

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 265

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO SEXUAL EXHIBITIONS; AMENDING TITLE 6, IDAHO CODE, BY THE ADDI-
2 TION OF A NEW CHAPTER 36, TITLE 6, IDAHO CODE, TO PROVIDE THAT CERTAIN
3 PERSONS AND INSTITUTIONS MUST TAKE REASONABLE STEPS TO RESTRICT THE AC-
4 CESS OF MINORS IN CERTAIN INSTANCES, TO PROVIDE FOR A CIVIL ACTION IN
5 CERTAIN INSTANCES, TO PROVIDE FOR DAMAGES, TO PROVIDE FOR AN AFFIRMA-
6 TIVE DEFENSE, TO PROVIDE THAT A PARENT OR LEGAL GUARDIAN ACCOMPANYING A
7 MINOR SHALL NOT BE A DEFENSE, TO DEFINE TERMS, AND TO PROVIDE SEVERABIL-
8 ITY; AMENDING CHAPTER 23, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW
9 SECTION 67-2359, IDAHO CODE, TO PROHIBIT THE USE OF PUBLIC FACILITIES
10 AND PUBLIC ASSETS FOR SEXUAL EXHIBITIONS AND TO PROVIDE A PENALTY; AND
11 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
12

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

14 SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
16 ter 36, Title 6, Idaho Code, and to read as follows:

17 CHAPTER 36

18 SEXUAL EXHIBITIONS -- CIVIL ACTION

19 6-3601. SEXUAL EXHIBITIONS -- CIVIL ACTION. (1) Any person or institu-
20 tion that knowingly promotes, conducts, performs, or participates in a show,
21 exhibition, or performance by a live person before an audience must take rea-
22 sonable steps to restrict the access of minors if:

23 (a) The person or institution has reason to believe that minors are
24 likely to be present;

25 (b) The show, exhibition, or performance involves live persons engaged
26 in sexual conduct; and

27 (c) The show, exhibition, or performance is patently offensive to an
28 average person applying contemporary community standards in the adult
29 community as a whole with respect to what is suitable for minors.

30 (2) Any minor, or a parent or legal guardian of such minor, who is ex-
31 posed to sexual conduct as a result of a violation of subsection (1) of this
32 section shall have a private cause of action against the person or institu-
33 tion that failed to take reasonable steps to restrict the access of minors.

34 (3) Any civil action arising under this section must be commenced
35 within four (4) years after the act has occurred.

36 (4) Any minor, or a parent or legal guardian of such minor, who pre-
37 vails in an action brought under this section may recover ten thousand dol-
38 lars (\$10,000) in statutory damages for each violation of this section. The
39 minor, or a parent or legal guardian of such minor, may also recover monetary
40 damages from the defendant for all psychological, emotional, economic, and
41 physical harm suffered.

1 (5) Any minor, or a parent or legal guardian of such minor, who prevails
2 in an action brought under this section is entitled to recover reasonable at-
3 torney's fees and costs from the defendant.

4 (6) It shall be an affirmative defense to an action brought under the
5 provisions of this section that the defendant had reasonable cause to be-
6 lieve that the minor involved was eighteen (18) years of age or older, or such
7 minor exhibited to the defendant a draft card, driver's license, birth cer-
8 tificate, or other official or apparently official document purporting to
9 establish that the minor was eighteen (18) years of age or older.

10 (7) It is not a defense to an action brought under this section that the
11 minor was accompanied by the minor's parent or legal guardian.

12 (8) For purposes of this section:

13 (a) "Minor" means any person less than eighteen (18) years of age.

14 (b) "Sexual conduct" means:

15 (i) Acts, whether actual or simulated, of masturbation, sexual
16 intercourse, or physical contact with a person's unclothed geni-
17 tals or pubic area;

18 (ii) Sexually explicit descriptions of acts described in subpara-
19 graph (i) of this paragraph; or

20 (iii) Sexually provocative dances or gestures performed with ac-
21 cessories that exaggerate male or female primary or secondary sex-
22 ual characteristics.

23 (9) The provisions of this section are hereby declared to be severable
24 and if any provision of this section or the application of such provision to
25 any person or circumstance is declared invalid for any reason, such declara-
26 tion shall not affect the validity of the remaining portions of this section.

27 SECTION 2. That Chapter 23, Title 67, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 67-2359, Idaho Code, and to read as follows:

30 67-2359. USE OF PUBLIC FACILITIES AND PUBLIC ASSETS FOR SEXUAL EXHIBI-
31 TIONS PROHIBITED. (1) No public institution, public facility, public equip-
32 ment, or other physical asset owned, leased, or controlled by this state, a
33 county, a city, a public health district, or any local political subdivi-
34 sion or agency thereof shall be used for the purpose of shows, exhibitions,
35 or performances that involve live persons engaged in sexual conduct, as de-
36 fined in section 6-3601, Idaho Code.

37 (2) No public institution or facility shall lease, sell, or permit the
38 subleasing of its facilities or property for the purpose of shows, exhibi-
39 tions, or performances that involve live persons engaged in sexual conduct,
40 as defined in section 6-3601, Idaho Code.

41 (3) No public funds made available by the state, a county, a city, a pub-
42 lic health district, or any local political subdivision or agency thereof
43 and distributed by any institution, board, commission, department, agency,
44 official, or employee of the state, a county, a city, a public health dis-
45 trict, or any local political subdivision or agency thereof shall be used in
46 any way to provide or assist in the provision of shows, exhibitions, or per-
47 formances that involve live persons engaged in sexual conduct, as defined in
48 section 6-3601, Idaho Code.

1 (4) Any knowing violation of the provisions of this section by a public
2 officer or public employee shall be considered a misuse of public moneys and
3 shall be subject to punishment pursuant to section 18-5702, Idaho Code.

4 SECTION 3. An emergency existing therefor, which emergency is hereby
5 declared to exist, this act shall be in full force and effect on and after
6 July 1, 2023.