
HOUSE BILL 1408

State of Washington

58th Legislature

2003 Regular Session

By Representatives McMahan, Carrell, Mielke, Hinkle, Benson, McDonald, Sump, Orcutt, Boldt, Kristiansen, Talcott, Schindler, Lovick, O'Brien, Roach, Bush, Bailey, Holmquist and Pearson

Read first time 01/24/2003. Referred to Committee on Judiciary.

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

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

7 NEW SECTION. **Sec. 1.** The legislature finds that sexually explicit
8 materials are harmful to the safety and well-being of children. Such
9 graphic materials contribute to increased sexual activity by children
10 along with higher rates of sexually transmitted diseases, illegitimate
11 pregnancies, and acts of sexual aggression by children against other
12 children. The legislature intends by this act to promote the safety
13 and well-being of children by limiting the ability of children to
14 access sexually explicit materials and to ensure the law reinforces and
15 supports the wishes of parents regarding their children's access to
16 such graphic materials.

17 NEW SECTION. **Sec. 2.** As used in sections 1 through 6 of this act,

1 the following terms have the meanings indicated unless the context
2 clearly requires otherwise.

3 (1) "Harmful to minors" means any matter or live performance:

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

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

10 (i) Ultimate sexual acts, normal or perverted, actual or simulated;
11 or

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

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

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

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

23 (3) "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) Videotape; or

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

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

35 (5) "Live performance" means any play, show, skit, dance, or other
36 exhibition performed or presented to or before an audience of one or
37 more, in person or by electronic transmission, or by telephonic
38 communication, with or without consideration.

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

2 (7) "Knowledge of its character" means that the person has
3 knowledge that the matter or performance contains, depicts, or
4 describes activity or conduct that may be found to be patently
5 offensive under subsection (1)(b) of this section. Such knowledge may
6 be proved by direct or circumstantial evidence, or both.

7 (8) "Minor" means any person under the age of eighteen years.

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

10 (10) "Sexual device" means any artificial device primarily
11 designed, promoted, or marketed to physically stimulate or manipulate
12 the human genitals.

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

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

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

24 NEW SECTION. **Sec. 3.** No person may with knowledge of its
25 character:

26 (1) Display matter that is harmful to minors in such a way that
27 minors, as part of the invited general public, will be exposed to view
28 the matter; however, a person is deemed not to have displayed matter
29 harmful to minors if:

30 (a) The matter is kept behind devices commonly known as blinder
31 racks so that the lower two-thirds of the matter is not exposed to
32 view; or

33 (b) In the case of an operator who transmits matter that is harmful
34 to minors via cable television transmissions, the operator first
35 notifies the subscriber of the availability of a device that allows a
36 subscriber to prohibit the viewing of a particular cable transmission;
37 or

1 (c) In the case of a person who provides a minor with access to a
2 computer containing matter that is harmful to minors stored locally, or
3 that can be connected to the internet, the computer is equipped with
4 specialized filtering software actively installed for the purpose of
5 protecting minors from accessing matter that is harmful to minors; or

6 (d) In the case of a person publishing a world wide web page
7 containing matter that is harmful to minors, the web page contains
8 codes or hidden comments that trigger the blocking mechanisms of any
9 browser-filtering software that is designed for the purpose of
10 protecting minors from accessing matter that is harmful to minors; or

11 (e) In the case of a person hosting or mirroring internet content
12 on servers located within the state of Washington, the person mandates
13 the inclusion in all web pages of codes or hidden comments that trigger
14 the blocking mechanisms of any browser-filtering software that is
15 designed for the purpose of protecting minors from accessing matter
16 that is harmful to minors; or

17 (f) In the case of a person providing electronic communications or
18 telecommunications access or connection to or from a facility, system,
19 or network, whether one-way or interactive, including transmission,
20 downloading, storage, navigational tools, and related capabilities that
21 are incidental to the provision of the electronic communications or
22 telecommunications access or connection, the person mandates the
23 inclusion in all web pages of codes or hidden comments that trigger the
24 blocking mechanisms of any browser-filtering software that is designed
25 for the purpose of protecting minors from accessing matter that is
26 harmful to minors;

27 (2) Sell, furnish, present, distribute, allow to view or hear, or
28 otherwise disseminate to a minor, with or without consideration, any
29 matter that is harmful to minors; or

30 (3) Present to a minor or participate in presenting to a minor,
31 with or without consideration, any live performance that is harmful to
32 minors.

33 NEW SECTION. **Sec. 4.** In any prosecution for violation of section
34 3 of this act, it is an affirmative defense that:

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

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 good faith attempt to ascertain
5 the true age of the minor by requiring production of a driver's
6 license, 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; or

11 (4) If engaged in the commercial distribution of material that is
12 harmful to minors by electronic or telephonic transmission, access by
13 persons under eighteen years of age is restricted by requiring use of
14 a verified credit card, debit account, adult access code, or adult
15 personal identification number before transmission of the material.

16 NEW SECTION. **Sec. 5.** (1) A person who is convicted of violating
17 section 3 of this act is guilty of a gross misdemeanor.

18 (2) Each day that a violation of section 3 of this act occurs or
19 continues is a separate offense and is punishable as a separate
20 violation.

21 (3) Every act, thing, or transaction prohibited by section 3 of
22 this act is a separate offense as to each item, issue, or title
23 involved and is punishable as such.

24 (4) For the purpose of this section, multiple copies of the same
25 identical title, monthly issue, volume, and number issue, or other such
26 identical material are a single offense.

27 NEW SECTION. **Sec. 6.** (1) The state of Washington fully occupies
28 and preempts within the boundaries of the state the entire field of
29 regulation and sanctions for displaying, selling, furnishing,
30 presenting, or otherwise distributing matter or performances that are
31 harmful to minors.

32 (2) Counties, cities, towns, or other municipalities may enact only
33 those laws and ordinances relating to matter and performances harmful
34 to minors that are consistent with this chapter.

35 (3) Local laws and ordinances that are inconsistent with, more
36 restrictive than, or exceed the requirements of this chapter may not be

1 enacted and are preempted and repealed, regardless of the nature of the
2 code, charter, or home rule status of such county, city, town, or
3 municipality.

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

6 (1) RCW 9.68.015 (Obscene literature, shows, etc.--Exemptions) and
7 1959 c 260 s 2;

8 (2) RCW 9.68.050 ("Erotic material"--Definitions) and 1992 c 5 s 1
9 & 1969 ex.s. c 256 s 13;

10 (3) RCW 9.68.060 ("Erotic material"--Determination by court--
11 Labeling--Penalties) and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;

12 (4) RCW 9.68.070 (Prosecution for violation of RCW 9.68.060--
13 Defense) and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;

14 (5) RCW 9.68.080 (Unlawful acts) and 1969 ex.s. c 256 s 16;

15 (6) RCW 9.68.090 (Civil liability of wholesaler or wholesaler-
16 distributor) and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;

17 (7) RCW 9.68.100 (Exceptions to RCW 9.68.050 through 9.68.120) and
18 1969 ex.s. c 256 s 18;

19 (8) RCW 9.68.110 (Motion picture operator or projectionist exempt,
20 when) and 1969 ex.s. c 256 s 19;

21 (9) RCW 9.68.120 (Provisions of RCW 9.68.050 through 9.68.120
22 exclusive) and 1969 ex.s. c 256 s 20;

23 (10) RCW 9.68.130 ("Sexually explicit material"--Defined--Unlawful
24 display) and 1975 1st ex.s. c 156 s 1;

25 (11) RCW 9.68A.140 (Definitions) and 1987 c 396 s 1;

26 (12) RCW 9.68A.150 (Allowing minor on premises of live erotic
27 performance) and 1987 c 396 s 2; and

28 (13) RCW 9.68A.160 (Penalty) and 1987 c 396 s 3.

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

31 NEW SECTION. **Sec. 9.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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