

SENATE BILL REPORT

ESSB 5614

As Passed Senate, March 1, 2023

Title: An act relating to adult entertainment establishments.

Brief Description: Concerning adult entertainment establishments.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Saldaña, Nguyen and Wilson, C.).

Brief History:

Committee Activity: Labor & Commerce: 2/06/23, 2/14/23 [DPS, w/oRec].

Floor Activity: Passed Senate: 3/1/23, 40-8.

Brief Summary of Engrossed First Substitute Bill

- Requires each adult entertainment establishment to develop required training for its employees to support entertainers in times of conflict.
- Requires establishments to provide certain security. Prohibits establishments from charging certain fees and taking certain actions related to entertainers.
- Prohibits state or local laws or ordinances related to entertainers.
- Creates a spirits, beer, and wine adult entertainment nightclub license and provides that the rule which restricts liquor licensees from allowing certain actions on the premises does not apply to adult entertainment nightclub licensees.
- Excludes adult entertainment from criminal laws related to indecent exposure and prostitution.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5614 be substituted therefor, and the

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substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; MacEwen, Robinson, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Staff: Susan Jones (786-7404)

Background: In 2019, certain laws were passed regarding adult entertainment establishments (establishments) and entertainers. The law required that:

- the Department of Labor and Industries (L&I) develop training for entertainers, which was developed, and convene an Adult Entertainer Advisory Committee;
- establishments provide panic buttons; and
- establishments keep a list of certain customers and decline admission in certain circumstances.

A Liquor and Cannabis rule effectively prohibits the sale of alcohol in these establishments because of the prohibited activities it identifies for premises holding a liquor license.

The advisory committee provided a report to the Legislature in November 2020. The committee recommendations are as follows:

- legalize the service of alcohol in establishments;
- require mandatory training for all staff in establishments;
- eliminate the practice of charging back rent to entertainers; and
- set minimum requirements for security staffing in establishments.

Summary of Engrossed First Substitute Bill: Employee Training. Each adult entertainment establishment must develop training for establishment employees. The training must include topics to minimize occurrences of unprofessional behavior by establishments' employees and enable the employees to support entertainers in times of conflict. An establishment must require all establishment employees to take the training within 30 days of hiring and at least every two years.

Security in Establishments. An establishment must provide at least one dedicated security person during business hours. Between the hours of 9:00 a.m. and 9:00 p.m., the dedicated security person's primary duty is security, between the hours of 9:00 p.m. and 9:00 a.m., the dedicated security person must have no other duties. L&I may adopt rules that require additional security persons based on certain factors.

Prohibited Actions. An establishment may not charge a fee to employee entertainers. For a nonemployee entertainer, an establishment may not:

- charge fees or other charges that, separately or when combined, are more than 30 percent of fees collected, or late payment or failure to appear fees;

- carryforward fees;
- exert control, including regarding their customer charges, when and how they work, and their costumes;
- take adverse action; and
- refuse to provide written notice of the reason for termination or refusal to rehire the entertainer, which must be provided within ten business days.

Any fees not prohibited must be in a written contract and continue for not less than three months. No adult entertainment establishment may allow any person under the age of 18 on the premises of the establishment.

No state agency or local government may adopt laws, rules, ordinances, or regulations that limit or prohibit an entertainer from: collecting any form of payment from customers; touching their own body or exposing themselves while performing; and engaging in physical contact with another person that is otherwise lawful outside of an establishment.

Adult Entertainment Nightclub Liquor License. A spirits, beer, and wine adult entertainment nightclub license is created, which may be issued only if business includes the sale and service of alcohol to the adult entertainment nightclub's customers and has food sales and service incidental to the sale and service of alcohol. The initial annual fee for this license is \$2,000. The Liquor and Cannabis Board (LCB) may adopt rules to allow entertainers who are over 18 years of age, but under 21 years of age, to perform in an adult entertainment nightclub. Local governments may petition the board to request that further restrictions be imposed on a spirits, beer, and wine adult entertainment nightclub license in the interest of public safety. The total number of these licenses are not restricted.

The LCB rule which restrict liquor licensees from allowing certain actions on the premises does not apply to an adult entertainment nightclub licensee. LCB may not issue any liquor license to any adult entertainment establishment which is not an adult entertainment nightclub.

Adult Entertainment Nightclub Defined. Adult entertainment nightclub means an establishment that demonstrates to L&I that it:

- has written processes and procedures accessible to all its employees and nonemployee entertainers related to certain customers;
- provides to L&I at least annually, a customer complaint log and proof of compliance with laws and rules related to panic buttons;
- has entertainers' dressing or locker rooms equipped with a code keypad;
- provides cleaning supplies and a waste receptacle accessible from private performance areas; and
- displays certain signage related to tips or gratuities and customer etiquette.

The provisions regarding the advisory committee are removed.

Adult Entertainment Excluded from Certain Criminal Provisions. Adult entertainment is not indecent exposure or sexual conduct for the criminal laws related to indecent exposure and prostitution.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Adult entertainment is a licensed activity in Washington, and the entire business is dependent on the entertainers and the money that they bring in. Hospitality and entertainment industries were decimated by Covid-19 and they have not received relief. This bill will provide relief and will strengthen protections for entertainers to make sure that they are not being exploited or trafficked. Entertainers need to know that they are safe, protected, and will leave each shift with minimum fees. Washington needs to require training for its staff, bartenders, and security. Club managers and owners need to stop cutting corners to make profit at entertainers' expense. Other states have cultivated safe entertainment environments, and it is time for Washington to do the same by passing this legislation. Entertainers do not hold the same rights and protections as other workers, but this bill will prevent discrimination and retaliation, allow the sales of alcohol, limit house fees and back fees, and will create a list of patrons who may not return.

Clubs that do not sell alcohol struggle for money and this pushes managers to cut corners and allow situations that are unsafe in the favor of more money. Allowing the sales of alcohol will make the business more lucrative and will benefit all employees involved. There is currently a monopoly on the market with only 10 club owners in Washington State, but by allowing the sale of alcohol, more clubs will open which will give entertainers more job opportunities and bargaining power.

OTHER: Under the WISHA act, L&I does not have enforcement authority over anything not safety or health related and the bill lacks private right of action. This needs to be addressed in this bill. As currently drafted, there will be a significant change in the relationship between entertainers and their establishments. There may be some overlap with existing law and court decisions.

Current laws are not always followed—what happens in the club stays in the club. Allowing clubs to sell alcohol will help these establishments be more lucrative but will add fuel to the fire of this industry. Entertainers have repeatedly stated that they do not want to be employees, and their independence must be allowed.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Shira Cole, Dancers of ERA; Samantha Estudillo; Madison Zack-Wu, Strippers Are Workers; Emily Dhatt, Working Washington; Lexy A; Ashe S.

OTHER: Tammy Fellin, Labor & Industries; Eric Forbes, Déjà Vu; Winter Fink, Déjà Vu; Alasha V.

Persons Signed In To Testify But Not Testifying: No one.