

House File 2390 - Introduced

HOUSE FILE 2390
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 525)

A BILL FOR

- 1 An Act relating to obscene material, commercial sexual
- 2 activity, and human trafficking, and providing penalties and
- 3 making penalties applicable.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 692A.102, subsection 1, paragraph c,
2 Code Supplement 2011, is amended by adding the following new
3 subparagraph:

4 NEW SUBPARAGRAPH . (032) Solicitation of commercial sexual
5 activity in violation of section 710A.2A.

6 Sec. 2. Section 710A.1, subsection 4, Code 2011, is amended
7 to read as follows:

8 4. a. "Human trafficking" means participating in a venture
9 to recruit, harbor, transport, supply provisions, or obtain a
10 person for any of the following purposes:

11 ~~a-~~ (1) Forced labor or service that results in involuntary
12 servitude, peonage, debt bondage, or slavery.

13 ~~b-~~ (2) Commercial sexual activity through the use of force,
14 fraud, or coercion, except that if the trafficked person is
15 under the age of eighteen, the commercial sexual activity need
16 not involve force, fraud, or coercion.

17 b. "Human trafficking" also means knowingly purchasing or
18 attempting to purchase services involving commercial sexual
19 activity from a victim or another person engaged in human
20 trafficking.

21 Sec. 3. Section 710A.2, Code 2011, is amended by adding the
22 following new subsection:

23 NEW SUBSECTION . 8. A person's ignorance of the age of the
24 victim or a belief that the victim was older is no defense to a
25 violation of this section.

26 Sec. 4. NEW SECTION . **710A.2A Solicitation of commercial**
27 **sexual activity.**

28 A person shall not entice, coerce, or recruit, or attempt
29 to entice, coerce, or recruit either a person under the age of
30 eighteen or a law enforcement officer or agent representing
31 oneself to be under the age of eighteen, to engage in a
32 commercial sexual activity. A person who violates this section
33 commits a class "D" felony.

34 Sec. 5. Section 728.1, subsection 7, paragraphs e through g,
35 Code 2011, are amended to read as follows:

1 e. Sadomasochistic abuse of a minor for the purpose of
2 arousing or satisfying the sexual desires of a person who may
3 view a visual depiction of the abuse.

4 f. Sadomasochistic abuse of a person by a minor for the
5 purpose of arousing or satisfying the sexual desires of a
6 person who may view a visual depiction of the abuse.

7 g. Nudity of a minor for the purpose of arousing or
8 satisfying the sexual desires of a person who may view a visual
9 depiction of the nude minor.

10 Sec. 6. Section 728.1, Code 2011, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 11. "*Visual depiction*" means but is
13 not limited to any picture, slide, photograph, digital or
14 electronic image, negative image, undeveloped film, motion
15 picture, videotape, digital or electronic recording, live
16 transmission, or other pictorial or three-dimensional
17 representation.

18 Sec. 7. Section 728.12, subsection 1, Code 2011, is amended
19 to read as follows:

20 1. It shall be unlawful to employ, use, persuade, induce,
21 entice, coerce, solicit, knowingly permit, or otherwise cause
22 or attempt to cause a minor to engage in a prohibited sexual
23 act or in the simulation of a prohibited sexual act. A person
24 must know, or have reason to know, or intend that the act
25 or simulated act may be photographed, filmed, or otherwise
26 preserved in a ~~negative, slide, book, magazine, computer,~~
27 ~~computer disk, or other print or visual medium, or be preserved~~
28 ~~in an electronic, magnetic, or optical storage system, or in~~
29 ~~any other type of storage system~~ visual depiction. A person
30 who commits a violation of this subsection commits a class
31 "C" felony. Notwithstanding section 902.9, the court may
32 assess a fine of not more than fifty thousand dollars for each
33 offense under this subsection in addition to imposing any other
34 authorized sentence.

35 Sec. 8. Section 728.12, subsection 3, unnumbered paragraph

1 1, Code 2011, is amended to read as follows:

2 It shall be unlawful to knowingly purchase or possess a
3 ~~negative, slide, book, magazine, computer, computer disk, or~~
4 ~~other print or visual medium, or an electronic, magnetic, or~~
5 ~~optical storage system, or any other type of storage system~~
6 ~~which depicts~~ visual depiction of a minor engaging in a
7 prohibited sexual act or the simulation of a prohibited sexual
8 act. A person who commits a violation of this subsection
9 commits an aggravated misdemeanor for a first offense and a
10 class "D" felony for a second or subsequent offense. For
11 purposes of this subsection, an offense is considered a second
12 or subsequent offense if, prior to the person's having been
13 convicted under this subsection, any of the following apply:

14 Sec. 9. Section 728.14, Code 2011, is amended to read as
15 follows:

16 **728.14 Commercial film and photographic print processor**
17 **reports of depictions of minors engaged in prohibited sexual**
18 **acts.**

19 1. A commercial film and photographic print processor
20 who has knowledge of or observes, within the scope of the
21 processor's professional capacity or employment, a ~~film,~~
22 ~~photograph, video tape, negative, or slide which depicts~~ visual
23 depiction of a minor whom the processor knows or reasonably
24 should know to be under the age of eighteen, engaged in a
25 prohibited sexual act or in the simulation of a prohibited
26 sexual act, shall report the visual depiction to the county
27 attorney immediately or as soon as possible as required in this
28 section. The processor shall not report to the county attorney
29 visual depictions involving mere nudity of the minor, but shall
30 report visual depictions involving a prohibited sexual act.
31 This section shall not be construed to require a processor
32 to review all ~~films, photographs, video tapes, negatives, or~~
33 ~~slides~~ visual depictions delivered to the processor within the
34 processor's professional capacity or employment.

35 2. For purposes of this section, "*prohibited sexual act*"

1 a violation relating to human trafficking under Code section
2 710A.2.

3 A person who knowingly engages in human trafficking commits
4 a criminal offense ranging from a class "D" felony to a class
5 "B" felony depending on the circumstances of the case in Code
6 section 710A.2.

7 The bill creates the criminal offense of solicitation of
8 commercial sexual activity. The bill prohibits a person from
9 enticing, coercing, or recruiting, or attempting to entice,
10 coerce, or recruit a person under the age of 18 or a law
11 enforcement officer or agent representing oneself to be under
12 the age of 18, to engage in commercial sexual activity.

13 A person who commits solicitation of commercial sexual
14 activity is guilty of a class "D" felony and must register as a
15 tier III sex offender.

16 "Commercial sexual activity" is defined in Code section
17 710A.1 to mean any sex act or sexually explicit performance
18 for which anything of value is given, promised to, or received
19 by any person and includes but is not limited to prostitution,
20 participation in the production of pornography, and performance
21 in strip clubs.

22 The bill also defines the term "visual depiction" within
23 Code chapter 728 to include any picture, slide, photograph,
24 digital or electronic image, negative image, undeveloped film,
25 motion picture, videotape, digital or electronic recording,
26 live transmission, or other pictorial or three-dimensional
27 representation.

28 The bill modifies the elements of the criminal offense of
29 sexual exploitation of a minor in Code section 728.12(1) and
30 (3) by substituting references for a computer and other types
31 of storage systems with the term "visual depiction" as defined
32 by the bill. The bill also substitutes "visual depiction" for
33 storage systems referenced in Code section 728.14 to conform
34 with the sexual exploitation of a minor changes in Code section
35 728.12.

1 In addition, the word "visual" is added before the word
2 "depiction" throughout Code chapter 728 to conform with the
3 changes made by the bill.

4 The changes in the bill to the criminal offense of sexual
5 exploitation of a minor in Code section 728.12(3) are in
6 response to State v. Muhlenbruch, 728 N.W.2d 212 (Iowa 2007).

7 The amendment to Code section 915.87 relates to compensation
8 awarded to a victim of a crime in Code section 915.86. The
9 bill specifies that compensation for an injury will be paid to
10 a victim involved in commercial sexual activity under the age
11 of 18, even if the victim assisted, attempted, or committed a
12 criminal act.