

IDAHO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

Idaho Code § 18-4101. Definitions

- The following definitions are applicable to this act:
 - (A) "**Obscene**" material means any matter:
 - (1) which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
 - (2) which depicts or describes patently offensive representations or descriptions of:
 - (a) ultimate sexual acts, normal or perverted, actual or simulated; or
 - (b) 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 the context in which it is used, possesses serious literary, artistic, political or scientific value.
 - In prosecutions under this act, where circumstances of production, presentation, sale, dissemination, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political, or scientific value.
 - (B) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group.
 - (C) "Matter" or "material" means any book, magazine, newspaper, or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, equipment, machines, or materials.
 - (D) "Person" means any individual, partnership, firm, association, corporation, or other legal entity; or any agent or servant thereof.
 - (E) "Distribute" means to transfer possession of, whether with or without consideration, by any means.
 - (F) "Knowingly" means having actual or constructive knowledge of the character of the subject matter or live conduct. A person shall be deemed to have constructive knowledge of the character of the subject matter or live conduct if he has knowledge of facts which would put a reasonable and prudent man on notice as to the suspect nature of the matter, and the failure to inspect the contents is either for the purpose of avoiding such disclosure or is due to reckless conduct.

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- (G) "Reckless conduct" is conduct which consciously disregards a substantial and unjustifiable risk that matter may be **obscene**. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that an average law-abiding person would observe in the actor's situation under like circumstances.
- (H) "Exhibit" means to show or display.
- (I) "**Obscene** live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, where:
 - (1) the average person, applying contemporary community standards, would find such conduct, when considered as a whole, appeals to the prurient interest; and
 - (2) the conduct is patently offensive because it consists of:
 - (a) ultimate sexual acts, normal or perverted, actual or simulated; or
 - (b) masturbation, excretory functions, or lewd exhibition of the genitals or genital area.
- Nothing herein contained is intended to include or proscribe any conduct which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political or scientific value. In prosecutions under this act, where circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political or scientific value.

§ 18-4102. Affirmative defense

- It is not innocent but calculated purveyance which is prohibited. This act shall not apply to any persons who may possess or distribute obscene matter or participate in conduct otherwise proscribed by this act when such possession, distribution, or conduct occurs:
 - (A) within the scope of employment of law enforcement and judicial activities; or
 - (B) within the scope of employment of bona fide school, college, university, museum or public library activities or within the scope of employment of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization; or
 - (C) within the scope of employment as a moving picture machine operator, assistant operator, usher, or ticket taker in a motion picture theater in connection with a motion picture film or show exhibited in such theater, if such operator or assistant operator has no financial interest in the motion picture theater wherein he is so employed other than his wages received or owed, and such person consents to give testimony regarding such employment in all judicial proceedings brought under this act, when granted immunity by the trial judge; or

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- (D) under like circumstances of justification where the possession, distribution or conduct possesses serious literary, artistic, political or scientific value.
- If this issue is not presented by the prosecution's evidence, the defendant may raise the same as an affirmative defense by presenting some evidence thereon. Where raised, the prosecution must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue.

§ 18-4103. General sale or distribution, etc., of obscene matter -- Penalty

Every person in this state who knowingly: brings or causes to be brought into this state for sale or distribution; or in this state prepares for distribution, publishes, prints, exhibits, distributes, or offers to distribute; or has in his possession with intent to distribute, exhibit, or offer to distribute, any obscene matter is guilty of a misdemeanor. Each sale, distribution, etc., is a separate violation.

§ 18-4103A. Advertisement, promotion of sale, etc., of matter represented to be obscene -- Penalty

Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material for, or who otherwise advertises or promotes the sale, distribution, or exhibition of matter represented or held out by him to be obscene, whether or not such matter exists in fact, or is obscene, is guilty of a misdemeanor.

§ 18-4104. Participation in, or production or presentation of, obscene live conduct in public place -- Penalty

- (A) Every person who knowingly engages or participates in, manages, produces, sponsors, presents, or exhibits obscene live conduct to or before an assembly or audience consisting of at least one (1) person or spectator in any public place, or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor.
- (B) Every person who procures, counsels, or assists any person to engage in such conduct, or who knowingly exhibits, or procures, counsels, or assists in the exhibition of a motion picture, television production, or other mechanical reproduction containing such conduct, is guilty of a misdemeanor.

§ 18-4105. Public display of offensive sexual material -- Penalty

- Any person who knowingly exhibits or displays or permits to be exhibited or displayed any of the following in such a manner that such exhibit or display is easily visible from any street, sidewalk, thoroughfare, or other public area; or is visible from any transportation facility; or is visible from any residence when the person knows that the owner or occupant of such residence objects to such exhibit or display:

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- (a) Human genitals or pubic area without a full opaque covering, or any graphic or pictorial depiction thereof, or any depiction of covered male genitals in a discernibly erect state;
- (b) An actual or simulated sex act, or sexual contact between humans and animals, or masturbation, or any graphic or pictorial display thereof; or
- (c) Any depiction of sado-masochistic abuse, as defined in section 18-1514(5), Idaho Code, is guilty of a misdemeanor.

§ 18-4105A. Requiring purchaser or consignee to receive obscene matter as condition to sale, etc. -- Penalty

Every person, who, knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter reasonably believed by the purchaser or consignee to be obscene, or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter, is guilty of a misdemeanor.

§ 18-4106. Distribution to minors -- Law governing

Notwithstanding any of the provisions of this act, the distribution of obscene matter to minors shall be governed by sections 18-1513 to 18-1521, Idaho Code.

§ 18-4107. Conspiracy -- Penalty

A conspiracy of two (2) or more persons to commit any of the crimes proscribed by this act is punishable as a felony. Any court having jurisdiction of the conspiracy crime has concurrent jurisdiction to try all misdemeanor crimes committed in furtherance of the conspiracy.

§ 18-4108. Special verdict

The jury, or the court if a jury trial is waived, shall render a general verdict, and must also render a special verdict as to whether the matter named in the charge is obscene. The special verdict or findings on the issue of obscenity may be: "We find the ____ (title or description of matter or live conduct) to be obscene," or "We find the (title or description of matter or live conduct) not to be obscene." A special verdict shall not be admissible as evidence in any other proceeding, nor shall it be res judicata of any question in any other proceeding.

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§ 18-4109. Punishment for violations

The following punishments are applicable to this act:

Every person who violates sections 18-4103, 18-4104 or 18-4105, Idaho Code, is punishable by a fine of not more than one thousand dollars (\$ 1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment for each separate violation. If such person has twice been convicted within the immediately preceding two (2) years for any offense contained in chapter 41, title 18, Idaho Code, and these convictions were for offenses which occurred ten (10) or more days apart, a third or subsequent violation of sections 18-4103, 18-4104 or 18-4105, Idaho Code, within this two (2) year period is punishable as a felony.

§ 18-4110. Expert witness testimony

In any prosecution for a violation of the provisions of this act, neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the obscene or harmful character of the matter which is the subject of any such prosecution.

§ 18-4111. Search warrant for seizure of obscene material

- (A) An affidavit for a search warrant shall be filed with the magistrate describing the matter sought to be seized in detail. Where practical, the matter alleged to be obscene shall be attached to the affidavit for search warrant so as to afford the magistrate the opportunity to examine such material.
- (B) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the matter sought to be seized, if attached, by an examination of the affidavit describing the matter, or by such other manner or means that he deems necessary, if probable cause exists to believe that the matter is obscene and that probable cause exists for the immediate issuance of a search warrant. Upon making such determination, he shall issue a search warrant ordering the seizure of the matter described in the affidavit for a search warrant according to the provisions of Idaho criminal rules of procedure.
- (C) In the event that a search warrant is issued and matter alleged to be obscene is seized under the provisions of this section, any person alleged to be in possession of the said matter or claiming ownership of the matter at the time of its possession or seizure may file a notice in writing with the magistrate within ten (10) days of the date of the seizure alleging that the matter is not obscene and the magistrate shall set a hearing within one (1) day after request therefore, or at such time as the requesting party might agree, and at such hearing evidence may be presented as to the obscenity or nonobscenity of the matter seized and at the conclusion of such hearing, the magistrate shall make a further determination of whether probable cause exists to believe that the matter is obscene or nonobscene. A decision as to whether there is probable cause to believe the seized material to be obscene shall be rendered by the court within two (2) days of the conclusion of said hearing. If at such hearing the magistrate finds that no probable cause exists to believe that the matter is obscene, then the matter shall be returned to the person or persons from whom it was seized.

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- (D) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, as provided for in section 18-4112, Idaho Code, in which case it shall not be returned.
- (E) When a search warrant is issued under the provisions of this section, only that matter described in the complaint shall be seized by the executing peace officer or officers.
- (F) Procedures under this section for the seizure of allegedly obscene matter shall be cumulative of all other lawful means of obtaining evidence as provided by the laws of this state. Nothing contained in this section shall prevent the obtaining of alleged obscene matter by purchase or under injunction proceedings as authorized by this act or by any other statute of the state of Idaho.

§ 18-4112. Contraband

- Destruction of obscene matter or advertisement of matter represented to be obscene:
 - (A) Obscene matter and advertisements for matter represented to be obscene are contraband and shall be destroyed.
 - (B) Upon the conviction of the accused or rendition of a court order declaring such matter to be contraband and subject to confiscation, the court shall, when such judgments become final, and all appeal procedures have terminated, order, upon five (5) days' notice to the defendant, any matter or advertisement, in respect whereof the accused stands convicted, and which remains in the possession or under the control of the prosecuting attorney or any law enforcement agency, to be destroyed, and the court shall cause to be destroyed any such material in its possession or under its control, retaining only such copies as are necessary for law enforcement purposes.

§ 18-4114. Enforcement by injunction, etc

The district courts of this state and the judges thereof shall have full power, authority, and jurisdiction, upon application by any county prosecutor or city attorney within their respective jurisdictions, or the attorney general, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this act. Such restraining orders or injunctions may issue to prevent any person from violating any of the provisions of this act, in addition to those powers provided under title 52 of the [the] Idaho Code. However, no restraining order or injunction shall issue except upon notice to the person sought to be enjoined. Such person shall be entitled to a trial of the issues within one (1) day after filing of an answer to the complaint and a decision shall be rendered by the court within two (2) days of the conclusion of the trial. In the event that a final order or judgment of injunction be entered against the person sought to be enjoined, such final order or judgment shall contain a provision directing the person to surrender to the sheriff of the county in which the action was brought any obscene matter in his possession which is subject to such injunction and such sheriff shall be directed to seize and destroy such matter.

§ 18-4116. Indecent exposure

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- Every person who willfully and lewdly, either:
 - (1) Exposes his or her genitals, in any public place, or in any place where there is present another person or persons who are offended or annoyed thereby; or,
 - (2) Procures, counsels, or assists any person so to expose his or her genitals, where there is present another person or persons who are offended or annoyed thereby is guilty of a misdemeanor.
- Any person who pleads guilty to or is found guilty of a violation of subsection (1) or (2) of this section or a similar statute in another state or any local jurisdiction for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony and shall be imprisoned in the state prison for a period not to exceed ten (10) years.

§ 18-1513. Obscene materials -- Dissemination to minors -- Policy

It is hereby declared to be the policy of the legislature to restrain the distribution, promotion, or dissemination of **obscene** material, or of material harmful to minors, or the performance of **obscene** performances, or performances harmful to minors. It is found that such materials and performances are a contributing factor to crime, to juvenile crime, and also a basic factor in impairing the ethical and moral development of our youth.

§ 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, pubic 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 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) appeals to the prurient interest of minors as judged by the average person, applying contemporary community standards;
 - and

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- (2) depicts or describes representations 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, 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.

§ 18-1515. Disseminating material harmful to minors -- Defined -- Penalty

- A person is guilty of disseminating material harmful to minors when:
 - 1. He knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors, or he knowingly sells or loans to a minor for monetary consideration:
 - (a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or
 - (b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors; or
 - (c) Any other material harmful to minors.

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- 2. With reference to a motion picture, show or other presentation which depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he knowingly:
 - (a) Exhibits such motion picture, show or other presentation to a minor for a monetary consideration; or
 - (b) Sells to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or
 - (c) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or
 - (d) Exhibits such motion picture, show or other presentation to a minor not for a monetary consideration; or
 - (e) Gives without monetary consideration to a minor an admission ticket or pass to premises where there is exhibited or to be exhibited such motion picture, show, or other presentation.
- Disseminating material harmful to minors is a misdemeanor punishable by confinement in the county jail not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$ 1,000), or by both such fine and jail sentence.

§ 18-1516. Misrepresentations -- Parenthood or age -- Misdemeanor

- A person is guilty of a misdemeanor when:
 - 1. He knowingly misrepresents that he is a parent or guardian of a minor for the purpose of obtaining admission of any minor to any motion picture, show, or other presentation which is harmful to minors as defined in section 18-1515, subsection 2.
 - 2. If he is a minor and misrepresents his age for the purpose of obtaining admission to any motion picture, show, or other presentation which is harmful to minors as defined in section 18-1515, subsection 2.

§ 18-1517. Disseminating material harmful to minors -- Defenses

- 1. In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:
 - (a) The defendant had reasonable cause to believe that the minor involved was eighteen (18) years old or more, 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.
 - (b) The minor involved was accompanied by his parent or legal guardian, or by an adult and the adult represented that he was the minor's parent or guardian or an adult and signed a written statement to that effect.
 - (c) The defendant was the parent or guardian of the minor involved.
 - (d) The defendant was a bona fide school, college, university, museum or public library, or was acting in his capacity as an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

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§ 18-1517A. Hiring, employing, etc., minor to engage in certain acts -- Penalty

Every person who, with knowledge that a person is a minor under eighteen (18) years of age, or who, while in the possession of such facts that he should reasonably know that such person is a minor under eighteen (18) years of age, hires, employs, or uses such minor to do or assist in doing any of the acts described in section 18-4103, Idaho Code, is guilty of a misdemeanor. If such person has previously been convicted of a violation of this section he shall be guilty of a felony.

§ 18-1518. Tie-in sales of prohibited materials -- Misdemeanor

No person shall as a condition to a sale or delivery for resale of any book, paper, magazine, periodical, or other material require that the purchaser or consignee receive for resale any article, the promotion of which is prohibited by this act. Any violation hereof is a misdemeanor.

§ 18-1519. Each prohibited item disseminated constitutes separate offense

If more than one (1) article or item of material prohibited under this statute, is sold, given, advertised for sale, distributed commercially or promoted, in violation of the provisions of this act by the same person, each such sale, gift, advertisement, distribution, or promotion shall constitute a separate offense.

§ 18-1520. District courts -- Injunctions -- Trial -- Orders of injunction

- The district courts have jurisdiction to enjoin the sale or distribution of material harmful to minors, and to direct the seizure and destruction of the same, as hereinafter specified:
 - 1. The prosecuting attorney of any county in which a person, firm, or corporation sells, distributes or promotes, or is about to sell, distribute or promote, or has in his possession with intent to sell, distribute or promote, or is about to acquire possession with intent to sell, distribute or promote, any material harmful to minors, may maintain an action in the name of the state of Idaho for an injunction against such person, firm, or corporation in the district court of that county to prevent the sale, distribution or promotion, or further sale, distribution, or promotion, or the acquisition or possession of any material harmful to minors.
 - 2. The person, firm or corporation sought to be enjoined shall be entitled to a trial of the issues within one (1) day after joinder of issue and a decision shall be rendered by the court within two (2) days of the conclusion of the trial.
 - 3. In the event that a final order or judgment of injunction be entered in favor of the state of Idaho and against the person, firm, or corporation sought to be

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- enjoined, such final order or judgment shall contain a provision directing the person, firm or corporation to cease and desist from the sale of all materials adjudged to be harmful to minors.
- 4. Such final order or judgment of injunction shall not enjoin or prohibit a person, firm or corporation from sale, distribution or promotion of material harmful to minors to persons other than minors, nor shall it order the seizure and destruction of material harmful to minors unless the court finds and concludes that the person, firm or corporation has been selling, distributing or promoting, or intends to sell, distribute or promote such material to minors.
 - 5. In any action brought as herein provided the state of Idaho shall not be required to file any undertaking before the issuance of an injunction order, shall not be liable for costs, and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm or corporation sought to be enjoined.
 - 6. Every person, firm, or corporation who sells, distributes, or promotes, or acquires possession with intent to sell, distribute, or promote any material harmful to minors, after the service upon him of a summons and complaint in an action brought pursuant to this section, is chargeable with knowledge of the contents thereof.

§ 19-1428. Indictment for selling obscene books

An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or **obscene** book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or **obscenity** thereof.

§ 67-6533. Location of stores selling sexual material restricted in certain areas

- (a) From and after January 1, 1980, no person or entity shall own or operate any store, shop or business which sells or rents any materials defined as **obscene** materials in section 18-4101, Idaho Code, within twenty-five hundred (2500) feet of any school, church, or place of worship measured in a straight line to the nearest entrance to the premises.
- (b) From and after January 1, 1980, no person or entity shall own or operate any store, shop or business which sells or rents any materials defined in subsection 1 of section 18-1515, Idaho Code, where such materials constitute ten percent (10%) or more of the printed materials held for sale or rent of such store, shop or business, within twenty-five hundred (2500) feet of any school, church, or place of worship measured in a straight line to the nearest entrance to the premises.
- (c) From and after the effective date of this act, a violation of subsection (a) or subsection (b) of this section shall be misdemeanor.
- (d) A judge of a court of competent jurisdiction shall immediately issue a temporary restraining order for a violation of subsection (a) or subsection (b) of this section upon application therefore [therefor] by any public or private entity or person and

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upon compliance with the Idaho rules of civil procedure, except that no bond or security for the issuance of such restraining order shall be required. Further, a violation of subsection (a) or subsection (b) of this section shall subject the person and entities therefore [therefor] to a preliminary and permanent order of any court of this state enjoining them from such violation and no bond or security shall be required from the plaintiff or applicant therefore [therefor].

- (e) No entity, public or private, nor any person shall be liable for any damages, costs or attorney fees for any acts attempting to civilly or criminally enforce this section.
- (f) Nothing contained in this section shall preempt or prohibit cities or counties from regulating or restricting the location of the business activity described in this section and cities and counties are hereby specifically authorized to so regulate or restrict the location of said business activity.

§ 52-103. Moral nuisances -- Definitions

- As used in title 52, Idaho Code, relating to moral nuisances.
 - (A) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, or prostitution which occur on the premises.
 - (B) "Lewd matter" is synonymous with "**obscene** matter" and means any matter:
 - (1) which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
 - (2) which depicts or describes patently offensive representations or descriptions of:
 - (a) ultimate sexual acts, normal or perverted, actual or simulated; or
 - (b) 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 the context in which it is used, possesses serious literary, artistic, political or scientific value.
 - (C) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.
 - (D) "Matter" means a motion picture film or a publication or both.
 - (E) "Moral Nuisance" means a nuisance which is injurious to public morals.
 - (F) "Motion picture film" shall include any:
 - (1) film or plate negative;
 - (2) film or plate positive;
 - (3) film designed to be projected on a screen for exhibition;
 - (4) films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen.[;]
 - (5) video tape or any other medium used to electronically reproduce images on a screen.

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- (G) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.
 - (H) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.
 - (I) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.
 - (J) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.
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FILTERING LAWS:

§ 33-2741. Public library -- Internet use policy required. [Effective October 1, 2012.]

- (1) Public libraries receiving public moneys and governed by the provisions of chapters 26 and 27, title 33, Idaho Code, that offer use of the internet or an online service to the public:
 - (a)
 - (i) Shall have in place a policy of internet safety for minors including the operation of a technology protection measure with respect to any publicly accessible computers with internet access and that protects against access through such computers to visual depictions that are **obscene** or child pornography or harmful to minors; and
 - (ii) Shall enforce the operation of such technology protection measure during any use of a computer by a minor.
 - (b)
 - (i) Shall have in place a policy of internet safety, which may include the operation of a technology protection measure with respect to any publicly accessible computers with internet access and that protects against access through such computers to visual depictions that are **obscene** or child pornography; and
 - (ii) May enforce the operation of such technology protection measure during any use of a computer.
- (2) The provisions of this section shall not prohibit a public library from limiting internet access or otherwise protecting against materials other than the materials specified in this section.
- (3) An administrator, supervisor or other authorized representative of a public library may disable a technology protection measure described in subsection (1) at the request of a library patron to enable access for lawful purposes.

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- (4) Each public library's policy shall be developed under the direction of the library's board of trustees, adopted in an open meeting and shall have an effective date. The board of trustees shall review the policy at least once every three (3) years. The policy shall reflect the most recent date of review.
- (5) Notice of the availability of the policy shall be posted in a conspicuous place within the library for all patrons to observe. The board of trustees may issue any other public notice it considers appropriate to inform the community about the policy.
- (6) The policy may:
 - (a) State that it restricts access to internet or online sites that contain material described in subsection (1) of this section and how the policy meets the requirements provided for in this section;
 - (b) Inform patrons that administrative procedures and guidelines for library staff to follow in enforcing the policy have been adopted and are available for review at the library; and
 - (c) Inform patrons that procedures for use by patrons and staff to handle complaints about the policy, its enforcement or about observed patron behavior have been adopted and are available for review at the library.
- (7) For purposes of this section, the following terms shall have the following meanings:
 - (a) "Child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:
 - (i) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - (ii) Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
 - (iii) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.
 - (b) "Harmful to minors" means any picture, image, graphic image file or other visual depiction that:
 - (i) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex or excretion;
 - (ii) Depicts, describes or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
 - (iii) Taken as a whole, lacks serious literary, artistic, political or scientific value as to minors.
 - (c) "Minor" means anyone who has not attained the age of eighteen (18) years.
 - (d) "**Obscene**" means a depiction that:
 - (i) The average person, applying contemporary community standards, would find to appeal to the prurient interest;
 - (ii) Depicts or describes sexual conduct in a patently offensive way; and
 - (iii) Lacks serious literary, artistic, political or scientific value.

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- (e) "Public moneys" means any and all moneys belonging to or collected by the state or any political subdivision thereof including, but not necessarily limited to, any city, county, town or district therein.
- (8) The provisions of this section shall have no effect on the provisions of section 33-132, Idaho Code.

§ 33-132. Local school boards -- Internet use policy required

- (1) As a condition for receiving moneys from the state general fund, each local school district shall file an acceptable internet use policy with the state superintendent of public instruction no later than August 1, 2011, or within one (1) year after the creation of a new district, whichever is later, and every five (5) years thereafter. Such policy shall be approved by the district's board of trustees and shall contain, but not be limited to, provisions that:
 - (a) Prohibit and prevent the use of school computers and other school owned technology-related services from sending, receiving, viewing or downloading materials that are deemed to be harmful to minors, as defined by section 18-1514, Idaho Code; and
 - (b) Provide for the selection of technology for the local district's computers to filter or block internet access to **obscene** materials, materials harmful to minors and materials that depict the sexual exploitation of a minor, as defined in chapter 15, title 18, Idaho Code; and
 - (c) Establish appropriate disciplinary measures to be taken against persons violating the policy provided for in this section; and
 - (d) Include a component of internet safety for students that is integrated into the district's instructional program; and
 - (e) Inform the public that administrative procedures have been adopted to enforce the policy provided for in this section and to handle complaints about such enforcement, and that such procedures are available for review at the district office.
- (2) The policy provided for in subsection (1) of this section may include terms, conditions and requirements deemed appropriate by the district's board of trustees including, but not limited to, requiring written parental authorization for internet use by minors or differentiating acceptable uses among elementary, middle and high school students.
- (3) The district's superintendent is hereby authorized to take reasonable measures to implement and enforce the provisions of this section.