

House File 271 - Introduced

HOUSE FILE _____
BY ANDERSON, SWAIM, and
FORRISTALL

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:
3 TLSB 1649HH 82
4 eg/cf/24

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1 1 Section 1. Section 728.5, Code 2007, is amended to read as
1 2 follows:
1 3 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.
1 4 1. An owner, manager, or person who exercises direct
1 5 control over a place of business ~~required to obtain a sales~~
~~1 6 tax permit shall be guilty of a serious misdemeanor under any~~
1 7 of the following circumstances described in subsection 2,
1 8 paragraphs "a" through "f", if the place of business is one of
1 9 the following:

1 10 a. Required to obtain a sales tax permit.

1 11 b. Allows an open or unsealed bottle, can, jar, or other
1 12 receptacle containing an alcoholic beverage on the premises.

1 13 c. Operates as a single place of business with an adjacent
1 14 place of business required to obtain a sales tax permit.

1 15 ~~1- 2. a.~~ If such person allows or permits the actual or
1 16 simulated public performance of any sex act upon or in such
1 17 place of business.

1 18 ~~2- b.~~ If such person allows or permits the exposure of the
1 19 genitals or buttocks or female breast of any person who acts
1 20 as a waiter or waitress.

1 21 ~~3- c.~~ If such person allows or permits the exposure of the
1 22 genitals or female breast nipple of any person who acts as an
1 23 entertainer, whether or not the owner of the place of business
1 24 in which the activity is performed employs or pays any
1 25 compensation to such person to perform such activity.

1 26 ~~4- d.~~ If such person allows or permits any person to
1 27 remain in or upon the place of business who exposes to public
1 28 view the person's genitals, pubic hair, or anus.

1 29 ~~5- e.~~ If such person advertises that any activity
1 30 prohibited by this section is allowed or permitted in such
1 31 place of business.

1 32 ~~6- f.~~ If such person allows or permits a minor to engage
1 33 in or otherwise perform in a live act intended to arouse or
1 34 satisfy the sexual desires or appeal to the prurient interests
1 35 of patrons. However, if such person allows or permits a minor
2 1 to participate in any act included in ~~subsections 1 through 4~~
2 2 paragraphs "a" through "d", the person shall be guilty of an
2 3 aggravated misdemeanor.

2 4 3. For purposes of this section, "minor" means any person
2 5 under the age of twenty-one.

2 6 4. The provisions of this section shall not apply to a
2 7 theater, concert hall, art center, museum, or similar
2 8 establishment which is primarily devoted to the arts or
2 9 theatrical performances and in which any of the circumstances
2 10 contained in this section were permitted or allowed as part of
2 11 such art exhibits or performances. At trial for a violation
2 12 of this section the court may consider the challenged
2 13 circumstance and whether the owner, manager, or person is
2 14 attempting to evade prosecution under this section. In
2 15 addition to other competent evidence, the court may consider
2 16 testimony pertaining to:

2 17 a. The artistic or theatrical value, if any, of the
2 18 performance or exhibit.

2 19 b. The degree of public acceptance within the community.

2 20 c. The advertising promotion.
2 21 d. The nexus, including the unity of interest, ownership,
2 22 management, and operations between the premises where the
2 23 challenged circumstance occurred and an adjacent place of
2 24 business.

2 25 Sec. 2. Section 728.8, Code 2007, is amended to read as
2 26 follows:

2 27 728.8 SUSPENSION OF LICENSES OR PERMITS.
2 28 Any person who knowingly permits a violation of section
2 29 728.2, 728.3, or 728.5, ~~subsection 6,~~ to occur on premises
2 30 under the person's control shall have all permits and licenses
2 31 issued to the person under state or local law as a
2 32 prerequisite for doing business on such premises revoked for a
2 33 period of six months. The county attorney shall notify all
2 34 agencies responsible for issuing licenses and permits of any
2 35 conviction under section 728.2, 728.3, or 728.5, ~~subsection 6.~~

3 1 EXPLANATION

3 2 This bill relates to indecent exposure under Code section
3 3 728.5.

3 4 Under current law, a person who exercises control over a
3 5 place of business required to obtain a sales tax permit may be
3 6 held accountable for circumstances of indecent exposure.

3 7 The bill provides that a person who exercises control over
3 8 a place of business is guilty of a serious misdemeanor for
3 9 circumstances of indecent exposure, if the place of business
3 10 is one of the following:

3 11 1. Required to obtain a sales tax permit.

3 12 2. Allows an open or unsealed container of an alcoholic
3 13 beverage on the premises.

3 14 3. Operates as a single place of business with an adjacent
3 15 place of business required to obtain a sales tax permit.

3 16 The bill also, for purposes of prohibiting obscene
3 17 performances by minors under Code section 728.5 only, raises
3 18 the age of a minor from 18 years to 21 years.

3 19 The indecent exposure provisions do not apply to the arts
3 20 or to theatrical performances. However, the bill provides
3 21 that at a trial, the court may consider whether the person is
3 22 attempting to avoid prosecution. The court may consider
3 23 testimony pertaining to the nexus, including the unity of
3 24 interest, ownership, management, and operations between the
3 25 premises where the challenged circumstance occurred and an
3 26 adjacent place of business.

3 27 A person who violates Code section 728.5 by allowing acts
3 28 of indecent exposure performed by an adult is guilty of a
3 29 serious misdemeanor and if such acts are performed by a minor,
3 30 is guilty of an aggravated misdemeanor. A serious misdemeanor
3 31 is punishable by confinement for no more than one year and a
3 32 fine of at least \$315 but not more than \$1,875. An aggravated
3 33 misdemeanor is punishable by confinement for no more than two
3 34 years and a fine of at least \$625 but not more than \$6,250.

3 35 Upon a conviction, a person's license or permit required to
4 1 do business on the premises shall be revoked for a period of
4 2 six months.

4 3 LSB 1649HH 82

4 4 eg:rj/cf/24