

FACT SHEET

KNOW YOUR RIGHTS: S.B. 12 (DRAG BAN)



Current status: Scheduled to take effect March 18, 2026.

In September 2023, a federal court entered a final order declaring S.B. 12 to be unconstitutional under five independent grounds and issued a permanent injunction blocking the Texas attorney general and other government defendants from enforcing it. On November 6, 2025, a Fifth Circuit panel reversed some aspects of that decision and stated that the case should be sent back to the district court for more analysis on overbreadth in light of an intervening decision from the U.S. Supreme Court. After the plaintiffs filed a motion for panel rehearing, the Fifth Circuit issued a new opinion on February 25, 2026 that vacates the injunction, which will allow the law to take effect for the first time. Instead of deciding whether S.B. 12 is constitutional, the Fifth Circuit is sending the case back to the district court for further analysis.

WHAT IS S.B. 12?

- S.B. 12 is a law that was passed during the 2023 Texas legislative session.
- Governor Abbott and Texas lawmakers stated that it was intended to ban drag shows in public, but it is not limited to drag and targets all performances that are “sexually oriented.”
- S.B. 12 defines a show that is “sexually oriented” as a “visual performance that features a performer who is (1) nude or (2) engages in sexual conduct” and that “appeals to the prurient interest in sex.”
- This applies on most public property and in front of minors (see below).

WHAT TYPES OF PERFORMANCES DOES THE LAW PROHIBIT?

- **“Nude”** is defined as “entirely unclothed” or “clothed in a manner that leaves uncovered . . . any portion of the breasts below the top of the areola . . . or any portion of the genitals or buttocks.”
- **“Sexual conduct”** includes:
 - “The exhibition or representation, actual or simulated, of sexual acts;”
 - “The exhibition or representation, actual or simulated, of male or female genitals in a lewd state;”
 - “The exhibition of a device and marked as useful primarily for the sexual stimulation of male or female genitals;”
 - “Actual contact or simulated contact occurring between one person and the buttocks, breast, or any part of the genitals of another person;” or
 - “The exhibition of sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics.”
- **“Prurient interest in sex”** is not defined by the law, and the district court found that this term is unconstitutionally vague.

HOW IS S.B. 12 ENFORCED?

- S.B. 12 can be enforced by the Texas attorney general, local governments, and criminal prosecutors.
- The attorney general may fine any person up to \$10,000 who controls the premises of a commercial enterprise and “allow[s] a sexually oriented performance to be present on the premises in the presence of an individual younger than 18 years of age.”
- Municipalities and counties may not “authorize a sexually oriented performance on public property or in the presence of an individual younger than 18 years of age.”
- S.B. 12 also contains criminal penalties of up to a year in jail and/or \$2,000 fine for any person who “engages in a sexually oriented performance 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 in the presence of an individual younger than 18 years of age.”

WHERE DOES S.B. 12 APPLY?

- On public property and anywhere that someone under 18 is present.
- It does not apply in bars and nightclubs where no one under 18 is “present on the premises.”
- The criminal penalties also do not apply on public property if the performance is “at a time, in a place, and in a manner that could [not] reasonably be expected to be viewed by a child.”

HOW DOES S.B. 12 TARGET DRAG SHOWS?

- The district court found that the prohibition on “sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics” was intended to target drag shows, since drag performers often use accessories or prosthetics that exaggerate gender expression.
- The Fifth Circuit did not disturb that conclusion but noted that the “text of the law does not include the word ‘drag,’” and it applies to all types of performances.

WHAT IS THE STATUS OF THE LAWSUIT CHALLENGING S.B. 12?

- In September 2023, a federal court blocked S.B. 12 from going into effect after the ACLU of Texas and Baker Botts LLP sued to challenge it on behalf of The Woodlands Pride, Abilene Pride Alliance, Extragrams, 360 Queen Entertainment, and Brigitte Bandit.
- The district court held that S.B. 12 violates the U.S. Constitution because it discriminates based on content and viewpoint without meeting strict scrutiny and is unconstitutionally vague, overbroad, and a prior restraint on speech.
- On November 6, 2025, the U.S. Court of Appeals for the Fifth Circuit issued a decision that proposed vacating the district court's decision and remanding back to the district court for further analysis under *NetChoice v. Moody*, a 2024 Supreme Court decision. The plaintiffs filed a motion for panel rehearing, and the Fifth Circuit issued a new decision on February 25, 2026 that reiterates this holding and schedules S.B. 12 to take effect on March 18, 2026.

WHAT DID THE FIFTH CIRCUIT SAY ABOUT S.B. 12?

- The court did not address whether S.B. 12 is unconstitutional. Instead, it held that The Woodlands Pride and Abilene Pride Alliance did not have standing to challenge the law because their family-friendly and all-ages drag shows are not even “arguably” proscribed by the statute.

In some ways, this is a win for drag performers in Texas, since all-ages or family-friendly drag shows like those described in this case are not subject to S.B. 12 and remain fully legal in Texas.

- The court found that another plaintiff's shows could be “arguably” impacted by the law because they involved more “sexual” drag shows typically limited to adults, involving “very revealing” clothing, lap dances, spanking, and pulsing of chests very close to audience members.
 - Importantly, the court did not say that even these activities actually violate S.B. 12, but they are at least arguably proscribed wherever the law applies.

WHAT HAPPENS NOW?

- The lawsuit against S.B. 12 remains ongoing and continues before the district court.
- Two defendants in the lawsuit — the Travis County attorney and Bexar County district attorney — did not appeal, so the injunction against them remains fully in effect, regardless of what happens at the Fifth Circuit.

SO WHERE DOES THAT LEAVE DRAG IN TEXAS?

- The Fifth Circuit clarified that drag itself remains fully legal throughout Texas.
- Drag shows at The Woodlands Pride and Abilene Pride are not impacted by the law at all, such that similar drag shows can still take place in public throughout Texas.
 - Any drag show that is family-friendly and for all ages that does not feature “nudity” or “sexual conduct” that “appeals to the prurient interest in sex” can continue unaffected by S.B. 12 anywhere in Texas.
 - The court found that things like “twerking,” vendors passing out condoms and lubricant, and drag performers touching each other’s butts in a non-sexual way do not even “arguably” violate S.B. 12 and remain fully legal.
 - Similarly, wearing “sequins, big hair, wigs, breastplates, hip pads, packers, and exaggerated jewelry” while “dancing, lip syncing, engaging with the audience by hugging, kissing on the cheek, [and] sometimes bumping hips” is all permissible and unaffected by the law.

IN WHAT WAYS IS S.B. 12 STILL HARMFUL?

- The text of S.B. 12 remains incredibly vague and unconstitutional. As the legal challenge continues, Texas leads the nation in threats against drag performers and venues that host them.
- S.B. 12’s vague and confusing language will make this worse, as some people might wrongfully think that drag is banned or try to enforce the law’s restrictions against “sexually oriented performances.”
- Black and Brown Texans already face over-policing and hypersexualization by law enforcement and society, so this bill will disproportionately harm these communities, especially Black trans women.
- Any performer — especially drag performers — using nearly any kind of clothing, makeup, accessories, or prosthetics could be accused of violating this law. The vague and sweeping definitions in this law mean that even Shakespeare plays, Broadway musicals, or professional cheerleading could be targeted and curtailed.

WHAT CAN YOU DO IF YOU ARE IMPACTED BY S.B. 12?

- If you are a drag performer, check out the [Drag Defense Handbook](#), created with, by, and for drag artists to respond to an ongoing epidemic of threats, harassment, bans, and discrimination.
- Remember that you have rights. If you are stopped or questioned by the police or any government official, you have a right to remain silent and to ask for an attorney, as [described here](#).
- Keep up with ACLU of Texas updates for information regarding our [court case](#).
- Consider consulting with an attorney about how to navigate performances that you might want to host.
- If you or someone you know has S.B. 12 enforced or threatened against them, contact us at intake.aclutx.org.

HOW CAN YOU SUPPORT DRAG IN TEXAS?

- Learn about the history of drag in Texas through our [partners at Equality Texas](#) or this [ACLU of Texas blog post](#).
- Support drag artists and those who support them. Even for performances completely unaffected by S.B. 12, performers, venues, and nonprofits need your support.
- Keep an eye out for funds and mutual aid groups for drag performers and consider donating to help artists protect themselves in Texas, including The Mahogany Project's [Drag Rapid Relief Fund](#).
- Pay attention to state-level elections in 2026 and note the candidates who will support drag and drag performers.