

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 710, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO MINORS; AMENDING SECTION 18-1514, IDAHO CODE, TO REVISE A DEF-
2 INITIATION, TO DEFINE A TERM, AND TO MAKE A TECHNICAL CORRECTION; AMEND-
3 ING 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 MA-
5 TERIALS 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 AFFIRMA-
8 TIVE DEFENSES, TO PROVIDE FOR A FORM ALLOWING A PERSON TO REQUEST REVIEW
9 OF MATERIAL THE PERSON CONSIDERS TO BE HARMFUL TO MINORS, AND TO PROVIDE
10 FOR HOW AN ACTION MAY BE BROUGHT; AND DECLARING AN EMERGENCY AND PROVID-
11 ING AN EFFECTIVE DATE.
12

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

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

16 18-1514. OBSCENE MATERIALS -- DEFINITIONS. The following definitions
17 are applicable to this act:

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

19 2. "Nudity" means the showing of the human male or female genitals, pu-
20 blic area or buttocks with less than a full opaque covering, or the showing
21 of the female breast with less than a full opaque covering of any portion
22 thereof below the top of the nipple, or the depiction of covered male geni-
23 tals in a discernibly turgid state.

24 3. "Sexual conduct" means any act of masturbation, homosexuality, sex-
25 ual intercourse, or physical contact with a person's clothed or unclothed
26 genitals, pubic area, buttocks or, if such person be a female, the breast.

27 4. "Sexual excitement" means the condition of human male or female gen-
28 itals when in a state of sexual stimulation or arousal.

29 5. "Sado-masochistic abuse" means flagellation or torture by or upon a
30 person who is nude or clad in undergarments, a mask or bizarre costume, or the
31 condition of being fettered, bound or otherwise physically restrained on the
32 part of one who is nude or so clothed.

33 6. "Harmful to minors" includes in its meaning ~~one or both of the fol-~~
34 ~~lowing:~~

35 ~~(a) The the~~ quality of any material or of any performance or of any de-
36 scription or representation, in whatever form, of nudity, sexual con-
37 duct, sexual excitement, or sado-masochistic abuse, when it:

38 ~~(1) (a) appeals~~ Appeals to the prurient interest of minors as judged by
39 the average person, applying contemporary community standards; and

40 ~~(2) (b) depicts~~ Depicts or describes representations or descriptions
41 of nudity, sexual conduct, sexual excitement, or sado-masochistic
42 abuse which are patently offensive to prevailing standards in the adult

1 community with respect to what is suitable material for minors and in-
 2 cludes, but is not limited to, patently offensive representations or
 3 descriptions of:

4 (i) ~~intimate~~ Intimate sexual acts, normal or perverted, actual or
 5 simulated; or

6 (ii) ~~masturbation,~~ Masturbation, excretory functions or lewd
 7 exhibition of the genitals or genital area. Nothing herein con-
 8 tained is intended to include or proscribe any matter which, when
 9 considered as a whole, and in context in which it is used, pos-
 10 sesses serious literary, artistic, political or scientific value
 11 for minors, ~~according to prevailing standards in the adult commu-~~
 12 ~~nity, with respect to what is suitable for minors.~~

13 ~~(b) The quality of any material or of any performance, or of any de-~~
 14 ~~scription or representation, in whatever form, which, as a whole, has~~
 15 ~~the dominant effect of substantially arousing sexual desires in persons~~
 16 ~~under the age of eighteen (18) years.~~

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

19 8. "Performance" means any play, motion picture, dance or other exhibi-
 20 tion performed before an audience.

21 9. "Promote" means to manufacture, issue, sell, give, provide, de-
 22 liver, publish, distribute, circulate, disseminate, present, exhibit or
 23 advertise, or to offer or agree to do the same.

24 10. "Knowingly" means having general knowledge of, or reason to know, or
 25 a belief or reasonable ground for belief ~~which~~ that warrants further inspec-
 26 tion or inquiry.

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

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

32 18-1517B. CHILDREN'S SCHOOL AND LIBRARY PROTECTION. (1) This section
 33 shall be known and may be cited as the "Children's School and Library Protec-
 34 tion Act."

35 (2) Notwithstanding any other provision of law, a school or public li-
 36 brary, or an agent thereof, shall not promote, give, or make available to a
 37 minor:

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

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

47 (c) Any other material harmful to minors.

48 (3) Any minor who obtains material, or parent or legal guardian whose
 49 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 sixty (60) days of receipt of the written notice; and

10 (c) Upon receipt of written notice and subsequent to the expiration of
11 sixty (60) days, the institution's library board or board of trustees
12 failed to relocate the material harmful to minors to an area with adult
13 access only.

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

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

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

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

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

36 (7) Each school and public library shall have a policy and readily ac-
37 cessible form allowing a person to request review of material the person con-
38 siders to be harmful to minors. Such form shall contain the definition of
39 "harmful to minors," as provided in section 18-1514, Idaho Code.

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

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