

House File 640 - Introduced

HOUSE FILE _____
BY ANDERSON and SWAIM

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 2405HH 83
4 jm/nh/8

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1 1 Section 1. Section 728.5, Code 2009, is amended to read as
1 2 follows:

1 3 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

1 4 1. For purposes of this section, the following definitions
1 5 apply unless the context otherwise requires:

1 6 a. "Minor" means any person under the age of twenty-one.

1 7 b. "Place of business" includes a place of business that

1 8 meets any of the following conditions:

1 9 (1) Required to obtain a sales tax permit.

1 10 (2) Allows an open or unsealed bottle, can, jar, or other

1 11 receptacle containing an alcoholic beverage on the premises.

1 12 (3) Operates as a single place of business with an

1 13 adjacent place of business required to obtain a sales tax

1 14 permit.

1 15 2. An owner, manager, or person who exercises direct
1 16 control over a place of business ~~required to obtain a sales~~

1 17 ~~tax permit shall be~~ is guilty of a serious misdemeanor under

1 18 any of the following circumstances:

1 19 1- a. If such person allows or permits the actual or
1 20 simulated public performance of any sex act upon or in such
1 21 place of business.

1 22 2- b. If such person allows or permits the exposure of
1 23 the genitals or buttocks or female breast of any person who
1 24 acts as a waiter or waitress.

1 25 3- c. If such person allows or permits the exposure of
1 26 the genitals or female breast nipple of any person who acts as
1 27 an entertainer, whether or not the owner of the place of
1 28 business in which the activity is performed employs or pays
1 29 any compensation to such person to perform such activity.

1 30 4- d. If such person allows or permits any person to
1 31 remain in or upon the place of business who exposes to public
1 32 view the person's genitals, pubic hair, or anus.

1 33 5- e. If such person advertises that any activity
1 34 prohibited by this section is allowed or permitted in such
1 35 place of business.

2 1 6- f. If such person allows or permits a minor to engage
2 2 in or otherwise perform in a live act intended to arouse or
2 3 satisfy the sexual desires or appeal to the prurient interests
2 4 of patrons. However, if such person allows or permits a minor
2 5 to participate in any act included in ~~subsections 1 through 4~~
2 6 paragraphs "a" through "d", the person ~~shall be~~ is guilty of
2 7 an aggravated misdemeanor.

2 8 2. The provisions of this section shall not apply to a
2 9 theater, concert hall, art center, museum, or similar
2 10 establishment which is primarily devoted to the arts or
2 11 theatrical performances and in which any of the circumstances
2 12 contained in this section were permitted or allowed as part of
2 13 such art exhibits or performances. At trial for a violation
2 14 of this section the court may consider the challenged

2 15 circumstance and whether the owner, manager, or person is
2 16 attempting to evade prosecution under this section. In
2 17 addition to other competent evidence, the court may consider
2 18 the offered testimony pertaining to:

2 19 a. The artistic or theatrical value, if any, of the
2 20 performance or exhibit.

2 21 b. The degree of public acceptance within the community.

2 22 c. The advertising promotion.
2 23 d. The nexus, including the unity of interest, ownership,
2 24 management, and operations between the premises where the
2 25 challenged circumstance occurred and an adjacent place of
2 26 business.

2 27 Sec. 2. Section 728.8, Code 2009, is amended to read as
2 28 follows:

2 29 728.8 SUSPENSION OF LICENSES OR PERMITS.

2 30 Any person who knowingly permits a violation of section
2 31 728.2, 728.3, or 728.5, ~~subsection 6,~~ to occur on premises
2 32 under the person's control shall have all permits and licenses
2 33 issued to the person under state or local law as a
2 34 prerequisite for doing business on such premises revoked for a
2 35 period of six months. The county attorney shall notify all
3 1 agencies responsible for issuing licenses and permits of any
3 2 conviction under section 728.2, 728.3, or 728.5, ~~subsection 6.~~

3 3 EXPLANATION

3 4 This bill relates to indecent exposure under Code section
3 5 728.5.

3 6 The bill specifies that a person who exercises control over
3 7 a place of business may be held accountable for circumstances
3 8 of indecent exposure on the premises of the business if any of
3 9 the following apply: the business is required to obtain a
3 10 sales tax permit; the business allows an open or unsealed
3 11 bottle or other receptacle containing an alcoholic beverage on
3 12 the premises; or the business operates a single place of
3 13 business with an adjacent place of business required to obtain
3 14 a sales tax permit.

3 15 The bill also, for purposes of prohibiting obscene
3 16 performances by minors under Code section 728.5 only, raises
3 17 the age of a minor from 18 years to 21 years.

3 18 The indecent exposure provisions do not apply to the arts
3 19 or to theatrical performances. However, the bill provides
3 20 that at a trial, the court may consider whether the person is
3 21 attempting to avoid prosecution.

3 22 Under the bill, and in addition to other competent evidence
3 23 at trial, the court may consider the following: the artistic
3 24 value of the performance or exhibit; the degree of public
3 25 acceptance within the community; the advertising promotion;
3 26 and the nexus, including the unity of interest, ownership,
3 27 management, and operations between the premises where the
3 28 challenged circumstances occurred.

3 29 A person who violates Code section 728.5 by allowing acts
3 30 of indecent exposure performed by an adult is guilty of a
3 31 serious misdemeanor and if such acts are performed by a minor,
3 32 is guilty of an aggravated misdemeanor. A serious misdemeanor
3 33 is punishable by confinement for no more than one year and a
3 34 fine of at least \$315 but not more than \$1,875. An aggravated
3 35 misdemeanor is punishable by confinement for no more than two
4 1 years and a fine of at least \$625 but not more than \$6,250.

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

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