

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

MAY 26, 2023

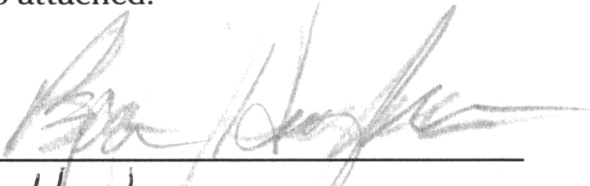
Date

Honorable Dan Patrick
President of the Senate

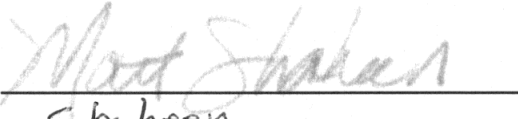
Honorable Dade Phelan
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 12 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

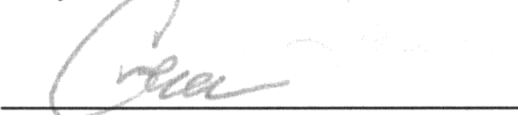


Hughes



Shaheen

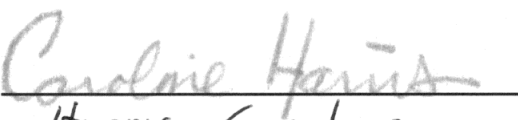
Creighton




Green



Paxton



Harris, Caroline



Springer



Moody

On the part of the Senate
West

On the part of the House
Patterson

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 12

A BILL TO BE ENTITLED

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.

Senate Bill 12
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 1. Subtitle A, Title 9, Health and Safety Code, is amended.

SECTION 2. Chapter 243, Local Government Code, is amended.

SECTION 3. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.28 to read as follows:
Sec. 43.28. CERTAIN SEXUALLY ORIENTED PERFORMANCES PROHIBITED. (a) In this section:

(1) "Sexual conduct" means:

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

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

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

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

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

HOUSE VERSION (CS)

SECTION 1. Same as Senate version.

SECTION 2. Same as Senate version.

SECTION 3. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.28 to read as follows:
Sec. 43.28. CERTAIN SEXUALLY ORIENTED PERFORMANCES PROHIBITED. (a) In this section:

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

(2) "Sexual conduct" means:

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

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

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

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

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

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

SECTION 1. Same as Senate version.

SECTION 2. Same as Senate version.

SECTION 3. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.28 to read as follows:
Sec. 43.28. CERTAIN SEXUALLY ORIENTED PERFORMANCES PROHIBITED. (a) In this section:

(1) "Sexual conduct" means:

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

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

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

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

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

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

Senate Bill 12
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

- (A) features:
- (i) a performer who is nude, as defined by Section 102.051, Business & Commerce Code;
 - (ii) a male performer exhibiting as a female, or a female performer exhibiting as a male, who uses clothing, makeup, or other similar physical markers and who sings, lip syncs, dances, or otherwise performs before an audience; or**
 - (iii) any other performer who engages in sexual conduct; and
- (B) appeals to the prurient interest in sex.
- (b) A person commits an offense if, regardless of whether compensation for the performance is expected or received, the person engages in a sexually oriented performance:
- (1) on public property at a time, in a place, and in a manner that could reasonably be expected to be viewed by a child;
 - or
 - (2) in the presence of an individual younger than 18 years of age.
- (c) An offense under this section is a Class A misdemeanor.

SECTION 4. Severability clause.

SECTION 5. Effective date.

HOUSE VERSION (CS)

- (A) features:
- (i) a performer who is nude, as defined by Section 102.051, Business & Commerce Code; or
 - (ii) any other performer who engages in sexual conduct; and
- (B) appeals to the prurient interest in sex.
- (b) A person commits an offense if, regardless of whether compensation for the performance is expected or received, the person engages in a sexually oriented performance:
- (1) on public property at a time, in a place, and in a manner that could reasonably be expected to be viewed by a child;
 - or
 - (2) on the premises of a commercial enterprise in the presence of an individual younger than 18 years of age.
- (c) An offense under this section is a Class A misdemeanor.

SECTION 4. Same as Senate version.

SECTION 5. Same as Senate version.

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

- (A) features:
- (i) a performer who is nude, as defined by Section 102.051, Business & Commerce Code; or
 - (ii) any other performer who engages in sexual conduct; and
- (B) appeals to the prurient interest in sex.
- (b) A person commits an offense if, regardless of whether compensation for the performance is expected or received, the person engages in a sexually oriented performance:
- (1) on public property at a time, in a place, and in a manner that could reasonably be expected to be viewed by a child;
 - or
 - (2) in the presence of an individual younger than 18 years of age.
- (c) An offense under this section is a Class A misdemeanor.

SECTION 4. Same as Senate version.

SECTION 5. Same as Senate version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 27, 2023

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB12 by Hughes (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.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would restrict certain sexually oriented performances on public property, on the premises of a commercial enterprise, or in the presence of an individual younger than 18 years old.

According to the Office of Court Administration and the Office of the Attorney General, no significant fiscal implications are anticipated from the provisions of the bill.

According to the Comptroller's Office, any revenue impacts from the creation of a new misdemeanor offense and associated penalties and court costs cannot be determined.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: JMc, KDw, SMAT, HGR, LCO, NV