

IN THE SENATE

SENATE BILL NO. 1214

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, TO PROVIDE FOR AN ACTION  
8 BY THE ATTORNEY GENERAL OR A PROSECUTING ATTORNEY, AND TO PROVIDE SEVER-  
9 ABILITY; AMENDING CHAPTER 23, TITLE 67, IDAHO CODE, BY THE ADDITION OF  
10 A NEW SECTION 67-2359, IDAHO CODE, TO PROHIBIT THE USE OF PUBLIC FACIL-  
11 ITIES AND PUBLIC ASSETS FOR SEXUAL EXHIBITIONS; AND DECLARING AN EMER-  
12 GENCY AND PROVIDING AN EFFECTIVE DATE.  
13

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

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

18 CHAPTER 36

19 SEXUAL EXHIBITIONS -- CIVIL ACTION

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

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

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

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

31 (2) (a) Any minor, or a parent or legal guardian of such minor, who is  
32 exposed to sexual conduct as a result of a violation of subsection (1)  
33 of this section shall have a civil cause of action against the person or  
34 institution that failed to take reasonable steps to restrict the access  
35 of minors.

36 (b) Any minor, or parent or legal guardian of such minor, who prevails  
37 in an action pursuant to this subsection shall recover five thousand  
38 dollars (\$5,000) in statutory damages as well as actual damages and any  
39 other relief available by law.

1 (c) Any action brought pursuant to this subsection by or on behalf of a  
2 minor shall be in accordance with the provisions of section 5-306, Idaho  
3 Code, and rule 17 of the Idaho rules of civil procedure.

4 (d) Any action brought pursuant to this subsection against this state,  
5 a county, a city, a public health district, or any local political sub-  
6 division of the state shall be in accordance with chapter 9, title 6,  
7 Idaho Code.

8 (3) Any person or institution who knowingly violated or is violating  
9 the provisions of subsection (1) of this section may be subject to an action  
10 brought by the attorney general or a prosecuting attorney pursuant to sec-  
11 tion 6-3602, Idaho Code.

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

18 (5) It is not a defense to an action brought under this chapter that the  
19 minor was accompanied by the minor's parent or legal guardian.

20 (6) For purposes of this section:

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

22 (b) "Sexual conduct" means:

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

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

28 (iii) Sexually provocative dances or gestures performed with ac-  
29 cessories that exaggerate male or female primary or secondary sex-  
30 ual characteristics.

31 6-3602. ACTION BY THE ATTORNEY GENERAL OR PROSECUTING ATTORNEY. When-  
32 ever the attorney general or a prosecuting attorney has reason to believe  
33 that a person or institution has knowingly violated or is violating the pro-  
34 visions of section 6-3601, Idaho Code, the attorney general or a prosecuting  
35 attorney, acting in the public interest, may bring an action against the per-  
36 son or institution:

37 (1) To enjoin any action that constitutes a violation of section  
38 6-3601, Idaho Code, by issuance of a temporary restraining order or prelimi-  
39 nary or permanent injunction;

40 (2) To recover from the alleged violator a civil penalty not to exceed  
41 five thousand dollars (\$5,000) per violation and not to exceed a total of  
42 twenty thousand dollars (\$20,000) in aggregate, as determined by the court;  
43 and

44 (3) To obtain other appropriate relief as provided for under this chap-  
45 ter.

46 6-3603. SEVERABILITY. The provisions of this chapter are hereby de-  
47 clared to be severable and if any provision of this chapter or the applica-  
48 tion of such provision to any person or circumstance is declared invalid for

1 any reason, such declaration shall not affect the validity of the remaining  
2 portions of this chapter.

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

6 67-2359. USE OF PUBLIC FACILITIES AND PUBLIC ASSETS FOR SEXUAL EXHI-  
7 BITIONS PROHIBITED. No public funds, public institution, public facility,  
8 public equipment, or other physical asset made available, owned, leased, or  
9 controlled by this state, a county, a city, a public health district, or any  
10 local political subdivision or agency thereof shall be used for the purpose  
11 of shows, exhibitions, or performances that involve live persons engaged in  
12 a sexual exhibition, as described in section 6-3601(1), Idaho Code.

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