

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 819

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO MINORS; AMENDING SECTION 18-1514, IDAHO CODE, TO DEFINE TERMS,  
2 TO REVISE DEFINITIONS, TO REMOVE A DEFINITION, AND TO MAKE TECHNICAL  
3 CORRECTIONS; AMENDING SECTION 18-1515, IDAHO CODE, TO REVISE PROVI-  
4 SIONS REGARDING DISSEMINATING MATERIAL HARMFUL TO MINORS; AMENDING  
5 SECTION 18-1517B, IDAHO CODE, TO REVISE PROVISIONS REGARDING CHIL-  
6 DREN'S SCHOOL AND LIBRARY PROTECTION AND TO ESTABLISH PROVISIONS  
7 REGARDING CHILDREN'S SCHOOL AND LIBRARY PROTECTION; AMENDING SECTION  
8 18-4105, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION  
9 67-6533, IDAHO CODE, TO REVISE A REFERENCE; AND DECLARING AN EMERGENCY  
10 AND PROVIDING AN EFFECTIVE DATE.  
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12 Be It Enacted by the Legislature of the State of Idaho:

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

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

17 (1) "Adolescent minor" means any person thirteen (13) years of age or  
18 older but less than eighteen (18) years of age.

19 ~~1. (2) "Minor" means any person less than eighteen (18) years of age.~~

20 ~~2. (3) "Nudity" means the showing of the human male or female genitals,~~  
21 ~~pubic area or buttocks with less than a full opaque covering, or the show-~~  
22 ~~ing of the female breast with less than a full opaque covering of any portion~~  
23 ~~thereof below the top of the nipple, or the depiction of covered male geni-~~  
24 ~~tals in a discernibly turgid state.~~

25 ~~3. (4) "Sexual conduct" means any act of masturbation, homosexuality,~~  
26 ~~sexual intercourse, or physical contact with a person's clothed or unclothed~~  
27 ~~genitals, pubic area, buttocks or, if such person be a female, the breast.~~  
28 ~~Breastfeeding, childbearing, medical procedures and examinations, and any~~  
29 ~~other nonerotic physical contact shall not be considered sexual conduct.~~

30 ~~4. (5) "Sexual excitement" means the condition of human male or female~~  
31 ~~genitals when in a state of sexual stimulation or arousal.~~

32 ~~5. (6) "Sado-masochistic abuse" means flagellation or torture by or~~  
33 ~~upon a person who is nude or clad in undergarments, a mask or bizarre costume,~~  
34 ~~or the condition of being fettered, bound or otherwise physically restrained~~  
35 ~~on the part of one who is nude or so clothed.~~

36 ~~6. (7) (a) "Harmful to minors" includes in its meaning means the quality~~  
37 ~~of any material or of any performance or of any description or represen-~~  
38 ~~tation, in whatever form, of nudity, sexual conduct, sexual excitement,~~  
39 ~~or sado-masochistic abuse, when it:~~

40 ~~(a) (i) Appeals Taken as a whole, appeals to the prurient inter-~~  
41 ~~est of adolescent minors as judged by the average person, applying~~  
42 ~~contemporary community standards; and~~

1           ~~(b)~~ (ii) Depicts or describes representations or descriptions  
 2 of nudity, sexual conduct, sexual excitement, or sado-masochis-  
 3 tic abuse which are patently offensive to prevailing standards in  
 4 the adult community with respect to what is suitable material for  
 5 adolescent minors and includes, but is not limited to, patently  
 6 offensive representations or descriptions of:

7           ~~(i)~~ 1. Intimate sexual acts, normal or perverted, actual or  
 8 simulated; or

9           ~~(ii)~~ 2. Masturbation, excretory functions or lewd exhibi-  
 10 tion of the genitals or genital area. ~~Nothing herein~~  
 11 ~~contained is intended to include or proscribe any matter~~  
 12 ~~which, when considered as a whole, and in context in which it~~  
 13 ~~is used, possesses serious literary, artistic, political or~~  
 14 ~~scientific value for minors.~~

15           (b) "Harmful to minors" shall not include material that, when consid-  
 16 ered as a whole, possesses serious literary, artistic, political, or  
 17 scientific value for adolescent minors.

18           ~~7. (8) "Material" means anything tangible which is harmful to minors,~~  
 19 ~~whether derived through the medium of reading, observation, or sound, in-~~  
 20 ~~cluding any picture, photograph, drawing, sculpture, motion picture, film,~~  
 21 ~~or similar visual representation or image or any book, pamphlet, magazine,~~  
 22 ~~printed matter however reproduced, or sound recording.~~

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

25           ~~9. (9) "Promote" means to manufacture, issue, sell, give, provide, de-~~  
 26 ~~liver, publish, distribute, circulate, disseminate, present, exhibit or ad-~~  
 27 ~~vertise, or to offer or agree to do the same.~~

28           ~~10. (10) "Knowingly" means having general knowledge of, or reason to~~  
 29 ~~know, or a belief or reasonable ground for belief that warrants further in-~~  
 30 ~~spection or inquiry.~~

31           ~~11. (11) "School" means any public or private school providing instruc-~~  
 32 ~~tion for students in kindergarten through grade 12.~~

33           (12) "Sexually explicit" means the quality of any material when it con-  
 34 tains erotic depictions of nudity, depicts sexual conduct or sado-masochis-  
 35 tic abuse, or contains any explicit and detailed description or narrative  
 36 account of sexual excitement, sexual conduct, or sado-masochistic abuse.  
 37 "Sexually explicit" shall not include diagrams about anatomy for scientific  
 38 education, religious books such as the Bible and the Torah, or content relat-  
 39 ing to classical works of art.

40           SECTION 2. That Section 18-1515, Idaho Code, be, and the same is hereby  
 41 amended to read as follows:

42           18-1515. DISSEMINATING MATERIAL HARMFUL TO MINORS -- DEFINED --  
 43 PENALTY. A person is guilty of disseminating material harmful to minors  
 44 when:

45           1. He knowingly gives or makes available to a minor or promotes or pos-  
 46 sesses with intent to promote to minors, or he knowingly sells or loans to  
 47 a minor for monetary consideration: any material that is sexually explicit  
 48 and, taken as a whole, is harmful to minors.

- 1 ~~(a) Any picture, photograph, drawing, sculpture, motion picture film,~~  
 2 ~~or similar visual representation or image of a person or portion of the~~  
 3 ~~human body which depicts nudity, sexual conduct or sado-masochistic~~  
 4 ~~abuse and which is harmful to minors; or~~  
 5 ~~(b) Any book, pamphlet, magazine, printed matter however reproduced,~~  
 6 ~~or sound recording which contains any matter enumerated in paragraph~~  
 7 ~~(a) hereof, or explicit and detailed verbal descriptions or narrative~~  
 8 ~~accounts of sexual excitement, sexual conduct or sado-masochistic~~  
 9 ~~abuse and which, taken as a whole, is harmful to minors; or~~  
 10 ~~(c) Any other material harmful to minors.~~

11 2. With reference to a motion picture, show or other presentation ~~which~~  
 12 ~~depicts nudity, sexual conduct or sado-masochistic abuse, and which that is~~  
 13 sexually explicit and, taken as a whole, is harmful to minors, he knowingly:

- 14 (a) Exhibits such motion picture, show or other presentation to a minor  
 15 for a monetary consideration; or  
 16 (b) Sells to a minor an admission ticket or pass to premises whereon  
 17 there is exhibited or to be exhibited such motion picture, show or other  
 18 presentation; or  
 19 (c) Admits a minor for a monetary consideration to premises whereon  
 20 there is exhibited or to be exhibited such motion picture, show or other  
 21 presentation; or  
 22 (d) Exhibits such motion picture, show or other presentation to a minor  
 23 not for a monetary consideration; or  
 24 (e) Gives without monetary consideration to a minor an admission ticket  
 25 or pass to premises where there is exhibited or to be exhibited such mo-  
 26 tion picture, show, or other presentation.

27 Disseminating material harmful to minors is a misdemeanor punishable by  
 28 confinement in the county jail not to exceed one (1) year, or by a fine not to  
 29 exceed one thousand dollars (\$1,000), or by both such fine and jail sentence.

30 SECTION 3. That Section 18-1517B, Idaho Code, be, and the same is hereby  
 31 amended 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 private school or  
 36 public library, or an agent thereof, shall not promote, give, or make avail-  
 37 able to a minor: any material that is sexually explicit and, taken as a  
 38 whole, is harmful to minors.

- 39 ~~(a) Any picture, photograph, drawing, sculpture, motion picture film,~~  
 40 ~~or similar visual representation or image of a person or portion of the~~  
 41 ~~human body that depicts nudity, sexual conduct, or sado-masochistic~~  
 42 ~~abuse and that is harmful to minors;~~  
 43 ~~(b) Any book, pamphlet, magazine, printed matter however reproduced,~~  
 44 ~~or sound recording that contains any matter pursuant to paragraph (a) of~~  
 45 ~~this subsection or explicit and detailed verbal descriptions or narra-~~  
 46 ~~tive accounts of sexual excitement, sexual conduct, or sado-masochis-~~  
 47 ~~tic abuse and that, taken as a whole, is harmful to minors; or~~  
 48 ~~(c) Any other material harmful to minors.~~

1        (3) Notwithstanding any other provision of law, a public school or public library, or an agent thereof, shall not promote, give, or make available to a minor any material that is sexually explicit.

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4        ~~(3)~~ (4) Any minor who obtains material, or parent or legal guardian whose child obtained material, in violation of the provisions of subsection (2) or (3) of this section from a school or public library shall have a cause of action against such institution if:

5        (a) The institution gave or made available the material ~~harmful to minors~~, or the institution failed to take reasonable steps to restrict access by minors to the material ~~harmful to minors~~;

6        (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 sixty (60) days of receipt of the written notice; and

7        (c) Upon receipt of written notice and subsequent to the expiration of sixty (60) 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.

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19        ~~(4)~~ (5) 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.

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25        ~~(5)~~ (6) 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) or (3) of this section. The injunction shall be sufficient to prevent the defendant school or public library from violating the requirements of this section.

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30        ~~(6)~~ (7) It shall be an affirmative defense to civil liability under this section that the defendant:

31        (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

32        (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.

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41        ~~(7)~~ (8) Each private school and public library shall have a policy and readily accessible form allowing a person to request review of material the person considers to be harmful to minors. Such form shall contain the definitions of "sexually explicit" and "harmful to minors," as provided in section 18-1514, Idaho Code.

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

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1       ~~(8)~~ (10) Any action brought pursuant to this section by or on behalf of a  
 2 minor shall be in accordance with the provisions of chapter 9, title 6, Idaho  
 3 Code, section 5-306, Idaho Code, and rule 17 of the Idaho rules of civil pro-  
 4 cedure.

5       SECTION 4. That Section 18-4105, Idaho Code, be, and the same is hereby  
 6 amended to read as follows:

7       18-4105. PUBLIC DISPLAY OF OFFENSIVE SEXUAL MATERIAL -- PENALTY. Any  
 8 person who knowingly exhibits or displays or permits to be exhibited or dis-  
 9 played any of the following in such a manner that such exhibit or display  
 10 is easily visible from any street, sidewalk, thoroughfare, or other public  
 11 area; or is visible from any transportation facility; or is visible from any  
 12 residence when the person knows that the owner or occupant of such residence  
 13 objects to such exhibit or display:

14       (a) Human genitals or pubic area without a full opaque covering, or any  
 15 graphic or pictorial depiction thereof, or any depiction of covered male  
 16 genitals in a discernibly erect state;

17       (b) An actual or simulated sex act, or sexual contact between humans and  
 18 animals, or masturbation, or any graphic or pictorial display thereof; or

19       (c) Any depiction of sado-masochistic abuse, as defined in section  
 20 18-1514~~(5)~~, Idaho Code, is guilty of a misdemeanor.

21       SECTION 5. That Section 67-6533, Idaho Code, be, and the same is hereby  
 22 amended to read as follows:

23       67-6533. LOCATION OF STORES SELLING SEXUAL MATERIAL RESTRICTED IN  
 24 CERTAIN AREAS. (a) From and after January 1, 1980, no person or entity shall  
 25 own or operate any store, shop or business which sells or rents any mate-  
 26 rials defined as obscene materials in section 18-4101, Idaho Code, within  
 27 twenty-five hundred (2500) feet of any school, church, or place of worship  
 28 measured in a straight line to the nearest entrance to the premises.

29       (b) From and after January 1, 1980, no person or entity shall own or op-  
 30 erate any store, shop or business which sells or rents any materials defined  
 31 in subsection 1 of section 18-1515 as harmful to minors and as sexually ex-  
 32 PLICIT pursuant to section 18-1514, Idaho Code, where such materials consti-  
 33 tute ten percent (10%) or more of the printed materials held for sale or rent  
 34 of such store, shop or business, within twenty-five hundred (2500) feet of  
 35 any school, church, or place of worship measured in a straight line to the  
 36 nearest entrance to the premises.

37       (c) From and after the effective date of this act, a violation of sub-  
 38 section (a) or subsection (b) of this section shall be a misdemeanor.

39       (d) A judge of a court of competent jurisdiction shall immediately is-  
 40 sue a temporary restraining order for a violation of subsection (a) or sub-  
 41 section (b) of this section upon application therefore by any public or pri-  
 42 vate entity or person and upon compliance with the Idaho rules of civil pro-  
 43 cedure, except that no bond or security for the issuance of such restraining  
 44 order shall be required. Further, a violation of subsection (a) or subsec-  
 45 tion (b) of this section shall subject the person and entities therefore to  
 46 a preliminary and permanent order of any court of this state enjoining them

1 from such violation and no bond or security shall be required from the plain-  
2 tiff or applicant therefore.

3 (e) No entity, public or private, nor any person shall be liable for any  
4 damages, costs or attorney fees for any acts attempting to civilly or crimi-  
5 nally enforce this section.

6 (f) Nothing contained in this section shall preempt or prohibit cities  
7 or counties from regulating or restricting the location of the business ac-  
8 tivity described in this section and cities and counties are hereby specifi-  
9 cally authorized to so regulate or restrict the location of said business ac-  
10 tivity.

11 SECTION 6. An emergency existing therefor, which emergency is hereby  
12 declared to exist, this act shall be in full force and effect on and after  
13 July 1, 2026.