

Reprinted
2

FEB 6 1995
JUDICIARY

HOUSE FILE 135
BY HURLEY

Passed House ^(P. 1000) Date 3-27-95 Passed Senate, Date _____
Vote: Ayes 95 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to obscenity, by providing for restrictions on
2 public indecent exposure in certain establishments and by
3 providing for the abatement of the nuisance created by certain
4 establishments concerning obscenity, and providing an
5 effective date.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 135

1 Section 1. Section 657.2, Code 1995, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 14. A violation of section 728.4 or 728.5
4 or the knowing dissemination or exhibition of obscene material
5 to a minor from an establishment.

6 Sec. 2. Section 728.5, Code 1995, is amended to read as
7 follows:

8 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

9 A holder of a ~~liquor-license-or-beer~~ sales tax permit
10 pursuant to chapter 422 or any owner, manager, or person who
11 exercises direct control over any ~~licensed-premises-defined-in~~
12 ~~section-123-37-subsection-20~~ place of business required to
13 obtain a sales tax permit shall be guilty of a serious
14 misdemeanor under any of the following circumstances:

15 1. If such person ~~allow~~ allows or ~~permit~~ permits the
16 actual or simulated public performance of any sex act upon or
17 in such ~~licensed-premises~~ place of business.

18 2. If such person ~~allow~~ allows or ~~permit~~ permits the
19 exposure of the genitals or buttocks or female breast of any
20 person who acts as a waiter or waitress.

21 3. If such person ~~allow~~ allows or ~~permit~~ permits the
22 exposure of the genitals or female breast nipple of any person
23 who acts as an entertainer, whether or not the owner of the
24 ~~licensed-premises~~ place of business in which the activity is
25 performed employs or pays any compensation to such person to
26 perform such activity.

27 4. If such person ~~allow~~ allows or ~~permit~~ permits any
28 person to remain in or upon the ~~licensed-premises~~ place of
29 business who exposes to public view the person's genitals,
30 pubic hair, or anus.

31 ~~5. If such person allow or permit the displaying of moving~~
32 ~~pictures, films, or pictures depicting any sex act or the~~
33 ~~display of the pubic hair, anus, or genitals upon or in such~~
34 ~~licensed premises.~~

35 6 5. If such person advertises that any activity

1 prohibited by this section is allowed or permitted in such
2 licensed-premises place of business.

3 7 6. If such person allows or permits a minor to engage in
4 or otherwise perform in a live act intended to arouse or
5 satisfy the sexual desires or appeal to the prurient interests
6 of patrons. However, if such person allows or permits a minor
7 to participate in any act included in subsections 1 through 4,
8 the person shall be guilty of an aggravated misdemeanor.

9 In addition, a holder of a liquor license or beer permit or
10 any owner, manager, or person who exercises direct control
11 over any licensed premises defined in section 123.3,
12 subsection 20, shall be guilty of a serious misdemeanor if
13 such person allows or permits the displaying of moving
14 pictures, films, or pictures depicting any sex act or the
15 display of the pubic hair, anus, or genitals upon or in such
16 licensed premises.

17 ~~Provided-that-the~~ The provisions of this section shall not
18 apply to a theater, concert hall, art center, museum, or
19 similar establishment which is primarily devoted to the arts
20 or theatrical performances and any of the circumstances
21 contained in this section were permitted or allowed as part of
22 such art exhibits or performances.

23 Sec. 3. Section 728.8, Code 1995, is amended to read as
24 follows:

25 728.8 SUSPENSION OF LICENSES OR PERMITS.

26 Any person who knowingly permits a violation of section
27 728.2, 728.3, or 728.5, subsection 7 6, to occur on premises
28 under the person's control shall have all permits and licenses
29 issued to the person under state or local law as a
30 prerequisite for doing business on such premises revoked for a
31 period of six months. The county attorney shall notify all
32 agencies responsible for issuing licenses and permits of any
33 conviction under section 728.2, 728.3, or 728.5, subsection 7
34 6.

35 Sec. 4. NEW SECTION. 728.16 PUBLIC NUISANCE.

1 A person who violates section 728.4 or 728.5 or who
2 knowingly disseminates or exhibits obscene material to a minor
3 from an establishment operates a public nuisance subject to
4 the provisions of chapter 657.

5 Sec. 5. EFFECTIVE DATE. This Act, being deemed of
6 immediate importance, takes effect upon enactment.

7 EXPLANATION

8 Sections 1 and 4 of the bill provide that a violation of
9 section 728.4, concerning the rental or sale of hard-core
10 pornography, a violation of section 728.5, concerning public
11 indecent exposure, or the knowing dissemination or exhibition
12 of obscene materials to a minor constitutes a nuisance as
13 provided in chapter 657.

14 Sections 2 and 3 of the bill provide that all businesses
15 required to have a sales tax permit are subject to the
16 restrictions on public indecent exposure currently enumerated
17 in section 728.5, except that the bill provides that the
18 current obscenity restrictions on movies, films, or pictures
19 still only apply to businesses with a liquor license or wine
20 or beer permit.

21 Section 5 of the bill provides that the bill takes effect
22 upon enactment.

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HOUSE FILE 135

H-3337

1 Amend House File 135 as follows:

2 1. Page 1, by inserting after line 5 the
3 following:

4 "Sec. ____ . Section 728.1, Code 1995, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 6A. "Place of business" means the
7 premises of a business required to obtain a sales tax
8 permit pursuant to chapter 422, the premises of a
9 nonprofit or not-for-profit organization, and the
10 premises of an establishment which is open to the
11 public at large or where entrance is limited by a
12 cover charge or membership requirement.

13 Sec. ____ . Section 728.4, Code 1995, is amended to
14 read as follows:

15 728.4 RENTAL OR SALE OF HARD-CORE PORNOGRAPHY.

16 A person who knowingly rents, exhibits,
17 disseminates, sells, or offers for rental or sale
18 material depicting patently offensive representations
19 of oral, anal, or vaginal intercourse, actual or
20 simulated, involving humans, or depicting patently
21 offensive representations of masturbation, excretory
22 functions, or bestiality, or lewd exhibition of the
23 genitals, which the average adult taking the material
24 as a whole in applying statewide contemporary
25 community standards would find appeals to the prurient
26 interest; and which material, taken as a whole, lacks
27 serious literary, scientific, political, or artistic
28 value, upon conviction is guilty of an aggravated
29 misdemeanor. However, second and subsequent
30 violations of this section by a person who has been
31 previously convicted of violating this section are
32 class "D" felonies. Charges under this section may
33 only be brought by a county attorney or by the
34 attorney general."

A

35 2. Page 1, by striking lines 9 through 11 and
36 inserting the following:

37 ~~"A-holder-of-a-liquor-license-or-beer-permit-or-any~~
38 Any owner, manager, or person who exercises direct
39 control over any licensed-premises-defined-in".

40 3. Page 2, by inserting after line 22 the
41 following:

42 "Sec. ____ . Section 728.7, Code 1995, is amended to
43 read as follows:

44 728.7 EXEMPTIONS FOR PUBLIC LIBRARIES AND
45 EDUCATIONAL INSTITUTIONS.

B

46 Nothing in this chapter prohibits the use of
47 appropriate nonobscene material for educational
48 purposes in any accredited school, or any public
49 library, or in any educational program in which the
50 minor is participating. Nothing in this chapter

H-3337

H-3337

Page 2

B

1 prohibits the attendance of minors at an exhibition or
 2 display of nonobscene art works or the use of any
 3 nonobscene materials in any public library."
 4 4. Page 3, by inserting after line 4 the
 5 following:
 6 "Sec. ____ . Section 809.1, subsection 2, Code 1995,
 7 is amended by adding the following new paragraph:
 8 NEW PARAGRAPH. e. Any interest in, security in,
 9 claim against, or property or contractual right of any
 10 kind affording a source of influence over, any
 11 enterprise which a person has established, operated,
 12 controlled, conducted, or participated in the conduct
 13 of, in violation of a criminal offense pursuant to
 14 chapter 728."
 15 5. By renumbering as necessary.

By COMMITTEE ON JUDICIARY

HURLEY of Fayette, Chairperson

H-3337 FILED MARCH 17, 1995

*not germane - Motion to Suspend Rules - Prevailed (P. 999) A. adopted 3/27/95
 B. Withdrawn (P. 1000)*

HOUSE FILE 135

H-3460

1 Amend the amendment, H-3337, to House File 135 as
 2 follows:
 3 1. By striking page 1, line 40 through page 2,
 4 line 3.
 5 2. By renumbering as necessary.

By HEATON of Henry

GRUNDBERG of Polk

H-3460 FILED MARCH 27, 1995

LOST

(P. 999)

HOUSE FILE 135

H-3466

1 Amend the amendment, H-3337, to House File 135, as
 2 follows:
 3 1. Page 1, by inserting after line 39 the
 4 following:
 5 "____ . Page 1, lines 12 and 13, by striking the
 6 words "required to obtain a sales tax permit."

By HURLEY of Fayette

H-3466 FILED MARCH 27, 1995

NOT GERMANE -

(P. 998)

5-2/28/95
5-3/7/95 Do Pass
8-4/1/96 Judiciary

HOUSE FILE 135
BY HURLEY

(As Amended and Passed by the House March 27, 1995)

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Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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House Amendments _____

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24 whole in applying statewide contemporary community standards
25 would find appeals to the prurient interest; and which
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27 scientific, political, or artistic value, upon conviction is
28 guilty of an aggravated misdemeanor. However, second and
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30 previously convicted of violating this section are class "D"
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3 ~~any licensed-premises-defined-in-section-123-3,-subsection-20~~
4 ~~place of business required to obtain a sales tax permit~~ shall
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20 person to remain in or upon the ~~licensed-premises~~ place of
21 business who exposes to public view the person's genitals,
22 pubic hair, or anus.

23 ~~5.--If-such-person-allow-or-permit-the-displaying-of-moving~~
24 ~~pictures,-films,-or-pictures-depicting-any-sex-act-or-the~~
25 ~~display-of-the-pubic-hair,-anus,-or-genitals-upon-or-in-such~~
26 ~~licensed-premises-~~

27 6 5. If such person advertises that any activity
28 prohibited by this section is allowed or permitted in such
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31 or otherwise perform in a live act intended to arouse or
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34 to participate in any act included in subsections 1 through 4,
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26 6.

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