

Senate File 2198 - Introduced

SENATE FILE 2198

BY CHAPMAN

A BILL FOR

1 An Act relating to the prohibition of certain specified
2 materials in schools and school libraries and providing
3 penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 272.2, subsection 14, paragraph b,
2 subparagraph (1), Code 2022, is amended by adding the following
3 new subparagraph division:

4 NEW SUBPARAGRAPH DIVISION. (0g) Providing obscene material
5 or hard-core pornography to students from a school library
6 or requiring a student to read or view obscene material or
7 hard-core pornography under section 728.2A. For purposes of
8 this subparagraph division, "*obscene material*" and "*hard-core*
9 *pornography*" mean the same as defined in section 728.1.

10 Sec. 2. Section 728.1, Code 2022, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 1A. "*Hard-core pornography*" means material
13 depicting patently offensive representations of oral, anal, or
14 vaginal intercourse, actual or simulated, involving humans, or
15 depicting patently offensive representations of masturbation,
16 excretory functions, or bestiality, or lewd exhibition of the
17 genitals, which the average adult taking the material as a
18 whole in applying statewide contemporary community standards
19 would find appeals to the prurient interest; and which
20 material, taken as a whole, lacks serious literary, scientific,
21 political, or artistic value.

22 Sec. 3. NEW SECTION. **728.2A Obscene material and hard-core**
23 **pornography in schools and school libraries.**

24 1. As used in this section, unless the context otherwise
25 requires:

26 a. "*Administrator*" means and includes a school
27 superintendent, assistant superintendent, educational
28 director, principal, assistant principal, and other
29 individuals authorized to assist in performing noninstructional
30 administrative duties.

31 b. "*School*" means and includes all of the following:

32 (1) A charter school established in accordance with section
33 256E.2.

34 (2) A nonpublic school, as that term is defined in section
35 280.2.

1 (3) A public school district, as described in chapter 274.

2 c. "Student" means an individual who is enrolled in and
3 attending a school in kindergarten through grade twelve.

4 d. "Teacher" means the same defined in section 272.1.

5 2. A school shall designate at least one administrator to
6 ensure that no obscene material or hard-core pornography is
7 present and available to students in a library operated by the
8 school that the administrator supervises or directs.

9 3. a. An administrator who knowingly provides obscene
10 material or hard-core pornography to a student in a library
11 operated by the school that the administrator supervises or
12 directs shall be guilty of a serious misdemeanor.

13 b. A teacher who knowingly requires a student to read or
14 view obscene material or hard-core pornography as part of the
15 teacher's instructional program or curriculum shall be guilty
16 of a serious misdemeanor.

17 4. a. A parent or guardian of a student alleging a
18 violation of subsection 3 by an administrator or teacher may
19 bring a civil action for injunctive relief against the school
20 that employs the administrator or teacher to prohibit the
21 administrator or teacher from continuing such violation.

22 b. If a parent or guardian is the prevailing party in a
23 civil action instituted pursuant to paragraph "a", all of the
24 following shall apply:

25 (1) The court shall award reasonable attorney fees to the
26 parent or guardian.

27 (2) The court shall assess a civil penalty against the
28 school that employs the administrator or teacher, not to
29 exceed five hundred dollars per day for each day a violation
30 occurs during the pendency of the civil action. However, the
31 court shall not assess the civil penalty provided in this
32 subparagraph for a violation of subsection 3, paragraph "a", if
33 the administrator or the school that employs the administrator
34 removes the obscene material or hard-core pornography from
35 the library operated by the school during the pendency of the

1 civil action. Revenue from the civil penalty provided in this
2 subparagraph shall be remitted to the treasurer of state for
3 deposit in the general fund of the state.

4 (3) The clerk of court shall send a copy of the court's
5 order issued pursuant to paragraph "a" and a copy of this
6 section by restricted certified mail, return receipt requested,
7 to the county attorney of the county in which the school that
8 employs the administrator or teacher in violation of subsection
9 3 is located.

10 5. A county attorney shall file a criminal action on behalf
11 of the state against the administrator or teacher in violation
12 of subsection 3 within sixty days of the county attorney's
13 receipt of information from any person who provides the county
14 attorney with probable cause that a violation of subsection 3
15 has occurred. The county attorney's receipt of a copy of a
16 court's injunctive order provided by the clerk of court issued
17 pursuant to subsection 4 along with subsequent information
18 that a violation of subsection 3 is continuing to occur shall
19 constitute probable cause that a violation of subsection 3 has
20 occurred.

21 6. a. If a county attorney fails to institute a criminal
22 action on behalf of the state within sixty days of the county
23 attorney's receipt of information from any person who provides
24 the county attorney with probable cause that a violation of
25 subsection 3 has occurred, the parent or guardian of the
26 student who was injured by the violation of subsection 3 may
27 bring a civil action for damages against the county attorney.
28 Damages awarded pursuant to this subsection shall include all
29 of the following:

30 (1) Actual damages for injuries resulting from a violation
31 of subsection 3.

32 (2) A penalty in an amount determined by the court, but not
33 less than one thousand dollars per day for each day the county
34 attorney fails to institute a criminal action in accordance
35 with this subsection.

1 *b.* The state of Iowa hereby waives immunity from suit and
2 consents to the jurisdiction of any court in which an action
3 is brought against a county attorney respecting any cause of
4 action arising out of this subsection. Such action shall be
5 heard and determined pursuant to rules otherwise applicable
6 to civil actions brought in the particular court having
7 jurisdiction of the suit and the parties to the suit shall have
8 the right of appeal from any judgment, decree, or decision
9 of the trial court to the appropriate appellate court under
10 applicable rules of appeal.

11 Sec. 4. Section 728.4, Code 2022, is amended to read as
12 follows:

13 **728.4 Rental or sale of hard-core pornography.**

14 A person who knowingly rents, sells, or offers for
15 rental or sale ~~material depicting patently offensive~~
16 ~~representations of oral, anal, or vaginal intercourse, actual~~
17 ~~or simulated, involving humans, or depicting patently offensive~~
18 ~~representations of masturbation, excretory functions, or~~
19 ~~bestiality, or lewd exhibition of the genitals, which the~~
20 ~~average adult taking the material as a whole in applying~~
21 ~~statewide contemporary community standards would find appeals~~
22 ~~to the prurient interest; and which material, taken as a whole,~~
23 ~~lacks serious literary, scientific, political, or artistic~~
24 ~~value~~ hard-core pornography, upon conviction, is guilty of
25 an aggravated misdemeanor. However, second and subsequent
26 violations of [this section](#) by a person who has been previously
27 convicted of violating [this section](#) are class "D" felonies.
28 Charges under [this section](#) may only be brought by a county
29 attorney or by the attorney general.

30 Sec. 5. Section 728.7, Code 2022, is amended to read as
31 follows:

32 **728.7 Exemptions for public libraries and educational**
33 **institutions.**

34 Nothing in [this chapter](#) prohibits the use of appropriate
35 material for educational purposes in any accredited school,

1 or any public library, or in any educational program in which
2 the minor is participating. Nothing in **this chapter** prohibits
3 the attendance of minors at an exhibition or display of art
4 works or the use of any materials in any public library. For
5 purposes of this section, "appropriate material" does not
6 include obscene material or hard-core pornography.

7 EXPLANATION

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

10 This bill relates to the prohibition of certain specified
11 materials in schools and school libraries.

12 The bill requires a school to designate at least one
13 administrator to ensure that no obscene material or hard-core
14 pornography is present and available to students in a library
15 operated by the school that the administrator supervises or
16 directs.

17 The bill prohibits an administrator from knowingly providing
18 obscene material or hard-core pornography to students in
19 a library operated by the school that the administrator
20 supervises or directs. The bill also prohibits a teacher from
21 knowingly requiring a student to read or view obscene material
22 or hard-core pornography as part of the teacher's instructional
23 program or curriculum. The bill provides that an administrator
24 or teacher who violates either of these provisions is guilty
25 of a serious misdemeanor. A serious misdemeanor is punishable
26 by confinement for no more than one year and a fine of at least
27 \$430 but not more than \$2,560. The bill requires the board of
28 educational examiners to adopt rules that require the board to
29 disqualify an applicant for a license or to revoke a person's
30 license for a violation of either of these provisions.

31 The bill authorizes a parent or guardian of a student
32 alleging a violation of the bill's provisions to bring a civil
33 action for injunctive relief against the school that employs an
34 administrator or teacher in violation of the bill. The bill
35 requires a court to award reasonable attorney fees to a parent

1 or guardian who prevails in this civil action.

2 The bill provides that if a parent or guardian is the
3 prevailing party in the civil action, the court shall assess a
4 civil penalty against the school that employs the administrator
5 or teacher, not to exceed \$500 per day for each day a violation
6 occurs during the pendency of the civil action, unless certain
7 limited exceptions apply. The bill requires revenue from the
8 civil penalty to be remitted to the treasurer of state for
9 deposit in the general fund of the state.

10 The bill provides that if a parent or guardian is the
11 prevailing party in the civil action, the clerk of court
12 shall send a copy of the court's order and a copy of the law
13 by certified mail to the county attorney of the county in
14 which the school that employs the administrator or teacher who
15 violated the bill's provisions is located.

16 The bill requires the county attorney of the county in
17 which the school is located to file a criminal action against
18 the administrator or teacher in violation of the bill within
19 60 days of the county attorney's receipt of information
20 that provides the county attorney with probable cause that a
21 violation of the bill's provisions has occurred. The bill
22 provides that the county attorney's receipt of a copy of a
23 court's injunctive order provided by the clerk of court along
24 with subsequent information that a violation of the bill's
25 provisions is continuing to occur shall constitute probable
26 cause that a violation of the bill's criminal provision has
27 occurred.

28 The bill provides that if a county attorney fails to file a
29 criminal action on behalf of the state within 60 days of the
30 receipt of information that provides the county attorney with
31 probable cause that a violation of the bill's provisions has
32 occurred, the parent or guardian of the student who was injured
33 by the violation may bring a civil action for damages against
34 the county attorney. Additionally, the bill provides that the
35 damages shall include both actual damages and a penalty not

1 less than \$1,000 per day for each day the county attorney fails
2 to file a criminal action. The bill waives immunity for a
3 county attorney in any cause of action brought against a county
4 attorney under the bill.

5 Current law provides that Code chapter 728 does not prohibit
6 the use of appropriate material for educational purposes in any
7 accredited school, public library, or educational program in
8 which the minor is participating, and does not prohibit the
9 attendance of minors at an exhibition or display of art works
10 or the use of any materials in any public library. The bill
11 provides that, for purposes of this provision, appropriate
12 material does not include obscene material or hard-core
13 pornography.

14 The bill contains definitions for "administrator",
15 "hard-core pornography", "school", "student", and "teacher".

16 The bill makes conforming Code changes to Code section 728.4
17 (rental or sale of hard-core pornography).