

Senate File 2176 - Introduced

SENATE FILE 2176

BY SALMON

A BILL FOR

1 An Act relating to obscenity, including the exposure of a minor
2 to an obscene performance and admittance of a minor to a
3 premises with obscene performances, establishing a private
4 civil cause of action, and providing penalties.

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

1 Section 1. Section 721.2, Code 2024, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 9. Violates the provisions of section
4 728.7A.

5 Sec. 2. Section 728.1, Code 2024, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 5A. "*Obscene performance*" means a visual
8 performance by a person, whether compensated or uncompensated,
9 that exposes the person's genitals, pubic area, buttocks, or
10 female breast, including prosthetics and artificial sexual
11 organs or substitutes therefor, or involves the person
12 engaging in a sex act, masturbation, excretory function, or
13 sadomasochistic abuse, which the average person, viewing the
14 performance as a whole and applying contemporary community
15 standards with respect to what is suitable to be viewed by
16 minors, would find appeals to the prurient interest and is
17 patently offensive, and the performance taken as a whole lacks
18 serious artistic, literary, political, or scientific value.

19 Sec. 3. NEW SECTION. **728.1A Enforcement.**

20 The office of attorney general, as authorized by section
21 13.2, subsection 1, paragraph "b", or the county attorney of
22 the county in which a violation of this chapter occurs shall
23 enforce the provisions of this chapter.

24 Sec. 4. NEW SECTION. **728.2A Exposing minor to obscene
25 performance.**

26 Any person who knowingly exposes a minor to an obscene
27 performance is guilty of a public offense and shall upon
28 conviction be guilty of an aggravated misdemeanor.

29 Sec. 5. NEW SECTION. **728.3A Admitting minors to premises
30 with obscene performances.**

31 1. A person who knowingly sells, gives, delivers, or
32 provides a minor who is not a child a pass or admits the minor
33 to premises where an obscene performance is performed is guilty
34 of a public offense and upon conviction is guilty of a serious
35 misdemeanor.

1 2. A person who knowingly sells, gives, delivers, or
2 provides a child a pass or admits the minor to premises
3 where an obscene performance is performed is guilty of a
4 public offense and upon conviction is guilty of an aggravated
5 misdemeanor.

6 Sec. 6. Section 728.6, Code 2024, is amended to read as
7 follows:

8 **728.6 Civil suit to determine obscenity.**

9 1. Whenever the county attorney of any county has reasonable
10 cause to believe that any person is engaged or plans to engage
11 in the dissemination or exhibition of obscene material to
12 minors within the county attorney's county, ~~to minors~~ the
13 county attorney may institute a civil proceeding in the
14 district court of the county to enjoin the dissemination or
15 exhibition of obscene material to minors. Such application
16 for injunction is optional and not mandatory and shall not
17 be construed as a prerequisite to criminal prosecution for a
18 violation of this chapter.

19 2. a. The parent or guardian of a minor, or a minor upon
20 attaining eighteen years of age, to whom obscene material
21 has been knowingly disseminated or exhibited, in violation
22 of section 728.2 or 728.3, or who was exposed to an obscene
23 performance, in violation of section 728.2A or 728.3A, may
24 bring a civil action against any person that has knowingly
25 disseminated or exhibited obscene material to the minor or who
26 engaged in or caused or allowed a person to knowingly engage in
27 an obscene performance in the presence of the minor for any of
28 the following remedies:

29 (1) A declaratory judgment.

30 (2) Injunctive relief.

31 (3) Actual, incidental, and consequential damages.

32 (4) Punitive damages, if appropriate.

33 (5) Other equitable relief that the court deems
34 appropriate.

35 b. The minimum award of damages in an action brought

1 pursuant to this subsection shall be ten thousand dollars.

2 c. An action brought under this subsection may be commenced
3 by a parent or guardian within two years of a violation. An
4 action for a violation brought by a person who was a minor at
5 the time of a violation shall be found within ten years after
6 the person upon whom the offense is committed attains eighteen
7 years of age.

8 Sec. 7. NEW SECTION. 728.7A Public institutions and funds
9 — obscene material — obscene performance.

10 1. No public institution, public facility, public
11 equipment, or other physical asset that is owned, leased, or
12 controlled by this state or a political subdivision of this
13 state shall be used for a show, exhibition, or performance that
14 includes obscene material or obscene performances.

15 2. No public institution or facility shall lease, sell, or
16 permit the subleasing of its facilities or property for the
17 purpose of shows, exhibitions, or performances that include
18 obscene material or obscene performances.

19 3. No public funds made available by the state or a
20 political subdivision of this state that are distributed by an
21 institution, board, commission, department, agency, official,
22 or an employee of the state or political subdivision shall be
23 used for the purpose of shows, exhibitions, or performances
24 that include obscene material or obscene performances.

25 4. This section shall not apply to obscene materials that
26 are sent or received as part of a law enforcement investigation
27 or are authorized by law to be sent or received.

28 Sec. 8. REPEAL. Section 728.7, Code 2024, is repealed.

29

EXPLANATION

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

32 This bill relates to obscenity, including the exposure of a
33 minor to an obscene performance and admittance of a minor to a
34 premises with obscene performances, and establishes a private
35 civil cause of action.

1 The bill defines "obscene performance" as a visual
2 performance by a person, whether compensated or uncompensated,
3 that exposes the person's genitals, pubic area, buttocks, or
4 female breast, including prosthetics and artificial sexual
5 organs or substitutes therefor, or involves the person
6 engaging in a sex act, masturbation, excretory function, or
7 sadomasochistic abuse, which the average person, viewing the
8 performance as a whole and applying contemporary community
9 standards with respect to what is suitable to be viewed by
10 minors, would find appeals to the prurient interest and is
11 patently offensive, and the performance taken as a whole lacks
12 serious artistic, literary, political, or scientific value.

13 The bill provides that the office of attorney general or the
14 county attorney of the county in which a violation occurs shall
15 enforce the provisions of Code chapter 728 (obscenity).

16 The bill provides that any person who knowingly exposes
17 a minor to an "obscene performance" is guilty of a public
18 offense and shall upon conviction be guilty of an aggravated
19 misdemeanor.

20 The bill provides that a person who knowingly sells, gives,
21 delivers, or provides a minor who is not a child a pass or
22 admits the minor to premises where an obscene performance is
23 performed is guilty of a serious misdemeanor. A person who
24 knowingly sells, gives, delivers, or provides a child a pass or
25 admits the minor to premises where an obscene performance is
26 performed is guilty of an aggravated misdemeanor. A minor is a
27 person under 18 years of age, and a child is a person under the
28 age of 14 years of age.

29 The bill establishes a private civil cause of action for
30 a parent or guardian of a minor, or a minor upon reaching
31 18 years of age, to whom obscene material has been knowingly
32 disseminated or exhibited, or who was exposed to an obscene
33 performance. A cause of action may be brought against any
34 person that has knowingly disseminated or exhibited obscene
35 material to the minor or who engaged in or caused or allowed

1 a person to knowingly engage in an obscene performance in the
2 presence of the minor for any of the following remedies: a
3 declaratory judgment; injunctive relief; actual, incidental,
4 and consequential damages; punitive damages, if appropriate;
5 and any other equitable relief that the court deems
6 appropriate. The minimum award of damages shall be \$10,000.
7 An action may be commenced by a parent or guardian within two
8 years of a violation. An action for a violation brought by
9 a person who was a minor at the time of a violation shall be
10 found within 10 years after the person upon whom the offense is
11 committed attains 18 years of age.

12 The bill provides that no public institution, public
13 facility, public equipment, or other physical asset that is
14 owned, leased, or controlled by this state or a political
15 subdivision of this state shall be used for a show, exhibition,
16 or performance that includes obscene material or obscene
17 performances. No public institution or facility shall lease,
18 sell, or permit the subleasing of its facilities or property
19 for the purpose of shows, exhibitions, or performances that
20 include obscene material or obscene performances. No public
21 funds made available by the state or a political subdivision
22 of this state that are distributed by an institution, board,
23 commission, department, agency, official, or an employee of the
24 state or political subdivision shall be used for the purpose
25 of shows, exhibitions, or performances that include obscene
26 material or obscene performances. The bill does not apply to
27 obscene materials that are sent or received as part of a law
28 enforcement investigation or are authorized by law to be sent
29 or received.

30 The bill provides that any public officer or employee, or
31 any person acting under color of such office or employment, who
32 knowingly allows a public institution or funds to be used for
33 the purpose of shows, exhibitions, or performances that include
34 obscene material or obscene performances commits a serious
35 misdemeanor.

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1 The bill repeals Code section 728.7 (exemptions for public
2 libraries and educational institutions), which provides that
3 nothing in Code chapter 728 prohibits the use of appropriate
4 material for educational purposes in any accredited school,
5 or any public library, or in any educational program in which
6 the minor is participating and nothing in Code chapter 728
7 prohibits the attendance of minors at an exhibition or display
8 of art works or the use of any materials in any public library.