

*diem and travel allowances provided for such members by RCW 44.04.120, and each other member shall be entitled to allowances at rates equivalent thereto.*

\*Sec. 6 was vetoed, see message at end of chapter.

**\*NEW SECTION. Sec. 7.** *The commission may appoint such employees as may be needed, prescribe their duties, and fix their compensation within the amount appropriated for the commission.*

\*Sec. 7 was vetoed, see message at end of chapter.

**\*NEW SECTION. Sec. 8.** *The commission may enter into, amend, and terminate contracts with colleges, universities, schools of law, or other research institutions, or with qualified individuals for the purposes of research.*

\*Sec. 8 was vetoed, see message at end of chapter.

**NEW SECTION. Sec. 9.** The commission shall confer and coordinate its activities with any committees of the legislature, the state bar association, the uniform law commission, the statute law committee, or the judicial council so as to most efficiently accomplish its functions.

**NEW SECTION. Sec. 10.** There is added to chapter 41.06 RCW a new section to read as follows:

The provisions of this chapter do not apply to any position in or employee of the Washington law revision commission.

**NEW SECTION. Sec. 11.** Sections 1 through 9 of this act shall constitute a new chapter in Title 1 RCW.

Passed the House February 12, 1982.

Passed the Senate March 4, 1982.

Approved by the Governor April 1, 1982, with the exceptions of Sections 6, 7 and 8, which are vetoed.

Filed in Office of Secretary of State April 1, 1982.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to Sections 6, 7, and 8 House Bill No. 826 entitled:

"AN ACT Relating to the law revision commission."

This bill authorizes a new commission to propose reforms of our laws. The legislature, however, has not funded the Commission. I am vetoing those sections which authorize per diem, hiring of staff, and contracting with consultants because there are no supporting funds for those provisions."

## CHAPTER 184

[Substitute House Bill No. 626]

### PORNOGRAPHY AND MORAL NUISANCES—PENALTIES

AN ACT Relating to pornography and moral nuisances; adding a new chapter to Title 7 RCW; adding a new section to chapter 9.68 RCW; repealing section 118, page 96, Laws of 1854, section 124, page 226, Laws of 1869, section 130, page 210, Laws of 1873, section 850, Code of 1881, section 1, page 122, Laws of 1886, section 24, chapter 69, Laws

of 1891, section 207, chapter 249, Laws of 1909, section 1, chapter 260, Laws of 1959, section 1, chapter 146, Laws of 1961, section 1, chapter 92, Laws of 1969 and RCW 9.68.010; repealing section 209, chapter 249, Laws of 1909 and RCW 9.68.020; declaring an emergency; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Section 1. The definitions set forth in this section shall apply throughout this chapter.

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual or violent conduct which appears in the lewd matter, or knowledge of the acts of lewdness or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which explicitly depicts or describes patently offensive representations or descriptions of:

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

(ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or

(iii) Violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

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

(3) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(4) "Matter" shall mean a motion picture film or a publication or both.

(5) "Motion picture film" shall include any:

(a) Film or plate negative;

(b) Film or plate positive;

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

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

(e) Video tape or any other medium used to electronically reproduce images on a screen.

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

(7) "Place" includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(8) "Prurient" means that which incites lasciviousness or lust.

(9) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or coin-operated machine.

(10) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter.

NEW SECTION. Sec. 2. The following are declared to be moral nuisances:

(1) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(3) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(4) Every place which, as a regular course of business, is used for the purpose of lewdness or prostitution, and every such place in or upon which acts of lewdness or prostitution are conducted, permitted, carried on, continued, or exist.

NEW SECTION. Sec. 3. Any of the following parties may bring a civil action in the superior court of any county where a moral nuisance is alleged to have been maintained:

(1) The prosecuting attorney for the county where the alleged moral nuisance is located;

(2) The city attorney for the city where the alleged moral nuisance is located; or

(3) The attorney general.

The rules of evidence, burden of proof, and all other rules of court shall be the court rules generally applicable to civil cases in this state: PROVIDED, That the standard of proof on the issue of obscenity shall be clear, cogent, and convincing evidence.

NEW SECTION. Sec. 4. (1) No person shall with knowledge maintain a moral nuisance.

(2) Upon a determination that a defendant has with knowledge maintained a moral nuisance, the court shall impose a civil penalty and judgment of an amount as the court may determine to be appropriate. In imposing the civil penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the moral nuisance.

NEW SECTION. Sec. 5. All civil penalties assessed under section 4 of this act shall be paid into the general treasury of the governmental unit commencing the civil action.

NEW SECTION. Sec. 6. Nothing in this chapter applies to the circulation of any material by any recognized historical society or museum, any

library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act shall constitute a new chapter in Title 7 RCW.

NEW SECTION. Sec. 8. There is added to chapter 9.68 RCW a new section to read as follows:

A person who, for profit-making purposes and with knowledge, sells, exhibits, displays, or produces any lewd matter as defined in section 1 of this act is guilty of promoting pornography. Promoting pornography is a class C felony and shall bear the punishment prescribed for that class of felony, except that upon conviction of promoting pornography the court shall impose a fine of not less than five thousand dollars per count nor more than fifty thousand dollars per count. In imposing the criminal penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the felony. All fines assessed under this chapter shall be paid into the general treasury of the state.

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

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

NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:

(1) Section 118, page 96, Laws of 1854, section 124, page 226, Laws of 1869, section 130, page 210, Laws of 1873, section 850, Code of 1881, section 1, page 122, Laws of 1886, section 24, chapter 69, Laws of 1891, section 207, chapter 249, Laws of 1909, section 1, chapter 260, Laws of 1959, section 1, chapter 146, Laws of 1961, section 1, chapter 92, Laws of 1969 and RCW 9.68.010; and

(2) Section 209, chapter 249, Laws of 1909 and RCW 9.68.020.

Passed the House March 7, 1982.

Passed the Senate March 2, 1982.

Approved by the Governor April 1, 1982.

Filed in Office of Secretary of State April 1, 1982.