

IN THE SENATE

SENATE BILL NO. 1289

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO CHILDREN'S SCHOOL AND LIBRARY PROTECTION; AMENDING CHAPTER 15,
2 TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1517B, IDAHO
3 CODE, TO DEFINE TERMS, TO REQUIRE EVERY LIBRARY TO ESTABLISH A LIBRARY
4 MATERIALS REVIEW COMMITTEE AND A POLICY FOR PROCESSING REQUESTS FOR THE
5 RELOCATION OF CERTAIN LIBRARY MATERIALS, TO PROVIDE AN APPEAL PROCE-
6 DURE, TO PROVIDE FOR INJUNCTIVE RELIEF, TO PROHIBIT CERTAIN MATERIALS
7 FROM BEING GIVEN OR MADE AVAILABLE TO A MINOR BY A SCHOOL OR PUBLIC LI-
8 BRARY, TO PROVIDE FOR A CIVIL CAUSE OF ACTION, TO PROVIDE FOR DAMAGES,
9 AND TO PROVIDE FOR AFFIRMATIVE DEFENSES; AND DECLARING AN EMERGENCY AND
10 PROVIDING AN EFFECTIVE DATE.
11

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

13 SECTION 1. That Chapter 15, Title 18, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 18-1517B, Idaho Code, and to read as follows:

16 18-1517B. CHILDREN'S SCHOOL AND LIBRARY PROTECTION. (1) As used in
17 this section:

18 (a) "Affected person" means a student of the school district or resi-
19 dent of the library district or city served by the library who holds a
20 library card issued by the library and who may be adversely affected by a
21 library's decision regarding materials available in the library and in-
22 cludes the student's legal guardian.

23 (b) "Library" means a library operated by a school or a public community
24 library that receives public moneys and that is governed by the provi-
25 sions of chapter 26 or 27, title 33, Idaho Code, or by both such chap-
26 ters.

27 (c) "School" means any public school district or charter school provid-
28 ing instruction for students in kindergarten through grade 12.

29 (2) No later than January 1, 2025, every library, as defined in this
30 section, shall adopt written policies and procedures to process requests
31 for relocation of library materials that may be harmful to minors, as that
32 term is defined in section 18-1514 6.(a), Idaho Code. Each library's policy
33 shall be developed under the direction of the library's or school's board of
34 trustees, shall be approved by board resolution in an open meeting, and shall
35 have an effective date. The approved resolution and adopted policy shall at
36 a minimum comply with notice, hearing, and written decision requirements set
37 forth in this section.

38 (3) Every library shall adopt a policy that:

39 (a) Designates a library materials review committee of no fewer than
40 three (3) persons who reside in the school district's or library dis-
41 trict's boundaries or service area. At least one (1) member of the re-
42 view committee must be the parent of a minor child. The committee may

1 also include members of the library's governing board. The policy shall
2 identify the method of appointment or selection of the committee mem-
3 bers. The committee shall review and make decisions regarding requests
4 to relocate materials as provided in this section;

5 (b) Provides a uniform and accessible form for an affected person to re-
6 quest review of library materials the affected person considers harmful
7 to minors. The form shall reference the definition of harmful materials
8 provided in section 18-1514 6. (a), Idaho Code;

9 (c) Specifies procedures by which the library materials review com-
10 mittee, following receipt of a properly completed review request form,
11 shall schedule and conduct a public hearing to hear testimony by the af-
12 fected person, other affected patrons of the district, and the library
13 director or staff;

14 (d) Requires notice of a review hearing be provided to library patrons
15 and other affected persons by publication in a newspaper of general cir-
16 culation in the district's boundaries no less than seven (7) days prior
17 to the hearing; and

18 (e) Requires that, following the hearing, the library materials re-
19 view committee shall provide a reasoned decision in writing regarding
20 the library materials in question and the relevant statutory require-
21 ments, library policies, and community standards used in making its de-
22 cision. The committee shall also provide notice to the requestor that a
23 request for reconsideration of a decision shall be made within seven (7)
24 days of the written decision before the affected person may seek judi-
25 cial review of the decision.

26 (4) (a) The approval or denial of any library materials relocation
27 request processed pursuant to this section shall be based on the defi-
28 nitions, standards, and criteria as set forth in section 18-1514 6. (a),
29 Idaho Code, the relevant community standards, and the library's ap-
30 proved written policies regarding such materials. Such standards and
31 criteria shall be set forth in express terms so that library patrons may
32 know the standards required to obtain relocation of library materials.
33 The review committee's decision regarding any library materials review
34 request shall be in writing and shall include a reasoned statement that
35 explains the criteria and standards considered relevant, state the
36 relevant facts relied on, and explain the rationale for the decision
37 based on statutory provisions, community standards, pertinent consti-
38 tutional principles, and factual information contained in the record
39 developed at the public hearing, including written and oral testimony.

40 (b) Failure by the review committee to identify the nature of compli-
41 ance or noncompliance with standards or failure to explain relevant
42 decision criteria shall be grounds for invalidation of the committee's
43 decision regarding an appeal.

44 (c) Any affected person seeking judicial review of compliance with
45 the provisions of this section must first appeal to the library's or
46 school's board of trustees within seven (7) days of the final decision
47 by the review committee. Such an appeal must identify in writing the
48 specific deficiencies in the committee's decision for which appeal is
49 sought. Upon appeal, the decision may be affirmed, reversed, or modi-
50 fied after compliance with applicable procedural standards. A written

1 decision shall be provided to the affected person within seven (7) days
2 of receipt of the appeal or, if not, the appeal shall be deemed denied.
3 An appeal shall not be deemed final for purposes of judicial review un-
4 less the process required in this section has been followed. The time
5 frame for seeking judicial review is tolled until the date of the writ-
6 ten decision regarding appeal or the expiration of the seven (7) day
7 appeal decision period, whichever occurs first.

8 (5) Any affected person aggrieved by a final decision of a library's or
9 school's board of trustees concerning the relocation of library materials
10 may, within seven (7) days after all remedies pursuant to the library's poli-
11 cies and the provisions of this section have been exhausted, seek judicial
12 review as provided by chapter 52, title 67, Idaho Code.

13 (6) Notwithstanding any other provision of law, a library or its agent
14 shall not promote, give, or make available to a minor any material that has
15 been found to be harmful to minors as defined in section 18-1514 6. (a), Idaho
16 Code, in accordance with the hearing and written decision procedures set
17 forth in this section and in the library's policy and procedures.

18 (7) Any minor who obtains material, or any parent or legal guardian
19 whose child obtains material, in violation of the provisions of subsection
20 (6) of this section from a library shall have a cause of action against the
21 library if:

22 (a) Following the hearing and decision process set forth in this sec-
23 tion, the board or review committee issued a written decision that the
24 materials in question are harmful to minors and should be segregated or
25 moved;

26 (b) The library gave or made available to minors the materials previ-
27 ously found by the board or review committee to be harmful to minors or
28 the institution failed to take reasonable steps to restrict access by
29 minors to materials previously found to be harmful to minors;

30 (c) Prior to the filing of a cause of action, the minor, parent, or le-
31 gal guardian has notified the library in writing that materials previ-
32 ously found to be harmful to minors have not been segregated or removed
33 as directed in the board's or review committee's written decision and
34 has requested the library to comply with the board's or review commit-
35 tee's written decision; and

36 (d) Upon receipt of the written notice pursuant to paragraph (c) of this
37 subsection, the library board of trustees or school board of trustees
38 failed to relocate the materials harmful to minors to a section of the
39 library designated for adults.

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

45 (9) A county prosecuting attorney or the attorney general shall have a
46 cause of action for injunctive relief against any library that violates the
47 provisions of this section. The injunction shall be sufficient to prevent
48 the library from violating the requirements of this section.

49 (10) It shall be an affirmative defense to civil liability under this
50 section that the defendant:

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

6 (b) Verified the minor involved was accompanied, at the time of the
7 act, by his parent or legal guardian or by another adult who represented
8 to the defendant that he was the minor's parent or legal guardian and
9 signed a written statement to that effect.

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

14 SECTION 2. An emergency existing therefor, which emergency is hereby
15 declared to exist, this act shall be in full force and effect on and after
16 July 1, 2024.