
Labor & Workplace Standards Committee

ESSB 5614

Brief Description: Concerning adult entertainment establishments.

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

Brief Summary of Engrossed Substitute Bill

- Establishes a specialized spirits, beer, and wine license for adult entertainment nightclubs, and exempts the license from certain state laws and regulations.
- Establishes requirements for adult entertainment establishments to provide training to their employees, and provide on-site security.
- Prohibits adult entertainment establishments from charging certain fees to employee and non-employee entertainers and otherwise restricting certain conduct of non-employee entertainers.
- Prohibits state agencies and local governments from restricting adult entertainers from engaging in specified conduct, including collecting forms of payment from customers, touching their own body or exposing themselves, or engaging in physical contact that is otherwise lawful outside of adult entertainment establishments, such as restrictions on proximity or distance.
- Exempts adult entertainment from the crimes of Prostitution and Indecent Exposure.

Hearing Date: 3/15/23

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.

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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, liquor licenses, 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 WISHA, it may be subject to penalties imposed by the Department of Labor and Industries (L&I). Since 2019, WISHA has contained specific requirements governing adult entertainment establishments.

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:

- 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
- 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.

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 "blacklist," 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.

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, but is not limited to:

- education about the rights and responsibilities of entertainers, including with respect to working as an employee or independent contractor;
- reporting of workplace injuries, including sexual and physical abuse and sexual harassment;
- financial aspects of the entertainer profession;
- the risk of human trafficking; and
- resources for assistance.

Local Regulations of Adult Entertainment Businesses.

Many local jurisdictions have adopted ordinances regulating adult entertainment businesses 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.

Liquor Licenses for Adult Entertainment Businesses.

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). Current rules adopted by the LCB prohibit certain types of conduct at any premise holding a spirits, beer, and wine 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.

State law provides several restrictions on the provision of liquor licenses. This includes restricting the combined total number of licenses for nightclubs and restaurants, not including private clubs, to no more than one license for each 1,200 persons in the state. In addition, the LCB must refuse a spirits, beer, and wine license to any applicant if, in the opinion of the LCB, the spirits, beer, and wine licenses already granted for the particular locality are adequate for the reasonable needs of the community.

Criminal Laws Pertaining to Prostitution and Indecent Exposure.

State law contains several crimes pertaining to acts of prostitution. The crime of Prostitution generally governs those who receive payment, and the crime of Patronizing a Prostitute generally governs those who provide payment. A person commits the crime of Prostitution if he or she engages or agrees or offers to engage in sexual conduct with another person in return for a fee. Effective January 1, 2024, the crime of Prostitution can be committed by adults only. A person commits the crime of Patronizing a Prostitute if he or she:

- pursuant to a prior understanding, pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her;
- pays or agrees to pay a fee to another person pursuant to an understanding that in return such person will engage in sexual conduct with him or her; or
- solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

"Sexual conduct" can include either sexual contact or sexual intercourse. "Sexual contact"

means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party. Prostitution and Patronizing a Prostitute are both misdemeanors.

A person commits the crime of Indecent Exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. Indecent Exposure is a misdemeanor, with some exceptions for greater penalties when the conduct involves minors or is a repeat offense.

Adult Entertainer Advisory Committee.

In 2019 the state enacted Engrossed House Bill (EHB)1756, which established the workplace safety requirements for adult entertainment establishments under 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.

Summary of Bill:

Workplace Safety at Adult Entertainment Establishments.

Training. Adult entertainment establishments must develop training for their employees aimed at minimizing occurrences of unprofessional behavior by employees and enabling the employees to support entertainers in times of conflict. Training topics must include conflict de-escalation and firstaid. Adult entertainment establishments must require all employees to take the training within 30 days of hiring and at least every two years.

Safety Standards. Any adult entertainment establishment must provide at least one dedicated security person during business hours. Between the hours of 9:00 a.m. and 9:00 p.m., the dedicated security person's primary duty is security. Between the hours of 9:00 p.m. and 9:00 a.m. the dedicated security person must have no other duties. L&I may adopt rules requiring additional security persons based on specified factors.

Relations Between Entertainers and Adult Entertainment Establishments.

Certain labor and employment restrictions and protections are established for entertainers.

For any entertainer who is an employee under state minimum wage laws, an adult entertainment establishment may not charge any fee.

For any entertainer who is not an employee under state minimum wage laws, an adult

entertainment establishment may not:

- charge any fees or other charges that, separately or when combined, are greater than 30 percent of the entertainment fees collected by the entertainer during the leased date and time, excluding tips paid to the entertainer;
- carry forward an unpaid balance from any fee incurred previously by the entertainer for access to or usage of the establishment premises;
- charge fees to an entertainer for late payment or nonpayment of any fee;
- charge an entertainer a fee for failure to appear at a scheduled time;
- control how much the entertainer charges customers for adult entertainment;
- control when and how the entertainer works;
- control what type of clothing or costumes to wear during the adult entertainment;
- take adverse action against an entertainer based on scheduling;
- obligate an entertainer to appear for any length of time, provided the entertainer satisfies a leasing fee or otherwise agrees to an alternative charge; and
- terminate or refuse to hire an entertainer without providing written notice of the reason within 10 business days.

Any fees not prohibited under the bill must be stated in a written contract and continue to apply for a period of not less than three months with effective dates. The bill does not prevent an establishment from providing leasing discounts or credits to encourage scheduling or charge lease amounts that vary based on the time of day.

Local Regulations of Adult Entertainment Businesses.

A state agency or local government may not adopt laws, rules, ordinances, or regulations that limit or prohibit an entertainer from:

- collecting any form of payment from customers;
- touching their own body or exposing themselves while performing within an adult entertainment establishment; and
- engaging in physical contact with another person that is otherwise lawful outside of an adult entertainment establishment, such as restrictions on proximity or distance, before or during any exhibition, performance, or dance of any type.

These provisions do not prohibit a local government from adopting ordinances or regulations that are more protective of entertainers.

Minors at Adult Entertainment Businesses.

Adult entertainment establishments may not allow any person under the age of 18 on the premises of the establishment.

Liquor Licenses for Adult Entertainment Night Clubs.

A specialized spirits, beer, and wine adult entertainment nightclub license (license) is established for selling spirituous liquor by the drink, beer, and wine at retail, for consumption on the licensed premises. The license may be issued only to an adult entertainment nightclub whose business includes the sale and service of alcohol to the adult entertainment nightclub's customers and has food sales and service incidental to the sale and service of alcohol.

In order to qualify as an adult entertainment nightclub, an adult entertainment establishment must demonstrate in a manner determined by L&I that it:

- has written processes and procedures accessible to all its employees and entertainers who are not employees for responding to customer violence or criminal activity, ejecting customers who violate club policies, including intoxication or other inappropriate or illegal behavior, and processing requests from entertainers to place a patron on the blacklist;
- provides to L&I at least annually a customer complaint log with specified information;
- provides proof of compliance with the provisions requiring panic buttons and maintenance records showing that the panic buttons are maintained and checked to ensure they are in working condition;
- has entertainers' dressing or locker rooms equipped with a keypad requiring a code to enter;
- provides appropriate cleaning supplies and a waste receptacle accessible from private performance areas;
- displays signage in employee common areas indicating that entertainers are not required to surrender any tips or gratuities and may not be denied services and amenities in consideration of tips or gratuities; and
- displays signage at the entrance directing customers to resources on appropriate etiquette.

L&I and the LCB may share information with each other for the purposes of licensing. If, based on an inspection, L&I determines that an adult entertainment establishment is no longer in compliance with these requirements, L&I will notify the LCB.

The annual fee for a license is \$2,000. The fee must be reviewed from time to time and set at such a level sufficient to defray the cost of licensing and enforcing the licensing program. The fee must be fixed by rule adopted by the LCB. Licenses are not subject to the population restrictions for nightclubs and restaurants, and the LCB may not refuse a license even if it determines that the nightclub licenses already granted for the particular locality are adequate for the reasonable needs of the community. In addition, current LCB rules restricting sexually-oriented conduct for liquor licenses do not apply to licenses granted to adult entertainment nightclubs. The LCB is granted general rulemaking authority to implement the license. It may also adopt rules to allow entertainers who are over 18 years of age but under 21 years of age to perform in an adult entertainment nightclub.

Local governments may petition the LCB to request that further restrictions be imposed on a license in the interest of public safety, including, for example, prohibiting minors on the entire premises, submitting a security plan, or signing a good neighbor agreement with the local government.

Criminal Laws Pertaining to Prostitution and Indecent Exposure.

For the purposes of the crime of Prostitution, adult entertainment as defined under WISHA is not sexual conduct.

For the purposes of the crime of Indecent Exposure, adult entertainment as defined under WISHA is not indecent exposure.

Adult Entertainer Advisory Committee.

The provisions establishing the Committee are removed.

Appropriation: None.

Fiscal Note: Available.

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