

ESSB 5614 - H COMM AMD

By Committee on Labor & Workplace Standards

NOT CONSIDERED 01/02/2024

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 9A.88.010 and 2003 c 53 s 92 are each amended to
4 read as follows:

5 (1) A person is guilty of indecent exposure if he or she
6 intentionally makes any open and obscene exposure of his or her
7 person or the person of another knowing that such conduct is likely
8 to cause reasonable affront or alarm. The act of breastfeeding or
9 expressing breast milk is not indecent exposure.

10 (2)(a) Except as provided in (b) and (c) of this subsection,
11 indecent exposure is a misdemeanor.

12 (b) Indecent exposure is a gross misdemeanor on the first offense
13 if the person exposes himself or herself to a person under the age of
14 fourteen years.

15 (c) Indecent exposure is a class C felony if the person has
16 previously been convicted under this section or of a sex offense as
17 defined in RCW 9.94A.030.

18 (3) Adult entertainment as defined in RCW 49.17.470 is not
19 indecent exposure.

20 **Sec. 2.** RCW 49.17.470 and 2019 c 304 s 1 are each amended to
21 read as follows:

22 (1)(a) The department shall develop or contract for the
23 development of training for entertainers. The training must include,
24 but not be limited to:

25 (i) Education about the rights and responsibilities of
26 entertainers, including with respect to working as an employee or
27 independent contractor;

28 (ii) Reporting of workplace injuries, including sexual and
29 physical abuse and sexual harassment;

30 (iii) The risk of human trafficking;

31 (iv) Financial aspects of the entertainer profession; and

1 (v) Resources for assistance.

2 (b) As a condition of receiving or renewing an adult entertainer
3 license issued by a local government on or after July 1, 2020, an
4 entertainer must provide proof that the entertainer took the training
5 described in (a) of this subsection. The department must make the
6 training reasonably available to allow entertainers sufficient time
7 to take the training in order to receive or renew their licenses on
8 or after July 1, 2020.

9 (2) An adult entertainment establishment must provide a panic
10 button in each room in the establishment in which an entertainer may
11 be alone with a customer, and in bathrooms and dressing rooms. An
12 entertainer may use the panic button if the entertainer has been
13 harmed, reasonably believes there is a risk of harm, or there is an
14 other emergency in the entertainer's presence. The entertainer may
15 cease work and leave the immediate area to await the arrival of
16 assistance.

17 (3)(a) An adult entertainment establishment must record the
18 accusations it receives that a customer has committed an act of
19 violence, including assault, sexual assault, or sexual harassment,
20 towards an entertainer. The establishment must make every effort to
21 obtain the customer's name and if the establishment cannot determine
22 the name, it must record as much identifying information about the
23 customer as is reasonably possible. The establishment must retain a
24 record of the customer's identifying information for at least five
25 years after the most recent accusation.

26 (b) If an accusation is supported by a statement made under
27 penalty of perjury or other evidence, the adult entertainment
28 establishment must decline to allow the customer to return to the
29 establishment for at least three years after the date of the
30 incident. The establishment must share the information about the
31 customer with other establishments with common ownership and those
32 establishments with common ownership must also decline to allow the
33 customer to enter those establishments for at least three years after
34 the date of the incident. No entertainer may be required to provide
35 such a statement.

36 (4)(a) An establishment must develop training for its employees
37 to minimize occurrences of unprofessional behavior by the employees
38 and enable the employees to support entertainers in times of
39 conflict. Training topics must include, but are not limited to,
40 conflict de-escalation and first aid.

1 (b) An establishment must require all establishment employees to
2 take the training within 30 days of hiring and at least every two
3 years.

4 (5) An establishment must provide at least one dedicated security
5 person during business hours. Between the hours of 9:00 a.m. and 9:00
6 p.m., the dedicated security person's primary duty is security,
7 between the hours of 9:00 p.m. and 9:00 a.m. the dedicated security
8 person must have no other duties. The department may adopt rules that
9 require additional security persons based on additional factors,
10 including but not limited to:

11 (a) The size of the establishment;

12 (b) The layout and floor plan of the establishment;

13 (c) The patron volume;

14 (d) Security cameras and panic buttons; and

15 (e) The history of security events at the establishment.

16 (6) For the purposes of enforcement, except for subsection (1) of
17 this section, this section shall be considered a safety or health
18 standard under this chapter.

19 ~~((5))~~ (7) This section does not affect an employer's
20 responsibility to provide a place of employment free from recognized
21 hazards or to otherwise comply with this chapter and other employment
22 laws.

23 ~~((6) The department shall convene an entertainer advisory~~
24 ~~committee to assist with the implementation of this section,~~
25 ~~including the elements of the training under subsection (1) of this~~
26 ~~section. At least half of the advisory committee members must be~~
27 ~~former entertainers who held or current entertainers who have held an~~
28 ~~adult entertainer license issued by a local government for at least~~
29 ~~five years. At least one member of the advisory committee must be an~~
30 ~~adult entertainment establishment which is licensed by a local~~
31 ~~government and operating in the state of Washington. The advisory~~
32 ~~committee shall also consider whether additional measures would~~
33 ~~increase the safety and security of entertainers, such as by~~
34 ~~examining ways to make the procedures described in subsection (3) of~~
35 ~~this section more effective and reviewing the fee structure for~~
36 ~~entertainers. If the advisory committee finds and recommends~~
37 ~~additional measures that would increase the safety and security of~~
38 ~~entertainers and that those additional measures would require~~
39 ~~legislative action, the department must report those recommendations~~
40 ~~to the appropriate committees of the legislature.~~

1 ~~(7))~~ (8) The definitions in this subsection apply throughout
2 this section unless the context clearly requires otherwise.

3 (a) "Adult entertainment" means any exhibition, performance, or
4 dance of any type conducted in a premises where such exhibition,
5 performance, or dance involves an entertainer who:

6 (i) Is unclothed or in such attire, costume, or clothing as to
7 expose to view any portion of the breast below the top of the areola
8 or any portion of the pubic region, anus, buttocks, vulva, or
9 genitals; or

10 (ii) Touches, caresses, or fondles the breasts, buttocks, anus,
11 genitals, or pubic region of another person, or permits the touching,
12 caressing, or fondling of the entertainer's own breasts, buttocks,
13 anus, genitals, or pubic region by another person, with the intent to
14 sexually arouse or excite another person.

15 (b) "Adult entertainment establishment" or "establishment" means
16 any business to which the public, patrons, or members are invited or
17 admitted where an entertainer provides adult entertainment to a
18 member of the public, a patron, or a member.

19 (c) "Entertainer" means any person who provides adult
20 entertainment within an adult entertainment establishment, whether or
21 not a fee is charged or accepted for entertainment and whether or not
22 the person is an employee under RCW 49.17.020.

23 (d) "Panic button" means an emergency contact device by which the
24 entertainer may summon immediate on-scene assistance from another
25 entertainer, a security guard, or a representative of the (~~{adult}~~)
26 adult entertainment establishment.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.17
28 RCW to read as follows:

29 (1) An adult entertainment establishment qualifies as an adult
30 entertainment nightclub if the establishment demonstrates to the
31 department that the establishment:

32 (a) Has written processes and procedures accessible to all its
33 employees and entertainers who are not employees for:

34 (i) Responding to customer violence or criminal activity,
35 including when police are called;

36 (ii) Ejecting customers who violate club policies, including
37 intoxication or other inappropriate or illegal behavior; and

38 (iii) Processing requests from entertainers to place a patron on
39 the list under RCW 49.17.470(3);

1 (b) Provides to the department at least annually a customer
2 complaint log including, but not limited to, the number of
3 entertainer complaints and the number of customers related to
4 customer actions described in RCW 49.17.470(3);

5 (c) Provides to the department at least annually proof of
6 compliance with RCW 49.17.470(2) and maintenance records showing that
7 the panic buttons are maintained and checked to ensure they are in
8 working condition;

9 (d) Has entertainers' dressing or locker rooms equipped with a
10 keypad requiring a code to enter;

11 (e) Provides appropriate cleaning supplies and a waste receptacle
12 accessible from private performance areas;

13 (f) Displays signage in an employee common area indicating that
14 entertainers are not required to surrender any tips or gratuities and
15 may not be denied services and amenities in consideration of tips or
16 gratuities; and

17 (g) Displays signage at the entrance directing customers to
18 resources on appropriate etiquette.

19 (2) For any establishment seeking or holding a license under
20 section 5 of this act, the department shall inspect the establishment
21 and verify whether it demonstrates compliance with the requirements
22 in this section. Inspections must be conducted at least once every
23 calendar year. Following an inspection, the department shall notify
24 the liquor and cannabis board whether the establishment is in
25 compliance with the requirements of this section and qualifies as an
26 adult entertainment nightclub under this section.

27 (3) The department may share information with the liquor and
28 cannabis board for purposes of enforcing this section and section 5
29 of this act.

30 (4) The definitions in this subsection apply throughout this
31 section unless the context clearly requires otherwise.

32 (a) "Adult entertainment," "adult entertainment establishment,"
33 "establishment," and "entertainer" have the same meaning as provided
34 in RCW 49.17.470.

35 (b) "Adult entertainment nightclub" means an adult entertainment
36 establishment in compliance with the requirements of this section.

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.44
38 RCW to read as follows:

1 (1) For any entertainer who is an employee under chapter 49.46
2 RCW, an adult entertainment establishment may not charge any fee.

3 (2) (a) For any entertainer who is found to not be an employee
4 under chapter 49.46 RCW, an adult entertainment establishment may
5 not:

6 (i) Charge any fees or other charges that, separately or when
7 combined, are greater than 30 percent of the entertainment fees
8 collected by the entertainer during the leased date and time,
9 excluding tips paid to the entertainer;

10 (ii) Carry forward an unpaid balance from any fee incurred
11 previously by the entertainer for access to or usage of the
12 establishment premises;

13 (iii) Charge fees or interest to an entertainer for late payment
14 or nonpayment of any fee;

15 (iv) Charge an entertainer a fee for failure to appear at a
16 scheduled time;

17 (v) Control:

18 (A) How much the entertainer charges customers for adult
19 entertainment;

20 (B) When and how the entertainer works; or

21 (C) What type of clothing or costumes to wear during the adult
22 entertainment;

23 (vi) Take adverse action against an entertainer based on
24 scheduling;

25 (vii) Obligate an entertainer to appear for any length of time,
26 provided the entertainer satisfies a leasing fee or otherwise agrees
27 to an alternative charge, subject to the limitations of (a)(i) of
28 this subsection; and

29 (viii) Refuse to provide an entertainer with written notice of
30 the reason or reasons for any termination or refusal to rehire the
31 entertainer. Such notice must be provided within 10 business days of
32 the termination or refusal to rehire the entertainer.

33 (b) Any fees not prohibited under this subsection (2) must be
34 stated in a written contract and continue to apply for a period of
35 not less than three months with effective dates.

36 (c) This subsection (2) does not prevent an establishment from
37 providing leasing discounts or credits to encourage scheduling or
38 charge lease amounts that vary based on the time of day.

1 (3) (a) No state agency or local government may adopt laws, rules,
2 ordinances, or regulations that limit or prohibit an entertainer
3 from:

4 (i) Collecting any form of payment from customers;

5 (ii) Touching their own body or exposing themselves while
6 performing within an adult entertainment establishment; and

7 (iii) Engaging in physical contact with another person that is
8 otherwise lawful outside of an adult entertainment establishment,
9 such as restrictions on proximity or distance, before or during any
10 exhibition, performance, or dance of any type.

11 (b) This subsection may not be construed to prohibit a local
12 government from adopting ordinances or regulations that are more
13 protective of entertainers than the requirements of this section.

14 (4) No adult entertainment establishment may allow any person
15 under the age of 18 on the premises of the establishment.

16 (5) For purposes of this section:

17 (a) "Adult entertainment" has the same meaning as in RCW
18 49.17.470.

19 (b) "Adult entertainment establishment" or "establishment" have
20 the same meaning as in RCW 49.17.470.

21 (c) "Entertainer" has the same meaning as in RCW 49.17.470.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 66.24
23 RCW to read as follows:

24 (1) There shall be a spirits, beer, and wine adult entertainment
25 nightclub license to sell spirituous liquor by the drink, beer, and
26 wine at retail, for consumption on the licensed premises.

27 (2) The license may be issued only to an adult entertainment
28 nightclub whose business includes the sale and service of alcohol to
29 the adult entertainment nightclub's customers and has food sales and
30 service incidental to the sale and service of alcohol.

31 (3) The board may adopt rules to allow entertainers who are over
32 18 years of age but under 21 years of age to perform in an adult
33 entertainment nightclub.

34 (4) The annual fee for this license is \$2,000. The fee for the
35 license shall be reviewed from time to time and set at such a level
36 sufficient to defray the cost of licensing and enforcing this
37 licensing program. The fee shall be fixed by rule adopted by the
38 board in accordance with the provisions of chapter 34.05 RCW.

1 (5) Local governments may petition the board to request that
2 further restrictions be imposed on a spirits, beer, and wine adult
3 entertainment nightclub license in the interest of public safety.
4 Examples of further restrictions a local government may request are:
5 Not allowing minors on the entire premises, submitting a security
6 plan, or signing a good neighbor agreement with the local government.

7 (6) The total number of spirits, beer, and wine adult
8 entertainment nightclub licenses are not subject to the requirements
9 of RCW 66.24.420(4). However, the board may not refuse a spirits,
10 beer, and wine adult entertainment nightclub license to any applicant
11 even if the board determines that the spirits, beer, and wine
12 nightclub licenses already granted for the particular locality are
13 adequate for the reasonable needs of the community.

14 (7) The board may adopt rules to implement this section.

15 (8) The board may share information with the department of labor
16 and industries for purposes of this section.

17 (9) The board may not issue any liquor license to any adult
18 entertainment establishment which is not an adult entertainment
19 nightclub.

20 (10) WAC 314-11-050 does not apply to an adult entertainment
21 nightclub licensed under this section.

22 (11) For purposes of this section:

23 (a) "Adult entertainment establishment" or "establishment" have
24 the same meaning as in RCW 49.17.470.

25 (b) "Adult entertainment nightclub" has the same meaning as in
26 section 3 of this act.

27 (c) "Entertainer" has the same meaning as in RCW 49.17.470.

28 NEW SECTION. **Sec. 6.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected."

32 Correct the title.

EFFECT: Removes all provisions pertaining to the crime of
prostitution, thereby restoring current law criminalizing receiving
payment for sexual conduct, regardless of who performs the conduct.

Requires the department of labor and industries (department) to
conduct an inspection of any adult entertainment establishment
(establishment) seeking or holding a specialized adult entertainment
nightclub liquor club license in order to verify whether the

establishment demonstrates compliance with certain requirements and therefore qualifies as an adult entertainment nightclub. Requires inspections to be conducted on an annual basis. Requires the department to notify the liquor and cannabis board regarding whether an establishment is in compliance with certain requirements and therefore qualifies as an adult entertainment nightclub.

Shifts provisions establishing requirements for adult entertainment nightclubs into a new section codified under the Washington industrial safety and health act. Reorganizes subsections.

Prohibits establishments from charging interest for late payment or nonpayment of fees owed by nonemployee entertainers.

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