

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 448

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO BREASTFEEDING; AMENDING SECTION 18-4101, IDAHO CODE, TO PROVIDE
2 AN EXEMPTION FOR THE BREASTFEEDING OF A CHILD AND TO MAKE TECHNICAL COR-
3 RECTIONS; AND AMENDING SECTION 18-4116, IDAHO CODE, TO PROVIDE AN EX-
4 EMPTION FOR THE BREASTFEEDING OF A CHILD AND TO MAKE A TECHNICAL CORREC-
5 TION.
6

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

8 SECTION 1. That Section 18-4101, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 18-4101. DEFINITIONS. The following definitions are applicable to
11 this act:

12 (A) "Obscene" material" means any matter:

13 (1) ~~w~~Which the average person, applying contemporary community stan-
14 dards, would find, when considered as a whole, appeals to the prurient
15 interest; and

16 (2) ~~w~~Which depicts or describes patently offensive representations or
17 descriptions of:

18 (a) ~~u~~Ultimate sexual acts, normal or perverted, actual or simu-
19 lated; or

20 (b) ~~m~~Masturbation, excretory functions, or lewd exhibition of the
21 genitals or genital area.

22 Nothing herein contained is intended to include or proscribe any matter
23 which, when considered as a whole, and in the context in which it is used,
24 possesses serious literary, artistic, political or scientific value.

25 In prosecutions under this act, where circumstances of production, pre-
26 sentation, sale, dissemination, or publicity indicate that the matter is be-
27 ing commercially exploited by the defendant for the sake of its prurient ap-
28 peal, such evidence is probative with respect to the nature of the matter and
29 can justify the conclusion that, in the context in which it is used, the mat-
30 ter has no serious literary, artistic, political, or scientific value.

31 (B) "Prurient interest" means a shameful or morbid interest in nudity,
32 sex, or excretion, which goes substantially beyond customary limits of can-
33 dor in description or representation of such matters. If it appears from the
34 character of the material or the circumstances of its dissemination that the
35 subject matter is designed for a specially susceptible audience or clearly
36 defined deviant sexual group, the appeal of the subject matter shall be
37 judged with reference to such audience or group.

38 (C) "Matter" or "material" means any book, magazine, newspaper, or
39 other printed or written material; or any picture, drawing, photograph, mo-
40 tion picture, or other pictorial representation; or any statue or other fig-
41 ure; or any recording, transcription, or mechanical, chemical, or electri-
42 cal reproduction; or any other articles, equipment, machines, or materials.

1 (D) "Person" means any individual, partnership, firm, association,
2 corporation, or other legal entity; or any agent or servant thereof.

3 (E) "Distribute" means to transfer possession of, whether with or with-
4 out consideration, by any means.

5 (F) "Knowingly" means having actual or constructive knowledge of the
6 character of the subject matter or live conduct. A person shall be deemed to
7 have constructive knowledge of the character of the subject matter or live
8 conduct if he has knowledge of facts which would put a reasonable and prudent
9 man on notice as to the suspect nature of the matter, and the failure to in-
10 spect the contents is either for the purpose of avoiding such disclosure or
11 is due to reckless conduct.

12 (G) "Reckless conduct" is conduct which consciously disregards a sub-
13 stantial and unjustifiable risk that matter may be obscene. The risk must be
14 of such a nature and degree that, considering the nature and purpose of the
15 actor's conduct and the circumstances known to him, its disregard involves
16 a gross deviation from the standard of conduct that an average law-abiding
17 person would observe in the actor's situation under like circumstances.

18 (H) "Exhibit" means to show or display.

19 (I) "Obscene live conduct" means any physical human body activity,
20 whether performed or engaged in alone or with other persons, including but
21 not limited to singing, speaking, dancing, acting, simulating, or pantomim-
22 ing, where:

23 (1) ~~u~~The average person, applying contemporary community standards,
24 would find such conduct, when considered as a whole, appeals to the
25 prurient interest; and

26 (2) ~~u~~The conduct is patently offensive because it consists of:

27 (a) ~~u~~Ultimate sexual acts, normal or perverted, actual or simu-
28 lated; or

29 (b) ~~m~~Masturbation, excretory functions, or lewd exhibition of the
30 genitals or genital area.

31 Nothing herein contained is intended to include or proscribe any con-
32 duct which, when considered as a whole, and in the context in which it is
33 used, possesses serious literary, artistic, political or scientific value.
34 In prosecutions under this act, where circumstances of production, presen-
35 tation, advertising, or exhibition indicate that live conduct is being com-
36 mercially exploited by the defendant for the sake of its prurient appeal,
37 such evidence is probative with respect to the nature of the conduct and can
38 justify the conclusion that, in the context in which it is used, the matter
39 has no serious literary, artistic, political or scientific value. Nothing
40 herein contained is intended to include or proscribe the breastfeeding of a
41 child or the expression of breast milk for the purpose of feeding a child.

42 SECTION 2. That Section 18-4116, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 18-4116. INDECENT EXPOSURE. Every person who willfully and lewdly,
45 either:

46 (1) Exposes his or her genitals, in any public place, or in any place
47 where there is present another person or persons who are offended or annoyed
48 thereby; or

1 (2) Procures, counsels, or assists any person so to expose his or her
2 genitals, where there is present another person or persons who are offended
3 or annoyed thereby is guilty of a misdemeanor.

4 Any person who pleads guilty to or is found guilty of a violation of
5 subsection (1) or (2) of this section or a similar statute in another state
6 or any local jurisdiction for a second time within five (5) years, notwith-
7 standing the form of the judgment(s) or withheld judgment(s), is guilty of a
8 felony and shall be imprisoned in the state prison for a period not to exceed
9 ten (10) years.

10 The provisions of this section shall not apply to the breastfeeding of a
11 child or the expression of breast milk for the purpose of feeding a child.