LEGISLATURE OF THE STATE OF IDAHO
Sixty-seventh Legislature Second Regular Session - 2024

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 710

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO MINORS; AMENDING SECTION 18-1514, IDAHO CODE, TO REVISE A DEFINITION, TO DEFINE A TERM, AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1517B, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROHIBIT CERTAIN MATERIALS FROM BEING PROMOTED, GIVEN, OR MADE AVAILABLE TO A MINOR BY A SCHOOL OR PUBLIC LIBRARY, TO PROVIDE FOR A CAUSE OF ACTION, TO PROVIDE FOR DAMAGES, TO PROVIDE FOR INJUNCTIVE RELIEF, TO PROVIDE FOR AFFIRMATIVE DEFENSES, TO PROVIDE FOR A FORM ALLOWING A PERSON TO REQUEST REVIEW OF MATERIAL THE PERSON CONSIDERS TO BE HARMFUL TO MINORS, AND TO PROVIDE FOR HOW AN ACTION MAY BE BROUGHT; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

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

18-1514. OBScene MATERIALS -- DEFINITIONS. The following definitions are applicable to this act:

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

2. "Nudity" means the showing of the human male or female genitals, public 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.

3. "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 be a female, the breast.

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

5. "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.

6. "Harmful to minors" includes in its meaning one or both of the following:

(a) The the quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:
   (1) (a) [appeals] [appeals] to the prurient interest of minors as judged by the average person, applying contemporary community standards; and
   (2) [depicts] [depicts or describes] represents or descriptions of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse which 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 representations or descriptions of:

(i) intimate Sexual acts, normal or perverted, actual or simulated; or
(ii) masturbation. Masturbation, excretory functions or lewd exhibition of the genitals or genital area. Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in context in which it is used, possesses serious literary, artistic, political or scientific value for minors, according to prevailing standards in the adult community, with respect to what is suitable for minors.

(b) The quality of any material or of any performance, or of any description or representation, in whatever form, which, as a whole, has the dominant effect of substantially arousing sexual desires in persons under the age of eighteen (18) years.

7. "Material" means anything tangible which is harmful to minors, whether derived through the medium of reading, observation or sound.
8. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.
9. "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.
10. "Knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry.
11. "School" means any public or private school providing instruction for students in kindergarten through grade 12.

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

18-1517B. CHILDREN'S SCHOOL AND LIBRARY PROTECTION. (1) This section shall be known and may be cited as the "Children's School and Library Protection Act."
(2) Notwithstanding any other provision of law, a school or public library, or an agent thereof, shall not promote, give, or make available to a minor:
(a) 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;
(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter pursuant to paragraph (a) of this subsection 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
(c) Any other material harmful to minors.
(3) Any minor who obtains material, or parent or legal guardian whose child obtained material, in violation of the provisions of subsection (2)
of this section from a school or public library shall have a cause of action against such institution if:

(a) The institution gave or made available material harmful to minors, or the institution failed to take reasonable steps to restrict access by minors to material harmful to minors;
(b) Prior to the filing of a cause of action, the minor, parent, or legal guardian has provided written notice to the school or public library asking for the relocation of such material to a section designated for adults only within thirty (30) days of receipt of the written notice; and
(c) Upon receipt of written notice and subsequent to the expiration of thirty (30) days, the institution's library board or board of trustees failed to relocate the material harmful to minors to an area with adult access only.

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

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

(6) It shall be 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 of age 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 another adult and the adult represented that he was the minor's parent or legal guardian and signed a written statement to that effect.

(7) Each school and public library shall have a readily accessible form allowing a person to request review of material the person considers to be harmful to minors. Such form shall contain the definition of "harmful to minors," as provided in section 18-1514, Idaho Code.

(8) Any action brought pursuant to this section by or on behalf of a minor shall be in accordance with the provisions of chapter 9, title 6, Idaho Code, section 5-306, Idaho Code, and rule 17 of the Idaho rules of civil procedure.

SECTION 3. 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, 2024.