

**WSR 22-06-075**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed March 1, 2022, 8:20 a.m.]

Continuance of WSR 22-02-054.

Preproposal statement of inquiry was filed as WSR 19-22-062.

Title of Rule and Other Identifying Information: Chapter 296-831 WAC, Adult entertainer safety.

Hearing Location(s): On April 6, 2022, at 1:00 p.m. PST, United States and Canada. Public hearing meeting link <https://lni-wa.gov.zoom.us/j/89947181396?pwd=TXV6RW9pTElpUkdOTI5L3pVajdLUT09>, phone 253-215-8782, Meeting ID 899 4718 1396, Passcode 31078381. Virtual meetings and public hearings necessitated by the COVID-19 pandemic have proven effective in allowing greater public access, eliminating the burden of physical travel, and maintaining public safety. Accordingly, no in-person meeting will be held. The hearing will start at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: May 3, 2022.

Submit Written Comments to: Kevin Walder, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Kevin.Walder@lni.wa.gov, fax 360-902-5619, by April 13, 2022.

Assistance for Persons with Disabilities: Contact Kevin Walder, administrative regulations analyst, phone 360-902-6681, email Kevin.Walder@lni.wa.gov, by March 31, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a continuance filed for WSR 22-02-054 to obtain additional stakeholder feedback on the rule.

This rule making will implement the requirements of EHB 1756 (chapter 304, Laws of 2019) codified under RCW 49.17.470.

New chapter 296-831 WAC, Adult entertainer safety.

- Adds requirement that adult entertainment establishments provide panic buttons in specified locations.
  - Panic buttons must be silent (discreet) unless an adult entertainment establishment's safety committee has assessed the premises and operations and have unanimously agreed on the use of an audible alarm.
- Adds requirement that adult entertainment establishments record accusations of customer violence, including assault, sexual assault, or sexual harassment, towards an entertainer.
- Adds requirement that adult entertainment establishments ban customers for three years if an accusation of violence or harassment against the entertainer is supported by a statement made under penalty of perjury or other evidence.
- Includes definitions pertinent to these new requirements.
- Includes notes clarifying requirements.

Reasons Supporting Proposal: L&I DOSH is implementing EHB 1756 (chapter 304, Laws of 2019) codified under RCW 49.17.470. The legislature passed this bill into law in recognition of the fact that adult entertainers encounter unique workplace hazards that warrant specific occupational safety and health rules to best protect them from these hazards.

Statutory Authority for Adoption: Chapter 49.17 RCW; RCW 49.17.470.

Statute Being Implemented: RCW 49.17.470.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kevin Walder, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-6681, fax 360-902-5619, email Kevin.Walder@lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. L&I first estimates the total cost for implementing the silent panic button which includes the hardware and labor costs. Second, L&I estimates the cost of recording accusations based on the estimated number of annual accusations. Both cost components are annualized to determine the total annual cost of implementing this rule to affected businesses.

**Per Business Cost vs. Minor Cost Threshold:**

Per business average cost recurring	\$108 to \$227
Minor cost threshold (one percent of annual payroll)	\$1,860 <sup>1</sup>

When compared to the minor cost threshold (one percent of annual payroll), it clearly indicates the average per business cost of these proposed rule amendments is far below the threshold for affected businesses discussed above.

March 1, 2022  
 Joel Sacks  
 Director

OTS-1747.14

**Chapter 296-831 WAC  
 ADULT ENTERTAINER SAFETY**

NEW SECTION

**WAC 296-831-100 Purpose and scope.** This chapter applies to all adult entertainment establishments.

In addition to this chapter, chapter 296-800 WAC Safety and health core rules, chapter 296-24 WAC General safety and health standards, and chapter 296-62 WAC General occupational health standards contain safety and health rules that also apply to adult entertainment establishments. Similarly, other special industry focused chapters (e.g., chapter 296-832 WAC Late night retail worker crime prevention, chapter 296-155 WAC construction, etc.) and special hazard focused chapters (e.g., chapter 296-876 WAC ladders, chapter 296-880 WAC fall protection, etc.) complement the rules found in this chapter and may apply depending on operations being performed.

Note: All of the requirements in this rule work in conjunction with the Accident Prevention Program (APP) rules in WAC 296-800-140 through 296-800-14025 within the safety and health core rules. Therefore, an adult entertainment establishment's fully compliant Accident Prevention Program (APP) will cover the following (in addition to other general safety and health considerations applicable to all businesses):

- Entertainer orientation on panic button location, use, and maintenance, if any;
- How to add a problematic customer to your complaint log/blacklist;
- How to report work-related hazards, injuries, unsafe conditions, or unsafe practices;
- The proper use and care of personal protective equipment (PPE); and
- What to do in an emergency, including how to leave the workplace.

Adult entertainment establishments are also required to regularly hold safety and health meetings for the purpose of communicating and evaluating safety and health issues in the workplace, including the evaluation of your APP to determine whether improvements are necessary to ensure that it is effective in practice. Specific requirements differ somewhat between large and small employers. See WAC 296-800-130 Safety committees/safety meetings—Summary, for details.

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NEW SECTION

**WAC 296-831-200 Definitions.** Note: The definitions below exclusively apply to this chapter.

**Adult entertainment.** Any exhibition, performance, or dance of any type conducted in premises where such exhibition, performance, or dance involves an entertainer who:

(a) 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

(b) 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.

**Adult entertainment establishment or establishment.** 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.

**Entertainer.** 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.

**Panic button.** 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 entertainment establishment.

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NEW SECTION

**WAC 296-831-300 Panic button requirements.** (1) Adult entertainment establishments must provide a 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 another emergency in the entertainer's presence. The entertainer may cease work and leave the immediate area to await the arrival of assistance.

(2) Panic buttons, and their associated alarm(s), must be silent (discreet) at the entertainer's point of use, while still effectively alerting whomever you have determined to be responsible for responding to emergencies.

Exception: Panic buttons that trigger a recognizable (audible/visual/tactile) alarm at the entertainer's point of use may be used in specific locations within an establishment where alarms are required but only if you have assessed your business operations and alarm system with your required safety and health committee (see WAC 296-800-130 Safety committees/safety meetings—Summary) and the committee has unanimously determined that such an alarm would be more effective for a particular location within your establishment where an alarm is required. In such cases, this determination is limited to a particular location within your establishment and must be documented along with other required safety committee documentation.

(3) Adult entertainment establishments must test and maintain your alarm system regularly to ensure that it will function as intended when needed.

(a) Testing must be performed at least annually, or at whatever interval is recommended by the alarm system manufacturer (this information is typically found in the owner's manual).

(b) Adult entertainment establishments must keep a record that includes the dates of all testing or maintenance performed and any pertinent details such as errors corrected or adjustments made.

Note: Appendix A contains a nonmandatory panic button checklist that adult entertainment establishments can use to assist in identifying panic button and response procedure related hazards in their workplace, and to aid establishments in evaluating what performance criteria will address the violence-based hazards in their establishment.

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NEW SECTION

**WAC 296-831-310 Install an appropriate entertainer alarm system(s).** (1) Adult entertainment establishments must make sure that an alarm system, with a distinctive (not confused with fire alarm, etc.) signal, is installed for the purposes of communicating entertainer violence related emergencies to employer-designated responders.

(2) Adult entertainment establishments must make sure alarm systems:

(a) Communicate the use/triggering of panic buttons.

(b) Identify the location of all panic buttons which have been used/triggered.

(c) Latch, or continue to both communicate the use/triggering of panic buttons, and identify the location of panic buttons which have been used/triggered, without requiring ongoing action(s) of the person

that used the panic button. For example, entertainers must not be required to hold a button down to keep the alarm triggering.

(d) Are recognizable above surrounding noise and/or light levels by establishment designated responder(s) in all relevant portions of the establishment in which designated responders are acting in this role. Areas far enough away from an alarm, or where building materials or walls are in the alarms path, may reduce the effectiveness of the alarm to the point that it is no longer recognizable.

(3) For the purposes of this rule, panic button alarm systems can be categorized based on whether the entertainer's point of use features a silent (discreet), or a recognizable (audible/visual/tactile) alarm from the entertainer's and customer's perspective. Discreet panic buttons reduce the likelihood of escalating a confrontation towards violence, but at the same time prevent other entertainers and personnel in the area from knowing a panic button was used/triggered. **See WAC 296-831-300(2) and the exception immediately following it for specific requirements regarding silent (discreet) vs. recognizable (audible/visual/tactile) alarm systems.** Regardless of which method is used, associated hazards must be further mitigated by implementing either of the below, or a similarly protective, strategy:

(a) A multistage alarm (normally discreet at the panic button point of use, but switches to audible/recognizable at the point of use if the alarm system detects a malfunction that would prevent response actions); or

(b) A multicomponent alarm (discreet at the panic button point of use, but nonaudible alarm components (lights, etc.)) provided within adjacent booths/rooms/etc., and above/adjacent/on the entrance to booth(s)/room(s)/etc., to communicate to designated responders both the use, and location, of a panic button alarm in the area.

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#### NEW SECTION

**WAC 296-831-400 Training requirements.** (1) Adult entertainment establishments must train entertainers on the following, prior to their work as entertainers (for more information related to customer complaint logs/blacklists see WAC 296-831-500).

(a) The location and type of panic buttons used in the establishment (audible/discreet at the point of use).

(b) How to use panic button(s).

(c) Proper scenarios for use of panic button(s).

(d) What, if any, are the limitations of the panic button(s) and/or alarm system(s) - Under what circumstances could the panic button(s) and alarm system(s) fail and what are entertainers expected to do in these scenarios.

(e) The location and purpose of both the customer complaint log and blacklist.

(f) What scenarios are appropriate for listing customers in both the complaint log and blacklist.

(g) What steps entertainers must take to have customers added to blacklist and/or customer complaint log.

(2) Adult entertainment establishments designate and train responders on the following prior to their work as designated responders

(for more information related to customer complaint logs/blacklists see WAC 296-831-500).

(a) The location and type of panic buttons used in the establishment.

(b) How to recognize panic button alarms?

(c) What, if any, are the limitations of the panic button(s) and/or alarm system(s) - Under what circumstances could the panic button(s) and alarm system(s) fail and what are responders expected to do in these scenarios?

(d) What are the designated responders assigned duties following the use of a panic button?

(e) How do designated responders perform assigned duties following the use of a panic button?

(f) The location and purpose of both the customer complaint log and blacklist.

(g) What scenarios are appropriate for listing customers in both the complaint log and blacklist.

(h) What steps designated responders must take to have customers added to blacklist and/or customer complaint log.

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NEW SECTION

**WAC 296-831-500 Customer complaint log requirements.** (1) Adult entertainment establishments 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.

(2) 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 (blacklist) 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 (blacklist) for at least three years after the date of the incident. No entertainer may be required to provide such a statement.

Note: Appendix B contains a standard declaration template that can be used to make a statement under penalty of perjury. In addition to statements made under penalty of perjury, any other evidence brought forth to an employer that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment towards an entertainer, should be considered credible and trigger the employer to take action as required under the customer complaint log requirements above unless the employer can provide a rational explanation why they do not deem the evidence credible.

Appendix A

<b>PANIC BUTTON CHECKLIST</b>		
If the response to <i>any</i> of the following questions in this checklist is "NO," and if no other alternative hazard controls are in place for the identified hazard, panic buttons are likely not effective.		
<b>Do panic buttons and panic buttons systems exclusively rely on establishment owned/leased/ etc., equipment or services?</b>	<b>YES</b>	<b>NO</b>

The above covers the complete chain of events from the initial signaling at the entertainer's point of use through notification and to response from the establishment. The rule does not prohibit entertainer owned devices supplementing the devices provided by establishment (e.g., as a backup method).		
<b>Do panic buttons require only a single action to activate (such as a single push/pull/tap, etc.)?</b>	<b>YES</b>	<b>NO</b>
Panic buttons which require multiple actions (such as using a number pad to unlock/dial a cell phone, or selecting a channel/frequency on a portable radio, or pressing a button and then speaking) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.		
<b>Do panic buttons and the associated signal or alarm latch?</b>	<b>YES</b>	<b>NO</b>
Once triggered, panic buttons alarms continue to both alarm and identify the location of the used panic button(s) without requiring ongoing action of the entertainer. Panic buttons requiring ongoing actions of the entertainer (continued holding/pressing, etc.) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.		
<b>Do panic buttons systems resist tampering?</b>	<b>YES</b>	<b>NO</b>
Once triggered, panic buttons alarms are not easily reset at the panic button (entertainer's point of use) itself, especially using the same action that activated it. Panic buttons which can be readily turned off or reset by customers would delay response actions and allow continued exposure to the hazard.		
<b>Do panic buttons reduce or minimize inadvertent activation or false alarms?</b>	<b>YES</b>	<b>NO</b>
False alarms increase the likelihood of delayed, deprioritized, or ignored alarms. Buttons, switches, etc., which are protected, shouldered, recessed, or flush with top surface/bracket/etc. reduce the likelihood of false alarms.		
<b>Do panic buttons systems identify the location of the triggered panic buttons?</b>	<b>YES</b>	<b>NO</b>
Uncoordinated response to panic buttons increases the likelihood of response actions being delayed or otherwise inadequate.		
<b>Do panic buttons trigger distinct alarms?</b>	<b>YES</b>	<b>NO</b>
If an establishment's panic button response procedures dictate that after the triggering of a panic button, uninvolved entertainers should continue entertaining while the establishment conducts response activities; then panic buttons alarm systems (and response procedures) would need to continue to fully function during an alarm (or multiple alarms). Indistinct alarms, or alarms where the establishment cannot identify/respond to multiple simultaneous alarms, increase the likelihood of response actions being delayed or otherwise inadequate.		
<b>Do panic buttons alarms produce recognizable signals to perform actions under the APP, Emergency Action Plan, etc.?</b>	<b>YES</b>	<b>NO</b>
At the establishment's point of reception, alarms must be recognizable in the conditions under which they will be used. The following can obscure alarms sufficiently enough to make an alarm unrecognizable: <ul style="list-style-type: none"> <li>- Areas subject to noise/music at volumes equal or above the volume of an alarm;</li> <li>- Areas subject to strobing lighting equal or above the amount of illumination of an alarm;</li> <li>- Areas with sufficient distance, intermediary materials, or the room/building configuration itself, impairs alarm signals to the point that they are no longer recognizable.</li> </ul> At the entertainer's point of use, panic buttons may be either discreet, or produce an audible alarm. Discreet panic buttons reduce the likelihood of escalating a confrontation towards violence, but simultaneously prevent other entertainers and personnel in the area from knowing a panic button was triggered. Regardless of which method is used, associated hazards must be further mitigated such as via a multistage alarm (normally discreet, only audible if alarm malfunction, etc.), multicomponent alarm (using notification lights, rather than audible alarms, within adjacent booths/rooms/etc., in conjunction with indicator light(s) outside booth/room/etc., to signal and locate the use of a panic button).		
<b>Are panic buttons provided by the establishment in each room in the establishment in which entertainers may be alone with a customer, and in bathrooms and dressing rooms?</b>	<b>YES</b>	<b>NO</b>
For the purposes of this question, "alone" means outside of direct line-of-sight of other establishment personnel, entertainers, employees, etc., such as in private or semi-private booths, rooms, etc.		
<b>Are panic buttons that are permanently installed in the workplace, located within immediate reach?</b>	<b>YES</b>	<b>NO</b>
Panic buttons must be kept free of obstacles blocking their use (doors, furniture, mop buckets, boxes, coat racks, etc.).		

<b>Are panic buttons in good working order? If not, are entertainers informed of, and excluded from, areas lacking required panic buttons protection (e.g. during power loss, wireless service loss, etc.)?</b>	YES	NO
Keep a record of, and inform entertainers of, nonfunctional/improperly working panic buttons until replaced or repaired. - Use signage or otherwise inform entertainers prior to working; and - Use written procedures and policies in Accident Prevention Plan that prohibit or restrict access to relevant areas.		

Appendix B

**Declaration of:** \_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_ declares as follows:  
(Type or print your name)

I am over the age of eighteen, and I am otherwise competent to testify. I make these statements based on personal knowledge and belief.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
(Insert your statement here describing what happened)

I declare under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

DATED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, in \_\_\_\_\_, Washington.  
(##) (Month) (Year) (Name of city/town)

\_\_\_\_\_  
(Sign above)

\_\_\_\_\_  
(Type or print your name)

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