LEGISLATURE OF THE STATE OF IDAHO
Sixty-seventh Legislature First Regular Session - 2023

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 Chap-
ter 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 fol-
lowing:
(a) The quality of any material or of any performance or of any descrip-
tion 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 rep-
resentations or descriptions of:
1. Intimate sexual acts, normal or perverted, actual or sim-
ulated; 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 con-
sidered as a whole and in the context in which it is used,
possesses serious literary, artistic, political, or scient-
ific value for minors, according to prevailing standards in
the adult community, with respect to what is suitable for mi-

(b) The depictions of any material or any performance, or any descrip-
tion or representation in whatever form, that, as a whole, has the dom-
The effect of substantially arousing sexual desires in persons under eighteen (18) years of age.

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

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

(4) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

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

(6) "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.

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

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

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

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

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

(1) 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;

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter pursuant to subsection (1) of this section, 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

(3) Any other material harmful to minors.

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

(a) Employees or agents of the institution gave or made available material harmful to minors; or

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

(2) Any civil action arising under this section must be commenced within four (4) years after the act has occurred.
(3) Any minor, parent, or legal guardian who prevails in an action brought under this section may recover ten thousand dollars ($10,000) in statutory damages for each instance in which they obtained material harmful to minors. The minor, parent, or legal guardian may also recover actual damages and any other relief available by law.

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

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

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

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

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