

AN ACT

relating to the authority to regulate sexually oriented performances and to restricting those performances on the premises of a commercial enterprise, on public property, or in the presence of an individual younger than 18 years of age; 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.

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

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

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

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

8 (1) Travis County; or

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

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

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

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

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

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

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

1 (1) on public property; or

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

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

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

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

12 (1) "Sexual conduct" means:

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

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

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

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

25 (E) the exhibition of sexual gesticulations
26 using accessories or prosthetics that exaggerate male or female
27 sexual characteristics.

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

3 (A) features:

4 (i) a performer who is nude, as defined by
5 Section 102.051, Business & Commerce Code; or

6 (ii) 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.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 12 passed the Senate on April 5, 2023, by the following vote: Yeas 20, Nays 11; May 25, 2023, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 2023, House granted request of the Senate; May 28, 2023, Senate adopted Conference Committee Report by the following vote: Yeas 19, Nays 12.

Secretary of the Senate

I hereby certify that S.B. No. 12 passed the House, with amendments, on May 22, 2023, by the following vote: Yeas 93, Nays 45, six present not voting; May 26, 2023, House granted request of the Senate for appointment of Conference Committee; May 28, 2023, House adopted Conference Committee Report by the following vote: Yeas 87, Nays 54, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor