

HOUSE BILL REPORT

ESSB 6105

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to creating safer working conditions in adult entertainment establishments.

Brief Description: Creating safer working conditions in adult entertainment establishments.

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

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/14/24, 2/20/24 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Requires adult entertainment establishments to provide mandatory training to employees on first aid, conflict de-escalation, and identifying and preventing human trafficking, sexual harassment, discrimination, and assault.
- Expands certain safety requirements for adult entertainment establishments, including keypad locks for locker rooms, cleaning supplies, and certain safety signage.
- Requires adult entertainment establishments to provide dedicated security personnel during operating hours.
- Establishes restrictions on leasing fees charged to entertainers by adult entertainment establishments.
- Prohibits the Liquor and Cannabis Board from adopting or enforcing a rule that restricts the exposure of certain body parts or that restricts sexually oriented conduct.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Without recommendation. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Rude and Ybarra.

Staff: Kelly Leonard (786-7147).

Background:

Adult entertainment establishments are subject to a variety of laws and regulations adopted by the state and local governments, including those pertaining to workplace safety and business licenses, among others.

Workplace Safety at Adult Entertainment Establishments.

The Washington Industrial Safety and Health Act (WISHA) generally establishes responsibilities for employers to provide a workplace free from recognized hazards. If an employer violates the requirements or standards promulgated under the WISHA, it may be subject to penalties imposed by the Department of Labor and Industries (L&I). Since 2019 the WISHA has contained specific requirements governing adult entertainment establishments.

Relevant Definitions. "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: (1) 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 (2) 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" 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. "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.

Training. Entertainers are required to take a "Know Your Rights" training and provide proof of training completion in order to receive or renew an adult entertainer license issued by a local government. The training, which is facilitated through L&I, must include, for example: (1) education about the rights and responsibilities of entertainers, including with respect to working as an employee or independent contractor; (2) reporting of workplace injuries, including sexual and physical abuse and sexual harassment; (3) financial aspects of

the entertainer profession; and (4) the risk of human trafficking.

Safety Standards. The WISHA requires adult entertainment establishments to provide panic buttons in certain locations, which an entertainer may use if they have been harmed, believe there is a risk of harm, or if there is another emergency in their presence. Adult entertainment establishments must also document accusations of customer violence against adult entertainers via a "blocklist," which records the customer's identifying information for a period of at least five years. If an accusation of violence by a customer is supported by a statement made under penalty of perjury or other evidence, the establishment must ban the customer for a period of not less than three years. Establishments with common ownership must share this information amongst themselves, and all must decline admission to the customer.

Liquor-Related Restrictions Affecting Adult Entertainment Establishments.

State statute does not directly address alcohol in adult entertainment establishments. Instead, this authority is delegated to the Washington State Liquor and Cannabis Board (LCB). A current rule adopted by the LCB restricts the exposure of certain body parts and restricts sexually oriented conduct on the premises of a business holding a liquor license. This includes many activities conducted at adult entertainment establishments (such as exposure of specific areas of the body, touching, caressing, or fondling of specified body parts, among others), thereby effectively prohibiting the sale of alcohol in those establishments.

Local Regulations of Adult Entertainment.

Many local jurisdictions have adopted ordinances regulating adult entertainment establishments and entertainers. These ordinances typically require licensing of the managers and entertainers. The ordinances also address standards of conduct within the premises, lighting requirements, distance requirements, and other matters.

Summary of Amended Bill:

Workplace Safety at Adult Entertainment Establishments.

Relevant Definitions. The definition of "adult entertainment" is modified. "Adult entertainment" means any exhibition, performance, or dance of any type conducted within the view of one or more members of the public inside a premises where such exhibition, performance, or dance involves an entertainer, who 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, vulva, or genitals, with an intent to sexually arouse or excite another person.

Training. An adult entertainment establishment must provide training to its employees (other than entertainers) to minimize occurrences of unprofessional behavior and enable

employees to support entertainers in times of conflict. The training content must be developed and provided by a third-party qualified professional with experience and expertise in personnel training. If possible, the training should be designed for use by adult entertainment establishments. When practicable, the training must be translated if necessary for one or more non-English speaking employees to understand the training.

The training topics must include, but are not limited to:

- preventing sexual harassment, sexual discrimination, and assault in the workplace;
- information on how to identify and report human trafficking;
- conflict de-escalation between entertainers, other employees, and patrons; and
- providing first aid.

An adult entertainment establishment must require all employees other than entertainers to take the training by July 1, 2025, or within 30 days of hiring for recorded content or 120 days of hiring for live courses, whichever is later, and at least every two years thereafter. L&I may require annual reporting on the training.

Safety Standards. Panic buttons for entertainers must be accessible. An adult entertainment establishment must annually provide L&I with copies of maintenance records showing that panic buttons are maintained and checked to ensure they are in working condition.

An adult entertainment establishment must also record allegations of sex trafficking, promotion of prostitution, and prostitution in its blocklist, as well as written details of each incident and allegation. The establishment must have written policies and procedures for employees and entertainers to record allegations to its blocklist.

An adult entertainment establishment must also provide appropriate cleaning supplies at all stage performance areas, equip dressing or locker rooms for entertainers with a keypad requiring a code to enter, and display signage at the entrance directing customers to resources on appropriate etiquette.

Age Restrictions. An adult entertainment establishment may not allow any person under the age of 18 on the premises. If an establishment serves alcohol, the establishment may not allow any person under the age of 21 on the premises. This includes, but is not limited to, any employee, entertainer, contractor, or customer.

Security. An adult entertainment establishment must provide at least one dedicated person on the premises during operating hours whose primary duty is security. L&I must adopt rules for requiring security persons to not have duties other than security during peak operating hours when necessary, and requiring that require additional security persons when necessary. The rules must take into account the following factors: size of the establishment; layout and floor plan of the establishment; occupancy and patron volume; security cameras and panic buttons; history of security events at the establishment; and other factors identified by L&I.

An adult entertainment establishment must have written processes and procedures accessible to all employees and entertainers for responding to customer violence or criminal activity an ejecting customers who violate club policies, including intoxication or other inappropriate or illegal behavior.

Fees and Other Relations Between Entertainers and Adult Entertainment Establishments.

Any leasing fee or other fee charged by an establishment to an entertainer must be stated in a written contract and continue to apply for a period of not less than three months with effective dates. An establishment may not refuse to provide an entertainer with written notice of the reason or reasons for any termination or refusal to rehire the entertainer. This notice must be provided within 10 business days of the termination or refusal to rehire the entertainer.

Fees must apply equally to all entertainers in a given establishment, except an establishment may provide leasing discounts or credits to encourage scheduling or charge leasing fees that vary based on the time of day. An adult entertainment establishment may not charge an entertainer:

- a fee or interest for late payment or nonpayment of any fee;
- a fee for failure to appear at a scheduled time;
- a fee or interest that results in the entertainer carrying forward an unpaid balance from any fee incurred previously by the entertainer for access to or usage of the establishment premises;
- a leasing fee for access to or usage of the establishment premises in an amount greater than the entertainer receives during the period of access to or usage of the establishment premises; or
- within an eight-hour period, a leasing fee that exceeds the lesser of \$150 or 30 percent of amounts collected by the entertainer (excluding amounts collected for adult entertainment provided in a private performance area) and 30 percent of amounts collected by the entertainer for adult entertainment provided in a private performance area.

If an establishment charges an entertainer a leasing fee, the contract must include a method for estimating the total amount collected by the entertainer in any eight-hour period.

L&I may enforce the restrictions pertaining to fees and contracts. Any amounts owed to an entertainer may be enforced as a wage payment requirement under the Wage Payment Act.

Liquor-Related Restrictions Affecting Adult Entertainment Establishments.

The LCB may not adopt a rule or enforce any such rule restricting the exposure of body parts by any licensee, its employees or patrons, or any other person under the control or direction of the licensee or an employee, or otherwise restricting sexually oriented conduct of any licensee, its employees or patrons, or any other person under the control or direction of the licensee or an employee. This provision may not be construed to permit conduct that

is otherwise prohibited under other other statutes.

Local Regulations of Adult Entertainment.

A city with a population of more than 650,000 or a county with a population of more than 2,000,000 may not adopt or enforce ordinances or regulations that:

- limit or prohibit an entertainer from collecting payment for adult entertainment from customers; or
- restrict an entertainer's proximity or distance from others before or after any adult entertainment, or restrict the customer's proximity or distance from the stage during any adult entertainment, so long as there is no contact between the entertainers and customers.

Amended Bill Compared to Engrossed Substitute Bill:

With respect to workplace health and safety, the amended bill:

- requires the mandatory employee training to be designed for use by adult entertainment establishments (establishments) if possible;
- requires the training to be translated for non-English speaking employees if necessary and practicable;
- specifies that current employees must complete the training by July 1, 2025, rather than January 1, 2025 (to account for the delayed effective date in the striking amendment);
- modifies the requirements for customer allegation records, also referred to as blocklists, by: removing the requirement for records to be annually reported to the Department of Labor and Industries (L&I); removing language providing that records sent to L&I are confidential and not open to public inspection; and requiring establishments to have written policies and procedures for employees and entertainers to record allegations involving a customer (rather than a written process and procedure accessible to all employees and entertainers for submitting allegations involving a customer);
- modifies the requirement for establishments to provide security by: specifying that an establishment must provide at least one dedicated security person on the premises during operating hours whose primary duty is security (rather than one person on the premises during business hours whose primary duty is security); requiring L&I to adopt rules for requiring security persons to not have duties other than security during peak operating hours when necessary and requiring additional security persons when necessary, taking into account the factors identified in the underlying bill (rather than allowing L&I to adopt rules for requiring additional security persons based on those factors); and allowing L&I to consider additional factors identified by L&I when adopting rules for security;
- requires L&I to share any information requested by the Liquor and Cannabis Board (LCB) for the purposes of safeguarding worker safety in establishments seeking, or operating with, a license to serve alcohol (in addition to requiring L&I to share information with LCB regarding violations); and

- specifies that the restriction limiting a person under age 21 from accessing an establishment that serves alcohol applies to any person, including but not limited to any employee, entertainer, contractor, or customer.

The amended bill modifies the provisions pertaining to fees by: defining "leasing fee" as a fee, charge, or other request for money from an entertainer by an establishment in exchange for the entertainer's access or use of the premises or for otherwise allowing an entertainer to conduct entertainment on the premises (rather than a fee, charge, or other request for money from an entertainer by an establishment in exchange for allowing an entertainer to conduct entertainment); replacing certain descriptive language with the term "leasing fee" to reduce redundancy, and specifies that certain restrictions on fees apply to "any leasing fee or other fee"; and specifying that if an establishment charges an entertainer a leasing fee, the contract must include a method for estimating the total amount collected by the entertainer in the applicable period for the purposes of complying with the fee maximums established in the bill.

The amended bill adds a section preempting a city with a population of more than 650,000 or a county with a population of more than 2,000,000 from adopting or enforcing ordinances or regulations: limiting or prohibiting an entertainer from collecting payment for adult entertainment from customers; or restricting an entertainer's proximity or distance from others before or after any adult entertainment, or restricting the customer's proximity or distance from the stage during any adult entertainment, so long as there is no contact between the dancers and customers.

With respect to LCB rules, the amended bill:

- removes the provisions requiring the LCB to repeal Washington Administrative Code (WAC) 314-11-050, and removes provisions requiring the LCB to adopt rules to allow establishments to hold liquor licenses;
- removes provisions conditioning an establishment's liquor license on compliance with other workplace safety and fee-related provisions in the bill; and
- adds language specifying that the LCB may not adopt a rule or enforce any such rule restricting the exposure of body parts by any licensee, its employees or patrons, or any other person under the control or direction of the licensee or an employee, or otherwise restricting sexually oriented conduct of any licensee, its employees or patrons, or any other person under the control or direction of the licensee or an employee, and specifying that this provision may not be construed to permit conduct that is otherwise prohibited under other statutes.

The amended bill delays the effective date of the workplace safety and fee-related provisions in the bill until January 1, 2025. Other provisions take effect 90 days after the adjournment of session.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) The adult entertainment industry in Washington has historically been an unsafe workplace for entertainers and employees. This bill is the product of many years of collaboration with the industry and the entertainers in an effort to improve working conditions. In 2021 the LCB rejected a petition to revise their administrative rules preventing these businesses from receiving licenses, instead directing advocates to the Legislature to address workplace safety concerns. This bill not only addresses these concerns, but it goes much farther in an effort to protect entertainers and improve this industry. There may be mixed feelings about alcohol service in these establishments, but it is well understood that alcohol service is critical for the viability of many industries, including restaurants and performance venues. Without alcohol sales, the primary source of income for these clubs are the entertainers themselves. This has fueled exploitative practices in an effort to keep their doors open. In other states that allow alcohol service, dancers have experienced safer and more stable work environments. The bill directs the LCB to repeal the applicable WAC that is preventing licensure, but it does not take away its authority to regulate the industry. This strikes an important balance.

The current regulatory framework allows the LCB to police bodies in outdated and discriminatory ways. The LCB has targeted LGBTQ communities and artistic expression. This practice is harmful to the LGBTQ community and makes persons feel unsafe. Further, in some cultures, certain artistic dances are performed nude or partially nude, and would therefore be prohibited by the current LCB rule. It is time to shift away from policing artistic expression. The Legislature should require the LCB to repeal this rule. The bill is important for providing women more control over their bodies while also preserving these critical economic opportunities.

(Opposed) The bill has many helpful workplace safety and health protections. However, the Legislature should not make any changes that would allow alcohol service into these clubs. Allowing alcohol will make these clubs even more dangerous for dancers. Alcohol does not equate to safety. It is impossible to regulate violence out of the sex trade, and the state must maintain efforts to limit the proliferation of strip clubs. The bill is not aligning Washington with other states. Even in states that allow alcohol service in clubs, there are restrictions on nudity and touching. This bill has no such restrictions.

(Other) The bill is moving in the right direction. The workplace safety and health provisions, along with the changes to the LCB rules, will help stabilize the industry.

The bill will not make strip clubs safer. More alcohol means more clubs and more

violence. Washington will become a sex tourism destination. The Legislature should stand up against any effort to expand the sex trade. It is important to ask who is really benefiting from this bill. It is not going to help those who are vulnerable to being trafficked.

Persons Testifying: (In support) Senator Rebecca Saldaña, prime sponsor; Madison Zack-Wu and Kasey Champion, Strippers Are Workers; Kurt Olivo; Sabra Boyd; Katie Kolan, Greater Seattle Business Association; and Shira Cole.

(Opposed) Jay Benke and Robin Miller, Sex Trade Survivor Caucus.

(Other) Jeri Moomaw, Innovations Human Trafficking Collaborative; Isaac Kastama, Expressive Rights Alliance; and Sammi Mathew.

Persons Signed In To Testify But Not Testifying: None.