H-2319.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2036**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Walen, Morgan, Berry, Fitzgibbon, Ryu, Duerr, Farivar, Reeves, Simmons, Reed, Ormsby, Taylor, Alvarado, Peterson, Gregerson, Goodman, Thai, Lekanoff, Doglio, and Macri

AN ACT Relating to workplace safety and operational standards for adult entertainment establishments; amending RCW 49.17.470; adding new sections to chapter 49.44 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) In recognizing the importance of protecting all workers from exploitation, the legislature passed Engrossed House Bill 1756 (2019), directing the department of labor and industries to convene an advisory committee to develop recommendations aimed at increasing safety and security of entertainers in adult entertainment establishments. Members of the advisory committee represented an array of interests and expertise, and most importantly, the committee included the voices of eight entertainers, all of whom have worked in adult entertainment establishments for more than five years. The final report and recommendations of the advisory committee are based on both the voices and experiences from impacted workers and business owners, as well as the available research focused on this industry. By elevating the voices of entertainers, the report recognizes the complexity of real-life experiences in an industry that has been historically stigmatized. The committee acknowledged that solutions must strike an achievable balance, maximizing worker protections while allowing businesses to remain profitable.

(2) The legislature recognizes critical reforms recommended by the advisory committee. For that reason, the legislature hereby intends to establish the following workplace protections:

(a) Requiring training for all employees, including employees who are not entertainers, in order to prevent harassment, discrimination, and assault;

(b) Establishing minimum security staffing requirements; and

(c) Regulating leasing fees charged to entertainers, including eliminating back rent and capping certain fees.

(3) The legislature also intends to expand existing requirements, including those pertaining to panic buttons and blocklists, in an effort to improve compliance and enforcement. And importantly, safeguarding worker safety will be impossible if workers continue to fear criminal prosecution for otherwise legal artistic performances that do not involve sexual contact with patrons. Therefore, the legislature intends to clarify the boundaries for local enforcement actions in order to facilitate open communication between entertainers, establishments, local law enforcement, the liquor and cannabis board, and the department of labor and industries.

(4) Finally, the legislature also recognizes that the advisory committee identified several safety and security concerns associated with the existing prohibition against holding a liquor license in establishments where entertainers perform unclothed or expose certain parts of their body, which is based on regulations promulgated by the liquor and cannabis board. Of those concerns, the advisory committee highlighted the inability of adult entertainment establishments to adequately regulate the behaviors of their patrons. Alcohol consumption by customers frequently occurs off-site, or from an alternative source, and it cannot be monitored or controlled by staff and entertainers of adult entertainment establishments. Consistent with various other types of venues in Washington, adult entertainment establishments offer "in and out" privileges for their patrons, meaning that customers are free to leave and reenter the establishment once a cover charge for that day has been paid. Entertainers report it is a common practice for customers to leave an establishment to seek out alcohol service and then return later. According to the findings of a 2017 report from the University of Minnesota addressing the topic of alcohol sales in adult entertainment establishments, even in nonalcohol serving establishments, it is very common for customers to arrive already intoxicated, and prohibitions on alcohol do not prevent entertainers from coming into contact with intoxicated persons. Additionally, the lack of alcohol sales inadvertently places entertainers as the main, and often only, source of revenue for the establishments. The legislature finds this limits the entertainers' ability to deny services to customers who may pose a risk, thereby forcing them into hazardous working conditions and difficult economic choices. Therefore, the advisory committee recommended a change to agency rules to allow for alcohol service in adult entertainment establishments. While changes to liquor license regulations may be helpful for improving workplace safety in these establishments, the legislature recognizes that these changes can be effected through agency rule making following the implementation of the reforms provided herein.

**Sec.**  RCW 49.17.470 and 2019 c 304 s 1 are each amended to read as follows:

(1)(a) The department shall develop or contract for the development of training for entertainers. The training must include, but not be limited to:

(i) Education about the rights and responsibilities of entertainers, including with respect to working as an employee or independent contractor;

(ii) Reporting of workplace injuries, including sexual and physical abuse and sexual harassment;

(iii) The risk of human trafficking;

(iv) Financial aspects of the entertainer profession; and

(v) Resources for assistance.

(b) As a condition of receiving or renewing an adult entertainer license issued by a local government on or after July 1, 2020, an entertainer must provide proof that the entertainer took the training described in (a) of this subsection. The department must make the training reasonably available to allow entertainers sufficient time to take the training in order to receive or renew their licenses on or after July 1, 2020.

(2)(a) An establishment shall provide mandatory training for employees on how to:

(i) Provide basic first aid in emergencies, including accessing and using the first-aid kit located on the premises;

(ii) Prevent sexual harassment, sexual discrimination, and assault at the establishment;

(iii) De-escalate conflict between entertainers, employees, and patrons;

(iv) Minimize occurrences of unprofessional and inappropriate behavior by the employees; and

(v) Understand legal protections for employees who report violations of federal and state laws and rules.

(b) The training required under this subsection (2) must be developed and provided by a qualified professional with experience and expertise in personnel training.

(c) An establishment shall require all employees to complete the training by January 1, 2025, or within 30 days of hiring, whichever is later, and at least every two years thereafter.

(d) The department may require establishments to annually report to the department, in a manner determined by the department, information on the training including: The provider; the dates offered; the content; the number of employees who completed the training; the number of employees not in compliance with (c) of this subsection (2); and other information deemed appropriate by the department.

(3) An establishment shall provide at least one dedicated security personnel during operating hours. Between 9:00 a.m. and 9:00 p.m., the dedicated security personnel's primary duty must be security, and between 9:00 p.m. and 9:00 a.m., the dedicated security personnel must have no other duties. The department may adopt rules requiring additional security personnel based on additional factors including, but not limited to: The size of the establishment; the layout and floor plan of the establishment; the patron volume; security cameras and panic buttons; and the history of security events at the establishment.

(4) An adult entertainment establishment must provide ((~~a~~)) an accessible panic button in each room in the establishment in which an entertainer may be alone with a customer, and in bathrooms and dressing rooms. An entertainer may use the panic button if the entertainer has been harmed, reasonably believes there is a risk of harm, or there is an other emergency in the entertainer's presence. The entertainer may cease work and leave the immediate area to await the arrival of assistance. On an annual basis in accordance with procedures established by the department, the establishment shall provide to the department proof of compliance with this subsection (4), including copies of maintenance records to ensure panic buttons are in working condition.

((~~(3)~~)) (5)(a) An adult entertainment establishment must record the accusations it receives that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment, towards an entertainer. The establishment must make every effort to obtain the customer's name and if the establishment cannot determine the name, it must record as much identifying information about the customer as is reasonably possible. The establishment must retain a record of the customer's identifying information for at least five years after the most recent accusation.

(b) If an accusation is supported by a statement made under penalty of perjury or other evidence, the adult entertainment establishment must decline to allow the customer to return to the establishment for at least three years after the date of the incident. The establishment must share the information about the customer with other establishments with common ownership and those establishments with common ownership must also decline to allow the customer to enter those establishments for at least three years after the date of the incident. No entertainer may be required to provide such a statement.

((~~(4)~~)) (c) On an annual basis in accordance with procedures established by the department, an establishment shall provide to the department copies of information collected under this subsection (5).

(6) An establishment may not allow any person under the age of 18 on the premises. Nothing in this subsection (6) prevents the liquor and cannabis board from adopting stricter age restrictions for establishments holding a license under chapter 66.24 RCW.

(7) An establishment shall:

(a) Equip entertainers' dressing or locker rooms with a keypad requiring a code to enter;

(b) Provide appropriate cleaning supplies at all stage performance areas; and

(c) Display signage at the entrance directing customers to resources on appropriate etiquette.

(8) An establishment shall adopt and maintain written processes and procedures accessible to all its employees and entertainers for responding to customer violence or criminal activity, ejecting customers who violate club policies, including intoxication or other inappropriate or illegal behavior, and otherwise complying with subsections (4) through (7) of this section.

(9) For the purposes of enforcement, except for subsection (1) of this section, this section shall be considered a safety or health standard under this chapter.

((~~(5)~~)) (10) The department shall share any information collected under this chapter and requested by the liquor and cannabis board for the purposes of safeguarding worker safety in establishments seeking, or operating with, a license under chapter 66.24 RCW.

(11) This section does not affect an employer's responsibility to provide a place of employment free from recognized hazards or to otherwise comply with this chapter and other employment laws.

((~~(6) The department shall convene an entertainer advisory committee to assist with the implementation of this section, including the elements of the training under subsection (1) of this section. At least half of the advisory committee members must be former entertainers who held or current entertainers who have held an adult entertainer license issued by a local government for at least five years. At least one member of the advisory committee must be an adult entertainment establishment which is licensed by a local government and operating in the state of Washington. The advisory committee shall also consider whether additional measures would increase the safety and security of entertainers, such as by examining ways to make the procedures described in subsection (3) of this section more effective and reviewing the fee structure for entertainers. If the advisory committee finds and recommends additional measures that would increase the safety and security of entertainers and that those additional measures would require legislative action, the department must report those recommendations to the appropriate committees of the legislature.~~

~~(7)~~)) (12) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Adult entertainment" means any exhibition, performance, or dance of any type conducted in a premises where such exhibition, performance, or dance involves an entertainer who:

(i) Is unclothed or in such attire, costume, or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals; or

(ii) Touches, caresses, or fondles the breasts, buttocks, anus, genitals, or pubic region of another person, or permits the touching, caressing, or fondling of the entertainer's own breasts, buttocks, anus, genitals, or pubic region by another person, with the intent to sexually arouse or excite another person.

(b) "Adult entertainment establishment" or "establishment" means any business to which the public, patrons, or members are invited or admitted where an entertainer provides adult entertainment to a member of the public, a patron, or a member.

(c) "Entertainer" means any person who provides adult entertainment within an adult entertainment establishment, whether or not a fee is charged or accepted for entertainment and whether or not the person is an employee under RCW 49.17.020.

(d) "Panic button" means an emergency contact device by which the entertainer may summon immediate on-scene assistance from another entertainer, a security guard, or a representative of the ((~~[adult]~~)) adult entertainment establishment.

NEW SECTION. **Sec.**  A new section is added to chapter 49.44 RCW to read as follows:

(1) Except as otherwise provided in this section, any leasing fee or other fee or amount charged to an entertainer by an establishment must apply equally to all entertainers at the establishment. Any fees or charges must be stated in a written contract between the establishment and the entertainer, and must continue to apply for a specified finite period of at least three months.

(2) An establishment may charge an entertainer a leasing fee only if:

(a) The leasing fee is a fixed amount or percentage and applies equally to all entertainers;

(b) The leasing fee does not exceed, in any eight-hour period:

(i) The lesser of $150 or 30 percent of the total amount collected by the entertainer, excluding any amount collected for entertainment provided in a private performance area; and

(ii) 30 percent of the total amount collected by the entertainer for entertainment provided in a private performance area.

(3) An establishment may not:

(a) Carry forward an unpaid balance from any fee or charge incurred previously by the entertainer for access to or usage of the establishment premises;

(b) Charge interest or additional fees to an entertainer for late payment or nonpayment of any fee or charge;

(c) Charge a fee for failure to appear at a scheduled time;

(d) Control how much the entertainer charges customers for entertainment, except that an establishment may establish base charges for different services if such base charges are stated in a written contract, are applied equally to all entertainers in a given establishment, and do not limit what entertainers may charge above the base charges;

(e) Obligate an entertainer to appear for any length of time or how the entertainer performs, provided the entertainer satisfies a leasing fee or otherwise agrees to an alternative charge, subject to the limitations of this section;

(f) Control the types of clothing or costumes the entertainer wears while providing entertainment, except to the extent necessary to comply with state and local law; or

(g) Take adverse action against an entertainer based on scheduling.

(4) An establishment shall provide 10 days advance written notice to the entertainer when terminating or declining to renew the entertainer's contract with the establishment.

(5) This section does not prevent an establishment from providing leasing fee discounts or credits to encourage scheduling or from charging leasing fees that vary based on the time of day.

(6) The department shall adjust the dollar amount in subsection (2)(b)(i) of this section for inflation every 10 years, beginning January 1, 2034, based upon changes in the consumer price index during that time period.

(7) An establishment shall display signage in areas designated for entertainers notifying entertainers that they are not required to surrender any tips or gratuities and may not be denied service or amenities in consideration of tips or gratuities.

(8) For purposes of this section:

(a) "Entertainer" has the same meaning as in RCW 49.17.470.

(b) "Entertainment" has the same meaning as "adult entertainment" in RCW 49.17.470.

(c) "Establishment" has the same meaning as "adult entertainment establishment" in RCW 49.17.470.

(d) "Leasing fee" means a fee, charge, or amount charged to or requested from an entertainer by an establishment in exchange for allowing an entertainer to conduct entertainment or to otherwise use the establishment premises or private performance areas.

NEW SECTION. **Sec.**  A new section is added to chapter 49.44 RCW to read as follows:

(1) A state agency or local government may not enforce any law, rule, ordinance, or regulation against an entertainer to the extent that such enforcement action is based solely on an entertainer touching his or her own body during an entertainment performance at an establishment, regardless of whether the entertainer receives payment from the establishment or gratuities from patrons for his or her performance.

(2) A state agency or local government may not adopt or enforce laws, rules, ordinances, or regulations that restrict proximity or distance from others of an entertainer before or during any exhibition, performance, or dance of any type, where the entertainer does not engage in sexual contact, as defined in RCW 9A.44.010, with another person.

(3) For purposes of this section:

(a) "Entertainer" has the same meaning as in RCW 49.17.470.

(b) "Entertainment" has the same meaning as "adult entertainment" in RCW 49.17.470.

(c) "Establishment" has the same meaning as "adult entertainment establishment" in RCW 49.17.470.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**