

House File 359 - Introduced

HOUSE FILE 359
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 121)

A BILL FOR

1 An Act relating to obscene material by modifying the definition
2 of material and authorizing local regulation of certain live
3 acts, performances, and exhibitions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 728.1, subsection 3, Code 2013, is
2 amended to read as follows:

3 3. "*Material*" means any book, magazine, newspaper, or
4 other printed or written material or any picture, drawing,
5 photograph, motion picture, or other pictorial representation
6 or any statue or other figure, or any recording, transcription
7 or mechanical, chemical, or electrical reproduction or any
8 other articles, equipment, machines, or materials, but does
9 not mean a live act, performance, or exhibition, including
10 those circumstances described in section 728.5, subsection 1,
11 paragraphs "a" through "c".

12 Sec. 2. Section 728.11, Code 2013, is amended to read as
13 follows:

14 **728.11 Uniform application.**

15 In order to provide for the uniform application of the
16 provisions of this chapter relating to obscene material
17 applicable to minors within this state, it is intended that the
18 sole and only regulation of obscene material shall be under
19 the provisions of this chapter, and no municipality, county,
20 or other governmental unit within this state shall make any
21 law, ordinance, or regulation relating to the availability of
22 obscene materials. All such laws, ordinances, or regulations
23 shall be or become void, unenforceable, and of no effect on
24 January 1, 1978. Nothing in this section or section 728.5
25 shall restrict the zoning authority of cities and counties
26 or the authority of cities and counties to enact ordinances
27 or rules that regulate a place of business or establishment
28 operating within the city's or county's jurisdiction that
29 permits or allows the circumstances described in section 728.5,
30 subsection 1, paragraphs "a" through "c".

31 EXPLANATION

32 This bill relates to Iowa's law governing obscenity.
33 Current Code section 728.1(3) defines "material" as any book,
34 magazine, newspaper, or other printed or written material or
35 any picture, drawing, photograph, motion picture, or other

1 pictorial representation or any statue or other figure, or any
2 recording, transcription or mechanical, chemical or electrical
3 reproduction or any other articles, equipment, machines, or
4 materials. The bill amends the definition of material to
5 exclude live acts, performances, or exhibitions, including the
6 actual or simulated public performance of any sex act, the
7 exposure of the genitals or buttocks or female breast of any
8 person who acts as a waiter or waitress, and the exposure of
9 the genitals or female breast nipple of any person who acts
10 as an entertainer, whether or not the owner of the place of
11 business in which the activity is performed employs or pays any
12 compensation to such person to perform such activity.

13 The bill also provides that Code section 728.5, establishing
14 criminal offenses for specified live acts, performances, and
15 exhibitions, and Code section 728.11, limiting local government
16 authority to regulate the availability of obscene materials,
17 shall not restrict the authority of a city or county to
18 enact ordinances or rules that regulate a place of business
19 or an establishment operating within the city's or county's
20 jurisdiction that permits or allows the actual or simulated
21 public performance of any sex act, the exposure of the genitals
22 or buttocks or female breast of any person who acts as a waiter
23 or waitress, and the exposure of the genitals or female breast
24 nipple of any person who acts as an entertainer, whether or not
25 the owner of the place of business in which the activity is
26 performed employs or pays any compensation to such person to
27 perform such activity.

28 In 2012, the Iowa Supreme Court in *Mall Real Estate, L.L.C.*
29 *v. City of Hamburg* construed the definition of "material" in
30 Code section 728.1(3) to include live performances and held the
31 city of Hamburg's ordinance regulating places of business that
32 offer or permit nude dancing to be preempted by state law and
33 unenforceable.