

By: Slaton

H.B. No. 4129

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting certain erotic performances; creating a criminal offense; authorizing a civil penalty.

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

SECTION 1. Section 102.001, Business & Commerce Code, is amended to read as follows:

Sec. 102.001. DEFINITIONS. In this subchapter:

(1) "Child" means an individual younger than 18 years of age.

(2) "Erotic performance" has the meaning assigned by Section 243.002, Local Government Code.

(3) "Sex offender" means a person who has been convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under Chapter 62, Code of Criminal Procedure.

(4) (2) ~~["Sexually oriented business"~~ has the meaning assigned by Section 243.002, Local Government Code.

SECTION 2. Section 102.0031, Business & Commerce Code, is amended to read as follows:

Sec. 102.0031. PROHIBITION ON ~~[CERTAIN ACTIVITIES BY]~~ BUSINESS ALLOWING ~~[IN RELATION TO A]~~ CHILD ON PREMISES. A sexually oriented business may not allow a child ~~[an individual younger than 18 years of age]~~ to enter the premises of the business.

SECTION 3. Subchapter A, Chapter 102, Business & Commerce

Code, is amended by adding Section 102.0032 to read as follows:

Sec. 102.0032. PROHIBITION ON BUSINESS ALLOWING EROTIC PERFORMANCE IN PRESENCE OF CHILD. A sexually oriented business may not allow an erotic performance to take place in the presence of a child.

SECTION 4. Section 102.004(a), Business & Commerce Code, is amended to read as follows:

(a) The attorney general or appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a person who violates or threatens to violate Section 102.002, 102.003, ~~[or]~~ 102.0031, or 102.0032.

SECTION 5. Section 102.005, Business & Commerce Code, is amended by amending Subsection (c) and adding Subsections (b-1) and (d) to read as follows:

(b-1) A sexually oriented business commits an offense if the business violates Section 102.0032.

(c) An offense under Subsection (a) or (b) ~~[this section]~~ is a Class A misdemeanor.

(d) An offense under Subsection (b-1) is a felony of the third degree.

SECTION 6. Subchapter A, Chapter 102, Business & Commerce Code, is amended by adding Sections 102.006 and 102.007 to read as follows:

Sec. 102.006. CIVIL AND OTHER PENALTY. (a) A sexually oriented business that violates Section 102.0032 is:

(1) liable to this state for a civil penalty not to

1 exceed \$10,000 for each violation; and

2 (2) subject to the revocation of applicable licenses
3 for a second violation in accordance with Section 102.007.

4 (b) The attorney general may bring an action in the name of
5 the state to recover a civil penalty under this section.

6 (c) The action may be brought in a district court in:

7 (1) Travis County; or

8 (2) a county in which any part of the violation occurs.

9 (d) A civil penalty collected under this section shall be
10 deposited in the state treasury to the credit of the general revenue
11 fund.

12 Sec. 102.007. NOTICE TO LICENSING AUTHORITY; REVOCATION OF
13 CERTAIN LICENSES. (a) In this section:

14 (1) "License" means a license, certificate,
15 registration, permit, or other authorization that:

16 (A) is issued by a licensing authority;

17 (B) is subject before expiration to renewal,
18 suspension, revocation, forfeiture, or termination by a licensing
19 authority; and

20 (C) a person must obtain to:

21 (i) practice or engage in a particular
22 business, occupation, or profession; or

23 (ii) engage in any other regulated
24 commercial activity for which a license or permit is required.

25 (2) "Licensing authority" means a department,
26 commission, board, office, or other agency of this state or a
27 political subdivision of this state, including a municipality or

1 county with regulatory authority under Section 243.007, Local
2 Government Code, that issues or renews a license or that otherwise
3 has authority to suspend or refuse to renew a license.

4 (b) Not later than the 30th day after the date the attorney
5 general prevails in a second action against a sexually oriented
6 business under Section 102.006, the attorney general shall provide
7 notice to each appropriate licensing authority with regulatory
8 authority over licensing the business. If authorized under
9 applicable law, the licensing authority shall revoke the business's
10 license through the applicable revocation process.

11 SECTION 7. Section 102.051, Business & Commerce Code, is
12 amended to read as follows:

13 Sec. 102.051. DEFINITIONS. In this subchapter:

14 (1) "Business" means a foreign or domestic for-profit
15 or nonprofit entity.

16 (1-a) "Erotic performance" has the meaning assigned by
17 Section 243.002, Local Government Code.

18 (1-b) "Nude" means:

19 (A) entirely unclothed; or

20 (B) clothed in a manner that leaves uncovered or
21 visible through less than fully opaque clothing any portion of the
22 breasts below the top of the areola of the breasts, if the person is
23 female, or any portion of the genitals or buttocks.

24 (2) "Sexually oriented business" means:

25 (A) a nightclub, bar, restaurant, or similar
26 commercial enterprise that:

27 (i) [(A)] provides for an audience of two

1 or more individuals live nude entertainment or live nude
2 performances; and

3 (ii) [~~(B)~~] authorizes on-premises
4 consumption of alcoholic beverages, regardless of whether the
5 consumption of alcoholic beverages is under a license or permit
6 issued under the Alcoholic Beverage Code; or

7 (B) a business that provides for an audience of
8 two or more individuals an erotic performance.

9 SECTION 8. Section 243.002, Local Government Code, is
10 amended to read as follows:

11 Sec. 243.002. DEFINITIONS [~~DEFINITION~~]. In this chapter:

12 (1) "Biological sex" means the physical condition of
13 being male or female as determined by the sex organs, chromosomes,
14 and endogenous profile of the individual at birth.

15 (2) "Business" means a foreign or domestic for-profit
16 or nonprofit entity.

17 (3) "Erotic performance" means a performance with the
18 intent to or in such a way that a reasonable person would conclude
19 the movement is intended to, likely to, or would naturally cause
20 sexual arousal or gratification or any performance that would
21 otherwise appeal to the prurient interest of any person, including
22 a performance:

23 (A) depicting a sex act, including depicting a
24 sex act while nude;

25 (B) involving the progressive removal of
26 clothing or the placement of money into undergarments; and

27 (C) in which a person exhibits a sex or gender

1 that is different than the person's biological sex, using clothing,
2 makeup, or other physical markers, and sings, lip-syncs, dances, or
3 otherwise performs for an audience.

4 (4) "Sexually [~~,"sexually~~] oriented business" means:

5 (A) a sex parlor, nude studio, modeling studio,
6 love parlor, adult bookstore, adult movie theater, adult video
7 arcade, adult movie arcade, adult video store, adult motel, or
8 other commercial enterprise the primary business of which is the
9 offering of a service or the selling, renting, or exhibiting of
10 devices or any other items intended to provide sexual stimulation
11 or sexual gratification to the customer; or

12 (B) a business that provides for an audience of
13 two or more individuals an erotic performance.

14 SECTION 9. Subchapter B, Chapter 43, Penal Code, is amended
15 by adding Section 43.28 to read as follows:

16 Sec. 43.28. CERTAIN EROTIC PERFORMANCES PROHIBITED. (a)
17 In this section:

18 (1) "Biological sex" means the physical condition of
19 being male or female as determined by the sex organs, chromosomes,
20 and endogenous profile of the individual at birth.

21 (2) "Erotic performance" means an act that is
22 performed with the intent to or in such a way that a reasonable
23 person would conclude the act is intended to, likely to, or would
24 naturally cause arousal or gratify the sexual desire of any person
25 or to otherwise appeal to the prurient interest of any person in sex
26 or nudity, including an act:

27 (A) depicting a sex act, including depicting a

1 sex act while nude;

2 (B) involving the progressive removal of
3 clothing or the placement of money into undergarments; and

4 (C) in which a person exhibits a sex or gender
5 that is different than the person's biological sex, using clothing,
6 makeup, or other physical markers, and sings, lip-syncs, dances, or
7 otherwise performs for an audience.

8 (b) A person commits an offense if the person engages in an
9 erotic performance in a location where the performance is
10 reasonably likely to be viewed by a person younger than 18 years of
11 age.

12 (c) An offense under this section is a felony of the third
13 degree.

14 SECTION 10. This Act takes effect September 1, 2023.