

House File 2334 - Introduced

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BY VONDRAN

A BILL FOR

1 An Act relating to public safety nuisances at adult cabarets,
2 and making penalties applicable.

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

1 Section 1. NEW SECTION. 657.12 Adult cabarets.

2 1. As used in this section, unless the context otherwise
3 requires:

4 a. "*Adult cabaret*" means any commercial establishment that
5 more than a de minimis portion of its business involves any of
6 the following:

7 (1) Persons who appear or perform nude.

8 (2) Live performances that are distinguished or
9 characterized by an emphasis on the exposure, depiction, or
10 description of a specified anatomical area or the performance
11 or simulation of a specified sexual activity.

12 b. "*Nude*" means a state of dress or undress that exposes to
13 view a specified anatomical area.

14 c. "*Specified anatomical area*" means any of the following:

15 (1) Less than completely and opaquely covered human
16 genitals, pubic region, buttocks, anus, or female breast
17 below a point immediately above the top of the areola but not
18 including any portion of the cleavage exhibited by a dress,
19 blouse, shirt, leotard, bathing suit, or other wearing apparel
20 provided the areola is not exposed.

21 (2) Human male genitals in a discernibly turgid state, even
22 if completely and opaquely covered, or any device or covering
23 that, when worn, simulates human male genitals in a discernibly
24 turgid state.

25 d. "*Specified sexual activity*" means any of the following:

26 (1) The fondling or touching of one person's genitals, pubic
27 region, buttocks, anus, or female breasts by another person.

28 (2) Sex acts, actual or simulated, including cunnilingus,
29 fellatio, anilingus, bestiality, intercourse, oral copulation,
30 or sodomy.

31 (3) Masturbation, actual or simulated.

32 (4) Excretory or urinary functions as part of or in
33 connection with any of the activities set forth in this
34 paragraph.

35 2. A public safety nuisance exists when it is established by

1 clear and convincing evidence that an owner, manager, employee,
2 contemporaneous patron, or guest of an adult cabaret commits
3 any of the following acts either on the premises or within five
4 hundred feet of the premises:

5 *a.* Unlawfully discharges a firearm or uses an offensive
6 weapon, as defined in section 724.1, regardless of whether it
7 inflicts injury or death.

8 *b.* Assaults another person with a dangerous weapon as
9 defined in section 702.7 resulting in injury or death.

10 *c.* Engages in a riot as defined in section 723.1 on three
11 or more dates within a twelve-month period to which the police
12 respond and disperse a crowd. The participants need not be the
13 same persons for each incident.

14 3. When the county attorney or city attorney believes
15 a serious threat to the public safety exists, the county
16 attorney, city attorney, or any other attorney on behalf of the
17 county attorney or city attorney may file a suit in equity in
18 the district court without bond seeking abatement of the public
19 safety nuisance arising from an adult cabaret.

20 4. *a.* Upon filing a suit pursuant to subsection 3, the
21 petitioner may seek a temporary injunction. As part of any
22 temporary injunction issued, and upon a showing of reasonable
23 cause that a public safety nuisance exists, the court shall
24 limit the business hours of the adult cabaret to be between the
25 hours of 12:00 p.m. and 10:00 p.m. and prohibit the consumption
26 of alcoholic beverages on the property.

27 *b.* This subsection shall not be construed to prohibit the
28 court from ordering any other restrictions that the court deems
29 appropriate including complete closure during the pendency of
30 the action.

31 5. Upon finding a public safety nuisance exists, after
32 trial, the court may enter judgment declaring the existence of
33 the nuisance and ordering such remedial action to abate the
34 nuisance as the court determines reasonable. The abatement
35 order may take the form of an injunction. The duration of such

1 abatement order may be up to two years. Remedial action may
2 include but is not limited to temporary or complete closure,
3 change in business practice or operation, or posting of a bond.
4 If a bond is ordered and posted, the bond shall be subject
5 to forfeiture, in whole or in part, for any further actions
6 contrary to the abatement order.

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 provides the circumstances where an adult
11 cabaret is deemed to be a public safety nuisance and provides
12 penalties. The bill provides that a public safety nuisance
13 exists when an owner, manager, employee, contemporaneous
14 patron, or guest of an adult cabaret commits any of the
15 following acts either on the premises or within 500 hundred
16 feet of the premises: (1) unlawfully discharges a firearm or
17 uses an offensive weapon, (2) assaults another person with a
18 dangerous weapon resulting in injury or death, or (3) engages
19 in a riot three or more times in a 12-month period. The riot
20 participants need not be the same persons for each incident.

21 The bill provides when the county attorney or city attorney
22 believes a serious threat to the public safety exists, the
23 county attorney, city attorney, or any other attorney on
24 behalf of the county attorney or city attorney may file a suit
25 in equity in the local district court without bond seeking
26 abatement of a public safety nuisance arising from an adult
27 cabaret.

28 The bill provides that upon filing a suit, the petitioner
29 may seek a temporary injunction which can include limitation
30 of business hours of the adult cabaret and a prohibition on
31 the consumption of alcoholic beverages on the property. The
32 court may also order any other restrictions that it deems
33 appropriate.

34 The bill provides that if the court finds that a public
35 safety nuisance exists, the court may enter judgment declaring

1 the existence of the nuisance and ordering such remedial
2 action to abate the nuisance. The abatement order may include
3 an injunction of up to two years, temporary or complete
4 closure, change in business practice or operation, or posting
5 of a bond. Additionally, pursuant to Code section 657.3
6 (penalty — abatement), a person who is convicted of erecting,
7 causing, or continuing a public or common nuisance is guilty
8 of an aggravated misdemeanor. An aggravated misdemeanor is
9 punishable by confinement for no more than two years and a fine
10 of at least \$855 but not more than \$8,540.