

By: Hughes, et al.
(Shaheen)

S.B. No. 12

Substitute the following for S.B. No. 12:

By: Dean

C.S.S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

1
2 relating to restricting certain sexually oriented performances on
3 public property, on the premises of a commercial enterprise, or in
4 the presence of a child; authorizing a civil penalty; creating a
5 criminal offense.

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

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

9 CHAPTER 769. SEXUALLY ORIENTED PERFORMANCES

10 Sec. 769.001. DEFINITIONS. In this chapter:

11 (1) "Premises" has the meaning assigned by Section
12 46.03, Penal Code.

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

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

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

24 (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) "Premises" has the meaning assigned by
12 Section 46.03.

13 (2) "Sexual conduct" means:

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

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

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

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

26 (3) "Sexually oriented performance" means a visual
27 performance that:

- 1 (A) features:
- 2 (i) a performer who is nude, as defined by
- 3 Section 102.051, Business & Commerce Code; or
- 4 (ii) any other performer who engages in
- 5 sexual conduct; and

- 6 (B) appeals to the prurient interest in sex.
- 7 (b) A person commits an offense if, regardless of whether
- 8 compensation for the performance is expected or received, the
- 9 person engages in a sexually oriented performance:

- 10 (1) on public property at a time, in a place, and in a
- 11 manner that could reasonably be expected to be viewed by a child; or
- 12 (2) on the premises of a commercial enterprise in the
- 13 presence of an individual younger than 18 years of age.

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

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

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