

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 139

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO MINORS; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 66, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO ESTABLISH PROVISIONS REGARDING A CERTAIN POLICY FOR SCHOOLS AND LIBRARIES, AND TO PROVIDE FOR A CIVIL CAUSE OF ACTION; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 66, Title 33, Idaho Code, and to read as follows:

CHAPTER 66

CHILDREN'S SCHOOL AND LIBRARY PROTECTION ACT

33-6601. SHORT TITLE. This chapter shall be known as and may be cited as the "Children's School and Library Protection Act."

33-6602. DEFINITIONS. As used in this chapter:

(1) "Harmful to minors" includes in its meaning one or both of the following:

(a) The quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:

(i) Appeals to the prurient interest of minors as judged by the average person, applying contemporary community standards; and

(ii) Depicts or describes representations or descriptions of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse that are patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors and includes but is not limited to patently offensive representations or descriptions of:

1. Intimate sexual acts, normal or perverted, actual or simulated; or

2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area. Nothing in this section is intended to include or proscribe any matter that, when considered as a whole and in the 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; or

(b) The depictions of any material or any performance, or any description or representation in whatever form, that, as a whole, has the dom-

1 inant effect of substantially arousing sexual desires in persons under
2 eighteen (18) years of age.

3 (2) "Material" means anything tangible that is harmful to minors,
4 whether derived through the medium of reading, observation, or sound.

5 (3) "Minor" means any person under eighteen (18) years of age.

6 (4) "Nudity" means the showing of the human male or female genitals,
7 pubic area, or buttocks with less than a full opaque covering, or the show-
8 ing of the female breast with less than a full opaque covering of any portion
9 thereof below the top of the nipple, or the depiction of covered male geni-
10 tals in a discernibly turgid state.

11 (5) "Performance" means any play, motion picture, dance, or other exhi-
12 bition performed before an audience.

13 (6) "Promote" means to manufacture, issue, sell, give, provide, de-
14 liver, publish, distribute, circulate, disseminate, present, exhibit, or
15 advertise, or to offer or agree to do the same.

16 (7) "Sado-masochistic abuse" means flagellation or torture by or upon
17 a person who is nude or clad in undergarments, a mask or bizarre costume, or
18 the condition of being fettered, bound, or otherwise physically restrained
19 on the part of one who is nude or so clothed.

20 (8) "School" means any public or private school providing instruction
21 for students in grades K-12.

22 (9) "Sexual conduct" means any act of masturbation, homosexuality,
23 sexual intercourse, or physical contact with a person's clothed or unclothed
24 genitals, pubic area, buttocks, or, if such person is female, the breast.

25 (10) "Sexual excitement" means the condition of human male or female
26 genitals when in a state of sexual stimulation or arousal.

27 33-6603. POLICY. A school or public library, or an agent thereof,
28 shall not promote, give, or make available to a minor:

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

33 (2) Any book, pamphlet, magazine, printed matter however reproduced,
34 or sound recording that contains any matter pursuant to subsection (1) of
35 this section, or explicit and detailed verbal descriptions or narrative ac-
36 counts of sexual excitement, sexual conduct, or sado-masochistic abuse, and
37 that, taken as a whole, is harmful to minors; or

38 (3) Any other material harmful to minors.

39 33-6604. CIVIL CAUSE OF ACTION. (1) Any minor who obtains material or
40 parent or legal guardian whose child obtained material in violation of sec-
41 tion 33-6603, Idaho Code, from a school or public library shall have a pri-
42 vate cause of action against such institution if:

43 (a) Employees or agents of the institution gave or made available mate-
44 rial harmful to minors; or

45 (b) The institution failed to take reasonable steps to restrict access
46 to material harmful to minors.

47 (2) Any civil action arising under this section must be commenced
48 within four (4) years after the act has occurred.

1 (3) Any minor, parent, or legal guardian who prevails in an action
2 brought under this section may recover ten thousand dollars (\$10,000) in
3 statutory damages for each instance in which they obtained material harmful
4 to minors. The minor, parent, or legal guardian may also recover actual dam-
5 ages and any other relief available by law.

6 (4) Any minor, parent, or legal guardian who prevails in an action
7 brought under this section is entitled to recover reasonable attorney's fees
8 and costs from the defendant institution.

9 (5) It is an affirmative defense to civil liability under this section
10 that the defendant:

11 (a) Had reasonable cause to believe that the minor involved was eigh-
12 teen (18) years old or older, or such minor exhibited to the defendant
13 a draft card, driver's license, birth certificate, or other official or
14 apparently official document purporting to establish that the minor was
15 eighteen (18) years of age or older; or

16 (b) Verified the minor involved was accompanied, at the time of the act,
17 by his parent or legal guardian, or by an adult and the adult represented
18 that he was the minor's parent or guardian or an adult and signed a writ-
19 ten statement to that effect.

20 SECTION 2. An emergency existing therefor, which emergency is hereby
21 declared to exist, this act shall be in full force and effect on and after
22 July 1, 2023.