

IOWA CODE 702.22 Library materials and equipment.

1. "*Library materials*" include books, plates, pictures, photographs, engravings, paintings, drawings, maps, newspapers, magazines, pamphlets, broadsides, manuscripts, documents, letters, public records, microforms, sound recordings, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts, and written or printed materials regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of any of the following:

- a. A public library.
- b. A library of an educational, historical, or eleemosynary institution, organization, or society.
- c. A museum.
- d. A repository of public records.

2. "*Library equipment*" includes audio, visual, or audiovisual machines, machinery or equipment belonging to, on loan to or otherwise in the custody of one of the institutions or agencies listed in subsection 1.

IOWA CODE 808.12 Detention and search in theft of library materials and shoplifting.

1. Persons concealing property as set forth in section 714.5, may be detained and searched by a peace officer, person employed in a facility containing library materials, merchant, or merchant's employee, provided that the detention is for a reasonable length of time and that the search is conducted in a reasonable manner by a person of the same sex and according to subsection 2 of this section.

2. No search of the person under this section shall be conducted by any person other than someone acting under the direction of a peace officer except where permission of the one to be searched has first been obtained.

3. The detention or search under this section by a peace officer, person employed in a facility containing library materials, merchant, or merchant's employee does not render the person liable, in a criminal or civil action, for false arrest or false imprisonment provided the person conducting the search or detention had reasonable grounds to believe the person detained or searched had concealed or was attempting to conceal property as set forth in section 714.5.

IOWA CODE 714.5 Library materials and equipment - unpurchased merchandise – evidence of intention.

The fact that a person has concealed library materials or equipment as defined in section 702.22 or unpurchased property of a store or other mercantile establishment, either on the premises or outside the premises, is material evidence of intent to deprive the owner, and the finding of library materials or equipment or unpurchased property concealed upon the person or among the belongings of the person, is material evidence of intent to deprive and, if the person conceals or causes to be concealed library materials or equipment or unpurchased property, upon the person or among the belongings of another, the finding of the concealed materials, equipment or property is also material evidence of intent to deprive on the part of the person concealing the library materials, equipment or goods.

The fact that a person fails to return library materials for two months or more after the date the person agreed to return the library materials, or fails to return library equipment for one month or more after the date the person agreed to return the library equipment, is evidence of intent to deprive the owner, provided a reasonable attempt, including the mailing by restricted certified mail of notice that such material or equipment is overdue and criminal actions will be taken, has been made to reclaim the materials or equipment. Notices stating the provisions of this section and of section 808.12 with regard to library materials or equipment shall be posted in clear public view in all public libraries, in all libraries of educational, historical or charitable institutions, organizations or societies, in all museums and in all repositories of public records.

After the expiration of three days following the due date, the owner of borrowed library equipment may request the assistance of a dispute resolution center, mediation center or appropriate law enforcement agency in recovering the equipment from the borrower.

The owner of library equipment may require deposits by borrowers and in the case of late returns the owner may impose graduated penalties of up to twenty-five percent of the value of the equipment, based upon the lateness of the return.

In the case of lost library materials or equipment, arrangements may be made to make a monetary settlement.

728 Obscenity

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 423 , 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.

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.

728.7 Exemptions for public libraries and educational institutions.

Nothing in this chapter prohibits the use of appropriate material for educational purposes in any accredited school, or any public library, or in any educational program in which the minor is participating. Nothing in this chapter prohibits the attendance of minors at an exhibition or display of art works or the use of any materials in any public library.

LIBRARY LAWS – THE IOWA CODE

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See also subheads City Libraries and Boards of Trustees; Districts and Boards of Trustees of Districts above; Service Areas and Boards of Trustees of Service Areas; Township Libraries below

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256.70 Library compact authorized.

The division of libraries and information services of the department of education is hereby authorized to enter into interstate library compacts on behalf of the state of Iowa with any state bordering on Iowa which legally joins therein in substantially the following form.

The contracting states agree that:

ARTICLE I - PURPOSE

Because the desire for the services provided by public libraries transcends governmental boundaries and can be provided most effectively by giving such services to communities of people regardless of jurisdictional lines, it is the policy of the states who are parties to this compact to cooperate and share their responsibilities in providing joint and cooperative library services in areas where the distribution of population makes the provision of library service on an interstate basis the most effective way to provide adequate and efficient services.

ARTICLE II - PROCEDURE

The appropriate state library officials and agencies having comparable powers with those of the Iowa commission of libraries of the party states or any of their political subdivisions may, on behalf of said states or political subdivisions, enter into agreements for the cooperative or joint conduct of library services when they shall find that the execution of agreements to that end as provided herein will facilitate library services.

ARTICLE III - CONTENT

Any such agreement for the cooperative or joint establishment, operation or use of library services, facilities, personnel, equipment, materials or other items not excluded because of failure to enumerate shall, as among the parties of the agreement:

1. Detail the specific nature of the services, facilities, properties or personnel to which it is applicable;
2. Provide for the allocation of costs and other financial responsibilities;
3. Specify the respective rights, duties, obligations and liabilities;
4. Stipulate the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of said agreement.

ARTICLE IV - CONFLICT OF LAWS

Nothing in this compact or in any agreement entered into hereunder shall alter, or otherwise impair any obligation imposed on any public library by otherwise applicable laws, or be constituted to supersede.

ARTICLE V - ADMINISTRATOR

Each state shall designate a compact administrator with whom copies of all agreements to which the state or any subdivision thereof is party shall be filed. The administrator shall have such powers as may be conferred by the laws of the administrator's state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact.

ARTICLE VI - EFFECTIVE DATE

This compact shall become operative when entered in by two or more entities having the powers enumerated herein.

ARTICLE VII - RENUNCIATION

This compact shall continue in force and remain binding upon each party state until six months after any such state has given notice of repeal by the legislature. Such withdrawal shall not be construed to relieve any party to an agreement authorized by articles II and III of the compact from the obligation of that agreement prior to the end of its stipulated period of duration.

ARTICLE VIII - SEVERABILITY - CONSTRUCTION

The provisions of this compact shall be severable. It is intended that the provisions of this compact be reasonably and liberally construed.

93 Acts, ch 48, §33

256.73 Enforcement.

The agencies and officers of this state and its subdivisions shall enforce this compact and do all things appropriate to effect its purpose and intent which may be within their respective jurisdiction.

93 Acts, ch 48, §36

256.60 Library service areas established - purposes.

Library service areas are established as provided in section 256.61 to provide supporting services to libraries, including, but not limited to, consulting, continuing education, and interlibrary loan and reference services, to assure consistency of service statewide, and to encourage local financial support for library services.

93 Acts, ch 48, §23; 2001 Acts, ch 158, §13

256.69 Local financial support.

Commencing July 1, 1977, each city within its corporate boundaries and each county within the unincorporated area of the county shall levy a tax of at least six and three-fourths cents per thousand dollars of assessed value on the taxable property or at least the monetary equivalent thereof when all or a portion of the funds are obtained from a source other than taxation, for the purpose of providing financial support to the public library which provides library services within the respective jurisdictions.

93 Acts, ch 48, §32

Public library funding study; report to general assembly; 2001 Acts, ch 158, §38

336.2 Library districts formed.

A library district may be established composed of one or more counties, one or more cities, or any combination of cities and counties.

Eligible electors residing within the proposed district in a number not less than five percent of those voting for president of the United States or governor, as the case may be, within the district at the last general election may petition the board of supervisors of the county, or the city council, for the establishment of the library district. The petition shall clearly designate the area to be included in the district.

The board of supervisors of each county and the city council of each city containing area within the proposed district shall submit the question to the registered voters within their respective counties and cities at the next general election. The petition shall be filed not less than eighty-two days before the election.

A library district shall be established if a majority of the electors voting on the question and residing in the proposed library district favor its establishment.

The result of the election within cities maintaining a free public library shall be considered separately, and no city shall be included within the library district unless a majority of its electors voting on the question favor its inclusion. In such cases the boundaries of an established district may vary from those of the proposed district.

After the establishment of a library district other areas may be included by mutual agreement of the board of trustees of the library district and the governing body of the area sought to be included.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.2]

C93, §336.2

95 Acts, ch 67, §53; 2001 Acts, ch 158, §26; 2002 Acts, ch 1134, §96, 115

336.3 Gifts.

When a gift for library purposes is accepted by a county or city, its use for the library may be enforced against the board of supervisors or city council by the library board by an action of mandamus or by other proper action.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358B.3; 81 Acts, ch 117, §1072]

C93, §336.3

2001 Acts, ch 158, §27

336.4 Library trustees.

In any area in which a library district has been established in accordance with this chapter, a board of library trustees, consisting of five, seven, or nine electors of the library district, shall be appointed by the board of supervisors of any county or city comprising the library district. Membership on the library board shall be apportioned between the rural and city areas of the district in proportion to the population in each of such areas. In the event the library district is composed of two or more counties, two or more cities, or any combination of counties and cities, representation on the library board shall be equitably divided between or among the counties and cities in proportion to the population in each of the counties and cities.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.4]

C93, §336.4

2001 Acts, ch 158, §28

336.5 Terms.

Of said trustees so appointed on boards to consist of nine members, three shall hold office for two years, three for four years, and three for six years; on boards to consist of seven members, two shall hold office for two years, two for four years, and three for six years; and on boards to consist of five members, one shall hold office for two years, two for four years, and two for six years, from the first day of July following their appointment in each case. At their first meeting they shall cast lots for their respective terms, reporting the result of such lot to the board of supervisors. All subsequent appointments, whatever the size of the board, shall be for terms of six years each. Vacancies shall be filled for unexpired terms by the governing body of the taxing unit of the district represented by the retiring member.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.5] C93, §336.5

336.6 Removal or absence of trustee.

The board of library trustees may declare the office of a trustee vacant by the trustee's removal from the library district or the trustee's unexplained absence from six consecutive regular meetings.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.6]

C93, §336.6

336.7 No compensation.

Members of said board shall receive no compensation for their services.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.7]

C93, §336.7

336.8 Powers.

Said board of library trustees shall have and exercise the following powers:

1. To meet and organize by the election of one of their number as president of the board, and by the election of a secretary and such other officers as the board may deem necessary.
2. To have charge, and supervision of the public library, its appurtenances and fixtures, and rooms containing the same, directing and controlling all the affairs of such library.
3. To employ a librarian, such assistants and employees as may be necessary for the proper management of said library, and fix their compensation; but, prior to such employment, the compensation of such librarian, assistants, and employees shall be fixed for the term of employment by a majority of the members of said board voting in favor thereof.
4. To remove such librarian, assistants, or employees by a vote of two-thirds of such board for misdemeanor, incompetency, or inattention to the duties of such employment.

5. To select and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, furniture, fixtures, stationery, and supplies for such library.
6. To authorize the use of such libraries by school corporations or by nonresidents of the area which is taxed to support such libraries and to fix charges therefor.
7. To make and adopt, amend, modify, or repeal bylaws, rules, and regulations, not inconsistent with law, for the care, use, government, and management of such library and the business of said board, fixing and enforcing penalties for the violation thereof.
8. To have exclusive control of the expenditures for library purposes as provided by law, and of the expenditures of all moneys available by gift or otherwise for the erection of library buildings. The board shall keep a record of its proceedings.
9. To accept gifts of any property, including trust funds; to take the title to said property in the name of said library; to execute deeds and bills of sale for the conveyance of said property; and to expend the funds received by them from such gifts, for the improvement of said library.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.8]

83 Acts, ch 123, §162, 209

C93, §336.8

336.9 Methods of service.

Library service shall be accomplished by one or more of the following methods in whole or in part:

1. By the establishment of depositories of books or other educational materials to be loaned at stated times and places.
2. By the transportation of books and other educational materials by conveyances for lending the same at stated times and places.
3. By the establishment of branch libraries for lending books and other educational materials.
4. By contracting for library service with a free public library of any city.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.9]

C93, §336.9

336.10 Library fund.

All moneys received and set apart for the maintenance of the library shall be deposited in the treasury of the county or city, as determined by the board of library trustees, and paid out upon warrants drawn by the county or city auditor upon requisition of the board of trustees, signed by its president and secretary. Provided that where a free public library is maintained jointly by two or more counties or cities or any combination of counties and cities, the library trustees may elect a library treasurer, and it shall be the duty of the city and county treasurers to pay over to the library treasurer any and all library taxes that may be collected by them monthly.

The library treasurer shall be required to furnish a bond conditioned as provided by section 64.2 in an amount as agreed upon by the participating boards of supervisors and city councils and the cost shall be paid by the participating counties and cities.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358B.10; 81 Acts, ch 117, §1073]

83 Acts, ch 123, §163, 209

C93, §336.10

2001 Acts, ch 158, §29

336.11 Annual report.

The board of trustees shall, immediately after the close of each fiscal year, submit to the board of supervisors, and the city council, as appropriate, a report containing a statement of the condition of the library, the number of books added thereto, the number circulated, the number not returned or lost, the amount of fines collected, and the amount of money expended in the maintenance thereof during such year, together with such further information as it may deem important.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.11]

C93, §336.11

2001 Acts, ch 158, §30

336.12 Real estate acquired.

In any county or city in which a free library has been established, the board of library trustees may purchase real estate in the name of the county or city for the location of library buildings and branch libraries, and for the purpose of enlarging the grounds.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.12]

C93, §336.12

2001 Acts, ch 158, §31

336.13 Maintenance expense on proportionate basis.

The maintenance of a library established in accordance with this chapter shall be on the basis of each participating unit bearing its share of the total cost in proportion to its population as compared to the total population of the library district. The board of library trustees shall make an estimate of the amount necessary for the maintenance of the library, the sources of direct library revenue, and the amount to be contributed from taxes or other revenues by the participating city or county and hold a hearing on the estimate after notice of the hearing is published as provided in section 331.305 or section 362.3 , as appropriate. On or before January 10 of each year, the board of library trustees shall transmit the estimate in dollars to the board of supervisors and to the cities participating in the district. The unincorporated area of each county in the library district shall be considered as a separate supporting unit. Each board of supervisors shall review the estimate and appropriate for library purposes its share in the county rural services fund budget. Each city council shall review the estimate for the city and appropriate for library purposes its share in the city general fund budget. Each participating city or county shall contribute its share from taxation or from other sources available for library purposes on an equitable basis. With approval of a city council, the county treasurer may withhold a reasonable portion of the taxes collected for a city to meet the city's contribution for library purposes and deliver a receipt to the city clerk for the amount withheld. This section shall not affect the taxing authority provided under section 256.69 .

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358B.13; 81 Acts, ch 117, §1074; 82 Acts, ch 1104, §13] 83 Acts, ch 123, §164, 209; 84 Acts, ch 1168, §1

C93, §336.13 2001 Acts, ch 158, §32

336.14 Not applicable to contract service.

The provisions of this chapter pertaining to the establishment of a library district shall not apply to any area receiving library service from any city library, unless the petition for a library district, in addition to the required signatures of electors, is signed by the governing body of the area receiving library service under contract.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.14]

C93, §336.14

2001 Acts, ch 158, §33

336.15 Existing contracts assumed.

Whenever a library district is established in accordance with this chapter, its board of trustees shall assume all the obligations of the existing contracts made by cities, townships, school corporations, or counties to receive library service from free public libraries.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.15]

C93, §336.15

2001 Acts, ch 158, §34

336.16 Withdrawal from district - termination.

A city may withdraw from the library district upon a majority vote in favor of withdrawal by the electorate of the city in an election held on a motion by the city council. The election shall be held simultaneously with a general or city election. Notice of a favorable vote to withdraw shall be sent by certified mail to the board of library trustees of the library district and the county auditor or city clerk, as appropriate, prior to January 10, and the withdrawal shall be effective on July 1.

A county may withdraw from the district after a majority of the voters of the unincorporated area of the county voting on the issue favor the withdrawal. The board of supervisors shall call for the election which shall be held at the next general election.

A city or county election shall not be called until a hearing has been held on the proposal to submit a proposition of withdrawal to an election. A hearing may be held only after public notice published as provided in section 362.3 in the case of a city or section 331.305 in the case of a county. A copy of the notice submitted for publication shall be mailed to the library on or before the date of publication. The proposal presented at the hearing must include a plan for continuing adequate library service with or without all participants and the respective allocated costs and levels of service shall be stated. At the hearing, any interested person shall be given a reasonable time to be heard, either for or against the withdrawal or the plan to accompany it.

A library district may be terminated if a majority of the electors of the unincorporated area of the county and the cities included in the library district voting on the issue favor the termination. The election shall be held upon motion of the board of supervisors and simultaneously with a general or other county election. If the vote favors termination, the termination shall be effective on the succeeding July 1.

An election for withdrawal from or termination of a library district shall not be held more than once each four years.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.16]

84 Acts, ch 1168, §2; 85 Acts, ch 125, §1

C93, §336.16

2001 Acts, ch 158, §35; 2002 Acts, ch 1119, §51; 2002 Acts, ch 1134, §97, 115

336.17 Historical association.

If a local county historical association is formed in a county having a free public library, the trustees of the library may unite with the historical association and set apart the necessary room to care for articles which come into the possession of the association. The trustees may purchase necessary receptacles and materials for the preservation and protection of articles which are of a historical and educational nature.

[S13, §729-e; C24, 27, 31, 35, 39, § 5864; C46, 50, 54, 58, 62, 66, 71, 73, §378.16; C75, 77, 79, 81, §358B.17]

83 Acts, ch 123, §165, 209

C93, §336.17

336.18 Contracts to use city library.

1. A school corporation, township, or library district may contract for the use by its residents of a city library. A contract by a county shall supersede all contracts by townships or school corporations within the county outside of cities.
2. *a.* Contracts shall provide for the amount to be contributed. They may, by mutual consent of the contracting parties, be terminated at any time. They may also be terminated by a majority of the voters represented by either of the contracting parties, voting on the question to terminate which shall be submitted by the governing body upon a written petition of eligible electors in a number not less than five percent of those who voted in the area for president of the United States or governor at the last general election.
b. The question may be submitted at any election provided by law which covers the area of the unit seeking to terminate the contract. The petition shall be presented to the governing body not less than ten days before the last day candidates may file nomination petitions for the election at which the question is to be submitted.
3. The board of trustees of any township which has entered into a contract shall at the April meeting levy a tax not exceeding six and three-fourths cents per thousand dollars of assessed valuation on all taxable property in the township to create a fund to fulfill its obligation under the contract.
4. *a.* Eligible electors of that part of any county outside of cities in a number of not less than twenty-five percent of those in the area who voted for president of the United States or governor at the last general election may petition the board of supervisors to submit the question of requiring the board to provide library service for them and their area by contract as provided by this section.
b. The board of supervisors shall submit the question to the voters of the county residing outside of cities at the next general election. The petition shall be filed not less than ten days before the last day candidates may file nomination petitions for the election at which the question is to be submitted.
c. If a majority of those voting upon the question favors it, the board of supervisors shall within thirty days appoint a board of library trustees from residents of the petitioning area. Vacancies shall be filled by the board.
d. The board of trustees may contract with any library for library use or service for the benefit of the residents and area represented by it.

[S13, §592-a, 792-a; SS15, §422; C24, 27, 31, 35, 39, § **5859, 5861 - 5863**; C46, 50, 54, 58, 62, 66, 71, 73, §378.11, 378.13 - 378.15; C75, 77, 79, 81, S81, §358B.18; 81 Acts, ch 117, §1075]

83 Acts, ch 123, §166, 167, 209

C93, §336.18

2001 Acts, ch 56, §25, 26; 2001 Acts, ch 158, §36; 2002 Acts, ch 1134, §98, 99, 115

392.5 Library board.

“A city library board of trustees functioning on the effective date of the city code shall continue to function in the same manner until altered or discontinued as provided in this section.

In order for the board to function in the same manner, the council shall retain all applicable ordinances, and shall adopt as ordinances all applicable state statutes repealed by 1972 Iowa Acts, chapter 1088.

A library board may accept and control the expenditure of all gifts, devises, and bequests to the library.

A proposal to alter the composition, manner of selection, or charge of a library board, or to replace it with an alternate form of administrative agency, is subject to the approval of the voters of the city.

The proposal may be submitted to the voters at any city election by the council on its own motion. Upon receipt of a valid petition as defined in section 362.4 , requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election. A proposal submitted to the voters must describe with reasonable detail the action proposed.

If a majority of those voting approves the proposal, the city may proceed as proposed.

If a majority of those voting does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated.”

OBSCENITY

- 728.1 Definitions.
- 728.2 Dissemination and exhibition of obscene material to minors.
- 728.3 Admitting minors to premises where obscene material is exhibited.
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- 728.13 Forfeiture. Repealed by 85 Acts, ch 201, Section 21.
- 728.14 Commercial film and photographic print processor reports of depictions of minors engaged in prohibited sexual acts.
- 728.15 Telephone dissemination of obscene material to minors.

728.1 Definitions.

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

1. "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.
2. "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.
3. "Disseminate" means to transfer possession, with or without consideration.
4. "Knowingly" means being aware of the character of the matter.
5. "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.
6. "Minor" means any person under the age of eighteen.
7. "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.
8. "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 child;
 - c. Fondling or touching the pubes or genitals of a child;
 - d. Fondling or touching the pubes or genitals of a person by a child;
 - e. Sadomasochistic abuse of a child 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 child for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse; or
- g. Nudity of a child for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude child.
- h. "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.

[C75, 77, Section 725.1; C79, 81, Section 728.1]
83 Acts, ch 167, Section 1

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.

[C51, Section 2717; R60, Section 4359; C73, Section 4022; C97, Section 4951, 4955; C24, 27, 31, 35, 39, Section 13188, 13103; C46, 50, 54, 58, 62, 66, 71, 73, Section 725.4, 725.8; C75, 77, Section 725.2; C79, 81, Section 728.2]

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 a premise where obscene material is exhibited is guilty of a public offense and upon conviction is guilty of an aggravated misdemeanor.

[C51, Section 2717; R60, Section 4359; C73, Section 4022; C97, Section 4951; 513, Section 4944-k; C24, 27, 31, 35, 39, Section 13185, 13189; C46, 50, 54, 58, 62, 66, 71, 73, Section 725.3, 725.4; C75, 77, Section 725.3; C79, 81, Section 728.3]
83 Acts, ch 167, Section 2

728.4 Sale of hard core pornography.

A person who knowingly sells or offers for sale material depicting a sex act involving sadomasochistic abuse, excretory functions, or bestiality, which the average adult taking the material as a whole in applying contemporary community standards would find appeals to the prurient interest and is patently offensive; and which material, taken as a whole, lacks serious literary, scientific, political, or artistic value, upon conviction is guilty of an aggravated misdemeanor charges under this section may only be brought by a county attorney or by the attorney general.

[C79, 81, Section 728.4; 82 Acts, ch 1115, Section 1]
83 Acts, ch 167, Section 3

728.5 Public indecent exposure in certain establishments.

A holder of a liquor license or beer permit or any owner, manager or person who exercises direct control over any licensed premises defined in section 123.3, subsection 31 shall be guilty of a serious misdemeanor under any of

the following circumstances:

1. If such person allow or permit the actual or simulated public performance of any sex act upon or in such licensed premises.
2. If such person allow or permit the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.
3. If such person allow or permit the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the licensed premises in which the activity is performed employs or pays any compensation to such person to perform such activity.
4. If such person allow or permit any person to remain in or upon the licensed premises who exposes to public view the person's genitals, pubic hair, or anus.
5. If such person allow or permit the displaying of moving pictures, films, or pictures depicting any sex act or the display of the pubic hair, anus, or genitals upon or in such licensed premises.
6. If such person advertises that any activity prohibited by this section is allowed or permitted in such licensed premises.

Provided that 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 any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

[C79, 81, Section 728.5]

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.

[C75, 77, Section 725.4; C79, 81, Section 728.6]

728.7 Exemptions for public libraries and educational institutions.

Nothing in this chapter prohibits the use of appropriate material for educational purposes in any accredited school, or any public library, or in any educational program in which the minor is participating. Nothing in this chapter prohibits the attendance of minors at an exhibition or display of art works or the use of any materials in any public library.

[C75, 77, Section 725.5; C79, 81, Section 728.7]

728.8 Suspension of licenses or permits.

Any person who knowingly permits a violation of section 728.2 or 728.3 to occur on premises under the person's control shall have all permits and licenses issued to the person under state or local law as a prerequisite for doing business on such premises revoked for a period of six months. The county attorney shall notify all agencies responsible for issuing licenses and permits of any conviction under section 728.2 or 728.3.

[C75, 77, Section 725.6; C79, 81, Section 728.8]

728.9 Evidence considered.

At a trial for violation of section 728.2 or 728.3 the court may consider the material, and receive into evidence in addition to other competent evidence, the offered testimony of experts pertaining to:

1. The artistic, literary, political or scientific value, if any, of the challenged material.
2. The degree of public acceptance within the community of the material or material of similar character.
3. The intent of the author, artist, producer, publisher or manufacturer in creating the material.
4. The advertising promotion and other circumstances relating to the sale of the material.

[C75, 77, Section 725.7; C79, 81, Section 728.9]

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.

[C75, 77, Section 725.8; C79, 81, Section 728.10]

728.11 Uniform application.

In order to provide for the uniform application of the provisions of this chapter relating to obscene material applicable to minors within this state, it is intended that the sole and only regulation of obscene material shall be under the provisions of this chapter, and no municipality, county or other governmental unit within this state shall make any law ordinance or regulation relating to the availability of obscene materials. All such laws, ordinances or regulations shall be or become void, unenforceable and of no effect on January 1, 1978. Nothing in this section shall restrict the zoning authority of cities and counties.

[C75, 77, Section 725.9; C79, 81, Section 728.11]

728.12 Sexual exploitation of children.

1. A person commits a class "C" felony when the person employs, uses, persuades, induces, entices, coerces, knowingly permits, or otherwise causes a child to engage in a prohibited sexual act or in the simulation of a prohibited sexual act if the person knows, has reason to know, or intends that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, or other print or visual medium. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. A person commits a class "D" felony when the person knowingly promotes any material visually depicting a live performance of a child engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. Notwithstanding section 902.9, the court may assess a fine of not more than

twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. A person who knowingly purchases any negative, slide, book, magazine or other print or visual medium depicting a child engaging in a prohibited sexual act or the simulation of a prohibited sexual act commits a serious misdemeanor.

However, this section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

[C79, 81, Section 728.12]

83 Acts, ch 167, Section 4; 86 Acts, ch 1176, Section 1-3

728.13 Forfeiture. Repealed by 85 Acts, ch 201, Section 21. See ch 809.

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

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

For purposes of this section, "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 for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act.
- d. Fondling or touching the pubes or genitals 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 act.
- e. Sadoomasochistic 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. Sadoomasochistic 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.

2. A person who violates this section is guilty of a simple misdemeanor.

89 Acts, ch 263, section 4

728.15 Telephone dissemination of obscene material to minors.

1. A person shall not knowingly disseminate obscene material by the use of telephones or telephone facilities to a minor. A person who violates this subsection upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent offenses of this subsection by a person who has been previously convicted of violating this subsection are class "D" felonies. As used in this subsection, a "person" excludes any information-access service provider that merely provides transmission capacity without control

over the content of the transmission.

2. It shall be a defense in any prosecution for a violation of subsection 1 by a person who knowingly disseminates obscene material by the use of telephones or telephone facilities to a minor that the defendant has taken either of the following measures to restrict access to the obscene material:

a. Required the person receiving the obscene material to use and authorized access or identification code, as provided by the information provider, before transmission of the obscene material begins, where the defendant has previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was eighteen years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of eighteen or that the code is no longer desired.

b. Required payment by credit card before transmission of the obscene material.

3. Any list of applicants or recipients compiled or maintained by an information-access service provider for the purposes of compliance with subsection 2 is confidential and shall not be sold or otherwise disseminated except upon order of the court.

89 Acts, ch 263, section 5