

FAQS FOR HOSPITALITY EMPLOYERS ON TENNESSEE'S "ANTI-DRAG" LAW

Insights

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When Tennessee Governor Bill Lee signed the state's "Anti-Drag" law into effect on March 3, he raised a host of questions for hospitality businesses across the state. According to the law's sponsor, it is not meant to target drag performers or transgender persons but instead to protect minors from "sexually explicit performances." Opponents and cautious businesses think otherwise. Regardless of the intent, if you are a hospitality employer and you include drag performers as part of your entertainment, you'll want to learn more about this statute and how it impacts you. Below are some common FAQs and responses to guide your business decisions.

1. What is the Anti-Drag law?

Senate Bill 3/House Bill 9 amends Tennessee Code Annotated Sections 7-51-1401 and 1407. According to [the statute's text itself](#), it prohibits "adult cabaret performance" which it defines as "adult-oriented performances that are *harmful to minors...and that feature go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers*" (emphasis added). Although the word "drag" is not explicitly in the text, the statute's reference to "male or female impersonators" imply the term.

2. What does "harmful to minors" mean?

Tennessee Code Annotated Section 39-17-901(6) states "harmful to minors" means:

quality of any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct,

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excess violence or sadomasochistic abuse when the matter or performance:

- would be found by the average person applying contemporary community standards to appeal predominantly to the prurient, shameful or morbid interests of minors;
- is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
- taken as whole lacks serious literary, artistic, political or scientific values for minors.

Case law interpreting this is sparse, but the few cases addressing this statute focus on whether such content is sexual in nature.

3. What does the law actually prohibit?

It is important to note the law does not outlaw drag performances nor drag queens appearing in general. It only prohibits drag shows that are "harmful to minors" to be performed in public or places where minors are allowed.

4. When does this law take effect?

April 1, 2023.

5. How does this apply to me?

Do you provide drag entertainment in Tennessee? If so, this law applies to you, especially if you are having drag events where people under the age of 18 are allowed.

6. What can happen if this law is violated?

The first offense may result in a Class A misdemeanor, which in the State of Tennessee could involve jail time of up to 11 months and 29 days, fines of up to \$2,500, or both. Subsequent offenses could result in a Class E felony, which could carry a prison sentence between one to six years in prison, as well as a fine of up to \$3,000.

7. So I host a weekly drag brunch open to the public. Is that allowed under this statute?

Yes, so long as the performance is not sexual in nature. If any of the acts touch upon sex, you will want to make sure

you make the brunch limited to those over the age of 18.

8. How else can I comply with this law?

If you host various events featuring drag performers, you will want to do an audit of those events to determine whether you want to make those events 18 and up. The least risky option is making any performances limited to those over the age of 18. If not, you will want to have some control over the songs being performed and speak with the drag artists regarding the limits of their performance. You will want to partner with your legal counsel to assist with any risks associated with any events.

9. What do I do if the police show up?

If you host an event and the police show up, contact your trusted legal counsel immediately.

Conclusion

This is an ever-evolving law. If you have questions about compliance or anything else Tennessee-law related, please reach out to the author of this Insight or any other lawyer in our [Memphis](#) or [Nashville](#) offices. We'll continue to monitor issues that impact your day-to-day operations and provide updates as necessary, so you should sign up for the [Fisher Phillips Insight Service](#) to ensure you receive the latest information directly to your inbox.