

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 314, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO MINORS; AMENDING SECTION 18-1514, IDAHO CODE, TO REVISE A DEFINITION AND TO DEFINE A TERM; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, 2 BY THE ADDITION OF A NEW SECTION 18-1517B, IDAHO CODE, TO PROVIDE A SHORT 3 TITLE, TO PROHIBIT CERTAIN MATERIALS FROM BEING PROMOTED, GIVEN, OR 4 MADE AVAILABLE TO A MINOR BY A SCHOOL OR PUBLIC LIBRARY, TO PROVIDE A 5 CAUSE OF ACTION, TO PROVIDE FOR DAMAGES, TO PROVIDE FOR INJUNCTIVE RE- 6 LIEF, TO PROVIDE AFFIRMATIVE DEFENSES, AND TO PROVIDE FOR HOW AN ACTION 7 MAY BE BROUGHT; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE 8 DATE. 9 10

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

12 SECTION 1. That Section 18-1514, Idaho Code, be, and the same is hereby 13 amended to read as follows:

14 18-1514. OBSCENE MATERIALS -- DEFINITIONS. The following definitions 15 are applicable to this act:

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

17 2. "Nudity" means the showing of the human male or female genitals, pu- 18 blic area or buttocks with less than a full opaque covering, or the showing 19 of the female breast with less than a full opaque covering of any portion 20 thereof below the top of the nipple, or the depiction of covered male geni- 21 tals in a discernibly turgid state.

22 3. "Sexual conduct" means any act of masturbation, homosexuality, sex- 23 ual intercourse, or physical contact with a person's clothed or unclothed 24 genitals, pubic area, buttocks or, if such person be a female, the breast.

25 4. "Sexual excitement" means the condition of human male or female gen- 26 itals when in a state of sexual stimulation or arousal.

27 5. "Sado-masochistic abuse" means flagellation or torture by or upon a 28 person who is nude or clad in undergarments, a mask or bizarre costume, or the 29 condition of being fettered, bound or otherwise physically restrained on the 30 part of one who is nude or so clothed.

31 6. "Harmful to minors" includes in its meaning one or both of the fol- 32 lowing:

33 (a) The quality of any material or of any performance or of any descrip- 34 tion or representation, in whatever form, of nudity, sexual conduct, 35 sexual excitement, or sado-masochistic abuse, when it:

36 (1) appeals to the prurient interest of minors as judged by the 37 average person, applying contemporary community standards; and

38 (2) depicts or describes representations or descriptions of nu- 39 dity, sexual conduct, sexual excitement, or sado-masochistic 40 abuse which are patently offensive to prevailing standards in 41 the adult community with respect to what is suitable material for

1 minors and includes, but is not limited to, patently offensive
2 representations or descriptions of:

3 (i) intimate sexual acts, normal or perverted, actual or
4 simulated; or

5 (ii) masturbation, excretory functions or lewd exhibition
6 of the genitals or genital area. Nothing herein contained
7 is intended to include or proscribe any matter which, when
8 considered as a whole, and in context in which it is used,
9 possesses serious literary, artistic, political or scien-
10 tific value for minors, ~~according to prevailing standards in~~
11 ~~the adult community, with respect to what is suitable for mi-~~
12 ~~norers.~~

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 warrants further inspection
26 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) Employees or agents of the institution gave or made available mate-
4 rial harmful to minors; or

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

7 (4) Any minor, parent, or legal guardian who prevails in an action
8 brought under this section may recover two thousand five hundred dollars
9 (\$2,500) in statutory damages as well as actual damages and any other relief
10 available by law, including but not limited to injunctive relief sufficient
11 to prevent the defendant school or public library from violating the re-
12 quirements of this section.

13 (5) A county prosecuting attorney or the attorney general shall have a
14 cause of action for injunctive relief against any school or public library
15 that has violated the provisions of subsection (2) of this section. The in-
16 junction shall be sufficient to prevent the defendant school or public li-
17 brary from violating the requirements of this section.

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

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

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

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

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