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JUDICIARY

HOUSE FILE 130

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Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act applying the death penalty or life imprisonment, by  
2 establishing the offense of capital murder, by providing a  
3 minimum age for imposition of a death sentence, excluding  
4 mentally ill persons from imposition of a death sentence, by  
5 providing for review of death sentences, by providing for  
6 execution by lethal injection, by amending the rules of  
7 criminal procedure, and by providing for the Act's  
8 applicability.

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

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1 Section 1. Section 701.7, Code 1997, is amended to read as  
2 follows:

3 701.7 FELONY DEFINED AND CLASSIFIED.

4 A public offense is a felony of a particular class when the  
5 statute defining the crime declares it to be a felony.

6 Felonies are capital felonies, class "A" felonies, class "B"  
7 felonies, class "C" felonies, and class "D" felonies. Where  
8 If the statute defining the offense declares it to be a felony  
9 but does not state what class of felony it is or provide for a  
10 specific penalty, that felony ~~shall be~~ is a class "D" felony.

11 Sec. 2. NEW SECTION. 707.1A CAPITAL MURDER.

12 1. a. A person commits capital murder if the person  
13 commits murder in the first degree pursuant to section 707.2,  
14 and the person previously has been convicted of capital  
15 murder, a class "A" felony pursuant to section 707.2, 709.2,  
16 or 710.2, or a criminal offense in another jurisdiction which  
17 would constitute capital murder or a class "A" felony under  
18 section 707.2, 709.2, or 710.2 if committed in this state.

19 b. A person commits capital murder if the person commits  
20 murder in the first degree pursuant to section 707.2, and the  
21 person previously has been convicted of murder in the second  
22 degree in violation of section 707.3, sexual abuse in the  
23 second degree in violation of section 709.3, kidnapping in the  
24 second degree in violation of section 710.3, or robbery in the  
25 first or second degree in violation of section 711.2 or 711.3.

26 c. A person commits capital murder if the person commits  
27 murder in the first degree pursuant to section 707.2, and the  
28 person, in the course of that murder, commits another class  
29 "A" felony pursuant to section 707.2, 709.2, or 710.2.

30 2. Capital murder is a felony punishable either by death  
31 or by life imprisonment, as determined pursuant to sections 16  
32 through 19 of this Act. However, if a person who is convicted  
33 of capital murder was under the age of sixteen years or was  
34 mentally ill at the time the offense was committed, the person  
35 shall be sentenced to life imprisonment.

1 For purposes of this section, "mentally ill" means the  
2 condition of a person who is suffering from a chronic and  
3 persistent serious mental disease or disorder and who, by  
4 reason of that condition, lacks sufficient judgment to make  
5 responsible decisions regarding treatment and is reasonably  
6 likely to injure the person's self or others who may come into  
7 contact with the person if the person is allowed to remain at  
8 liberty without treatment.

9 3. If a defendant is sentenced to death pursuant to  
10 sections 16 through 19 of this Act, the sentence shall be  
11 executed by the administration of a lethal injection pursuant  
12 to rules adopted by the board of corrections. For the  
13 purposes of this section, "lethal injection" means a  
14 continuous intravenous injection of a lethal quantity of  
15 sodium thiopental or other equally or more effective substance  
16 sufficient to cause death.

17 4. If a defendant, for whom a warrant of execution is  
18 issued, is suffering from such a diseased or deranged  
19 condition of the mind as to prevent the defendant from knowing  
20 the nature and quality of the act the defendant has been  
21 convicted of, or from understanding that trial on the offense  
22 has taken place and that execution proceedings are about to  
23 take place, or otherwise causes the defendant to lack the  
24 capacity, to understand the sentence which has been imposed  
25 and to participate in any legal proceedings relating to the  
26 sentence the execution shall not take place until after the  
27 defendant's capacity is restored. If the director of the  
28 department of corrections or the defendant's counsel files a  
29 request with the court which issued the warrant of execution,  
30 alleging that the defendant suffers from such a diseased or  
31 deranged condition, a hearing on the matter shall be held in  
32 the manner provided in section 812A.1.

33 Sec. 3. Section 707.2, unnumbered paragraph 1, Code 1997,  
34 is amended to read as follows:

35 A person commits murder in the first degree when the person

1 commits murder which is not capital murder and which is  
2 committed under any of the following circumstances:

3 Sec. 4. Section 707.3, unnumbered paragraph 1, Code 1997,  
4 is amended to read as follows:

5 A person commits murder in the second degree when the  
6 person commits murder which is not capital murder or murder in  
7 the first degree.

8 Sec. 5. Section 707.4, unnumbered paragraph 2, Code 1997,  
9 is amended to read as follows:

10 Voluntary manslaughter is an included offense under an  
11 indictment for capital murder or murder in the first or second  
12 degree.

13 Sec. 6. Section 707.5, unnumbered paragraph 1, Code 1997,  
14 is amended to read as follows:

15 Involuntary manslaughter as defined in this section is an  
16 included offense under an indictment for capital murder or  
17 murder in the first or second degree or voluntary  
18 manslaughter.

19 Sec. 7. Section 802.1, Code 1997, is amended to read as  
20 follows:

21 802.1 MURDER.

22 A prosecution for capital murder or murder in the first or  
23 second degree may be commenced at any time after the death of  
24 the victim.

25 Sec. 8. Section 811.1, subsections 1 and 2, Code 1997, are  
26 amended to read as follows:

27 1. A defendant awaiting judgment of conviction and  
28 sentencing following either a plea or verdict of guilty of a  
29 class "A" felony, capital murder, murder, felonious assault,  
30 felonious child endangerment, sexual abuse in the second  
31 degree, sexual abuse in the third degree, kidnapping, robbery  
32 in the first degree, arson in the first degree, or burglary in  
33 the first degree, or any felony included in section 124.401,  
34 subsection 1, paragraph "a".

35 2. A defendant appealing a conviction of a class "A"

1 felony, capital murder, murder, felonious assault, felonious  
2 child endangerment, sexual abuse in the second degree, sexual  
3 abuse in the third degree, kidnapping, robbery in the first  
4 degree, arson in the first degree, or burglary in the first  
5 degree, or any felony included in section 124.401, subsection  
6 1, paragraph "a".

7 Sec. 9. Section 811.1, Code 1997, is amended by adding the  
8 following new subsection:

9 NEW SUBSECTION. 4. A defendant charged with capital  
10 murder, if upon hearing held under the conditions required by  
11 section 812.2, the prosecuting attorney establishes by clear  
12 and convincing evidence that the release of the defendant from  
13 custody is likely to pose a danger of physical harm to another  
14 person. The court shall consider all lawfully obtained  
15 evidence relevant to the required determination, whether or  
16 not the evidence would be admissible at trial, but testimony  
17 of the person charged is not admissible at a subsequent trial  
18 on the issue of guilt of the offense charged or of any other  
19 offense.

20 Sec. 10. NEW SECTION. 812A.1 PROCEDURE TO DETERMINE  
21 SANITY OF CONDEMNED INMATE.

22 1. At any time prior to execution of an inmate who has  
23 been convicted of capital murder and sentenced to death, if  
24 the director of the department of corrections or the counsel  
25 for a person who is under a sentence of execution has cause to  
26 believe that the inmate is suffering from such a diseased or  
27 deranged condition of the mind as to prevent the defendant  
28 from knowing the nature and quality of the act the defendant  
29 has been convicted of, or from understanding that trial on the  
30 offense has taken place and that execution proceedings are  
31 about to take place, or otherwise causes the defendant to lack  
32 the capacity to understand the sentence which has been imposed  
33 and to participate in any legal proceedings relating to the  
34 sentence, the director or counsel may file a request with the  
35 court that issued the warrant for execution for a

1 determination of the inmate's sanity. If the district court  
2 determines that there is not sufficient reason to believe that  
3 the inmate is insane, the court shall enter an order denying  
4 the request and shall state the grounds for denying the  
5 request. If the court believes that there is sufficient  
6 reason to believe that the inmate is insane, the court shall  
7 suspend the execution and conduct a hearing to determine the  
8 sanity of the inmate.

9 2. At the hearing, the court shall determine the issue of  
10 the inmate's sanity. The court shall order a psychiatric or  
11 psychological examination of the inmate. For that purpose,  
12 the court shall appoint two licensed physicians or licensed  
13 psychologists, or one licensed physician and one licensed  
14 psychologist, who are qualified by training and practice to  
15 make such an examination and to examine the inmate and report  
16 any findings in writing to the court within ten days after the  
17 order of examination is issued. The inmate shall have the  
18 right to present evidence and cross-examine any witnesses at  
19 the hearing. Any statement made by the inmate during the  
20 course of any examination provided for in this section,  
21 whether or not the inmate consents to the examination, shall  
22 not be admitted into evidence against the convict in any  
23 criminal proceeding.

24 3. If, at the conclusion of a hearing held pursuant to  
25 this section, the court determines that the inmate is sane,  
26 the court shall enter an order setting a date for the  
27 convict's execution, which shall be carried into effect in the  
28 same manner as provided in the original sentence. A copy of  
29 the order shall be sent to the director of the department of  
30 corrections and the governor.

31 4. If, at the conclusion of a hearing held pursuant to  
32 this section, the court determines that the convict is insane,  
33 the court shall suspend the execution until further order. At  
34 any time after issuance of the order, if the court has  
35 sufficient reason to believe that the inmate has become sane,

1 the court shall again determine the sanity of the inmate as  
2 provided by this section. Proceedings pursuant to this  
3 section may continue to be held at such times as the court  
4 orders until it is either determined that the inmate is sane  
5 or incurably insane.

6 Sec. 11. NEW SECTION. 814.28 REVIEW OF DEATH SENTENCE.

7 1. In a case in which a sentence of death is imposed, the  
8 supreme court shall automatically review the judgment and  
9 sentence. The case shall not be transferred to the court of  
10 appeals.

11 2. A review by the supreme court of a judgment and  
12 sentence imposing the punishment of death has priority over  
13 all other criminal and other actions pending before the  
14 supreme court.

15 3. The supreme court shall review the trial and judgment,  
16 and separately shall review the sentencing proceeding. Upon  
17 determining that errors did not occur at the trial requiring  
18 reversal or modification of the judgment, the supreme court  
19 shall proceed to determine if the sentence of death is  
20 lawfully imposed. In its review of the sentencing proceeding  
21 the supreme court shall determine all of the following:

22 a. Whether the sentence of death was imposed capriciously  
23 or under the influence of prejudice or other arbitrary factor.

24 b. Whether the special verdicts returned under section 16,  
25 subsection 2, of this Act, are supported by the evidence.

26 c. Whether the sentence of death is excessive or  
27 disproportionate to the penalty imposed in similar cases,  
28 considering both the crime and the defendant.

29 4. If the supreme court determines that the sentence of  
30 death was not lawfully imposed, the court shall set aside the  
31 sentence and shall remand the case to the trial court for  
32 imposition of a sentence of life imprisonment.

33 5. If the supreme court affirms the judgment and sentence  
34 of death, the clerk of the supreme court shall certify the  
35 judgment of the supreme court under the seal of the court to

1 the clerk of the trial court.

2 Sec. 12. NEW SECTION. 901.11 CAPITAL MURDER PROCEEDINGS.

3 1. If a charge of capital murder is submitted to the jury  
4 or court, but the prosecuting attorney waives the death  
5 penalty, upon a verdict of guilty, the court shall sentence  
6 the defendant to life imprisonment. If the prosecuting  
7 attorney waives the death penalty, the court shall follow the  
8 sentencing procedures set forth in rule of criminal procedure  
9 22, Iowa court rules, third edition, and need not follow the  
10 special sentencing procedures provided for capital murder  
11 cases.

12 2. If capital murder is charged, but the charge is not  
13 submitted to the court or jury, or the court or jury finds the  
14 defendant guilty of another offense, upon conviction of the  
15 other charge, the court shall follow the sentencing procedures  
16 set forth in rule of criminal procedure 22, Iowa court rules,  
17 third edition, concerning sentencing for the offense, rather  
18 than the sentencing procedures provided for capital murder  
19 cases.

20 3. Capital murder proceedings shall be conducted in  
21 bifurcated proceedings before the same trier of fact. During  
22 the initial proceeding, the jury, or the court, if the  
23 defendant waives the right to a jury trial, shall decide only  
24 whether the defendant is guilty or not guilty of any submitted  
25 offense. The issue of punishment shall not be submitted  
26 during the initial proceeding.

27 Upon a verdict of guilty to a capital murder charge, a  
28 separate sentencing proceeding shall be conducted as provided  
29 in sections 16 through 19 of this Act. If a defendant enters  
30 a plea of guilty to a capital murder charge, the court shall  
31 conduct a separate sentencing proceeding as provided in  
32 sections 16 through 19 of this Act.

33 Sec. 13. NEW SECTION. 902.13 CAPITAL MURDER.

34 If a person is to be sentenced to life imprisonment under  
35 section 16, subsection 5, of this Act, nothing in chapters 901

1 through 909, pertaining to deferred judgment, deferred  
2 sentence, suspended sentence, or reconsideration of sentence,  
3 applies, and the person shall not be released on parole unless  
4 the governor commutes the person's sentence to a term of years  
5 and shall not otherwise be released from confinement unless  
6 the governor pardons the person.

7 Sec. 14. Section 904.105, Code 1997, is amended by adding  
8 the following new subsection:

9 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A  
10 pertaining to executions of persons convicted of capital  
11 murder.

12 Sec. 15. Rules of criminal procedure, Iowa court rules,  
13 third edition, are amended by adding sections 16 through 19 of  
14 this Act.

15 Sec. 16. NEW RULE. CAPITAL MURDER -- PROCEDURE.

16 1. Upon a finding or plea that a defendant is guilty of  
17 capital murder, the court shall conduct a separate sentencing  
18 proceeding to determine whether the defendant shall be  
19 sentenced to death or to life imprisonment. The proceeding  
20 shall be conducted in the trial court before the trial jury,  
21 or the court if there is no jury, as soon as practicable. In  
22 the proceeding, additional evidence may be presented as to any  
23 matter which is relevant to the sentence. The court shall  
24 receive when offered any evidence that is required by the  
25 rules of criminal procedure. This subsection does not  
26 authorize the introduction of any evidence secured in  
27 violation of the Constitution of the United States or of the  
28 Constitution of the State of Iowa. The state and the  
29 defendant or the defendant's counsel shall be permitted to  
30 cross-examine witnesses and to present arguments for or  
31 against a sentence of death.

32 2. On conclusion of the presentation of the evidence, the  
33 court shall submit each of the following issues to the jury:

34 a. Whether the conduct of the defendant that caused the  
35 death of the deceased was committed willfully, deliberately,

1 and with the reasonable expectation that the death of the  
2 deceased or another would result.

3 b. Whether a probability exists that in the future the  
4 defendant would commit criminal acts of violence that would  
5 constitute a continuing threat to society.

6 c. Whether aggravating circumstances exist that are  
7 sufficient to outweigh any mitigating circumstances that may  
8 exist.

9 If the case is not tried to a jury, the court shall  
10 determine the issues.

11 3. The state must prove each issue in subsection 2 beyond  
12 a reasonable doubt, and the jury, or the court if there is no  
13 jury, shall return a special verdict of "yes" or "no" on each  
14 issue.

15 4. If the case is tried to a jury, the court shall charge  
16 the jury that:

17 a. It shall answer any issue "yes" if it agrees  
18 unanimously.

19 b. It shall answer any issue "no" if the jurors  
20 unanimously agree that the answer is "no" or if the jurors do  
21 not unanimously agree that the answer is "yes".

22 5. If the jury, or the court if there is no jury, returns  
23 an affirmative finding on all applicable issues, the court  
24 shall sentence the defendant to death. If the jury or the  
25 court returns a negative finding on any applicable issue, the  
26 court shall sentence the defendant to the custody of the  
27 director of the department of corrections for confinement for  
28 the rest of the defendant's life.

29 6. Iowa Code chapters 901 through 909 do not apply to a  
30 conviction of capital murder if the defendant is sentenced to  
31 death.

32 Sec. 17. NEW RULE. AUTOMATIC REVIEW -- STAY OF JUDGMENT.

33 1. A judgment of conviction and sentence of death shall be  
34 reviewed automatically in the manner provided in Iowa Code  
35 section 814.28, and the Iowa supreme court has exclusive

1 jurisdiction of the review.

2 2. Upon entry of judgment and sentence of death, the trial  
3 court shall prepare a complete record and transcript of the  
4 action in the manner provided in the rules of criminal  
5 procedure and shall docket the record and transcript with the  
6 clerk of the supreme court.

7 3. The judgment and sentence of the trial court is stayed  
8 as a matter of law from the time of its entry until the  
9 judgment of the supreme court is certified to and entered by  
10 the trial court. Upon entry of a judgment of the supreme  
11 court which affirms the conviction and sentence, the stay of  
12 the judgment and sentence terminates as a matter of law.

13 4. All court costs required due to the automatic  
14 preparation of the record and transcript, docketing with the  
15 supreme court, and stay of judgment and sentence shall be  
16 assessed to the state.

17 Sec. 18. NEW RULE. ISSUANCE OF WARRANT.

18 1. Upon entry by the trial court of the judgment of the  
19 supreme court affirming a judgment and sentence of death, a  
20 district judge shall within five days of the entry issue a  
21 warrant under the seal of the court for the execution of the  
22 sentence of death. The warrant shall specifically set forth  
23 the offense and the fact of conviction, shall state the  
24 judgment and sentence of the court, shall state that the  
25 judgment and sentence were affirmed by the supreme court and  
26 the date of entry of judgment of the supreme court in the  
27 trial court, and shall specify the date fixed for execution of  
28 the defendant which shall be not less than fifty nor more than  
29 sixty days after the date of entry in the trial court of the  
30 judgment of the supreme court affirming the judgment and  
31 sentence of death. The warrant shall be directed to the  
32 director of the department of corrections commanding the  
33 director to cause the warrant to be executed on the date  
34 specified. The trial court shall deliver the warrant to the  
35 sheriff of the county in which judgment of conviction was

1 entered and the sheriff shall deliver the warrant and the  
2 defendant to the custody of the department of corrections for  
3 confinement in the state penitentiary. The director of the  
4 department of corrections shall acknowledge receipt of the  
5 warrant and the defendant, and the sheriff shall return the  
6 acknowledgment to the office of the clerk of the trial court  
7 from which the warrant was issued.

8 2. Immediately after issuance of a warrant ordering a  
9 sentence of death, the clerk of the trial court issuing the  
10 warrant shall transmit by mail to the governor a copy of the  
11 indictment, the plea, the verdict and special findings, the  
12 affirmation of judgment and sentence by the supreme court, and  
13 the complete transcript of the trial court.

14 3. Notwithstanding subsection 1, if a defendant, for whom  
15 a warrant of execution is issued, is suffering from such a  
16 diseased or deranged condition of the mind as to prevent the  
17 defendant from knowing the nature and quality of the act the  
18 defendant has been convicted of, or from understanding that  
19 trial on the offense has taken place and that execution  
20 proceedings are about to take place, or otherwise causes the  
21 defendant to lack the capacity to understand the sentence  
22 which has been imposed and to participate in any legal  
23 proceedings relating to the sentence, the execution shall not  
24 take place until after the defendant is no longer suffering  
25 from the condition.

26 Sec. 19. NEW RULE. EVIDENCE AT SENTENCING IN CAPITAL  
27 MURDER CASES -- REQUIRED INFORMATION.

28 1. At a reasonable time before the commencement of  
29 sentencing proceedings in a capital murder case, each party  
30 shall file and serve upon the other party the following:

31 a. A list of all aggravating or mitigating circumstances  
32 which the party intends to prove during the sentencing  
33 proceedings.

34 b. The names of all persons whom the party intends to call  
35 as witnesses during the sentencing proceedings.

1 c. Notwithstanding rule 13, copies, or for inspection  
2 purposes, the location, of all documents, including books,  
3 papers, writings, drawings, graphs, charts, photographs,  
4 phonorecords, and other data compilations from which  
5 information can be obtained, or other objects which the party  
6 intends to offer into evidence during the sentencing  
7 proceedings. If copies are not supplied to opposing counsel,  
8 the party shall make the items available for inspection and  
9 copying without order of the court.

10 2. In proceedings to determine whether the sentence shall  
11 be death or life imprisonment, evidence may be presented as to  
12 any matter which the trial court deems relevant to the  
13 sentence, including but not limited to the nature,  
14 circumstances, and manner of completion of the murder, and the  
15 defendant's character, background, history, and mental and  
16 physical condition. The trial court shall admit any relevant  
17 evidence respecting any aggravating or mitigating  
18 circumstances, if the party has included the circumstance on a  
19 list provided pursuant to this rule, or good cause is shown  
20 for the failure to do so.

21 Sec. 20. APPLICABILITY. This Act applies to offenses  
22 committed on or after the effective date of this Act.

23 Sec. 21. SEVERABILITY. If any provision of this Act or  
24 the application thereof to any person is invalid, the  
25 invalidity shall not affect the provisions or application of  
26 this Act which can be given effect without the invalid  
27 provisions or application and to this end the provisions of  
28 this Act are severable.

29 EXPLANATION

30 This bill amends the Iowa criminal code to provide for  
31 punishment by death for murder committed under specified  
32 circumstances if the trial jury, or the judge if there is no  
33 jury, makes specific affirmative findings respecting the  
34 nature of the act of murder and the characteristics of the  
35 defendant in a separate sentencing proceeding held after the

1 close of the trial. Under the bill, the offense of capital  
2 murder involves a murder which would constitute murder in the  
3 first degree committed by a person who has previously  
4 committed capital murder or a class "A" felony; a person who  
5 has been previously convicted of murder in the second degree,  
6 sexual abuse in the second degree, kidnapping in the second  
7 degree, or robbery in the first or second degree; or a person  
8 who commits another class "A" felony in the course of a first  
9 degree murder. Class "A" felonies for this purpose include  
10 murder in the first degree, sexual abuse in the first degree,  
11 and kidnapping in the first degree. With respect to  
12 previously committed crimes, murder in the second degree,  
13 sexual abuse in the second degree, kidnapping in the second  
14 degree, and robbery in the first degree are class "B"  
15 felonies. Robbery in the second degree is a class "C" felony.  
16 Murder in the second degree, sexual abuse in the second  
17 degree, kidnapping in the second degree, and robbery in the  
18 first and second degrees are all forcible felonies for which a  
19 convicted person must serve 100 percent of the sentence,  
20 subject to a possible reduction of up to 15 percent of the  
21 sentence for good behavior.

22 The sentence of death is imposed only if the trier of fact  
23 unanimously answers three questions affirmatively: (1)  
24 whether the conduct of the defendant that caused the death of  
25 the deceased was committed willfully, deliberately, and with  
26 reasonable expectation that the death of the deceased or  
27 another would result; (2) whether a probability exists that in  
28 the future the defendant would commit criminal acts of  
29 violence that would constitute a continuing threat to society;  
30 and (3) whether aggravating circumstances exist that are  
31 sufficient to outweigh any mitigating circumstances that may  
32 exist. The sentencing proceeding is conducted separately from  
33 the finding of guilt or innocence by the same trier of fact.  
34 If the jury fails to agree unanimously on the required  
35 affirmative findings or if the supreme court determines that

1 error was committed in the sentencing proceeding, the penalty  
2 would be life imprisonment.

3 The death penalty sentence would be reviewed automatically  
4 by the supreme court. The bill requires the supreme court to  
5 examine whether the sentence is excessive or disproportionate  
6 to penalties in similar cases. If affirmed by the supreme  
7 court, the penalty would be accomplished by lethal injection.  
8 The bill requires the board of corrections to adopt rules  
9 pertaining to executions.

10 The bill provides that in order to receive a sentence of  
11 death, the defendant must be at least 16 years of age and not  
12 mentally ill at the time the offense is committed. A  
13 procedure for the determination of mental illness is provided.  
14 A person who is mentally ill at the time that a warrant of  
15 execution is issued will not be executed until the person no  
16 longer suffers from the condition. The bill also provides  
17 that it applies only to offenses committed on or after the  
18 bill's effective date and, that if any provision or  
19 application of a provision is invalid, it is severable from  
20 the rest of the bill.

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