

**Senate File 2364 - Introduced**

SENATE FILE 2364  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2198)

**A BILL FOR**

1 An Act relating to the dissemination of certain specified  
2 materials, including the prohibition of certain specified  
3 materials in schools and school libraries, civil actions to  
4 determine obscenity, and providing penalties.

5 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 272.2, subsection 14, Code 2022, is amended  
11 by adding the following new paragraph:

12 NEW PARAGRAPH. *f.* The board shall suspend the license of  
13 an administrator or a teacher upon the board's finding by a  
14 preponderance of evidence that the administrator or teacher  
15 violated an injunction entered pursuant to section 728.2A,  
16 subsection 4.

17 Sec. 3. Section 728.1, Code 2022, is amended by adding the  
18 following new subsection:

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

29 Sec. 4. NEW SECTION. 728.2A **Obscene material and hard-core**  
30 **pornography in schools and school libraries.**

31 1. As used in this section, unless the context otherwise  
32 requires:

33 *a.* "*Administrator*" means and includes a school  
34 superintendent, assistant superintendent, educational  
35 director, principal, assistant principal, and other

1 individuals authorized to assist in performing noninstructional  
2 administrative duties.

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

4 (1) A charter school established in accordance with section  
5 256E.2.

6 (2) A nonpublic school, as that term is defined in section  
7 280.2.

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

9 *c.* "Student" means an individual who is enrolled in and  
10 attending a school in kindergarten through grade twelve.

11 *d.* "Teacher" means the same defined in section 272.1.

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

16 3. *a.* An administrator who knowingly provides obscene  
17 material to a student in a library operated by the school that  
18 the administrator supervises or directs shall be guilty of a  
19 serious misdemeanor.

20 *b.* An administrator who knowingly provides hard-core  
21 pornography to a student in a library operated by the school  
22 that the administrator supervises or directs shall be guilty  
23 of an aggravated misdemeanor.

24 *c.* A teacher who knowingly requires a student to read or  
25 view obscene material as part of the teacher's instructional  
26 program or curriculum shall be guilty of a serious misdemeanor.

27 *d.* A teacher who knowingly requires a student to read  
28 or view hard-core pornography as part of the teacher's  
29 instructional program or curriculum shall be guilty of an  
30 aggravated misdemeanor.

31 4. *a.* A parent or guardian of a student alleging a  
32 violation of subsection 3 by an administrator or teacher may  
33 bring a civil action for injunctive relief against the school  
34 that employs the administrator or teacher to prohibit the  
35 administrator or teacher from continuing such violation.

1     *b.* If a parent or guardian is the prevailing party in a  
2 civil action instituted pursuant to paragraph "a", all of the  
3 following shall apply:

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

6     (2) The court shall assess a civil penalty against the  
7 school that employs the administrator or teacher, not to  
8 exceed five hundred dollars per day for each day a violation  
9 occurs during the pendency of the civil action. However, the  
10 court shall not assess the civil penalty provided in this  
11 subparagraph for a violation of subsection 3, paragraph "a", if  
12 the administrator or the school that employs the administrator  
13 removes the obscene material or hard-core pornography from  
14 the library operated by the school during the pendency of the  
15 civil action. Revenue from the civil penalty provided in this  
16 subparagraph shall be remitted to the treasurer of state for  
17 deposit in the general fund of the state.

18     (3) The clerk of court shall send a copy of the court's  
19 order issued pursuant to paragraph "a" and a copy of this  
20 section by restricted certified mail, return receipt requested,  
21 to the attorney general and to the county attorney of the  
22 county in which the school that employs the administrator or  
23 teacher in violation of subsection 3 is located.

24     5. A parent or guardian who was the prevailing party in  
25 a civil action instituted pursuant to subsection 4 may bring  
26 a civil action for damages against the school that employs  
27 the administrator or teacher if the administrator or teacher  
28 violates an injunction issued pursuant to subsection 4. If a  
29 parent or guardian is the prevailing party in a civil action  
30 instituted pursuant to this subsection, the clerk of court  
31 shall send a copy of the court's order issued pursuant to this  
32 subsection and a copy of this section by restricted certified  
33 mail, return receipt requested, to the board of educational  
34 examiners. Damages awarded pursuant to this subsection shall  
35 include all of the following:

1 a. Actual damages for injuries resulting from the  
2 administrator's or teacher's initial violation of subsection  
3 3 and the administrator's or teacher's violation of the  
4 injunction.

5 b. A penalty in an amount determined by the court, but  
6 not less than one thousand dollars per day for each day the  
7 administrator's or teacher's violation of the injunction  
8 continues.

9 c. The state of Iowa hereby waives immunity from suit and  
10 consents to the jurisdiction of any court in which an action  
11 is brought against a charter school established in accordance  
12 with section 256E.2 or a public school district, as described  
13 in chapter 274, respecting any cause of action arising out of  
14 this subsection. Such action shall be heard and determined  
15 pursuant to rules otherwise applicable to civil actions brought  
16 in the particular court having jurisdiction of the suit and  
17 the parties to the suit shall have the right of appeal from  
18 any judgment, decree, or decision of the trial court to the  
19 appropriate appellate court under applicable rules of appeal.

20 6. A county attorney or the attorney general may institute  
21 criminal or civil actions to enforce the provisions of this  
22 section. A county attorney's or the attorney general's receipt  
23 of a copy of a court's injunctive order provided by the clerk  
24 of court issued pursuant to subsection 4, along with subsequent  
25 information that a violation of subsection 3 is continuing to  
26 occur, shall constitute probable cause that a violation of  
27 subsection 3 has occurred.

28 Sec. 5. Section 728.4, Code 2022, is amended to read as  
29 follows:

30 **728.4 Rental or sale of hard-core pornography.**

31 A person who knowingly rents, sells, or offers for  
32 rental or sale ~~material depicting patently offensive~~  
33 ~~representations of oral, anal, or vaginal intercourse, actual~~  
34 ~~or simulated, involving humans, or depicting patently offensive~~  
35 ~~representations of masturbation, excretory functions, or~~

1 ~~bestiality, or lewd exhibition of the genitals, which the~~  
2 ~~average adult taking the material as a whole in applying~~  
3 ~~statewide contemporary community standards would find appeals~~  
4 ~~to the prurient interest; and which material, taken as a whole,~~  
5 ~~lacks serious literary, scientific, political, or artistic~~  
6 ~~value~~ hard-core pornography, upon conviction, is guilty of  
7 an aggravated misdemeanor. However, second and subsequent  
8 violations of **this section** by a person who has been previously  
9 convicted of violating **this section** are class "D" felonies.  
10 For purposes of this section, an offense is considered a second  
11 or subsequent offense if, prior to the person's having been  
12 convicted under this section, the person has a prior conviction  
13 or a deferred judgment under section 728.2A, subsection 3,  
14 paragraph "b" or "d". Charges under **this section** may only be  
15 brought by a county attorney or by the attorney general.

16 Sec. 6. Section 728.6, Code 2022, is amended to read as  
17 follows:

18 **728.6 Civil suit to determine obscenity.**

19 Whenever the attorney general or the county attorney of  
20 any county has reasonable cause to believe that any person is  
21 engaged or plans to engage in the dissemination or exhibition  
22 of obscene material within the county attorney's county  
23 to minors, the attorney general or the county attorney may  
24 institute a civil proceeding in the district court of the  
25 county to enjoin the dissemination or exhibition of obscene  
26 material to minors. Such application for injunction is  
27 optional and not mandatory and shall not be construed as a  
28 prerequisite to criminal prosecution for a violation of this  
29 chapter.

30 Sec. 7. 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 dissemination of certain specified  
11 materials, including the prohibition of certain specified  
12 materials in schools and school libraries and civil actions to  
13 determine obscenity.

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

19 The bill prohibits an administrator from knowingly providing  
20 obscene material to a student in a library operated by the  
21 school that the administrator supervises or directs. The bill  
22 provides that an administrator who violates this provision  
23 is guilty of a serious misdemeanor. Additionally, the bill  
24 prohibits an administrator from knowingly providing hard-core  
25 pornography to a student in a library operated by the school  
26 that the administrator supervises or directs. The bill  
27 provides that an administrator who violates this provision is  
28 guilty of an aggravated misdemeanor. The bill also prohibits  
29 a teacher from knowingly requiring a student to read or view  
30 obscene material as part of the teacher's instructional program  
31 or curriculum. The bill provides that a teacher who violates  
32 this provision is guilty of a serious misdemeanor. The bill  
33 prohibits a teacher from knowingly requiring a student to  
34 read or view hard-core pornography as part of the teacher's  
35 instructional program or curriculum. The bill provides

1 that a teacher who violates this provision is guilty of an  
2 aggravated misdemeanor. A serious misdemeanor is punishable  
3 by confinement for no more than one year and a fine of at least  
4 \$430 but not more than \$2,560. An aggravated misdemeanor is  
5 punishable by confinement for no more than two years and a fine  
6 of at least \$855 but not more than \$8,540. The bill requires  
7 the board of educational examiners to adopt rules that require  
8 the board to disqualify an applicant for a license or to revoke  
9 a person's license for a violation of these provisions.

10 The bill authorizes a parent or guardian of a student  
11 alleging a violation of the bill's provisions to bring a civil  
12 action for injunctive relief against the school that employs an  
13 administrator or teacher in violation of the bill. The bill  
14 requires a court to award reasonable attorney fees to a parent  
15 or guardian who prevails in this civil action.

16 The bill provides that if a parent or guardian is the  
17 prevailing party in the civil action, the court shall assess a  
18 civil penalty against the school that employs the administrator  
19 or teacher, not to exceed \$500 per day for each day a violation  
20 occurs during the pendency of the civil action, unless certain  
21 limited exceptions apply. The bill requires revenue from the  
22 civil penalty to be remitted to the treasurer of state for  
23 deposit in the general fund of the state.

24 The bill provides that if a parent or guardian is the  
25 prevailing party in the civil action, the clerk of court  
26 shall send a copy of the court's order and a copy of the law  
27 by certified mail to the attorney general and to the county  
28 attorney of the county in which the school that employs the  
29 administrator or teacher who violated the bill's provisions is  
30 located.

31 The bill provides that a parent or guardian who was the  
32 prevailing party in the civil action may bring a civil action  
33 for damages against the school that employs the administrator  
34 or teacher if the administrator or teacher violates the  
35 injunction. The bill requires the clerk of court to send a



1 copy of the court's order issued pursuant to the proceedings  
2 related to the violation of the injunction, and a copy of the  
3 law, by certified mail to the board of educational examiners.  
4 The bill also provides that if the parent or guardian is the  
5 prevailing party in these proceedings, the court shall award  
6 the parent or guardian actual damages for injuries resulting  
7 from the administrator's or teacher's initial violation of the  
8 bill's provisions and a civil penalty not less than \$1,000 per  
9 day for each day the administrator's or teacher's violation of  
10 the injunction continues. The bill waives immunity for charter  
11 schools and school districts in any cause of action brought  
12 against those entities under the bill. The bill requires  
13 the board of educational examiners to suspend the license of  
14 an administrator or a teacher upon the board's finding by a  
15 preponderance of the evidence that the administrator or teacher  
16 violated an injunction.

17 The bill authorizes a county attorney or the attorney  
18 general to institute criminal or civil actions to enforce  
19 the provisions of the bill. The bill provides that a county  
20 attorney's or the attorney general's receipt of a copy of a  
21 court's injunctive order provided by the clerk of court, along  
22 with subsequent information that a violation of the bill's  
23 provisions is continuing to occur, shall constitute probable  
24 cause that a violation of the bill's criminal provisions has  
25 occurred.

26 Code section 728.4 (rental or sale of hard-core pornography)  
27 provides that a person who knowingly rents, sells, or offers  
28 for rental or sale hard-core pornography is guilty of an  
29 aggravated misdemeanor. Current law also provides that second  
30 and subsequent violations of Code section 728.4 by a person  
31 who has been previously convicted of violating this Code  
32 section are class "D" felonies. The bill establishes that,  
33 for purposes of Code section 728.4, an offense is considered  
34 a second or subsequent offense if, prior to the person's  
35 having been convicted under Code section 728.4, the person has

1 a prior conviction or a deferred judgment for violating the  
2 bill's provisions related to providing hard-core pornography  
3 to a student in a library or related to requiring a student to  
4 read or view hard-core pornography as part of an instructional  
5 program. The bill makes conforming Code changes to Code  
6 section 728.4.

7 Current law authorizes a county attorney to institute a  
8 civil proceeding to enjoin the dissemination or exhibition  
9 of obscene material to minors when the county attorney has  
10 reasonable cause to believe that any person is engaged or  
11 plans to engage in the dissemination or exhibition of obscene  
12 material within the county attorney's county to minors. The  
13 bill establishes that the attorney general may institute such  
14 civil proceedings as well.

15 Current law provides that Code chapter 728 does not prohibit  
16 the use of appropriate material for educational purposes in any  
17 accredited school, public library, or educational program in  
18 which the minor is participating, and does not prohibit the  
19 attendance of minors at an exhibition or display of art works  
20 or the use of any materials in any public library. The bill  
21 provides that, for purposes of this provision, appropriate  
22 material does not include obscene material or hard-core  
23 pornography.

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