

House File 361 - Introduced

HOUSE FILE 361

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(COMPANION TO SF 305 BY SALMON)

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 civil actions to determine
4 obscenity, modifying the responsibilities of the department
5 of education, and providing civil penalties.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 256.9, Code 2023, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 66. Develop and make available on the
4 department's internet site a comprehensive list of all
5 notifications received pursuant to section 280.35, subsection
6 6, sortable by the book's title and author, and the school
7 districts, accredited nonpublic schools, or charter schools
8 that have removed the book from libraries operated by the
9 school district, accredited nonpublic school, or charter school
10 or from classrooms or any areas on school district, accredited
11 nonpublic school, or charter school property. The department
12 shall update the list at least once each month.

13 Sec. 2. Section 256E.7, subsection 2, Code 2023, is amended
14 by adding the following new paragraphs:

15 NEW PARAGRAPH. *0j.* Be subject to and comply with section
16 280.33 relating to the prohibition on the use of standards or
17 guidance developed by the American library association when
18 determining whether to acquire a book for a school library or
19 remove a book from a school library in the same manner as a
20 school district.

21 NEW PARAGRAPH. *00j.* Be subject to and comply with section
22 280.34 relating to students serving on committees that
23 determine, or provide recommendations related to, whether a
24 material in a school library should be removed because it may
25 constitute or contain hard-core pornography or obscene material
26 in the same manner as a school district.

27 NEW PARAGRAPH. *000j.* Be subject to and comply with section
28 280.35 relating to prohibitions on the provision of obscene
29 material and hard-core pornography in the same manner as a
30 school district.

31 Sec. 3. Section 272.2, subsection 14, paragraph b,
32 subparagraph (1), Code 2023, is amended by adding the following
33 new subparagraph division:

34 NEW SUBPARAGRAPH DIVISION. (0g) Providing obscene
35 material or hard-core pornography to students in a school

1 library, classroom, or any other area on school property,
2 or requiring a student to read or view obscene material or
3 hard-core pornography under section 280.35. For purposes of
4 this subparagraph division, "obscene material" and "hard-core
5 pornography" mean the same as defined in section 728.1.

6 Sec. 4. Section 272.2, subsection 14, Code 2023, is amended
7 by adding the following new paragraph:

8 NEW PARAGRAPH. *f.* The board shall suspend the license of
9 an administrator or a teacher upon the board's finding by a
10 preponderance of evidence that the administrator or teacher
11 violated an injunction entered pursuant to section 280.35,
12 subsection 4.

13 Sec. 5. Section 277.29, Code 2023, is amended to read as
14 follows:

15 **277.29 Vacancies.**

16 Failure to elect at the proper election or to appoint within
17 the time fixed by law or the failure of the officer elected
18 or appointed to qualify within the time prescribed by law;
19 the incumbent ceasing for any reason to be a resident of
20 the district or removing residence from the subdistrict; the
21 resignation or death of the incumbent or of the officer-elect;
22 the removal of the incumbent from, or forfeiture of, the
23 office, or the decision of a competent tribunal declaring the
24 office vacant; the conviction of the incumbent of a felony, as
25 defined in [section 701.7](#), a violation of section 280.35, or of
26 any public offense involving the violation of the incumbent's
27 oath of office, shall constitute a vacancy.

28 Sec. 6. NEW SECTION. **280.33 School library materials —**
29 **prohibitions.**

30 The board of directors of a school district and the
31 authorities in charge of an accredited nonpublic school shall
32 not use any standards or guidance developed by the American
33 library association when determining whether to acquire a book
34 for a library operated by the school district or accredited
35 nonpublic school or remove a book from a library operated by

1 the school district or accredited nonpublic school.

2 Sec. 7. NEW SECTION. 280.34 Library materials review
3 committee.

4 1. For purposes of this section:

5 a. "*Hard-core pornography*" means the same as defined in
6 section 728.1.

7 b. "*Obscene material*" means the same as defined in section
8 728.1.

9 2. The board of directors of a school district and the
10 authorities in charge of an accredited nonpublic school shall
11 not allow a student serving on any committee that determines,
12 or provides recommendations related to, whether a material in a
13 library operated by the school district or accredited nonpublic
14 school should be removed to view the material being considered
15 for removal if the material is being considered for removal
16 because it may constitute or contain hard-core pornography or
17 obscene material.

18 Sec. 8. NEW SECTION. 280.35 Obscene material and hard-core
19 pornography in schools and school libraries.

20 1. As used in this section, unless the context otherwise
21 requires:

22 a. "*Administrator*" means and includes a school
23 superintendent, assistant superintendent, educational
24 director, principal, assistant principal, and other
25 individuals authorized to assist in performing noninstructional
26 administrative duties.

27 b. "*Hard-core pornography*" means the same as defined in
28 section 728.1.

29 c. "*Obscene material*" means the same as defined in section
30 728.1.

31 d. "*Provides*" means to make available for a student to
32 use or to supply to a student. "*Provides*" includes placing a
33 material, or causing a material to be placed, in a school or in
34 a library operated by a school where a student could reasonably
35 be expected to find the material or observe the material.

1 e. "School" means and includes all of the following:

2 (1) A charter school established in accordance with chapter
3 256E.

4 (2) A nonpublic school as that term is defined in section
5 280.2.

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

7 f. "Student" means an individual who is enrolled in and
8 attending a school in kindergarten through grade twelve.

9 g. "Teacher" means the same defined in section 272.1.

10 "Teacher" includes a qualified teacher librarian licensed by the
11 board of educational examiners.

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, in school classrooms, or in any other areas on school
16 property.

17 3. a. (1) An administrator shall not knowingly provide
18 obscene material to a student in a library operated by the
19 school, in a school classroom, or in any other area on school
20 property.

21 (2) A teacher shall not knowingly provide obscene material
22 to a student in a library operated by the school, in a school
23 classroom, or in any other area on school property.

24 b. (1) An administrator shall not knowingly provide
25 hard-core pornography to a student in a library operated by the
26 school, in a school classroom, or in any other area on school
27 property.

28 (2) A teacher shall not knowingly provide hard-core
29 pornography to a student in a library operated by the school,
30 in a school classroom, or in any other area on school property.

31 c. A teacher shall not knowingly require a student to read
32 or view obscene material as part of the teacher's instructional
33 program or curriculum.

34 d. A teacher shall not knowingly require a student to
35 read or view hard-core pornography as part of the teacher's

1 instructional program or curriculum.

2 4. a. A parent or guardian of a student alleging a
3 violation of subsection 3 by an administrator or teacher
4 may bring a civil action for damages and injunctive relief
5 against the school that employs the administrator or teacher
6 to prohibit the administrator or teacher from continuing such
7 violation.

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

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

13 (2) The court shall assess a civil penalty against the
14 school that employs the administrator or teacher, not less than
15 five thousand dollars plus an additional five hundred dollars
16 per day for each day a violation occurs during the pendency
17 of the civil action. However, the court shall not assess the
18 additional civil penalty provided in this subparagraph for a
19 violation of subsection 3, paragraph "a", if the administrator
20 or teacher, or the school that employs the administrator or
21 teacher, removes the obscene material from the library operated
22 by the school, school classroom, or any other area on school
23 property during the pendency of the civil action. Revenue
24 from the civil penalty provided in this subparagraph shall be
25 remitted to the treasurer of state for deposit in the general
26 fund of the state.

27 (3) In the case of a violation of subsection 3, paragraphs
28 "a" or "c", the court shall order the school that employs the
29 administrator or teacher to pay not less than ten thousand
30 dollars in damages to the parent or guardian.

31 (4) In the case of a violation of subsection 3, paragraphs
32 "b" or "d", the court shall order the school that employs the
33 administrator or teacher to pay not less than twenty thousand
34 dollars in damages to the parent or guardian.

35 (5) The clerk of court shall send a copy of the court's

1 order issued pursuant to paragraph "a" and a copy of this
2 section by restricted certified mail, return receipt requested,
3 to the board of educational examiners, the attorney general,
4 and the county attorney of the county in which the school that
5 employs the administrator or teacher in violation of subsection
6 3 is located.

7 5. A parent or guardian who was the prevailing party in
8 a civil action instituted pursuant to subsection 4 may bring
9 a civil action for damages against the school that employs
10 the administrator or teacher if the administrator or teacher
11 violates an injunction issued pursuant to subsection 4. If a
12 parent or guardian is the prevailing party in a civil action
13 instituted pursuant to this subsection, the clerk of court
14 shall send a copy of the court's order issued pursuant to this
15 subsection and a copy of this section by restricted certified
16 mail, return receipt requested, to the board of educational
17 examiners. Damages awarded pursuant to this subsection shall
18 include all of the following:

19 a. Actual damages for injuries resulting from the
20 administrator's or teacher's initial violation of subsection
21 3 and the administrator's or teacher's violation of the
22 injunction.

23 b. A penalty in an amount determined by the court, but
24 not less than twenty thousand dollars plus an additional one
25 thousand dollars per day for each day the administrator's or
26 teacher's violation of the injunction continues.

27 c. The state of Iowa hereby waives immunity from suit and
28 consents to the jurisdiction of any court in which an action
29 is brought against a charter school established in accordance
30 with chapter 256E, or a public school district as described in
31 chapter 274, with respect to any cause of action arising out
32 of this subsection. Such action shall be heard and determined
33 pursuant to rules otherwise applicable to civil actions brought
34 in the particular court having jurisdiction of the suit and
35 the parties to the suit shall have the right of appeal from

1 any judgment, decree, or decision of the trial court to the
2 appropriate appellate court under applicable rules of appeal.

3 6. *a.* The board of directors of each school district, the
4 authorities in charge of each accredited nonpublic school, and
5 the governing board of each charter school shall notify the
6 department of education that the board of directors of the
7 school district, the authorities in charge of the accredited
8 nonpublic school, or the governing board of the charter school
9 has removed a book from a library operated by the school, a
10 classroom, or any area on school property because the board of
11 directors of the school district, the authorities in charge
12 of the accredited nonpublic school, or the governing board of
13 the charter school determined that the book constituted or
14 contained hard-core pornography or obscene material, within
15 seven days after removal. The notification shall contain the
16 book's title and author.

17 *b.* A school shall remove a book that is on the list
18 maintained by the department of education pursuant to section
19 256.9, subsection 66, from any library operated by the school,
20 a classroom, or any area on school property.

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

29 Sec. 9. Section 728.1, Code 2023, is amended by adding the
30 following new subsection:

31 NEW SUBSECTION. 1A. "*Hard-core pornography*" means
32 material depicting representations of oral, anal, or vaginal
33 intercourse, actual or simulated, involving humans, or
34 depicting patently offensive representations of masturbation,
35 excretory functions, or bestiality, or lewd exhibition of the

1 genitals.

2 Sec. 10. Section 728.4, Code 2023, is amended to read as
3 follows:

4 **728.4 Rental or sale of ~~hard-core pornography~~ material**
5 **depicting certain patently offensive representations.**

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

22 Sec. 11. Section 728.6, Code 2023, is amended to read as
23 follows:

24 **728.6 Civil suit to determine obscenity.**

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

1 program or curriculum. The bill requires the board of
2 educational examiners (BOEE) to adopt rules that require the
3 BOEE to disqualify an applicant for a license or to revoke
4 a person's license for a violation of these provisions. The
5 bill provides that if the administrator or teacher who violates
6 these provisions is a member of the board of directors of a
7 school district, the administrator's or teacher's membership
8 on the board shall be vacated.

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

15 The bill provides that if a parent or guardian is the
16 prevailing party in the civil action, the court shall assess a
17 civil penalty against the school that employs the administrator
18 or teacher, not less than \$5,000 plus an additional \$500 per
19 day for each day a violation occurs during the pendency of the
20 civil action, unless certain limited exceptions apply. The
21 bill requires revenue from the civil penalty to be remitted
22 to the treasurer of state for deposit in the general fund of
23 the state. The bill provides that if the administrator's or
24 teacher's violation relates to obscene material, the court is
25 required to order the school to pay not less than \$10,000 in
26 damages to the parent or guardian. The bill also provides
27 that if the administrator's or teacher's violation relates
28 to hard-core pornography, the court is required to order the
29 school to pay not less than \$20,000 in damages to the parent or
30 guardian.

31 The bill provides that if a parent or guardian is the
32 prevailing party in the civil action, the clerk of court
33 shall send a copy of the court's order and a copy of the law
34 by certified mail to the BOEE, the attorney general, and the
35 county attorney of the county in which the school that employs

1 the administrator or teacher who violated the bill's provisions
2 is located.

3 The bill provides that a parent or guardian who was the
4 prevailing party in the civil action may bring a civil action
5 for damages against the school that employs the administrator
6 or teacher if the administrator or teacher violates the
7 injunction. The bill requires the clerk of court to send a
8 copy of the court's order issued pursuant to the proceedings
9 related to the violation of the injunction, and a copy of the
10 law, by certified mail to the BOEE. The bill also provides
11 that if the parent or guardian is the prevailing party in these
12 proceedings, the court shall award the parent or guardian
13 actual damages for injuries resulting from the administrator's
14 or teacher's initial violation of the bill's provisions and a
15 civil penalty not less than \$20,000 plus an additional \$1,000
16 per day for each day the administrator's or teacher's violation
17 of the injunction continues. The bill waives immunity for
18 charter schools and school districts in any cause of action
19 brought against those entities under the bill. The bill
20 requires the BOEE to suspend the license of an administrator
21 or a teacher upon the BOEE's finding by a preponderance of
22 the evidence that the administrator or teacher violated an
23 injunction.

24 The bill requires the board of directors of each school
25 district, the authorities in charge of each accredited
26 nonpublic school, and the governing board of each charter
27 school to notify the department of education that the board of
28 directors, the authorities, or the governing board has removed
29 a book from a library operated by the school, a classroom, or
30 any area on school property because the board of directors,
31 the authorities, or the governing board determined that
32 the book constituted or contained hard-core pornography or
33 obscene material. The bill also requires the department to
34 develop and make available on the department's internet site a
35 comprehensive list of all of these notifications and update the

1 list at least once each month. Additionally, the bill requires
2 a school to remove a book that is on the list maintained by
3 the department from any library operated by the school, a
4 classroom, or any area on school property.

5 The bill authorizes a county attorney or the attorney
6 general to institute criminal or civil actions to enforce
7 the provisions of the bill. The bill provides that a county
8 attorney's or the attorney general's receipt of a copy of a
9 court's injunctive order provided by the clerk of court, along
10 with subsequent information that a violation of the bill's
11 provisions is continuing to occur, shall constitute probable
12 cause that a violation of the bill's criminal provisions has
13 occurred.

14 Current law authorizes a county attorney to institute a
15 civil proceeding to enjoin the dissemination or exhibition
16 of obscene material to minors when the county attorney has
17 reasonable cause to believe that any person is engaged or
18 plans to engage in the dissemination or exhibition of obscene
19 material within the county attorney's county to minors. The
20 bill establishes that the attorney general may institute such
21 civil proceedings as well.

22 Current law provides that Code chapter 728 does not prohibit
23 the use of appropriate material for educational purposes in any
24 accredited school, public library, or educational program in
25 which the minor is participating, and does not prohibit the
26 attendance of minors at an exhibition or display of art works
27 or the use of any materials in any public library. The bill
28 provides that, for purposes of this provision, appropriate
29 material does not include obscene material or hard-core
30 pornography.

31 The bill prohibits the board of directors of a school
32 district, the authorities in charge of an accredited nonpublic
33 school, and the governing board of a charter school from using
34 any standards or guidance developed by the American library
35 association when determining whether to acquire a book for a

1 school library or remove a book from a school library.

2 The bill provides that the board of directors of a school
3 district, the authorities in charge of an accredited nonpublic
4 school, and the governing board of a charter school shall not
5 allow a student serving on any committee that determines, or
6 provides recommendations related to, whether a material in a
7 library operated by the school should be removed to view the
8 material being considered for removal if the material is being
9 considered for removal because it may constitute or contain
10 hard-core pornography or obscene material.

11 The bill contains definitions for "administrator",
12 "hard-core pornography", "provides", "school", "student", and
13 "teacher".