

SENATE BILL REPORT

SB 5613

As of February 22, 2013

Title: An act relating to providing that certain cover charges for the opportunity to dance are not considered retail sales.

Brief Description: Providing that certain cover charges for the opportunity to dance are not considered retail sales.

Sponsors: Senators Murray, Fain, Kohl-Welles and Keiser.

Brief History:

Committee Activity: Ways & Means: 2/21/13.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Juliana Roe (786-7438)

Background: A retail sale includes the sale of or charge made for services received by persons involved in business activities such as amusement and recreation services. Amusement and recreation services include, but are not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers. This also includes cover charges for providing the opportunity to dance, which are subject to the retailing business and occupation (B&O) tax classification and the retail sales tax.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Amusement and recreation services do not include the opportunity to dance provided by an establishment in exchange for a cover charge. A cover charge is a charge to enter an establishment or added to the purchaser's bill in exchange for the purchaser having the opportunity to dance. An opportunity to dance means that an establishment provides a designated physical space where customers are allowed to dance and the establishment makes customers aware that this area for dancing exists. The result of this change is that cover charges provided for the opportunity to dance are no longer subject to the retail sales tax. These cover charges will also no longer be subject to the retailing classification of the B&O tax, but will be subject to the services and other activities classification currently taxed at 1.8 percent.

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

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Every year we discuss what should be done with tax exemptions. Last year we extended various exemptions in order to help those industries. Overall, we have to look at whether an exemption is working and whether it is doing what it is intended to do. Over the last 50 years, the taxing of recreation has been a problem for the Department of Revenue and the Legislature. The tax on the opportunity to dance does not make sense. It applies to bars and clubs with DJs and recorded music, but not to concerts with live bands, even though those events might take place in the same venue and both may provide the opportunity to dance. All of these venues pay taxes on gross receipts, just as all other businesses. This is an odd twist in our tax system that taxes like activities differently. The underlying statute is ambiguous as to whether a business provides an opportunity to dance or whether they are providing the listening of music. If this exemption is not provided, it will lead to the closure of many venues and small businesses. This is an oppressive tax that we were unaware of until recently. It is a huge imposition on local businesses that have small margins. Further, this tax is imposed differently by different auditors, which leads to more unfairness. The revenue from food and beverages is worth much more to the state than what is brought in from this tax on the opportunity to dance. If a venue is forced to close, the state will lose more money than it would by providing this exemption.

Persons Testifying: PRO: Senator Murray, prime sponsor; Julia Clark, WA Restaurant Assn.; Maya Ojalehto, Derek Francois, Allegro Dance Studio; Jessica Summa-Kusiak, Seattle Nightlife and Music; Dan Cowan, Tractor Tavern; Hallie Kuperman, Century Ballroom; Shannon Roach, The Recording Academy; Craig Jewell, Wild Buffalo House of Music; Guy Godefroy, Trinity Nightclub; Jason Lajeunesse, Block Party.