

1 **ESSB 5466 - H AMD 874 ADOTPED 4/14/95**

2 By Representatives McMahan, Sheahan and Sheldon

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

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

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

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

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

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

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

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

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

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

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

- 1 (4) "Motion picture film" means any:
2 (a) Film or plate negative;
3 (b) Film or plate positive;
4 (c) Film designed to be projected on a screen for exhibition;
5 (d) Film, glass slides, or transparencies, either in negative
6 or positive form, designed for exhibition by projection on a
7 screen;
8 (e) Video tape; or
9 (f) Any other medium used to electronically transmit or
10 reproduce images on a screen.
- 11 (5) "Publication" means any book, magazine, article, pamphlet,
12 writing, printing illustration, picture, sound recording,
13 telephonic communication, or coin-operated machine.
- 14 (6) "Sexual device" means any artificial device primarily
15 designed, promoted, or marketed to physically stimulate or
16 manipulate the human genitals.
- 17 (7) "Live performance" means any play, show, skit, dance, or
18 other exhibition performed or presented to or before an audience of
19 one or more, in person or by electronic transmission, or by
20 telephonic communication, with or without consideration.
- 21 (8) "Person" means any individual, partnership, firm,
22 association, corporation, or other legal entity.
- 23 (9) "Knowledge of its character" means that the person has
24 knowledge that the matter or performance contains, depicts, or
25 describes activity or conduct that may be found to be patently
26 offensive under subsection (2)(b) of this section. Such knowledge
27 may be proved by direct or circumstantial evidence, or both.
- 28 (10) "Knowledge" means knowledge as defined in RCW
29 9A.08.010(1)(b).

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) Where it is not reasonably possible to restrict access in
16 the manner described in (a) of this subsection, the matter is
17 stored in an area labelled "adults only";

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

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

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

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

31 (2) The matter or performance involved was displayed or
32 otherwise disseminated to a minor with the written permission of
33 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.

26
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.

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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.

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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.

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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."

EFFECT: The following changes are made: (1) sound recordings are included; (2) exemptions for transmissions by cable operators, providers of on-line services, public school instructional materials, health care providers, contraceptive devices, and depictions of breast-feeding are deleted; (3) adds that matter is not deemed displayed, in the case of on-line access to electronic information, if access is restricted or the material is labeled "adults only;" (4) deletes the provision that states that matter is not deemed to be displayed if it is transmitted by a franchised cable operator and the operator provides a device by which a subscriber can prohibit viewing of a particular service; and (5) adds an emergency clause.