

MAR 7 2006
Place On Calendar

HOUSE FILE 2674
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2473)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to indecent exposure and providing penalties.

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

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HF 2674

TLSB 6171HV 81

eg/cf/24

1 Section 1. Section 728.5, Code 2005, is amended to read as
2 follows:

3 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

4 1. An owner, manager, or person who exercises direct
5 control over a place of business required to obtain a sales
6 tax permit or a place of business where alcoholic beverages
7 are served or allowed on the premises shall be guilty of a
8 serious misdemeanor under any of the following circumstances:

9 ~~1-~~ a. If such person allows or permits the actual or
10 simulated public performance of any sex act upon or in such
11 place of business.

12 ~~2-~~ b. If such person allows or permits the exposure of
13 the genitals or buttocks or female breast of any person who
14 acts as a waiter or waitress.

15 ~~3-~~ c. If such person allows or permits the exposure of
16 the genitals or female breast nipple of any person who acts as
17 an entertainer, whether or not the owner of the place of
18 business in which the activity is performed employs or pays
19 any compensation to such person to perform such activity.

20 ~~4-~~ d. If such person allows or permits any person to
21 remain in or upon the place of business who exposes to public
22 view the person's genitals, pubic hair, or anus.

23 ~~5-~~ e. If such person advertises that any activity
24 prohibited by this section is allowed or permitted in such
25 place of business.

26 ~~6-~~ f. If such person allows or permits a minor to engage
27 in or otherwise perform in a live act intended to arouse or
28 satisfy the sexual desires or appeal to the prurient interests
29 of patrons. However, if such person allows or permits a minor
30 to participate in any act included in subsections-~~1~~ paragraphs
31 "a" through 4 "d", the person shall be guilty of an aggravated
32 misdemeanor.

33 2. For purposes of this section, "minor" means any person
34 under the age of twenty-one.

35 3. The provisions of this section shall not apply to a

1 theater, concert hall, art center, museum, or similar
2 establishment which is primarily devoted to the arts or
3 theatrical performances and in which any of the circumstances
4 contained in this section were permitted or allowed as part of
5 such art exhibits or performances. At trial for a violation
6 of this section the court may consider the challenged
7 circumstance and whether the owner, manager, or person is
8 attempting to evade prosecution under this section. The court
9 may receive into evidence testimony regarding the nexus
10 between the premises where the challenged circumstance
11 occurred and the premises of a business situated nearby. In
12 addition to other competent evidence, the court may consider
13 the offered testimony of experts pertaining to:

- 14 a. The artistic or theatrical value, if any of the
15 performance or exhibit.
16 b. The degree of public acceptance within the community.
17 c. The advertising promotion.

18 Sec. 2. Section 728.8, Code 2005, is amended to read as
19 follows:

20 728.8 SUSPENSION OF LICENSES OR PERMITS.

21 Any person who knowingly permits a violation of section
22 728.2, 728.3, or 728.5~~7~~-~~subsection-6~~7 to occur on premises
23 under the person's control shall have all permits and licenses
24 issued to the person under state or local law as a
25 prerequisite for doing business on such premises revoked for a
26 period of six months. The county attorney shall notify all
27 agencies responsible for issuing licenses and permits of any
28 conviction under section 728.2, 728.3, or 728.5~~7~~-~~subsection-6~~.

29 EXPLANATION

30 This bill relates to indecent exposure under Code section
31 728.5.

32 Under current law, a person who exercises control over a
33 place of business required to obtain a sales tax permit may be
34 held accountable for circumstances of indecent exposure.

35 Under the bill, a person who exercises control over a place of

1 business where alcoholic beverages are served or allowed on
2 the premises is also accountable for circumstances of indecent
3 exposure.

4 The bill also, for purposes of prohibiting obscene
5 performances by minors under Code section 728.5 only, raises
6 the age of a minor from 18 years to 21 years.

7 The indecent exposure provisions do not apply to the arts
8 or to theatrical performances. However, the bill provides
9 that at a trial, the court may consider whether the person is
10 attempting to avoid prosecution.

11 A person who violates Code section 728.5 by allowing acts
12 of indecent exposure performed by an adult is guilty of a
13 serious misdemeanor and if such acts are performed by a minor,
14 is guilty of an aggravated misdemeanor. A serious misdemeanor
15 is punishable by confinement for no more than one year and a
16 fine of at least \$250 but not more than \$1,500. An aggravated
17 misdemeanor is punishable by confinement for no more than two
18 years and a fine of at least \$500 but not more than \$5,000.

19 Upon a conviction, a person's license or permit required to
20 do business on the premises shall be revoked for a period of
21 six months.

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HOUSE FILE 2674

H-8238

1 Amend House File 2674 as follows:

2 1. Page 1, by striking lines 4 through 9 and
3 inserting the following:

4 "1. An owner, manager, or person who exercises
5 direct control over a place of business ~~required to~~
6 ~~obtain a sales tax permit~~ shall be guilty of a serious
7 misdemeanor under any of the ~~following~~ circumstances
8 described in subsection 1A, paragraphs "a" through
9 "f", if the place of business is one of the following:

10 a. Required to obtain a sales tax permit.

11 b. Allows an open or unsealed bottle, can, jar, or
12 other receptacle containing an alcoholic beverage on
13 the premises.

14 c. Operates as a single place of business with an
15 adjacent place of business required to obtain a sales
16 tax permit.

17 ~~1.~~ 1A. a. If such person allows or permits the
18 actual or".

19 2. Page 2, line 8, by striking the words "The
20 court".

21 3. Page 2, by striking lines 9 through 11 and
22 inserting the following: "In".

23 4. Page 2, line 13, by striking the words "of
24 experts".

25 5. Page 2, by inserting after line 17 the
26 following:

27 "d. The nexus, including the unity of interest,
28 ownership, management, and operations between the
29 premises where the challenged circumstance occurred
30 and an adjacent place of business."

31 6. By renumbering as necessary.

By ANDERSON of Page

H-8238 FILED MARCH 14, 2006