

By: Toth

H.B. No. 4378

A BILL TO BE ENTITLED

AN ACT

relating to a cause of action for drag performances performed in the presence of a minor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100B to read as follows:

CHAPTER 100B. LIABILITY FOR DRAG PERFORMANCE IN PRESENCE OF MINOR

Sec. 100B.001. DEFINITIONS. In this chapter:

(1) "Drag performance" means a performance in which a performer exhibits a gender that is different than the performer's gender recorded at birth using clothing, makeup, or other physical markers and sings, lip syncs, dances, or otherwise performs in a lascivious manner before an audience.

(2) "Lascivious" means conduct of a sexual nature that is offensive to community standards of decency. The term includes the intentional exposure of genitalia in the presence of a minor.

(3) "Minor" means an individual who is younger than 18 years of age.

Sec. 100B.002. LIABILITY FOR DRAG PERFORMANCE IN PRESENCE OF MINOR. An individual who attends a drag performance as a minor may bring an action against a person who knowingly promotes, conducts, or participates as a performer in the drag performance that occurs before an audience that includes the minor if:

(1) the performance violates the prevailing standard

1 in the adult community for content suitable for minors; and
2 (2) the person fails to take reasonable steps to
3 restrict access to the performance by minors.

4 Sec. 100B.003. LIMITATIONS. A claimant may bring an action
5 under this chapter not later than the 10th anniversary of the date
6 the cause of action accrues.

7 Sec. 100B.004. DAMAGES. If a claimant prevails in an action
8 brought under this chapter, the court shall award:

9 (1) actual damages, including damages for
10 psychological, emotional, economic, and physical harm;

11 (2) reasonable attorney's fees and costs incurred in
12 bringing the action; and

13 (3) statutory damages of \$5,000.

14 Sec. 100B.005. DEFENSES. (a) It is an affirmative defense
15 to an action brought under this chapter that:

16 (1) the defendant reasonably believed the minor was at
17 least 18 years of age at the time the minor was allowed entry to the
18 performance; or

19 (2) the minor displayed an apparently valid proof of
20 identification issued by a governmental agency purporting to
21 establish that the minor was at least 18 years of age to gain entry
22 to the performance.

23 (b) It is not a defense to an action brought under this
24 chapter that the minor was accompanied at the drag performance by
25 the minor's parent or guardian.

26 SECTION 2. The change in law made by this Act applies only
27 to a cause of action that accrues on or after the effective date of

1 this Act.

2 SECTION 3. This Act takes effect September 1, 2023.