is a class C felony and shall bear the punishment and fines prescribed for that class of felony. In imposing the criminal penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the felony. All fines assessed under this chapter shall be paid into the general treasury of the state. [1985 c 235 § 3; 1982 c 184 § 8.]

Severability—1985 c 235: See note following RCW 7.48A.040.

Class C felony—Authorized sentence: RCW 9A.20.020.

RCW 9.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral,

and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 19.]