
ENGROSSED SUBSTITUTE SENATE BILL 6262

State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Children & Family Services (originally sponsored by Senators Roach, Stratton, L. Smith, Murray, Cantu, Jesernig, Hayner, Thorsness, Amondson, Bailey, Metcalf, Barr, Nelson and Erwin)

Read first time 02/06/92.

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

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

6 NEW SECTION. **Sec. 1.** As used in sections 1 through 4 of this
7 act, the following terms have the meanings indicated unless the context
8 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) Which the average adult person, applying contemporary community
12 standards, would find, when considered as a whole, appeals to the
13 prurient interest of minors; and

1 (b) Which explicitly depicts or describes, by prevailing standards
2 in the adult community with respect to what is suitable for minors,
3 patently offensive representations or descriptions of:

4 (i) Ultimate sexual acts, normal or perverted, actual or simulated;
5 or

6 (ii) Masturbation, fellatio, cunnilingus, bestiality, excretory
7 functions, lewd exhibition of the genitals or genital area, sexually
8 explicit conduct, sexual excitement, or sexually explicit nudity; or

9 (iii) Violent or destructive acts, including sexual acts, but not
10 limited to human or animal mutilation, dismemberment, rape, or torture;
11 and

12 (c) Which, when considered as a whole, and in the context in which
13 it is used, lacks serious literary, artistic, political, or scientific
14 value for minors.

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

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

21 (5) "Sexually explicit nudity" means the showing of the human male
22 or female genitals, pubic area, buttocks, or perineum with less than a
23 full opaque covering; or the showing of the female breast with less
24 than a full opaque covering of any portion thereof below the top of the
25 nipple.

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

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

29 (a) Film or plate negative;

30 (b) Film or plate positive;

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

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

4 (e) Video tape; or

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

7 (8) "Publication" means any book, magazine, article, pamphlet,
8 writing, printing, illustration, picture, sound recording, or coin-
9 operated machine.

10 (9) "Sexual device" means any artificial human penis, vagina, or
11 anus, or other device primarily designed, promoted, or marketed to
12 physically stimulate or manipulate the human genitals, pubic area,
13 perineum, or anal area, including dildoes, penisators, vibrators,
14 vibrillators, penis rings, and erection enlargement or prolonging
15 creams, jellies, or other such chemicals or preparations.

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

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

22 (12) "Knowledge of its character" means that the person knows or is
23 aware, or has reason to know, that the matter or performance contains,
24 depicts, or describes any of the activity or conduct which may be found
25 to be patently offensive under subsection (2)(b) of this section,
26 regardless of whether such person has actual or specific knowledge of
27 its precise contents or that the matter or performance is "harmful to
28 minors" under subsection (2) of this section. Such knowledge may be
29 proved by direct or circumstantial evidence, or both.

1 NEW SECTION. **Sec. 2.** No person shall recklessly and with
2 knowledge of its character:

3 (1) Display matter which is harmful to minors, as defined in
4 section 1(2) of this act, in such a way that minors, as part of the
5 invited general public, will be exposed to view such matter; however,
6 a person shall be deemed not to have displayed matter harmful to minors
7 if the matter is kept behind devices commonly known as blinder racks so
8 that the lower two-thirds of the matter is not exposed to view;

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 5.** The provisions of sections 1 through 4
12 of this act shall be exclusive.

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

15 (1) RCW 9.68.050 and 1969 ex.s. c 256 s 13;

16 (2) RCW 9.68.060 and 1969 ex.s. c 256 s 14;

17 (3) RCW 9.68.070 and 1969 ex.s. c 256 s 15;

18 (4) RCW 9.68.080 and 1969 ex.s. c 256 s 16;

19 (5) RCW 9.68.090 and 1969 ex.s. c 256 s 17;

20 (6) RCW 9.68.100 and 1969 ex.s. c 256 s 18;

21 (7) RCW 9.68.110 and 1969 ex.s. c 256 s 19;

22 (8) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1;

23 (9) RCW 9.68A.140 and 1987 c 396 s 1;

24 (10) RCW 9.68A.150 and 1987 c 396 s 2; and

25 (11) RCW 9.68A.160 and 1987 c 396 s 3.

26 NEW SECTION. **Sec. 7.** Sections 1 through 4 of this act are
27 each added to chapter 9.68 RCW.

1 NEW SECTION. **Sec. 8.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.