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SENATE BILL 6262

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State of Washington

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By Senators Roach, Stratton, L. Smith, Murray, Cantu, Jesernig, Hayner, Thorsness, Amondson, Bailey, Metcalf, Barr, Nelson and Erwin

Read first time 01/23/92. Referred to Committee on Children & Family Services.

1 AN ACT Relating to the well-being of children; adding new sections  
2 to chapter 9.68 RCW; repealing RCW 9.68.050, 9.68.060, 9.68.070,  
3 9.68.080, 9.68.090, 9.68.100, 9.68.110, 9.68.120, and 9.68.130; and  
4 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 sexual acts, including but not limited  
10 to human or animal mutilation, dismemberment, rape, or torture; and

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

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

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

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

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

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

28 (a) Film or plate negative;

29 (b) Film or plate positive;

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

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

3 (e) Video tape; or

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

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

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

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

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

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

- 13        (1) RCW 9.68.050 and 1969 ex.s. c 256 s 13;
- 14        (2) RCW 9.68.060 and 1969 ex.s. c 256 s 14;
- 15        (3) RCW 9.68.070 and 1969 ex.s. c 256 s 15;
- 16        (4) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
- 17        (5) RCW 9.68.090 and 1969 ex.s. c 256 s 17;
- 18        (6) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
- 19        (7) RCW 9.68.110 and 1969 ex.s. c 256 s 19;
- 20        (8) RCW 9.68.120 and 1969 ex.s. c 256 s 20; and
- 21        (9) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1.

22        NEW SECTION.    **Sec. 6.**        Sections 1 through 4 of this act are  
23 each added to chapter 9.68 RCW.

24        NEW SECTION.    **Sec. 7.**        If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.