

SENATE BILL REPORT

ESSB 6105

As Amended by House, February 27, 2024

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 & Commerce: 1/15/24, 1/29/24 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 2/7/24, 29-20.

Passed House: 2/27/24.

Brief Summary of Engrossed First Substitute Bill

- Requires adult entertainment establishments to provide certain training to its employees.
- Provides additional requirements regarding panic buttons, customer behavior, security personnel, and notice of termination and limits certain charges to entertainers.
- Requires the Liquor and Cannabis Board (LCB) to repeal the rule currently codified as WAC 314-11-050, which prohibits liquor licensees from allowing certain actions on their premises and provides for cancellation of license privileges, and to modify or adopt rules to allow adult entertainment establishments to hold liquor licenses.
- Prevents LCB from issuing a liquor license and requires suspension of a license if an establishment receives a citation for a violation of laws related to adult entertainers and establishments and has not abated the violation.
- Modifies the definition of adult entertainment.

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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6105 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and MacEwen.

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 Board (Board) 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: Training. An adult entertainment establishment require its employees to take third party professionally developed training by January 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 to minimize occurrences of unprofessional behavior and enable employees to support entertainers in times of conflict. The training must include topics on preventing sexual harassment and discrimination, assault in the workplace, conflict de-escalation, and first aid. Entertainers may take the training. L&I may require annual reporting on the training.

Panic Buttons, Customers Procedures, Security, and Other Requirements. An establishment

must:

- provide required panic buttons accessible in rooms where an entertainer may be alone with a customer;
- provide annually to L&I proof of compliance with the requirements regarding panic buttons and maintenance records;
- have a written process and procedure for submitting allegations regarding customers, responding to violence and criminal activity, and ejecting certain customers;
- provide at least one person on the premises during business hours whose primary duty is security. L&I may adopt rules that require additional security persons based on additional factors;
- provide cleaning supplies and a keypad for dressing rooms;
- display signage about customer etiquette;
- restrict minors from the premises; and
- display signage that entertainers are not required to surrender tips.

An entertainment establishment must provide certain information collected regarding customer allegations to L&I annually. The information provided to L&I is deemed confidential and is not be open to public inspection, but must be made available to law enforcement or employees of governmental agencies in the performance of their official duties, and to an entertainer or employee or their legal representative.

The entertainer advisory committee provisions are removed.

Entertainer Charges. Fees charged by an establishment must apply equally to all entertainers in an establishment, be stated in a written contract, and continue for at least three months. An establishment may not charge an entertainer any fees or interest for late or nonpayment, for failure to appear at a scheduled time, or that result in the entertainer carrying forward an unpaid balance. An establishment may not charge for use of the premises in an amount greater than the entertainer receives during the period of usage; or within an eight-hour period, any fee that exceeds the lesser of \$150 or 30 percent of amounts collected by the entertainer for nonprivate performance areas plus 30 percent of amounts collected by the entertainer for private performance areas.

Notice of Reasons for Termination. No establishment may refuse to provide entertainers with written notice stating the reasons for the termination or refusal to rehire the entertainer.

Liquor Licenses. If an establishment has received a citation for a violation of laws or rules related to adult entertainers and establishments or the provisions related to entertainer charges and has not abated the violation within the time period provided in the citation, the Board:

- may not issue or reissue a liquor license to the establishment until L&I affirms the violation has been abated; and
- must suspend or cancel the establishment's existing liquor license until L&I affirms

the violation has been abated.

L&I must share information about violations with the Liquor and Cannabis Board (LCB). LCB must modify or adopt rules to allow establishments to hold liquor licenses. LCB must repeal the rule currently codified as WAC 314-11-050, which prohibits liquor licensees from allowing certain actions on their premises and provides for cancellation of license privileges in its entirety. Repeal of this rule must not be construed to legalize conduct described in the rule which is otherwise illegal under existing statutes in the Revised Code of Washington. An establishment with a liquor license must be limited to person 21 years and older.

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. For purposes of certain issues related to fees and charges and other requirements and prohibitions for establishments, the term 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.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill builds on previous legislation. It makes sure establishments are safe for workers; providing training for the entire workforce; preventing worker exploitation; and allowing freedom in working. There is additional enforcement related to alcohol. No Washington law prohibits alcohol in adult entertainment establishments but the bill would allow LCB to reconsider their rule on alcohol.

This bill will minimize coercion, decriminalize conduct, and empowers workers. Club owners and community have not made needed changes. Dancers are deemed not entitled to basic rights. Many are marginalized communities. The contract provisions will prevent discrimination. Dancers are vulnerable without standardized practices. Dancers can be sexually harassed by other workers. There needs to be training creating a higher standard to protect dancers. The current model lacks security and dancers address customer safety

issues. Managers lack training. Other states' clubs prioritize dancer safety. A dancer described being bullied by customers. There was no security. She stopped working in Washington. Customers pushed physical boundaries and staff supported them because they tipped them. Portland is a better place to dance but it is exhausting to drive there and they have to be away from their families.

COVID-19 has impacted the number of customers. Dancers need a sustainable workplace. There are fewer customers and less economic resources. Dancers pay high rent fees to work. If clubs are slow, they can end up owing money and are expected to tip out staff. Fees have increased. Clubs have closed because there is not enough money. Washington clubs need more sustainable model. The states that allow alcohol are safe working environments.

It is illegal to take money upfront under some local ordinances. The issue of distance has been litigated. The language about more protective is ambiguous.

OTHER: We support safety measures. We do not support Section 2(11) to comply with criminal law. Section 2(9) regarding local ordinances needs to include human trafficking training. The 2019 bill described what adult entertainment is. In the VIP rooms, entertainers' bodies are a commodity. The local ordinance provision should be removed. Local ordinance distance requirements protects dancers. Human trafficking training needs to be revamped to help identify a situation.

Washington has the fewest number of establishments per capita in the U.S. One establishment opened its doors to law makers. The bill needs more clarity. These are complex issues. Many states have figured this out. Most states have frameworks for alcohol that varies dramatically.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Eva Bhagwandin, Strippers are Workers; Madison Zack-Wu, Strippers Are Workers; Kasey Champion, Strippers Are Workers; Lexy Bove, Strippers Are Workers; Erica R, Strippers Are Workers; Alexa S, Strippers Are Workers; Andrea L, Strippers Are Workers; KJ M, Strippers Are Workers; Arijanna Z, Strippers Are Workers.

OTHER: Isaac Kastama, Expressive Rights Alliance; Lindsey Hueer, Association of Washington Cities; Rebekah Fonden, Wase Forward; Jeri Moomaw, Wase Forward.

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

EFFECT OF HOUSE AMENDMENT(S):

- Requires: mandatory employee training be designed for use by adult entertainment establishments (establishments), if possible, be translated for non-English-speaking employees if necessary and practicable; and current employees complete the training by March 1, 2025, rather than January 1, 2025.

- Modifies customer allegation records requirements by: requiring establishments have written policies and procedures for implementing statutory requirements, including a process 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; requiring an establishment to make written policies and procedures available to the Department of Labor and Industries (L&I) upon request; and removing the requirement for records to be annually reported to L&I and language providing that records sent to L&I are confidential and not open to public inspection.
- Modifies the security requirement by: requiring an establishment to provide at least one dedicated security person on the premises during operating hours whose primary duty is security, including monitoring interactions between entertainers and patrons—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 have no duties other than security during peak operating hours when necessary and requiring additional security persons when necessary, and taking into account the specified factors and other factors identified by L&I—rather than allowing L&I to adopt rules for requiring additional security persons based on those factors.
- Requires: the Liquor and Cannabis Board (LCB) to notify L&I if an establishment is eligible for and applies for a liquor license; L&I to conduct an inspection of the establishment to verify compliance with laws regarding establishments within 90 days of receipt of the notice—in addition to requiring L&I to share information with LCB regarding violations; and LCB to notify L&I if it observes certain violations.
- Specifies that the restriction limiting a person under age 21 from accessing an establishment that serves alcohol applies to any person, including any employee, entertainer, contractor, or customer; and moves this provision to the new section in chapter 49.46 RCW.
- Modifies the term "leasing fee" to include a fee for access or use of the premises or to conduct entertainment on the premises.
- Replaces certain descriptive language with the term "leasing fee," and specifies that certain restrictions on fees apply to "any leasing fee or other fee."
- Specifies 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.
- Adds a section preempting a city with a population of more than 650,000 or a county with a population of more than 2 million 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.
- Removes provisions conditioning an establishment's liquor license on compliance with other workplace safety and fee-related provisions in the bill; and removes provisions requiring the LCB to adopt rules to allow establishments to hold liquor licenses.

- Preempts LCB from adopting any rule similar to WAC 314-11-050 and specifies 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.
- Specifies that this provision may not be construed to permit conduct that is otherwise prohibited under other statutes.
- 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.