

# HOUSE BILL REPORT

## HB 2036

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**As Reported by House Committee On:**  
Labor & Workplace Standards

**Title:** An act relating to workplace safety and operational standards for adult entertainment establishments.

**Brief Description:** Concerning workplace safety and operational standards for adult entertainment establishments.

**Sponsors:** Representatives Walen, Morgan, Berry, Fitzgibbon, Ryu, Duerr, Farivar, Reeves, Simmons, Reed, Ormsby, Taylor, Alvarado, Peterson, Gregerson, Goodman, Thai, Lekanoff, Doglio and Macri.

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 1/12/24, 1/24/24 [DPS].

**Brief Summary of Substitute Bill**

- Requires adult entertainment establishments (establishments) to provide mandatory training to employees on first-aid, human trafficking, sexual harassment, conflict de-escalation, and other specified topics.
- Establishes certain safety requirements for establishments, including keypad locks for locker rooms, cleaning supplies, and certain safety signage.
- Requires establishments to provide dedicated security personnel during business hours.
- Establishes restrictions on leasing fees charged to entertainers by establishments.
- Prohibits state agencies and local governments from enforcing laws or rules to the extent that any such enforcement action is based solely on an entertainer touching his or her own body during a performance at an

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*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.*

establishment.

- Prohibits state agencies and local governments from adopting or enforcing laws or rules that restrict an entertainer's proximity or distance from others before or during a performance where the entertainer does not engage in inappropriate contact with another person.

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## HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Schmidt, Ranking Minority Member; Rude.

**Minority Report:** Without recommendation. Signed by 1 member: Representative 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.

#### *Training.*

Adult 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 of the establishment, 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.

### Local Regulations of Adult Entertainment Businesses.

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.

### Adult Entertainer Advisory Committee.

In 2019 the state enacted Engrossed House Bill 1756, which established workplace safety requirements for adult entertainment establishments under the WISHA and also directed L&I to convene the Adult Entertainer Advisory Committee (Committee). The Committee was required to consider measures to increase the safety and security of entertainers, including reviewing relevant fee structures. The Committee submitted a report to the Legislature in 2020, including the following recommendations:

- requiring mandatory training for staff in adult entertainment establishments;
- setting minimum requirements for security staffing in adult entertainment establishments;
- eliminating the practice of charging back rent to adult entertainers in adult entertainment establishments; and
- legalizing the service of alcohol in adult entertainment establishments.

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## **Summary of Substitute Bill:**

### Workplace Safety at Adult Entertainment Establishments.

#### *Training.*

An adult entertainment establishment must provide mandatory training for employees on how to:

- provide basic first aid in emergencies, including accessing and using the first-aid kit located on the premises;
- prevent human trafficking, sexual harassment, sexual discrimination, and assault at

- the establishment;
- de-escalate conflict between entertainers, employees, and patrons;
- minimize occurrences of unprofessional and inappropriate behavior by the employees; and
- understand legal protections for employees who report violations of federal and state laws and rules.

The training must be developed and provided by one or more qualified professionals with experience and expertise in personnel training. Where practicable, the training must be translated if necessary for one or more non-English speaking employees to understand the training. All employees must complete the training by the later of: (1) January 1, 2025; or (2) within 30 days of hiring if the training is provided in a prerecorded format or within 120 days of hiring if the training is provided in a live format. L&I may require establishments to annually report certain information on the training.

#### *Safety Standards.*

An adult entertainment establishment must annually report to L&I certain information demonstrating compliance with the requirements pertaining to panic buttons. For blocklists, establishments must also record accusations of human trafficking.

An adult entertainment establishment must: (1) equip entertainers' dressing or locker rooms with a keypad requiring a code to enter; (2) provide appropriate cleaning supplies at all stage performance areas; and (3) display signage at the entrance directing customers to resources on appropriate etiquette.

An adult entertainment establishment may not allow any person under the age of 18 on the premises. An establishment may not allow persons under the age of 21 on the premises if alcohol is being served.

#### *Security.*

An adult entertainment establishment must provide at least one dedicated security personnel during operating hours. Between 9:00 a.m. and 9:00 p.m., the dedicated security personnel's primary duty must be security, and between 9:00 p.m. and 9:00 a.m., the dedicated security personnel must have no other duties. L&I may adopt rules requiring additional security personnel based on additional factors including, but not limited to the: (1) size of the establishment; (2) layout and floor plan of the establishment; (3) patron volume; (4) security cameras and panic buttons; and (5) history of security events at the establishment.

#### Fees and Other Relations Between Entertainers and Adult Entertainment Establishments.

A "leasing fee" means a fee, charge, or amount charged to or requested from an entertainer by an establishment in exchange for allowing an entertainer to conduct entertainment or to otherwise use the establishment premises or private performance areas.

Any fees or charges must be stated in a written contract between the establishment and the entertainer, and must continue to apply for a specified finite period of at least three months. An establishment must provide 10 days advance written notice to an entertainer when terminating or declining to renew the entertainer's contract with the establishment.

Any leasing fee or other fee or amount charged to an entertainer by an establishment must apply equally to all entertainers at the establishment. However, an establishment may provide leasing fee discounts or credits to encourage scheduling or vary leasing fee amounts based on the time of day. An establishment may charge an entertainer a leasing fee only if the leasing fee does not exceed, in any eight-hour period: (1) the lesser of \$150 or 30 percent of the total amount collected by the entertainer (adjusted for inflation every 10 years by L&I), excluding any amount collected for entertainment provided in a private performance area; and (2) 30 percent of the total amount collected by the entertainer for entertainment provided in a private performance area. If the establishment charges an entertainer a leasing fee, the contract must include a method for estimating the total amount collected by an entertainer in any eight-hour period. An adult entertainment establishment may not: (1) carry forward an unpaid balance from any fee or charge incurred previously by the entertainer for access to or usage of the establishment premises; (2) charge interest or additional fees to an entertainer for late payment or nonpayment of any fee or charge; (3) charge a fee for failure to appear at a scheduled time; or (4) control how much the entertainer charges customers for entertainment, except that an establishment may establish base charges for different services if such base charges are stated in a written contract, are applied equally to all entertainers in a given establishment, and do not limit what entertainers may charge above the base charges.

L&I may adopt rules for implementing and enforcing the provisions pertaining to leasing fees and contracts. Any amounts unlawfully collected from, or otherwise owed to, an entertainer by an establishment constitute a wage payment requirement under the Wage Payment Act.

An adult entertainment establishment may not:

- obligate an entertainer to appear for any length of time or how the entertainer performs, provided the entertainer satisfies a leasing fee or otherwise agrees to an alternative charge;
- control the types of clothing or costumes the entertainer wears while providing entertainment, except to the extent necessary to comply with state and local law; or
- take adverse action against an entertainer based on scheduling.

#### Local Regulations of Adult Entertainment Businesses.

A state agency or local government may not enforce any law, rule, ordinance, or regulation against an entertainer to the extent that such enforcement action is based solely on an entertainer touching his or her own body during an entertainment performance at an establishment, regardless of whether the entertainer receives payment from the establishment or gratuities from patrons for his or her performance.

A state agency or local government may not adopt or enforce laws, rules, ordinances, or regulations that restrict an entertainer's proximity or distance from others before or during any exhibition, performance, or dance of any type, where the entertainer does not engage in inappropriate contact with another person.

Adult Entertainer Advisory Committee.

The provisions establishing the Committee are removed.

**Substitute Bill Compared to Original Bill:**

The substitute bill modifies the mandatory training provided by adult entertainment establishments (establishments) to employees by:

- requiring the training to address human trafficking;
- allowing the training to be provided by one or more qualified professionals;
- specifying that the training should be designed for establishments, if possible;
- providing that, where practicable, the training must be translated if necessary for one or more non-English speaking employees to understand the training; and
- requiring employees to complete the training within 30 days of hiring if the training is provided in a prerecorded format or within 120 days of hiring if the training is provided in a live format (rather than within 30 days of hiring regardless of the format of the training, as provided in the underlying bill).

The substitute bill modifies the provisions pertaining to customer blocklists by requiring establishments to also record accusations of human trafficking, and removing the requirement to annually report blocklists to L&I. Language is added to prohibit an establishment from allowing persons under the age of 21 into the establishment if alcohol is being served in the establishment (rather than allowing the Liquor and Cannabis Board to adopt those restrictions where necessary).

The substitute bill modifies the restrictions on leasing fees by:

- providing that, if the establishment charges an entertainer a leasing fee, the contract must include a method for estimating the total amount collected by an entertainer in any eight-hour period;
- authorizing L&I to adopt rules for implementing and enforcing the provisions pertaining to leasing fees and contracts;
- providing that any amounts unlawfully collected from, or otherwise owed to, an entertainer by an establishment constitute a wage payment requirement under the Wage Payment Act; and
- reorganizing subsections.

The preemption provisions are modified. A state agency or local government may not adopt or enforce laws, rules, or ordinances that restrict an entertainer's proximity or distance from others before or during any exhibition, performance, or dance of any type, where the

entertainer does not engage in inappropriate contact (rather than sexual contact, as provided in the underlying bill). The substitute bill defines inappropriate contact.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) All workers deserve to be paid a fair wage and be free from harassment. All workers should be safe. Dancers at adult entertainment clubs are marginalized and ignored. Yet they deserve to be heard, and this bill is a product of their efforts over many years. The bill would protect dancers from financial exploitation and further improve the working conditions at clubs.

Dancers actually pay to dance at clubs. For example, a dancer might be required to pay the club \$120 in order to work a single shift. If the dancer made less than \$120 from charges collected from customers, or if the dancer calls in sick, then the dancer actually owes the club money. These rates are so high because clubs do not have another reliable source of revenue, like alcohol sales. This fuels financial exploitation, abuse, and discrimination. Club practices vary by manager, and worse, by the skin color of the dancer. The effect is that clubs in Washington are more dangerous than those in Oregon and other states. Clubs have toxic working conditions, inflexible scheduling, and reduced customer volume.

On the other hand, a dancing career can be highly beneficial in terms of flexibility and pay. There are many examples of dancers being able to support their families, pay for college and graduate school, and be available as caregivers. While working in other states, like Wisconsin and Texas, dancers have experienced much better working conditions. Clubs in other states provide security and other safety measures. The leasing fees are also lower.

Washington has taken steps to improve safety, but this bill is a critical next step in correcting serious issues in this industry. The bill requires certain safety measures and caps leasing fees. It also provides agency oversight. The bill will improve workplace safety and prevent financial exploitation.

(Opposed) Even though the bill includes workplace safety improvements, there are concerns with public safety. The bill should be amended to address the risks of human trafficking. This should be incorporated into the mandatory training. There is also confusion with the definition of "adult entertainment," since it includes conduct that is criminalized under other laws. This would include prostitution. Further, the bill appears to contemplate alcohol

service in these establishments. This should not be permitted. If it is, there should be clear age restrictions in the bill. The preemption provisions should be removed. Local governments need to be able to impose restrictions in the interest of protecting dancers and customers. In the absence of local control, the club owners will have more power and a greater ability to exploit the dancers.

Washington should not strive to become more like other states. Oregon is not a model for this industry. Persons are trafficked out of those clubs. There is no way to regulate the harm out of the sex trade. This is a dangerous and exploitative industry, and the state should not allow any expansion of these clubs.

(Other) Recognizing that the bill has many great elements pertaining to workplace safety, there are concerns with the ways in which it undermines public safety. The bill preempts local control in unacceptable ways. Local governments need to be able to regulate this industry, particularly with appropriate distance and proximity restrictions. These restrictions protect entertainers by preventing unwelcome contact and preventing club owners from pressuring entertainers to engage in inappropriate behavior.

The bill lacks clarity around rulemaking and enforcement. Club owners continue to be open to discussions on how to improve the industry, and are prepared to work with proponents on the legislation.

**Persons Testifying:** (In support) Representative Amy Walen, prime sponsor; Madison Zack-Wu, Deana N., Lexy B., Gabriella R., Kasey Champion, Bree L., and Rosemary T., Strippers are Workers; and Melissa Sims, The Cupcake Girls.

(Opposed) Jeri Moomaw, Innovations Human Trafficking Collaborative; Russell Brown, Washington Association of Prosecuting Attorneys; and Robin Miller, Sex Trade Survivor Caucus.

(Other) Candice Bock, Association of Washington Cities; and Isaac Kastama, Expressive Rights Alliance.

**Persons Signed In To Testify But Not Testifying:** None.