

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 384

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO MINORS; AMENDING SECTION 18-1514, IDAHO CODE, TO REVISE A DEFINITION,
2 TO DEFINE A TERM, AND TO MAKE A TECHNICAL CORRECTION; AMENDING
3 CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
4 18-1517B, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROHIBIT CERTAIN
5 MATERIALS FROM BEING PROMOTED, GIVEN, OR MADE AVAILABLE TO A MINOR BY A
6 SCHOOL OR PUBLIC LIBRARY, TO PROVIDE FOR A CAUSE OF ACTION, TO PROVIDE
7 FOR DAMAGES, TO PROVIDE FOR INJUNCTIVE RELIEF, TO PROVIDE FOR AFFIRMATIVE
8 DEFENSES, AND TO PROVIDE FOR HOW AN ACTION MAY BE BROUGHT; AND
9 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Section 18-1514, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 18-1514. OBSCENE MATERIALS -- DEFINITIONS. The following definitions
15 are applicable to this act:

- 16 1. "Minor" means any person less than eighteen (18) years of age.
- 17 2. "Nudity" means the showing of the human male or female genitals, pubic
18 area or buttocks with less than a full opaque covering, or the showing
19 of the female breast with less than a full opaque covering of any portion
20 thereof below the top of the nipple, or the depiction of covered male geni-
21 tals in a discernibly turgid state.
- 22 3. "Sexual conduct" means any act of masturbation, homosexuality, sex-
23 ual intercourse, or physical contact with a person's clothed or unclothed
24 genitals, pubic area, buttocks or, if such person be a female, the breast.
- 25 4. "Sexual excitement" means the condition of human male or female geni-
26 tals when in a state of sexual stimulation or arousal.
- 27 5. "Sado-masochistic abuse" means flagellation or torture by or upon a
28 person who is nude or clad in undergarments, a mask or bizarre costume, or the
29 condition of being fettered, bound or otherwise physically restrained on the
30 part of one who is nude or so clothed.
- 31 6. "Harmful to minors" includes in its meaning one or both of the fol-
32 lowing:
 - 33 (a) The quality of any material or of any performance or of any descrip-
34 tion or representation, in whatever form, of nudity, sexual conduct,
35 sexual excitement, or sado-masochistic abuse, when it:
 - 36 (1) ~~appeals~~ Appeals to the prurient interest of minors as judged
37 by the average person, applying contemporary community standards;
38 and
 - 39 (2) ~~depicts~~ Depicts or describes representations or descriptions
40 of nudity, sexual conduct, sexual excitement, or sado-masochistic
41 abuse which are patently offensive to prevailing standards in the
42 adult community with respect to what is suitable material for mi-

nors and includes, but is not limited to, patently offensive representations or descriptions of:

- (i) ~~intimate~~ Intimate sexual acts, normal or perverted, actual or simulated; or
- (ii) ~~masturbation,~~ Masturbation, excretory functions or lewd exhibition of the genitals or genital area. Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in context in which it is used, possesses serious literary, artistic, political or scientific value for minors, ~~according to prevailing standards in the adult community, with respect to what is suitable for minors.~~

(b) The quality of any material or of any performance, or of any description or representation, in whatever form, which, as a whole, has the dominant effect of substantially arousing sexual desires in persons under the age of eighteen (18) years.

7. "Material" means anything tangible which is harmful to minors, whether derived through the medium of reading, observation or sound.

8. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

9. "Promote" means to manufacture, issue, sell, give, provide, deliver, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

10. "Knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief ~~which~~ that warrants further inspection or inquiry.

11. "School" means any public or private school providing instruction for students in kindergarten through grade 12.

SECTION 2. That Chapter 15, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-1517B, Idaho Code, and to read as follows:

18-1517B. CHILDREN'S SCHOOL AND LIBRARY PROTECTION. (1) This section shall be known and may be cited as the "Children's School and Library Protection Act."

(2) Notwithstanding any other provision of law, a school or public library, or an agent thereof, shall not promote, give, or make available to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, or sado-masochistic abuse and that is harmful to minors;

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter pursuant to paragraph (a) of this subsection or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and that, taken as a whole, is harmful to minors; or

(c) Any other material harmful to minors.

(3) Any minor who obtains material, or parent or legal guardian whose child obtained material, in violation of the provisions of subsection (2)

1 of this section from a school or public library shall have a cause of action
2 against such institution if:

3 (a) The institution gave or made available material harmful to minors,
4 or the institution failed to take reasonable steps to restrict access by
5 minors to material harmful to minors;

6 (b) Prior to the filing of a cause of action, the minor, parent, or le-
7 gal guardian has provided written notice to the school or public library
8 asking for the relocation of such material to a section designated for
9 adults only within thirty (30) days of receipt of the written notice;
10 and

11 (c) Upon receipt of written notice and subsequent to the expiration of
12 thirty (30) days, the institution's library board or board of trustees
13 failed to relocate the material harmful to minors to an area with adult
14 access only.

15 (4) Any minor, parent, or legal guardian who prevails in an action
16 brought under this section may recover two hundred fifty dollars (\$250) in
17 statutory damages as well as actual damages and any other relief available
18 by law, including but not limited to injunctive relief sufficient to prevent
19 the defendant school or public library from violating the requirements of
20 this section.

21 (5) A county prosecuting attorney or the attorney general shall have a
22 cause of action for injunctive relief against any school or public library
23 that violates the provisions of subsection (2) of this section. The injunc-
24 tion shall be sufficient to prevent the defendant school or public library
25 from violating the requirements of this section.

26 (6) It shall be an affirmative defense to civil liability under this
27 section that the defendant:

28 (a) Had reasonable cause to believe that the minor involved was eigh-
29 teen (18) years of age or older or such minor exhibited to the defendant
30 a draft card, driver's license, birth certificate, or other official or
31 apparently official document purporting to establish that the minor was
32 eighteen (18) years of age or older; or

33 (b) Verified the minor involved was accompanied, at the time of the act,
34 by his parent or legal guardian, or by another adult and the adult rep-
35 resented that he was the minor's parent or legal guardian and signed a
36 written statement to that effect.

37 (7) Any action brought pursuant to this section by or on behalf of a mi-
38 nor shall be in accordance with the provisions of chapter 9, title 6, Idaho
39 Code, section 5-306, Idaho Code, and rule 17 of the Idaho rules of civil pro-
40 cedure.

41 SECTION 3. An emergency existing therefor, which emergency is hereby
42 declared to exist, this act shall be in full force and effect on and after
43 July 1, 2024.