CONCISE EXPLANATORY STATEMENT

Labor Standards for Adult Entertainment Establishments

Chapter 296-128 WAC, Minimum Wages
Public Hearings: October 14 and October 15, 2024
Adoption: December 2, 2024
Effective: January 2, 2025

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I. Purpose of Rulemaking

The Washington state legislature passed Engrossed Substitute Senate Bill 6105 (ESSB 6105) during the 2024 legislative session, codified, in part, as RCW 49.46.360. The bill provided new protections for entertainers of adult entertainment establishments and grants enforcement authority to the Department of Labor and Industries' (L&I) Fraud Prevention and Labor Standards (FPLS) division and the Division of Occupational Safety and Health (DOSH). The two divisions are conducting simultaneous but separate rulemaking packages for their respective provisions of ESSB 6105.

ESSB 6105 establishes the following labor standards enforced by FPLS:

- Leasing fee caps for entertainers.
- Written contracts.
- Tips and gratuities.
- Signage.
- Written notices for termination and refusal to rehire.
- Retaliation protections for entertainers.
- L&I enforcement provisions.

ESSB 6105 establishes the following quota safety and health standards enforced by DOSH:

- Training requirements for employees other than entertainers.
- A requirement for establishments to submit annual proof of compliance with panic button requirements.

- Written policies and procedures developed by establishments for implementing requirements related to allegations of specific customer acts.
- Dedicated security personnel required in establishments.
- Requirements for appropriate cleaning supplies, keypads for dressing or locker rooms, signage for customers about appropriate etiquette, and additional written policies and procedures.

A. Background

FPLS and DOSH engaged in rulemaking to clarify and implement the requirements found in ESSB 6105. The adopted rules intend to enhance the safety and workplace rights for entertainers at adult entertainment establishments.

The adopted rules within chapter 296-128 WAC will implement the statutory requirements and:

- Create definitions for key terms used in the chapter.
- Create guidance on leasing fees and other fees.
- Create guidance on tips and gratuities.
- Adopt guidance on written contracts of leasing fees.
- Establish signage requirements.
- Adopt requirements for written notices of termination.
- Adopt retaliation protections for entertainers.
- Adopt enforcement guidance for complaints, investigations, and remedies.
- Create enforcement mechanisms for retaliation protections for entertainers including the complaint, investigation, citation and appeals processes.

- Establish collection procedures for unpaid citations.

The rule adopted by DOSH, chapter 296-831 WAC, will implement the statutory requirements and will:

- Create a definition for a key term used in the chapter.
- Add a general requirements section to clarify existing requirements for establishments, and aid establishments in compliance with new requirements.
- Provide guidance to establishments on how to determine "accessibility" of panic buttons, and clarify requirements for submitting annual proof of compliance with the panic button provisions.
- Add guidance to assist establishments in determining peak operating hours, and provide guidance to help establishments assess when the need for additional security personnel exists.
- Clarify language to assist establishments in differentiating between a customer complaint log and a blocklist.
- Update existing resources in the rule aimed at assisting establishments with compliance.
- Make housekeeping adjustments.

B. Summary of the rulemaking activities

While drafting the proposed rules, L&I conducted multiple rounds of informal preliminary stakeholder meetings. L&I released preliminary drafts of the proposed rule language for public comment and held two feedback meetings. L&I filed the FPLS CR-102 on September 3, 2024, and the DOSH CR-102 on September 4, 2024. Stakeholders had the opportunity to provide formal public comment at one in-person public hearing, one virtual public hearing, and by email, fax, and mail. L&I used the feedback received during the formal comment period to refine the language in the adopted rules.

II. Changes to the Rules (Proposed rule versus rule adopted)

The following are the changes between the proposed rules and the rules as adopted, other than minor editing:

Changes to the rule adopted by FPLS, chapter 296-128 WAC

WAC 296-128-90010(3) Definitions.

- (3) – updated the "amounts collected" definition to clarify that the definition is included for the purpose of calculating leasing fees under RCW 49.46.360(3).
- (3) – updated the "amounts collected" definition to clarify that if an establishment charges a customer a room fee, with no entertainment being provided, then that amount is paid to the establishment and does not count as "amounts collected" for the purposes of determining the maximum leasing fee amount.

WAC 296-128-90070(4)(e) Retaliation.

- (4)(e) – updated to clarify that altering how an entertainer's requested music is handled generally, is considered an adverse action.

WAC 296-128-90110 Administrative Appeals.

- (1) – updated to correct a numeral error to WAC 296-128-90080 instead of WAC 296-128-90090.
- (6) – updated to correct a numeral error to WAC 296-128-90080 instead of WAC 296-128-90090.

III. Comments on Proposed Rule

The purpose of this section is to respond to the oral and written comments received through the public comment period and at the public hearings.

A. Comment Period

The formal public comment period for this rulemaking began on September 4, 2024, and ended October 18, 2024. L&I received a total of six written comments and 11 people provided oral testimony during public hearings.

B. Public Hearings

FPLS and DOSH held two joint public hearings. Additional information about the hearings is provided in the table below.

Location	Number Attended	Number Testified
October 14, 2024 – Tukwila	13	6
October 15, 2024 – Virtual	17	5

C. Summary of Comments Received and L&I's Responses

L&I analyzed all of the comments received on the proposed rules in detail and responds to these comments in the chart below. L&I responded to the substance of the comments it received. In some cases, final rule language was changed as a result of comment review and analysis; in other cases, the responses indicate why a change was not made.

Below is a summary of the comments L&I received and the responses.

Comments	L&I Response
WAC 296-128-90010 Definitions.	
"Amounts collected"	
Amounts charged by the establishment to the customer are not entertainer earnings and should not be considered in "amounts collected" by the entertainer.	Thank you for your comment. L&I has updated the definition of "amounts collected" in the adopted rule to read as follows: "(3) "Amounts collected" <u>for the purposes of calculating leasing fees under RCW 49.46.360(3) and associated rules</u>, means an establishment's designated charges <u>for entertainment provided in</u> private performance areas …" in order to align with statute language within RCW 49.46.360(3). The definition in the adopted rule was updated to clarify that if an establishment charges a customer a room fee and no entertainment is being provided then that amount is paid to the establishment and does not count as "amounts collected" for the purposes of determining the maximum leasing fee. Likewise, if an establishment charges a customer a room fee and entertainment is being provided then all amounts paid to the establishment count as "amounts collected" for the purposes of determining the maximum leasing fee.
Under the labor standards portion, we want to flag that if a dancer is providing private performance in a private room, we would prefer some sort of clarification that those charges associated with that dancer providing labor in the private rooms is actually a charge to the dancers.	
Want to close the loophole of clubs charging for private rooms and considering it a charge to customers, not dancers, and therefore still taking money from dancers.	Thank you for your comment. The adopted rules do not intend to regulate room fees charged to customers. The definition in the adopted rule was updated to clarify that if an establishment charges a customer a room fee and no entertainment is being provided then that amount is paid to the establishment and does not count as "amounts collected" for the purposes of determining maximum leasing fees. If an

	establishment charges a customer a room fee and entertainment is being provided, then all amounts paid to the establishment count as "amounts collected" for the purposes of determining the maximum leasing fee.
"Tips and gratuities"	
According to L&I guidance a "tip" is a "voluntary sum of money that a customer freely gives to an employee for services." While an establishment may use posted prices to indicate a base charge to customers - if an entertainer markets or negotiates her price to customers above the posted price prior to providing services, that additional amount is a service charge and should not be construed as a tip. It is better understood as an upsell and should therefore be considered amounts collected by the entertainer. Not doing so raises equity concerns as it would enable an entertainer who makes more earnings to pay effectively a smaller percentage towards leasing fees than an entertainer who commands lower earnings.	Thank you for your comment. Statutory language does not reference service charges for adult entertainers and does not require tips be included in "amounts collected". Because tip and gratuity amounts vary amongst entertainers, their omission from "amounts collected" aligns with statutory requirements to apply leasing fees equally amongst entertainers. In order to remain aligned with statutory language, this comment did not result in a change to the adopted rule language.
Then there was concern about guidance for tip versus voluntary sum of money that a customer – being a voluntary sum of money that a customer freely gives to an employee for services, it says that, one, "Establishment may use posted prices to indicate a base charge to customer if an entertainer markets or negotiates their price to customers above the posted price prior to providing services, that additional amount is a service charge and not be constituted as a	

tip."	
WAC 296-128-90020 Leasing fee and other fee requirements.	
The requirement that contracts with an entertainer must "continue to apply for a period of not less than three months" raises annual implementation sequencing issues as employment periods among dancers working at the same establishment will overlap. In considering how to implement this requirement, establishments are requesting guidance that, provided that the language is explicit in the contract language, establishments may establish a range of fees or a transitionary period during these periods of overlaps. For example, new hires that start within three months of new annual contract adoption. One concept is to provide notice of an upcoming new contract, with a transition period applicable to all.	Thank you for your comment. RCW 49.46.360(2) requires written contracts to continue to apply for a period of not less than three months. Because the proposed rule language aligns with statutory language, this comment did not result in a change to the adopted rule language.
WAC 296-128-90070 Retaliation.	
Language regarding retaliation presumes that entertainers may play any music during a performance. Rather, the language should be changed to reflect that an entertainer will not be treated differently than others in selecting their own music. For example, an establishment may have a list of approved songs an entertainer may choose from or rely on a DJ or jukebox. Applying the policy uniformly does not constitute retaliation, but the rule implies an obligation to allow an entertainer to select	Thank you for your comment. WAC 296-128-90070(4) does not intend to create new obligations for an entertainer to select music. Rather, WAC 296-128-90070(4) intends to provide examples of adverse actions that would be considered retaliatory if they were taken in reaction to an entertainer exercising their applicable rights within RCW 49.46. L&I has amended the example of adverse action in WAC 296-128-90070(4) to "(e) Altering how an entertainer's requested music is handled" in order to clarify that the example is not limited to entertainers who select their own music.

any music which does not exist.	
General Comments	
L&I should require clubs to post information on resources. That is a big part of what I do in the community is connect people to resources and make sure that people have options if they are worried that they are a victim of sex trafficking or violence. That would be something that I would hope would be posted in common areas, perhaps in the bathroom where it might be discrete. L&I staff training also should provide understanding so that people can relate to the concept of trauma-informed care so that L&I staff are aware of how to identify sex trafficking but also the things that might intertwine or overlap at the intersection of trafficking and attempting to have livable wage employment. And if they believe something is occurring, they need to know, again, what types of red flags to look for and then who to report to or how to refer.	Thank you for your comment. RCW 49.17.470(1)(b) requires all entertainers, as a condition of receiving an adult entertainer license, to provide proof of completion of a "know your rights" training. The training includes information and resources related to the risk of human trafficking. Effective January 1, 2025, RCW 49.17.470(2)(a) requires establishments to provide training to employees other than adult entertainers. RCW 49.17.470(2)(d) provides a list of topics the training must contain, which includes information on how to identify and report human trafficking. Establishments must offer entertainers the ability to opt into those trainings. As part of the implementation of ESSB 6105, L&I intends to have all L&I staff tasked with outreach, enforcement, and implementation to receive a human trafficking awareness training. While there is not a requirement for establishments to post information about resources specifically for entertainers, establishments may choose to do so. This comment did not result in a change to the adopted rule language.
I think I would speak for everybody, hopefully, that all the club owners are really concerned about the safety of everybody in the club, not just the entertainers, but our employees as well. I think that	Thank you for your comment. This comment did not result in a change to the adopted rule language.

goes without saying. I think that we are all on board to help L&I take care of this, as well as the Liquor and Cannabis Board. I would like to just say that some of these issues in this law are in my opinion draconian, and they are going to put us in risk of not being a viable company. And it may be something the goose that laid the golden egg is to be gone. You are going to regulate us out of business, either between fines from L&I, which can be inundating, or from the fact that we got just too much to do to comply with this law as it states. I think we are all on board as far as working with L&I and Liquor and Cannabis Board to make this work. We are definitely serious. I know we have two security guys at night, every night. Just be careful what we do here because it may put us in a situation where we are no longer a viable business. Then the entertainers will get exactly what they want. They will be secure in their own homes because they will not have a place to go to.	
"And then there was also a concern about withholding income. So apparently there was an instance where there was a customer had a very large transaction of like around $70,000 on a credit card, and that amount was withheld because there was concern that the customer could pull back the money, and looking for guidance on what to do with that as well."	Thank you for your comment. Statutory language does not reference or address customer credit card charge disputes; therefore, this is not included in the rule language. Entertainers are owed all tips and gratuities as applicable under RCW 49.46 and the adopted rules. This comment did not result in a change to the adopted rule language.