

House File 225 - Introduced

HOUSE FILE 225

BY SALMON

A BILL FOR

1 An Act relating to certain criminal and civil actions involving
2 sexual offenses and obscene material and minors, and
3 providing penalties.

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

1 Section 1. NEW SECTION. 235G.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Disseminate*" means the same as defined in section 728.1.

5 2. "*Distributor*" means a person who owns or operates an
6 internet site or internet-based application.

7 3. "*Minor*" means a person under the age of eighteen.

8 4. "*Obscene material*" means the same as defined in section
9 728.1.

10 5. "*Personal identification information*" means an unexpired
11 student identification card, a valid social security card,
12 an unexpired driver's license, an unexpired nonoperator's
13 identification card, an unexpired passport, a certified copy
14 of a birth certificate, or other valid, unexpired proof of
15 identity.

16 Sec. 2. NEW SECTION. 235G.2 Restriction on minor access to
17 internet sites and internet-based applications.

18 A distributor shall not knowingly allow a minor to access the
19 distributor's internet site or internet-based application if
20 the distributor's internet site or internet-based application
21 contains obscene material.

22 Sec. 3. NEW SECTION. 235G.3 Civil remedy — attorney fees.

23 1. A parent or legal guardian of a minor may institute a
24 civil action for damages in the amount of five hundred dollars
25 for each violation of section 235G.2.

26 2. A court shall award a prevailing party in an action under
27 this section court costs, reasonable attorney fees, and expert
28 witness fees.

29 Sec. 4. NEW SECTION. 235G.4 Affirmative defense.

30 1. It is an affirmative defense to any claim or action
31 under section 235G.3 that the distributor has done all of the
32 following:

33 a. Required a person accessing its internet site or
34 internet-based application to provide to the distributor
35 personal identification information verifying the person was

1 age eighteen or older when the person accessed the internet
2 site or internet-based application.

3 *b.* Required the person receiving the obscene material to use
4 an authorized access or identification code, as provided by the
5 distributor, before dissemination of the obscene material.

6 *c.* Previously issued an authorized access or identification
7 code to the person after taking reasonable measures to
8 ascertain that the person was eighteen years of age or older.

9 *d.* Established a procedure to immediately cancel the
10 authorized access or identification code of a person after
11 receiving notice that the code has been lost, stolen, or used
12 by persons under the age of eighteen years or that the code is
13 no longer desired.

14 2. It shall not be an affirmative defense to any claim
15 or action under section 235G.3 that a minor accessed the
16 distributor's internet site or internet-based application
17 from an accredited school, public library, community college,
18 college, or university.

19 Sec. 5. Section 272.2, subsection 14, paragraph b,
20 subparagraph (1), subparagraph division (g), Code 2021, is
21 amended to read as follows:

22 (g) ~~Telephone dissemination of~~ Use of an electronic
23 communication device to disseminate obscene material to minors
24 under [section 728.15](#).

25 Sec. 6. Section 692A.102, subsection 1, paragraph a,
26 subparagraph (10), subparagraph division (a), Code 2021, is
27 amended to read as follows:

28 (a) Dissemination or exhibition of obscene material to
29 minors in violation of [section 728.2](#) or ~~telephone dissemination~~
30 ~~of~~ using an electronic communication device to disseminate
31 obscene material to minors in violation of [section 728.15](#).

32 Sec. 7. Section 728.15, Code 2021, is amended to read as
33 follows:

34 **728.15** ~~Telephone dissemination of~~ Use of an electronic
35 communication device to disseminate obscene material to minors.

1 1. ~~a.~~ As used in this section, ~~"person"~~ excludes unless the
2 context otherwise requires:

3 a. "Electronic communication device" means a telephone or
4 a mobile telephone or other electronic device used to move
5 information from one place to another.

6 b. "Person" includes any information-access service provider
7 that merely provides transmission capacity without with control
8 over the content of the transmission.

9 ~~b.~~ 2. A person shall not knowingly disseminate obscene
10 material by the use of ~~telephones or telephone facilities~~ an
11 electronic communication device to a minor.

12 ~~2.~~ 3. It shall be a defense in any prosecution for a
13 violation of subsection 1 2 by a person accused of knowingly
14 disseminating obscene material by the use of ~~telephones~~ an
15 electronic communication device or telephone facilities to a
16 minor that the person accused has taken either of the following
17 measures to restrict access to the obscene material:

18 a. The person accused has done all of the following:

19 (1) Required the person receiving the obscene material to
20 use an authorized access or identification code, as provided by
21 the information provider, before transmission of the obscene
22 material begins.

23 (2) Previously issued the code by mailing it to the
24 applicant after taking reasonable measures to ascertain that
25 the applicant was eighteen years of age or older.

26 (3) Established a procedure to immediately cancel the
27 code of any person after receiving notice, in writing or by
28 ~~telephone~~ electronic communication device, that the code has
29 been lost, stolen, or used by persons under the age of eighteen
30 years or that the code is no longer desired.

31 b. The person accused has required payment by credit card
32 before transmission of the obscene material.

33 ~~3.~~ 4. Any list of applicants or recipients compiled or
34 maintained by an information-access service provider for
35 purposes of compliance with subsection 2 3 is confidential and

1 shall not be sold or otherwise disseminated except upon order
2 of the court.

3 ~~4.~~ 5. a. A violation of subsection 1 2 is an aggravated
4 misdemeanor.

5 b. A violation of subsection 1 2 by a person who has been
6 previously convicted of a violation of subsection 1 2 is a
7 class "D" felony.

8 Sec. 8. Section 802.2, subsection 1, Code 2021, is amended
9 to read as follows:

10 1. An information or indictment for sexual abuse in the
11 first, second, or third degree committed on or with a person
12 who is under the age of eighteen years shall be found within
13 ~~fifteen~~ thirty years after the person upon whom the offense
14 is committed attains eighteen years of age, or if the person
15 against whom the information or indictment is sought is
16 identified through the use of a DNA profile, an information or
17 indictment shall be found within three years from the date the
18 person is identified by the person's DNA profile, whichever is
19 later.

20 Sec. 9. Section 802.2B, subsection 6, Code 2021, is amended
21 by striking the subsection.

22 Sec. 10. NEW SECTION. **802.2E Sexually motivated offenses**
23 **— minors.**

24 An information or indictment for a violation of section
25 728.2 or 728.3, 728.5, subsection 1, paragraph "f", 728.5,
26 subsection 2, or section 728.12, 728.14, or 728.15 committed on
27 or with a person who is under the age of eighteen years shall
28 be found within thirty years after the person upon whom the
29 offense is committed attains eighteen years of age, or if the
30 person against whom the information or indictment is sought is
31 identified through the use of a DNA profile, an information or
32 indictment shall be found within three years from the date the
33 person is identified by the person's DNA profile, whichever is
34 later.

35 Sec. 11. Section 802.3, Code 2021, is amended to read as

1 follows:

2 **802.3 Felony — aggravated or serious misdemeanor.**

3 In all cases, except those enumerated in [section 802.1](#),
4 [802.2](#), [802.2A](#), [802.2B](#), [802.2C](#), [802.2D](#), [802.2E](#), or [802.10](#),
5 an indictment or information for a felony or aggravated or
6 serious misdemeanor shall be found within three years after its
7 commission.

8 Sec. 12. Section 802.4, Code 2021, is amended to read as
9 follows:

10 **802.4 Simple misdemeanor — ordinance.**

11 A In all cases except for any case enumerated in section
12 802.2E, a prosecution for a simple misdemeanor or violation
13 of a municipal or county rule or ordinance shall be commenced
14 within one year after its commission.

15 Sec. 13. Section 802.10, subsection 3, Code 2021, is amended
16 to read as follows:

17 3. However, notwithstanding [subsection 2](#), an indictment
18 or information shall be found against a person within three
19 years from the date the person is identified by the person's
20 DNA profile. If the action involves sexual abuse, another
21 sexual offense, kidnapping, or human trafficking, the
22 indictment or information shall be found as provided in section
23 [802.2](#), [802.2B](#), [802.2C](#), ~~or~~ [802.2D](#), or [802.2E](#) if the person is
24 identified by the person's DNA profile.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 This bill relates to a minor's ability to access obscene
29 material on a distributor's internet site or internet-based
30 application, limitations of criminal actions (statute of
31 limitations) in sexually motivated or exploitation offenses
32 that involve a minor, and the dissemination of obscene
33 materials to minors.

34 MINOR ACCESS TO OBSCENE MATERIAL ON INTERNET. The
35 bill provides that if a distributor's internet site or

1 internet-based application contains obscene material, the
2 distributor shall not knowingly allow a minor to access the
3 internet site or internet-based application. A parent or legal
4 guardian of a minor may institute a civil action for damages
5 under this provision. The bill provides that the damages for a
6 violation of this provision shall be \$500 for each violation,
7 and the prevailing party in the action shall recover court
8 costs and reasonable attorney fees.

9 The bill also provides an affirmative defense to any claim
10 or action under the bill that a distributor required a person
11 accessing its internet site or internet-based application
12 to provide to the distributor personal identification
13 information verifying the person was 18 years of age or older
14 when the person accessed the internet site or internet-based
15 application; required the person receiving the obscene
16 material to use an authorized access or identification code,
17 as provided by the distributor, before dissemination of the
18 obscene material; previously issued an authorized access or
19 identification code to the person after taking reasonable
20 measures to ascertain that the person was 18 years of age
21 or older; and established a procedure to immediately cancel
22 the authorized access or identification code of any person
23 after receiving notice that the code has been lost, stolen,
24 or used by persons under the age of 18 years or that the code
25 is no longer desired. The bill provides that it shall not
26 be an affirmative defense to any claim or action under the
27 bill that a minor accessed the distributor's internet site or
28 internet-based application from an accredited school, public
29 library, community college, college, or university.

30 The bill provides definitions as follows: "disseminate"
31 means to transfer possession, with or without consideration;
32 "distributor" means a person who owns or operates an internet
33 site or internet-based application; "minor" means a person
34 under the age of 18; "obscene material" means any material
35 depicting or describing the genitals, sex acts, masturbation,

1 excretory functions, or sadomasochistic abuse which the
2 average person, taking the material as a whole and applying
3 contemporary community standards with respect to what is
4 suitable material for minors, would find appeals to the
5 prurient interest and is patently offensive, and the material,
6 taken as a whole, lacks serious literary, scientific, political
7 or artistic value; and "personal identification information"
8 means an unexpired student identification card, a valid social
9 security card, an unexpired driver's license, an unexpired
10 nonoperator's identification card, an unexpired passport,
11 a certified copy of a birth certificate, or other valid,
12 unexpired proof of identity.

13 SEXUAL ABUSE. The bill amends Code section 802.2 by allowing
14 an indictment or information for sexual abuse in the first,
15 second, or third degree committed on or with a person under 18
16 years of age to be found within 30 years after the person upon
17 whom the offense is committed attains 18 years of age. Current
18 law provides that an indictment or information for sexual abuse
19 in the first, second, or third degree committed on or with a
20 person under 18 years of age shall be found within 15 years
21 after the person upon whom the offense is committed attains 18
22 years of age.

23 A person who commits sexual abuse in the first degree
24 commits a class "A" felony and is subject to a special sentence
25 under Code section 903B.1 for the rest of the person's life
26 if the person ever completes the sentence for the underlying
27 criminal offense. A person who commits sexual abuse in the
28 second degree commits a class "B" felony and is subject to
29 a special sentence under Code section 903B.1 for the rest of
30 the person's life upon completion of the sentence for the
31 underlying criminal offense. A person who commits sexual
32 abuse in the third degree commits a class "C" felony and is
33 subject to a special sentence under Code section 903B.1 for
34 the rest of the person's life upon completion of the sentence
35 for the underlying criminal offense. A person who commits any

1 sexual abuse offense must register as a sex offender under Code
2 section 692A.

3 SEXUALLY MOTIVATED OR EXPLOITATION OFFENSES. The bill
4 creates new Code section 802.2E which allows an information
5 or indictment for the following felony and aggravated and
6 serious misdemeanor offenses and one simple misdemeanor offense
7 committed on or with either a child under 14 years of age or a
8 person under 18 years of age to be found within 30 years after
9 the person upon whom the offense is committed attains 18 years
10 of age: dissemination and exhibition of obscene material to
11 minors in violation of Code section 728.2, admitting minors
12 to premises where obscene material is exhibited in violation
13 of Code section 728.3, public indecent exposure in violation
14 of Code section 728.5(1)(f) or 728.5(2), sexual exploitation
15 of a minor in violation of Code section 728.12, commercial
16 film and photographic print processor reports of depictions
17 of minors engaged in prohibited sexual acts in violation of
18 Code section 728.14 (simple misdemeanor), and the criminal
19 offense as amended in the bill relating to using an electronic
20 communication device to disseminate obscene material to minors
21 in violation of Code section 728.15.

22 Current law provides that an indictment or information for
23 the offenses listed in the bill be found within three years
24 after its commission. However, under current law for sexual
25 exploitation of a minor in violation of Code section 728.12,
26 an indictment or information may be found 10 years after the
27 person upon whom the offense is committed attains 18 years of
28 age, and for depictions of minors engaged in prohibited acts in
29 violation of Code section 728.14, an information may be found
30 one year after the commission of the offense.

31 A person who commits dissemination and exhibition of obscene
32 material to minors commits a serious misdemeanor and must
33 register as a sex offender. A person who commits admitting
34 minors to premises where obscene material is exhibited commits
35 a serious or aggravated misdemeanor and must register as a

1 sex offender. A person who commits public indecent exposure
2 commits a serious or aggravated misdemeanor. A person who
3 commits sexual exploitation of a minor commits an aggravated
4 misdemeanor or a class "C" or class "D" felony depending on
5 the facts and circumstances of the case and must register
6 as a sex offender. A person who commits a felonious sexual
7 exploitation of a minor is also subject to a special sentence
8 under Code section 903B.1 for the rest of the person's life or
9 a special Code section 903B.2 for 10 years upon completion of
10 the sentence for the underlying criminal offense. A person
11 who commits commercial film and photographic print processor
12 reports of depictions of minors engaged in prohibited sexual
13 acts commits a simple misdemeanor. A person who commits
14 the criminal offense now known under the bill as using an
15 electronic communication device to disseminate obscene material
16 to minors commits an aggravated misdemeanor or class "D" felony
17 and must register as a sex offender.

18 DNA PROFILE. The bill also provides that if the person
19 against whom the information or indictment is sought is
20 identified through the use of a DNA profile for an offense
21 described in the bill, an information or indictment shall be
22 found within 25 years after the victim attains 18 years of age,
23 or within three years from the date the person is identified by
24 the person's DNA profile, whichever is later.

25 ELECTRONIC DISSEMINATION OF OBSCENE MATERIAL. The bill
26 also amends Code section 728.15 by striking references to
27 "telephone" and changing the name of the criminal offense
28 from "telephone dissemination of obscene material to minors"
29 to "use of an electronic communication device to disseminate
30 obscene material to minors". The bill defines "electronic
31 communication device" to mean a telephone or a mobile telephone
32 or other electronic device used to move information from one
33 place to another. The criminal penalty for a violation of
34 Code section 728.15 remains an aggravated misdemeanor or class
35 "D" felony depending on the facts and circumstances of the

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1 violation.