

## Iowa

### Title XVI, Chapter 728

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#### 728.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Disseminate*" means to transfer possession, with or without consideration.
2. "*Knowingly*" means being aware of the character of the matter.
3. "*Material*" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.
4. "*Minor*" means any person under the age of eighteen.
5. "*Obscene material*" is any material depicting or describing the genitals, sex acts, masturbation, excretory functions or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political or artistic value.
6. "*Place of business*" means the premises of a business required to obtain a sales tax permit pursuant to chapter 422, the premises of a nonprofit or not-for-profit organization, and the premises of an establishment which is open to the public at large or where entrance is limited by a cover charge or membership requirement.
7. Unless otherwise provided, "*prohibited sexual act*" means any of the following:
  - a. A sex act as defined in section 702.17.
  - b. An act of bestiality involving a minor.
  - c. Fondling or touching the pubes or genitals of a minor.

- d. Fondling or touching the pubes or genitals of a person by a minor.
  - e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.
  - f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.
  - g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude minor.
8. "*Promote*" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do any of these acts.
9. "*Sadomasochistic abuse*" means the infliction of physical or mental pain upon a person or the condition of a person being fettered, bound or otherwise physically restrained.
10. "*Sex act*" means any sexual contact, actual or simulated, either natural or deviate, between two or more persons, or between a person and an animal, by penetration of the penis into the vagina or anus, or by contact between the mouth or tongue and genitalia or anus, or by contact between a finger of one person and the genitalia of another person or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

**Section History: Early form**

[C75, 77, § 725.1; C79, 81, § 728.1]

**Section History: Recent form**

83 Acts, ch 167, § 1; 89 Acts, ch 263, §1; 97 Acts, ch 125, §2

**728.2 Dissemination and exhibition of obscene material to minors.**

Any person, other than the parent or guardian of the minor, who knowingly disseminates or exhibits obscene material to a minor, including the exhibition of obscene material so that it can be observed by a minor on or off the premises where it is displayed, is guilty of a public offense and shall upon conviction be guilty of a serious misdemeanor.

**Section History: Early form**

[C51, § 2717; R60, § 4359; C73, § 4022; C97, § 4951, 4955; C24, 27, 31, 35, 39, § 13189, 13193; C46, 50, 54, 58, 62, 66, 71, 73, § 725.4, 725.8; C75, 77, § 725.2; C79, 81, § 728.2]

## **Internal References**

Referred to in § 692A.1, 728.8, 728.9

### **728.3 Admitting minors to premises where obscene material is exhibited.**

1. A person who knowingly sells, gives, delivers, or provides a minor who is not a child with a pass or admits the minor to premises where obscene material is exhibited is guilty of a public offense and upon conviction is guilty of a serious misdemeanor.
2. A person who knowingly sells, gives, delivers, or provides a child with a pass or admits a child to premises where obscene material is exhibited is guilty of a public offense and upon conviction is guilty of an aggravated misdemeanor.

#### **Section History: Early form**

[C51, § 2717; R60, § 4359; C73, § 4022; C97, § 4951; S13, § 4944-k; C24, 27, 31, 35, 39, § **13185, 13189**; C46, 50, 54, 58, 62, 66, 71, 73, § 725.3, 725.4; C75, 77, § 725.3; C79, 81, § 728.3]

#### **Section History: Recent form**

83 Acts, ch 167, § 2

## **Internal References**

Referred to in § 692A.1, 728.8, 728.9

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

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

#### **Section History: Early form**

[C79, 81, § 728.4; 82 Acts, ch 1115, § 1]

### **Section History: Recent form**

83 Acts, ch 167, § 3; 89 Acts, ch 263, §2

### **Internal References**

Referred to in § 692A.1

### **728.5 Public indecent exposure in certain establishments.**

An owner, manager, or person who exercises direct control over a place of business required to obtain a sales tax permit shall be guilty of a serious misdemeanor under any of the following circumstances:

1. If such person allows or permits the actual or simulated public performance of any sex act upon or in such place of business.
2. If such person allows or permits the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.
3. If such person allows or permits the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the place of business in which the activity is performed employs or pays any compensation to such person to perform such activity.
4. If such person allows or permits any person to remain in or upon the place of business who exposes to public view the person's genitals, pubic hair, or anus.
5. If such person advertises that any activity prohibited by this section is allowed or permitted in such place of business.
6. If such person allows or permits a minor to engage in or otherwise perform in a live act intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons. However, if such person allows or permits a minor to participate in any act included in subsections 1 through 4, the person shall be guilty of an aggravated misdemeanor.

The provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

### **Section History: Early form**

[C79, 81, § 728.5]

**Section History: Recent form**

92 Acts, ch 1029, § 1; 97 Acts, ch 125, §3

**Internal References**

Referred to in § 728.8

**728.6 Civil suit to determine obscenity.**

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

**Section History: Early form**

[C75, 77, § 725.4; C79, 81, § 728.6]

**728.10 Affirmative defense.**

In any prosecution for disseminating or exhibiting obscene material to minors, it is an affirmative defense that the defendant had reasonable cause to believe that the minor involved was eighteen years old or more and the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more or was accompanied by a parent or spouse eighteen years of age or more.

**Section History: Early form**

[C75, 77, § 725.8; C79, 81, § 728.10]