

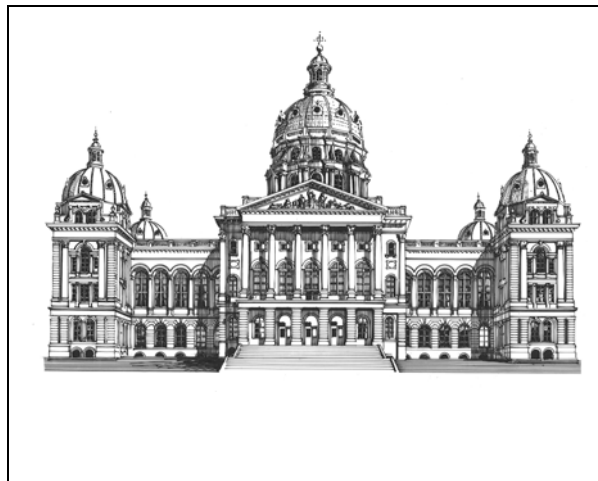
# **Iowa House of Representatives**

## **State Representative Cecil Dolecheck**

### **Dolecheck's Details**

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**For the week of February 22nd-February 26th, 2010**



## **Appropriations**

The main focus this week continues to be on the budget. The budget sub-committees are being asked to vote their budgets out of their respective committees on Thursday, February 25<sup>th</sup>. The Education sub-committee, on which I am ranking member, received a spreadsheet with the appropriation numbers on it, but with no policy language. House rules clearly state that all votes shall be cast for or against bills presented in the proper format. In the interest of transparency and fairness to the public and the process, the Republican House members on the Education Appropriations Budget Sub will not be voting on a spreadsheet. I can only hope that we will receive a bill including policy language soon, so the process can move forward with public scrutiny. I do not know how many other budget sub-committees are going to be asked to do the same. The Republican House members will not be supporting any budget that spends more than it takes in.

## **Judiciary-Underage Dancing Loophole**

A controversial District Court case that found the owner of a strip club not guilty for letting a minor dance nude in his establishment is receiving increased attention due to the Court of Appeals decision to not overturn the case.

The issue originates from a strip club in Hamburg owned by Clarence Judy, who in 2007 admitted a group of recent high school graduates into the establishment. All but one of the group were at least 18. The underage female's ID was not checked as she entered the establishment. After some time, she was pulled up on stage by performers, where she twice danced completely nude. She testified that she felt she was expressing herself through her dancing. She was provided two beers by performers.

Chapter 728.5 of the Iowa Code pertains to public indecent exposure in certain establishments. Under this law, the State is required to prove that Judy was the owner of the establishment, that he permitted or allowed a minor to perform a live act, the act performed was intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons, and finally that the place of business was not a theater or similar establishment primarily devoted to the arts or theatrical performances and that the act was not part of such a performance. If the State is able to prove all of the above elements, Judy would be guilty of an aggravated misdemeanor. That charge carries with it the potential of two years in prison and a fine of up to \$6,250.

It is not disputed that the establishment is owned by Judy. The court found that Judy did permit a minor to enter his establishment by allowing her through the front door without checking her ID and that he is responsible for allowing her to perform once inside.

The court also found that the act performed was indeed intended to arouse or satisfy the sexual desires or appeal to the prurient interests of the patrons. It was significant to the court the manner in which the establishment advertises itself to the public. Also significant was the sexual nature of the dancing by the underage female.

The only element remaining for the State to prove is that the strip club is not a theater. Judy operates the strip club, Shotgun Geniez, under the name "Hamburg Theater for the Performing Arts" which is how it appears in the phone book and on signs outside the business. Judy presented evidence that artwork is displayed on the walls of the establishment and sold on the establishment's website. Judy also testified that sketch pads have been made available to patrons to sketch dancers; however that could not be corroborated.

While the court noted that the state proved that the establishment is primarily a strip club, they found that the State failed to prove beyond a reasonable doubt that Shotgun Geniez is not a theater. While the State had focused on the fact that the establishment was primarily a strip club, the court noted that the theater exemption in 728.5 is not qualified by language that would limit it to only places that are primarily theaters. Even if a theater in a limited capacity, the court feels the exemption applies, and it concluded it did in this instance.

The decision resulted in an acquittal for Judy and a disturbing loophole in State law that seems to allow underage nude dancing. The Court of Appeals recently found the District Court ruling sufficient. With the courts apparently unwilling to correct this situation, many in the Legislature are prepared to fix the problem themselves.

A number of proposals would do essentially the same thing. The loophole would be closed by adding language to the theater exemption in Chapter 728.5 that explicitly states that the exemption does not apply to a situation where a minor is involved. With a strong public outcry, it is hoped that a fix can get passed this year.

## **Prohibition on Text Messaging While Driving**

HF2456 makes it illegal to write or send a text message while driving a vehicle. The bill does not include a voice-operated or hands-free device which allows the user to text message with the use of either hand except to activate or deactivate a feature or function. A person shall not use a hand held electronic communication device to write or send a text message while driving unless that vehicle is at a complete stop off the roadway. The Senate passed an amendment to the bill to include receiving a text message. The amended bill comes back to the House for more consideration.

It is still permissible to use a global positioning or navigational system. It is still permissible to manually enter a telephone number to place a call and then to converse on your cell phone while driving.

What do you think? Email me your thoughts. My e-mail address is : [cecil.dolecheck@legis.state.ia.us](mailto:cecil.dolecheck@legis.state.ia.us)

House Visitors include : John Thorpe from Mount Ayr, Mike Cheese of Cheese's Food Center, Carroll Baker, Phil Kinser, Stan Peterman, Ron Hartstack, and Glen Roberts from Southwest Iowa Rural Electric Cooperative, and Gordon Winkler from the Ringgold County Hospital.

Information about my legislative forum schedule, past newsletters and biography can be found at [www.iowahouserepublicans.com/members/cecil-dolecheck](http://www.iowahouserepublicans.com/members/cecil-dolecheck)

The number for the House switchboard is (515) 281-3221, Seat 65