

2 **ESSB 5466** - H AMD  
3 By Representative McMahan

4 ADOPTED AS AMENDED 4/21/95

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** As used in sections 1 through 6 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 or live performance:

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

15 (b) That 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) That, 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;

1 (e) Video tape; or  
2 (f) Any other medium used to electronically transmit or reproduce  
3 images on a screen.

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

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

10 (7) "Live performance" means any play, show, skit, dance, or other  
11 exhibition performed or presented to or before an audience of one or  
12 more, in person or by electronic transmission, or by telephonic  
13 communication, with or without consideration.

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

16 (9) "Knowledge of its character" means that the person has  
17 knowledge that the matter or performance contains, depicts, or  
18 describes activity or conduct that is patently offensive under  
19 subsection (2)(b) of this section. Such knowledge may be proved by  
20 direct or circumstantial evidence, or both.

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

22 (11) "Community" means the state-wide community.

23 NEW SECTION. **Sec. 2.** No person shall with knowledge of its  
24 character:

25 (1) Display matter that is harmful to minors, as defined in section  
26 1(2) of this act, in such a way that minors, as part of the invited  
27 general public, will be exposed to view such matter; however, a person  
28 shall be deemed not to have displayed matter harmful to minors if the  
29 matter is kept behind devices commonly known as blinder racks so that  
30 the lower two-thirds of the matter is not exposed to view. In the case  
31 of on-line accessibility to information stored in an electronic form,  
32 a person shall be deemed not to have displayed matter harmful to minors  
33 if:

34 (a) The matter is stored in a restricted area where access is  
35 allowed only to persons who are reasonably believed to be eighteen  
36 years of age or older based on information supplied as provided for in  
37 section 3(3) of this act and who have obtained a password or other  
38 authorization necessary for access to the matter; or

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

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

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

11 NEW SECTION. **Sec. 3.** In any prosecution for violation of section  
12 2 of this act, it shall be an affirmative defense that:

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

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

19 (3) The person made a reasonable bona fide attempt to ascertain the  
20 true age of the minor by requiring production of a driver's license,  
21 marriage license, birth certificate, or other governmental or  
22 educational identification card or paper, or copy thereof if supplied  
23 by mail or electronic facsimile when in-person production thereof is  
24 impractical, and not relying solely on the oral allegations or apparent  
25 age of the minor.

26 NEW SECTION. **Sec. 4.** Any person who is convicted of violating any  
27 provision of section 2 of this act is guilty of a gross misdemeanor.  
28 Each day that any violation of section 2 of this act occurs or  
29 continues shall constitute a separate offense and shall be punishable  
30 as a separate violation. Every act, thing, or transaction prohibited  
31 by section 2 of this act shall constitute a separate offense as to each  
32 item, issue, or title involved and shall be punishable as such. For  
33 the purpose of this section, multiple copies of the same identical  
34 title, monthly issue, volume, and number issue, or other such identical  
35 material shall constitute a single offense.

1        NEW SECTION.    **Sec. 5.** Nothing in this chapter shall apply to the  
2 official distribution of material by a recognized historical society or  
3 museum, a library of a college or university, or an archive or library  
4 under the supervision and control of the state, county, municipality,  
5 or other political subdivision of the state.

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

18        NEW SECTION.    **Sec. 7.** The following acts or parts of acts are each  
19 repealed:

- 20        (1) RCW 9.68.015 and 1959 c 260 s 2;
- 21        (2) RCW 9.68.050 and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;
- 22        (3) RCW 9.68.060 and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;
- 23        (4) RCW 9.68.070 and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;
- 24        (5) RCW 9.68.080 and 1969 ex.s. c 256 s 16;
- 25        (6) RCW 9.68.090 and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;
- 26        (7) RCW 9.68.100 and 1969 ex.s. c 256 s 18;
- 27        (8) RCW 9.68.110 and 1969 ex.s. c 256 s 19;
- 28        (9) RCW 9.68.120 and 1969 ex.s. c 256 s 20;
- 29        (10) RCW 9.68.130 and 1975 1st ex.s. c 156 s 1;
- 30        (11) RCW 9.68A.140 and 1987 c 396 s 1;
- 31        (12) RCW 9.68A.150 and 1987 c 396 s 2; and
- 32        (13) RCW 9.68A.160 and 1987 c 396 s 3.

33        NEW SECTION.    **Sec. 8.** Sections 1 through 6 of this act are each  
34 added to chapter 9.68 RCW.

1        NEW SECTION.    **Sec. 9.**    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.

5        NEW SECTION.    **Sec. 10.**    This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and shall take  
8 effect immediately."

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

--- END ---