

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 38
LIABILITY FOR PUBLISHERS AND DISTRIBUTORS OF MATERIAL HARMFUL TO MINORS
ON THE INTERNET

6-3801. LEGISLATIVE FINDINGS AND INTENT. (1) The provisions of this chapter are intended to provide a civil remedy for damages against commercial entities that publish or distribute material that is harmful to minors on the internet. The legislature finds that pornography is creating a public health crisis and having a corroding influence on minors. Due to advances in technology, the universal availability of the internet, and limited age verification requirements, minors are exposed to pornography earlier in age. Pornography contributes to the hyper-sexualization of teens and prepubescent children and may lead to low self-esteem, body image disorders, an increase in problematic sexual activity at younger ages, and increased desire among adolescents to engage in risky sexual behavior. Pornography may also impact brain development and functioning, contribute to emotional and medical illnesses, shape deviant sexual arousal, and lead to difficulty in forming or maintaining positive, intimate relationships, as well as promote problematic or harmful sexual behaviors and addiction.

(2) As provided in the Idaho consumer protection act that was passed by the legislature in 1971 and allows consumers to seek legal remedies through private lawsuits, it is the intent of the legislature to enable a minor person, or the parent or guardian of such person, who is exposed to harmful material on the internet to bring an action to recover damages.

(3) It is the intent of the legislature that the sovereign immunity described in section [6-3808](#), Idaho Code, includes the constitutional sovereign immunity recognized by the court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state and federal court, and which may not be abrogated by congress or by any state or federal court except pursuant to legislation authorized by section 5 of the fourteenth amendment to the constitution of the United States, by the bankruptcy clause of article I, by congress's powers to raise and support armies and to provide and maintain a navy, or by any other ground that might be recognized by the supreme court of the United States.

(4) With respect to the severability provisions of section [6-3809](#), Idaho Code, it is the intent of the legislature that any court construing such provisions be mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which, in the context of determining the severability of a state statute, the supreme court of the United States held that an explicit statement of legislative intent is controlling. It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other. The legislature further declares that it intends to enact this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter could be declared invalid, preempted, or unconstitutional.

[6-3801, added 2024, ch. 113, sec. 1, p. 486.]

6-3802. DEFINITIONS. As used in this chapter:

(1) "Commercial entity" means a corporation, a limited liability company, a partnership, a limited partnership, a sole proprietorship, or another legally recognized business entity.

(2) "Digitized identification card" means a data file available on any mobile device that has connectivity to the internet through a state-approved application that allows the mobile device to download a data file that contains all of the data elements visible on the face and back of a license or identification card and displays the current status of the license or identification card.

(3) "Harmful to minors" means:

(a) Material that the average person applying contemporary community standards would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(b) Material that is devoted to or principally consists of descriptions of actual, simulated, or animated displays or depictions of any of the following, in a manner patently offensive with respect to minors:

(i) Pubic hair, anus, vulva, genitals, or nipple of the female breast;

(ii) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

(iii) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

(c) Material that, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(4) "Information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet or any interactive computer service.

(5) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(6) "Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks.

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

(8) (a) "News-gathering organization" means any of the following:

(i) An employee of a newspaper, news publication, or news source that is printed or on an online or mobile platform, of current news and public interest, while operating as an employee of such news-gathering organization, who can provide documentation of such employment with the newspaper, news publication, or news source; or

(ii) An employee of a radio broadcast station, television broadcast station, cable television operator, or wire service while operating as an employee of such news-gathering organization, who can provide documentation of such employment.

(b) A website or an interactive computer service is not deemed to be a news-gathering organization unless its primary business is as an infor-

mation content provider, news publisher, or broadcaster of current news and public interest.

(9) "Publish" means to communicate or make information available to another person or entity on a publicly available internet website. A commercial entity shall not be considered the publisher of any material or information provided by another information content provider.

(10) "Reasonable age verification methods" include verifying that the person seeking to access the material is eighteen (18) years of age or older by:

(a) Providing a digitized identification card as defined in this section; or

(b) Requiring that the person attempting to access the material complies with a commercial age verification system that verifies age in one (1) or more of the following ways:

(i) Government-issued identification; or

(ii) Public or private transactional data.

(11) "Substantial portion" means more than one-third (1/3) of total material on a website. If a website links by hypertext link to the material of a third-party website, the material on such third-party website shall not be considered toward the total percentage of material if that third-party website does not contain material harmful to minors and if such linking does not constitute an attempt to intentionally dilute the percentage calculation of material harmful to minors in order to evade the provisions of this section.

(12) "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. Transactional data may include but is not limited to records from mortgage, education, and employment entities.

[6-3802, added 2024, ch. 113, sec. 1, p. 487.]

6-3803. INTENTIONAL PUBLICATION OR DISTRIBUTION OF MATERIAL HARMFUL TO MINORS ON THE INTERNET. (1) Any commercial entity that knowingly and intentionally publishes material that is harmful to minors on the internet from a website that contains a substantial portion of such material shall be liable if the entity fails to perform reasonable age verification to verify the age of individuals attempting to access the material or, after verifying the age of the individual, provides a minor access to the material.

(2) Any commercial entity or third party that takes steps to perform a reasonable age verification required pursuant to this chapter shall not retain any identifying information of the individual after age verification has been performed.

(3) This chapter shall not apply to any bona fide news or public interest broadcast, website video, report, or event and shall not be construed to affect the rights of any news-gathering organizations.

(4) No internet service provider, affiliate of an internet service provider, subsidiary of an internet service provider, search engine provider, web browser provider, smart device manufacturer, computer manufacturer, or cloud service provider shall be held to have violated the provisions of this chapter solely for providing access or connection to or from a website or other information or content on the internet or a facility, system, or network not under that provider's control, including transmission, downloading, intermediate storage, or access software, to the extent such provider is not responsible for the creation of the content of

the communication that constitutes material harmful to minors. However, an interactive computer service is subject to the provisions of this section if it knowingly benefits from:

(a) Being the information content provider for a commercial entity that knowingly and intentionally publishes material harmful to minors in violation of subsection (1) of this section; or

(b) Being in a venture with a commercial entity that knowingly and intentionally publishes material harmful to minors in violation of subsection (1) of this section.

(5) Nothing in this chapter shall be construed to create a conflict with applicable federal law.

[6-3803, added 2024, ch. 113, sec. 1, p. 489.]

6-3804. PRIVATE CAUSE OF ACTION. (1) Any person exposed to material harmful to minors in violation of section [6-3803](#), Idaho Code, including the parent or guardian of a child exposed to material harmful to minors, has standing to bring a civil action against any person or entity that is liable under section [6-3803](#), Idaho Code, provided that no lawsuit may be brought under this section against a provider or a user of an interactive computer service if such lawsuit would be preempted by 47 U.S.C. 230(c).

(2) If a claimant prevails in an action brought under this section, the court shall award:

(a) Injunctive relief sufficient to prevent the defendant from engaging in the conduct described in section [6-3803](#), Idaho Code;

(b) Nominal and compensatory damages;

(c) Statutory damages in an amount no less than ten thousand dollars (\$10,000); and

(d) Court costs and reasonable attorney's fees.

(3) Notwithstanding any other provision of law to the contrary, a person may bring an action under this section no later than four (4) years after the date the cause of action accrued.

(4) Notwithstanding any other provision of law to the contrary, the following shall not be a defense to an action brought under this section:

(a) Ignorance or mistake of law;

(b) A defendant's belief that the requirements or provisions of this chapter are unconstitutional or were unconstitutional;

(c) A defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;

(d) A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(e) A defendant's reliance on any federal statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

(f) Nonmutual issue preclusion or nonmutual claim preclusion;

(g) Contributory or comparative negligence;

(h) Assumption of risk;

(i) Any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional

rights of third parties, except as provided by section [6-3805](#), Idaho Code.

(5) This chapter may not be construed to impose liability on speech or conduct protected by the first amendment to the constitution of the United States, as made applicable to the states through the supreme court of the United States' interpretation of the fourteenth amendment to the constitution of the United States, or by section 9, article I of the constitution of the state of Idaho.

(6) (a) Notwithstanding any other law to the contrary, neither the state nor any of its political subdivisions nor any district or county attorney, nor any officer or employee of this state or a political subdivision may:

(i) Act in concert or participation with anyone who brings suit under this section;

(ii) Establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;

(iii) Make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or

(iv) Intervene in any action brought under this section.

(b) This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action as long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of this subsection.

(7) Notwithstanding any other provision of law to the contrary, a court may not award costs or attorney's fees to a litigant who is sued under this section.

(8) Notwithstanding any other provision of law to the contrary, a civil action under this section may not be brought against any person or entity in response to conduct taken at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law if doing so would violate the doctrines of preemption or intergovernmental immunity.

(9) Notwithstanding any other provision of law to the contrary, including section [5-514](#), Idaho Code, the courts of this state shall have personal jurisdiction over any defendant sued under this chapter to the maximum extent permitted by the fourteenth amendment to the constitution of the United States.

(10) Notwithstanding any other provision of law to the contrary, the law of Idaho shall apply to any civil action brought under this section, to the maximum extent permitted by the constitution of the United States and the constitution of the state of Idaho.

(11) Notwithstanding any other provision of law to the contrary, including Idaho rule of civil procedure 77, a civil action under this section may not be litigated on behalf of a plaintiff class or a defendant class, and no court may certify a class under Idaho rule of civil procedure 77 in any civil action brought under this section.

(12) Any waiver or purported waiver of the right to sue under this section or chapter shall be void as against public policy and shall not be enforceable in any court.

6-3805. AFFIRMATIVE DEFENSES. (1) A defendant against whom an action is brought under section [6-3804](#), Idaho Code, may assert an affirmative defense to liability under this section if:

(a) The imposition of civil liability on the defendant will violate constitutional or federally protected rights that belong to the defendant personally; or

(b) The defendant:

(i) Has standing to assert the rights of a third party under the tests for third-party standing established by the supreme court of the United States; and

(ii) Demonstrates that the imposition of civil liability on the defendant will violate constitutional or federally protected rights belonging to that third party.

(2) The defendant shall bear the burden of proving the affirmative defense that is provided for in subsection (1) of this section by a preponderance of the evidence.

(3) Nothing in this chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of Idaho law as a defense to liability under section [6-3804](#), Idaho Code, or from asserting any other defense that might be available under any other source of law.

[6-3805, added 2024, ch. 113, sec. 1, p. 491.]

6-3806. VENUE. (1) Notwithstanding any other provision of law to the contrary, including [chapter 4, title 5](#), Idaho Code, a civil action brought under section [6-3804](#), Idaho Code, may be brought in:

(a) The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(b) The county of residence for any of the natural person defendants at the time the cause of action accrued;

(c) The county of the principal office in this state of any of the defendants that is not a natural person; or

(d) The county of residence for the claimant, if the claimant is a natural person residing in this state.

(2) If a civil action is brought under section [6-3804](#), Idaho Code, in any of the venues described in subsection (1) of this section, then the action may not be transferred to a different venue without the written consent of all parties.

[6-3806, added 2024, ch. 113, sec. 1, p. 491.]

6-3807. PRIVATE CIVIL ENFORCEMENT EXCLUSIVE. (1) Notwithstanding any other provision of law to the contrary, the requirements of this chapter shall be enforced exclusively through the private civil actions described in section [6-3804](#), Idaho Code.

(2) No direct or indirect enforcement of this chapter may be taken or threatened by the state, a political subdivision, a district or county attorney, or any officer or employee of this state or a political subdivision against any person or entity by any means. No violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in this section.

(3) This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such

other law or regulation and that would remain prohibited by such other law or regulation in the absence of this chapter.

[6-3807, added 2024, ch. 113, sec. 1, p. 491.]

6-3808. IMMUNITY FROM SUIT AND LIMITS ON STATE-COURT JURISDICTION. (1) Notwithstanding any other provision of law to the contrary, the state and each of its subdivisions and their officers and employees shall have sovereign immunity, governmental immunity, and official immunity, as appropriate, in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state or its political subdivisions or any of their officers, employees, or agents from enforcing any provision or application of this chapter, or from hearing, adjudicating, or docketing a civil action brought under section [6-3804](#), Idaho Code, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the constitution of the United States. The sovereign immunity conferred by this section on the state and each of its officers and employees includes the constitutional sovereign immunity recognized by the supreme court of the United States.

(2) Notwithstanding any provision of law to the contrary, the immunities conferred by subsection (1) of this section shall apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever.

(3) Notwithstanding any other provision of law to the contrary, no provision of state law may be construed to waive or abrogate an immunity described in subsection (1) of this section unless it expressly waives or abrogates immunity with specific reference to this section.

(4) Notwithstanding any other provision of law to the contrary, no attorney representing the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision is authorized or permitted to waive an immunity described in subsection (1) of this section or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity and an ultra vires act.

(5) Notwithstanding any other provision of law to the contrary, including [title 1](#), Idaho Code, [chapter 12, title 10](#), Idaho Code, and Idaho appellate rules 5, 13, and 43, no court of this state may award declaratory or injunctive relief, or any type of stay or writ, including a writ of prohibition, that would pronounce any provision or application of this chapter invalid or unconstitutional or that would restrain or prevent the state, its political subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person from implementing or enforcing any provision or application of this chapter, or from hearing, adjudicating, docketing, or filing a civil action brought under section [6-3804](#), Idaho Code, and no inferior court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks such relief.

(6) Nothing in this section or chapter shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this chapter as a defense to any action, claim, or counterclaim brought against that litigant.

(7) Notwithstanding any other provision of law to the contrary, any judicial relief issued by a court of this state that disregards the immunities conferred by subsection (1) of this section, or the limitations on jurisdic-

tion and relief imposed by subsection (5) of this section, shall be regarded as a legal nullity because it was issued by a court without jurisdiction and may not be enforced or obeyed by any officer, employee, or agent of this state or a political subdivision, judicial or otherwise.

(8) Notwithstanding any other provision of law to the contrary, any stay, writ, injunction, or declaratory judgment issued by a court of this state that purports to restrain or prevent the state, its political subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person from hearing, adjudicating, docketing, or filing a civil action brought under section [6-3804](#), Idaho Code, shall be regarded as a legal nullity and a violation of the due process clause of the fourteenth amendment to the constitution of the United States and may not be enforced or obeyed by any officer, employee, or agent of this state or a political subdivision, judicial or otherwise.

(9) Notwithstanding any other provision of law to the contrary, including Idaho rule of civil procedure 77, no court may certify a plaintiff or defendant class with respect to any claim that seeks declaratory or injunctive relief, or any type of stay or writ, that would pronounce any provision or application of this chapter invalid or unconstitutional, or that would restrain or prevent the state, its political subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person from enforcing any provision or application of this chapter, or from hearing, adjudicating, docketing, or filing a civil action brought under section [6-3804](#), Idaho Code.

[6-3808, added 2024, ch. 113, sec. 1, p. 492.]

6-3809. SEVERABILITY. (1) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional because it is the legislature's intent and priority that every single valid application of every statutory provision be allowed to stand alone.

(2) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that are not found to be constitutionally vague shall be severed and remain in force, consistent with the severability requirements of this section.

(3) No court may decline to enforce the severability requirements of this section or this chapter on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting a statute or engaging in legislative or lawmaking activity, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(a) Is nothing more than an edict prohibiting enforcement of the disputed statute against the named parties to that lawsuit, which may subsequently be vacated by a later court if that court has a different understanding of the requirements of the constitution of the state of Idaho or United States constitution;

- (b) Is not a formal amendment of the language in a statute; and
- (c) No more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(4) If any state or federal court disregards any of the severability requirements of this section or this chapter and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances without violating federal law or the federal or state constitutions, then that provision shall be interpreted, as a matter of state law, as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

[6-3809, added 2024, ch. 113, sec. 1, p. 493.]