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**SUBSTITUTE HOUSE BILL 1407**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Sheahan and Mulliken)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to the well-being of children; adding new sections  
2 to chapter 9.68 RCW; repealing RCW 9.68.015, 9.68.050, 9.68.060,  
3 9.68.070, 9.68.080, 9.68.090, 9.68.100, 9.68.110, 9.68.120, 9.68.130,  
4 9.68A.140, 9.68A.150, and 9.68A.160; prescribing penalties; and  
5 declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** As used in sections 1 through 6 of this act,  
8 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

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

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

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

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

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

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

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

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

24 (a) Film or plate negative;

25 (b) Film or plate positive;

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

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

29 (e) Video tape; or

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

32 (8) "Publication" means any book, magazine, article, pamphlet,  
33 writing, printing illustration, picture, sound recording, telephonic  
34 communication, or coin-operated machine.

35 (9) "Sexual device" means any artificial device primarily designed,  
36 promoted, or marketed to physically stimulate or manipulate the human  
37 genitals.

38 (10) "Live performance" means any play, show, skit, dance, or other  
39 exhibition performed or presented to or before an audience of one or

1 more, in person or by electronic transmission, or by telephonic  
2 communication, with or without consideration.

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

5 (12) "Knowledge of its character" means that the person has  
6 knowledge that the matter or performance contains, depicts, or  
7 describes activity or conduct that may be found to be patently  
8 offensive under subsection (2)(b) of this section. Such knowledge may  
9 be proved by direct or circumstantial evidence, or both.

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

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

12 NEW SECTION. **Sec. 2.** No person shall with knowledge of its  
13 character:

14 (1) Display matter that is harmful to minors, as defined in section  
15 1(2) of this act, in such a way that minors, as part of the invited  
16 general public, will be exposed to view such matter; however, a person  
17 shall be deemed not to have displayed matter harmful to minors if the  
18 matter: (a) Is kept behind devices commonly known as blinder racks so  
19 that the lower two-thirds of the matter is not exposed to view; or (b)  
20 is transmitted by cable by a franchised cable operator, and the  
21 operator notifies new subscribers upon ordering cable services, and all  
22 subscribers at least annually thereafter, that it provides by sale,  
23 lease, or otherwise, a device by which a subscriber may prohibit the  
24 viewing of a particular cable service;

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

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

32 NEW SECTION. **Sec. 3.** In any prosecution for violation of section  
33 2 of this act, it is an affirmative defense that:

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

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

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

11 NEW SECTION. **Sec. 4.** Any person who is convicted of violating any  
12 provision of section 2 of this act is guilty of a gross misdemeanor.  
13 Each day that any violation of section 2 of this act occurs or  
14 continues shall constitute a separate offense and shall be punishable  
15 as a separate violation. Every act, thing, or transaction prohibited  
16 by section 2 of this act constitutes a separate offense as to each  
17 item, issue, or title involved and shall be punishable as such. For  
18 the purpose of this section, multiple copies of the same identical  
19 title, monthly issue, volume, and number issue, or other such identical  
20 material constitute a single offense.

21 NEW SECTION. **Sec. 5.** This act does not apply to:

22 (1) The circulation of any material by any recognized historical  
23 society or museum, any library of any college or university, or to any  
24 archive or library under the supervision and control of the state,  
25 county, municipality, or other political subdivision of the state.

26 (2) Any person that provides electronic communications or  
27 telecommunications access or connection to or from a facility, system,  
28 or network, whether one way or interactive, including transmission,  
29 downloading, storage, navigational tools, and related capabilities that  
30 are incidental to the provision of the electronic communications or  
31 telecommunications access or connection.

32 NEW SECTION. **Sec. 6.** The state of Washington hereby fully  
33 occupies and preempts within the boundaries of the state the entire  
34 field of regulation and sanctions for displaying, selling, furnishing,  
35 presenting, or otherwise distributing matter or performances that are  
36 harmful to minors. Counties, cities, towns, or other municipalities

1 may enact only those laws and ordinances relating to matter and  
2 performances harmful to minors that are consistent with this chapter.  
3 Local laws and ordinances that are inconsistent with, more restrictive  
4 than, or exceed the requirements of this chapter shall not be enacted  
5 and are preempted and repealed, regardless of the nature of the code,  
6 charter, or home rule status of such county, city, town, or  
7 municipality.

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

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

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

25 NEW SECTION. **Sec. 9.** If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other  
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
30 preservation of the public peace, health, or safety, or support of the  
31 state government and its existing public institutions, and takes effect  
32 immediately.

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