



# PROPOSED RULE MAKING

## CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: September 03, 2024

TIME: 4:01 PM

WSR 24-18-110

Agency: Department of Labor and Industries (L&I)

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 24-11-023 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject) Labor standards for adult entertainment establishments. Creating new sections in Chapter 296-128 WAC.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 14, 2024	11:00 a.m.	Department of Labor & Industries 12806 Gateway Drive South Tukwila, WA 98168	A pre-hearing overview will begin at 10:00 a.m. The hearing will start at 11:00 a.m. and will continue until all oral comments are received. This public hearing will be held jointly with L&I's Division of Occupational Safety and Health.
October 15, 2024	2:00 p.m.	Virtual/telephonic hearing: <b>Join electronically:</b> <a href="https://lni-wa-gov.zoom.us/j/87075679462?pwd=ePBJQ2wvAbvYdydgkD0fFPMVb4YIx7.1">https://lni-wa-gov.zoom.us/j/87075679462?pwd=ePBJQ2wvAbvYdydgkD0fFPMVb4YIx7.1</a>  <b>To join by phone (audio only):</b> 253-205-0468 or 253-215-8782 Meeting ID: 870 7567 9462 Passcode: 140340150	A pre-hearing overview will begin at 1:00 p.m. The hearing will start at 2:00 p.m. and will continue until all oral comments are received. This public hearing will be held jointly with L&I's Division of Occupational Safety and Health.

Date of intended adoption: December 2, 2024 (Note: This is **NOT** the effective date)

Submit written comments to:

Name Bridget Osborne

Address Department of Labor & Industries  
Fraud Prevention & Labor Standards

PO Box 44510

Olympia, WA 98504-4510

Email AERules@Lni.wa.gov

Fax 360-902-5300

Other \_\_\_\_\_

Beginning (date and time) September 4, 2024, 8:00 a.m.

By (date and time) October 18, 2024, by 5:00 p.m.

Assistance for persons with disabilities:

Contact Bridget Osborne

Phone 360-902-5552

Fax 360-902-5300

TTY \_\_\_\_\_

Email Aerules@Lni.wa.gov

Other \_\_\_\_\_

By (date) October 7, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Washington State Legislature passed Engrossed Substitute Senate Bill 6105 (ESSB 6105), Chapter 250, Laws of 2024, during the 2024 legislative session. ESSB 6105, codified under RCW 49.46.360, establishes the following protections for entertainers at adult entertainment establishments:

- Leasing or other fees must apply equally to all entertainers in an establishment, be stated in a written contract, and continue for at least three months;
- Establishments may not charge an entertainer any fees or interest for late or non-payments, for failure to appear at a scheduled time, or that result in the entertainer carrying forward an unpaid balance from any previously incurred leasing fee;
- Establishments may not charge a leasing fee in an amount greater than the entertainer receives during the period of access or usage; or within an eight-hour period, any leasing fee that exceeds the lesser of \$150 or 30 percent of amounts collected by the entertainer for non-private performance areas and 30 percent of amounts collected by the entertainer for private performance areas;
- If establishments charge a leasing fee, the contract must include a method for estimating the total amounts collected by the entertainer in any eight hour period;
- Establishments must display signage in designated areas on forbiddance of entertainers surrendering any tips or gratuities;
- Establishments may not take adverse action against an entertainer in response to the entertainer's use or collection of tips or gratuities; and
- Establishments must provide an entertainer with written notice of the reason or reasons for any termination or refusal to rehire the entertainer within 10 business days.

L&I's Fraud Prevention and Labor Standards (FPLS) Division is proposing rules to clarify and implement the requirements of ESSB 6105. The proposed rules also describe FPLS's enforcement of ESSB 6105 including the complaint, investigation, citation, and appeals processes.

Other requirements related to Adult Entertainment Establishments under chapter 49.17 RCW are enforced by L&I's Division of Occupational Safety and Health (DOSH). DOSH is conducting simultaneous rulemaking for the provisions of chapter 49.17 RCW enforced by the division in chapter 296-831 WAC.

**Reasons supporting proposal:** Rules are required to clarify and enforce the labor standards for adult entertainers established under ESSB 6105, codified in chapter 49.46 RCW.

**Statutory authority for adoption:** RCW 49.46.360

**Statute being implemented:** RCW 49.46.360

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Department of Labor and Industries

**Type of proponent:**  Private.  Public.  Governmental.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Bridget Osborne	Tumwater, WA	360-902-5552
Implementation	Bryan Templeton	Tumwater, WA	360-902-5310
Enforcement	Bryan Templeton	Tumwater, WA	360-902-5310

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name Bridget Osborne  
 Address Department of Labor & Industries  
 Fraud Prevention & Labor Standards  
 PO Box 44510  
 Olympia, WA 98504-4510  
 Phone 360-902-5552  
 Fax 360-902-5300  
 TTY  
 Email AERules@Lni.wa.gov  
 Other

No: Please explain:

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- |   |  |
|---|--|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions: Check one.**

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

	Proposed WAC Sections and Title	This proposed rule section is <b>not exempt (in whole or in part)</b> . Analysis is required	This proposed rule section is <b>exempt (in whole or in part)</b> . Provide RCW to support this exemption.
1.	WAC 296-128-90010 Definitions	<input checked="" type="checkbox"/>	RCW 34.05.310(4)(e) - Rules adopting or incorporating by reference without material change.
2.	WAC 296-128-90020 Leasing fee and other fee requirements.	<input checked="" type="checkbox"/>	
3.	WAC 296-128-90030 Tips and gratuities.	<input checked="" type="checkbox"/>	
4.	WAC 296-128-90040 Written contracts of leasing fees- Administrative requirements.	<input checked="" type="checkbox"/>	

5.	WAC 296-128-90050 Required Signage-Administrative requirements.	<input checked="" type="checkbox"/>	
6.	WAC 296-128-90060 Written Notice of Reason for Termination or Refusal to Rehire-Administrative Requirements.	<input checked="" type="checkbox"/>	
7.	WAC 296-128-90070 Retaliation.	<input checked="" type="checkbox"/>	
8.	WAC 296-128-90080 Enforcement-Compensation.	<input checked="" type="checkbox"/>	
9.	WAC 296-128-90090 Enforcement-Administrative Violations.	<input checked="" type="checkbox"/>	
10.	WAC 296-128-90100 Enforcement-Retaliation.	<input checked="" type="checkbox"/>	
11.	WAC 296-128-90110 Administrative Appeals.	<input checked="" type="checkbox"/>	
12.	WAC 296-128-90120 Collection Procedures.	<input checked="" type="checkbox"/>	
13.	WAC 296-128-90130 Severability Clause.	<input checked="" type="checkbox"/>	

The rule proposal: Is not exempt. (Complete section 3.) No exemptions were identified above.

**(3) Small business economic impact statement: Complete this section if any portion is not exempt.**

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. As outlined in the chart below, there are no anticipated costs to comply with the rule.

WAC 296-128-90010(3), (4), and (7)	These definitions are explanatory and provide L&I's interpretation for the term in chapter 49.46 RCW used in and throughout the rules and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90020	This section is explanatory and provides L&I's interpretation of RCW 49.46.360(3) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90030	This section provides L&I's interpretation of RCW 49.46.360(5) and (7). The rule could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90040(1), (3), and (5)	These subsections provide L&I's interpretation of RCW 49.46.360(2)(b) and (3)(e)(ii) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90040(2)	This subsection provides L&I's interpretation of RCW 49.46.360(2)(b) and (3)(e)(ii) and could impose a penalty on an establishment. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90040(5)	This subsection provides recordkeeping requirements that could impose a penalty on an establishment. The subsection creates no cost for establishments because written contracts are required by statute. Creating additional documents for estimating the total amounts is optional, therefore there is no cost associated with compliance for establishments to also maintain such records.
WAC 296-128-90050	This section provides L&I's interpretation of RCW 49.46.360(5) and (7) and does not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90060(1)	This subsection provides L&I's interpretation of RCW 49.46.360(6) and (7) and does not independently impose a penalty or sanction on a person or entity and does not impose costs to employers for the inclusion of applicable date(s) on the written notices because such notices are already required by RCW 49.46.360(6). Establishments are not required to establish corrective action records, the establishment must simply maintain and provide any corrective action records they chose to create, so there is no additional cost.
WAC 296-128-90060(2), (3), and (4)	These subsections provide L&I's interpretation of RCW 49.46.360(6) and (7) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90070	This section provides L&I's interpretation of RCW 49.46.360(5) and (7). The rule could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90080(1), (2), (4), (6), (7), and (9)	These subsections provide L&I's interpretation of RCW 49.46.360(7) and do not independently impose a penalty or sanction on a person or entity.

WAC 296-128-90080(3) and (5)	These subsections provide L&I's interpretation of RCW 49.46.360(7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. The subsections do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90080(8)	This subsection provides L&I's interpretation of RCW 49.46.360(7), including the enforcement capability for the department to request an establishment perform a self audit. The self-audit process is intended to reduce the cost and burden of an investigation thus, there is no cost associated with the rule.
WAC 296-128-90090(1), (2), (3), (4), (7), (8), (9), and (11)	These subsections provide L&I's interpretation of RCW 49.46.360(7) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90090(5) and (6)	These subsections provide L&I's interpretation of RCW 49.46.360(7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. The subsections do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90090(10)	This subsection provides L&I's interpretation of RCW 49.46.360(7), including the enforcement capability for the department to request an establishment perform a self audit. The self-audit process is intended to reduce the cost and burden of an investigation thus, there is no cost associated with the rule.
WAC 296-128-90100(1), (2), (3), (4), (6), (7) and (8)	These subsections provide L&I's interpretation of RCW 49.46.360(5) and (7) and do not independently impose a penalty or sanction on a person or entity. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules.
WAC 296-128-90100(5) and (9)	These subsections provides L&I's interpretation of RCW 49.46.360(5) and (7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. These subsections do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90110	This section provides L&I's interpretation of RCW 49.46.360(7) and does not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90120	This section provides L&I's interpretation of RCW 49.46.360(7) and does not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90120	This section provides L&I's interpretation of RCW 49.46.360(7) and does not independently impose a penalty or sanction on a person or entity.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

**Date:** September 3, 2024

**Name:** Joel Sacks

**Title:** Director

**Signature:**

