

By: Hughes, et al.

S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

relating to restricting certain sexually oriented performances on public property, on the premises of a commercial enterprise, or in the presence of a child; authorizing a civil penalty; creating a criminal offense.

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

SECTION 1. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 769 to read as follows:

CHAPTER 769. SEXUALLY ORIENTED PERFORMANCES

Sec. 769.001. DEFINITIONS. In this chapter:

(1) "Premises" has the meaning assigned by Section 46.03, Penal Code.

(2) "Sexually oriented performance" has the meaning assigned by Section 43.28, Penal Code.

Sec. 769.002. CERTAIN SEXUALLY ORIENTED PERFORMANCES PROHIBITED ON PREMISES OF COMMERCIAL ENTERPRISE; CIVIL PENALTY; INJUNCTION. (a) A person who controls the premises of a commercial enterprise may not allow a sexually oriented performance to be presented on the premises in the presence of an individual younger than 18 years of age.

(b) A person who violates this section is liable to this state for a civil penalty of not more than \$10,000 for each violation.

(c) The attorney general may bring an action to:

1           (1) recover the civil penalty imposed under this  
2 section; or

3           (2) obtain a temporary or permanent injunction to  
4 restrain the violation.

5           (d) An action under this section may be brought in a  
6 district court in:

7                 (1) Travis County; or

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

9           (e) The attorney general shall deposit a civil penalty  
10 collected under this section in the state treasury to the credit of  
11 the general revenue fund.

12           (f) The attorney general may recover reasonable expenses  
13 incurred in bringing an action under this section, including court  
14 costs, attorney's fees, investigative costs, witness fees, and  
15 deposition expenses.

16           SECTION 2. Chapter 243, Local Government Code, is amended  
17 by adding Section 243.0031 to read as follows:

18           Sec. 243.0031. AUTHORITY TO REGULATE CERTAIN SEXUALLY  
19 ORIENTED PERFORMANCES. (a) In this section, "sexually oriented  
20 performance" has the meaning assigned by Section 43.28, Penal Code.

21           (b) Subject to Subsection (c), a municipality or county may  
22 regulate sexually oriented performances as the municipality or  
23 county considers necessary to promote the public health, safety, or  
24 welfare.

25           (c) A municipality or county may not authorize a sexually  
26 oriented performance:

27                 (1) on public property; or

1           (2) in the presence of an individual younger than 18  
2 years of age.

3           (d) Except as provided by Subsection (c), this section does  
4 not limit the authority of a municipality to license, tax,  
5 suppress, prevent, or otherwise regulate theatrical or other  
6 exhibitions, shows, or amusements under Section 215.032.

7           SECTION 3. Subchapter B, Chapter 43, Penal Code, is amended  
8 by adding Section 43.28 to read as follows:

9           Sec. 43.28. CERTAIN SEXUALLY ORIENTED PERFORMANCES  
10 PROHIBITED. (a) In this section:

11                   (1) "Sexual conduct" means:

12                           (A) the exhibition or representation, actual or  
13 simulated, of sexual acts, including vaginal sex, anal sex, and  
14 masturbation;

15                           (B) the exhibition or representation, actual or  
16 simulated, of male or female genitals in a lewd state, including a  
17 state of sexual stimulation or arousal;

18                           (C) the exhibition of a device designed and  
19 marketed as useful primarily for the sexual stimulation of male or  
20 female genitals; or

21                           (D) actual contact or simulated contact  
22 occurring between one person and the buttocks, breast, or any part  
23 of the genitals of another person.

24                   (2) "Sexually oriented performance" means a visual  
25 performance that:

26                           (A) features:

27                                   (i) a performer who is nude, as defined by

1 Section 102.051, Business & Commerce Code;

2 (ii) a male performer exhibiting as a  
3 female, or a female performer exhibiting as a male, who uses  
4 clothing, makeup, or other similar physical markers and who sings,  
5 lip syncs, dances, or otherwise performs before an audience; or

6 (iii) any other performer who engages in  
7 sexual conduct; and

8 (B) appeals to the prurient interest in sex.

9 (b) A person commits an offense if, regardless of whether  
10 compensation for the performance is expected or received, the  
11 person engages in a sexually oriented performance:

12 (1) on public property at a time, in a place, and in a  
13 manner that could reasonably be expected to be viewed by a child; or

14 (2) in the presence of an individual younger than 18  
15 years of age.

16 (c) An offense under this section is a Class A misdemeanor.

17 SECTION 4. If any provision of this Act or its application  
18 to any person or circumstance is held invalid, the invalidity does  
19 not affect other provisions or applications of this Act that can be  
20 given effect without the invalid provision or application, and to  
21 this end the provisions of this Act are declared severable.

22 SECTION 5. This Act takes effect September 1, 2023.