

HOUSE BILL REPORT

SHB 1085

As Passed House:

March 5, 2009

Title: An act relating to preventing the spread of disease in body piercing practices through standard universal precautions and sterilization requirements.

Brief Description: Concerning body piercing.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Appleton, Green and Dickerson).

Brief History:

Committee Activity:

Health Care & Wellness: 1/22/09, 2/6/09 [DPS].

Floor Activity

Passed House: 3/5/09, 96-1.

Brief Summary of Substitute Bill

- Requires the Secretary of Health to adopt rules regarding body piercing and body art.
- Makes a violation of the rules a misdemeanor, negligence per se, and a violation of the Consumer Protection Act.
- Declares as void any liability waiver that limits liability relating to the rules.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Cody, Chair; Ericksen, Ranking Minority Member; Bailey, Campbell, Clibborn, Green, Kelley, Moeller, Morrell and Pedersen.

Staff: Jim Morishima (786-7191)

Background:

Sterilization Rules.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Secretary of Health (Secretary) has adopted rules regarding the sterilization of needles and instruments by electrologists and tattoo artists. When adopting the rules, the Secretary was required to consider the universal precautions for infection control, as recommended by the United States Centers for Disease Control and Prevention, and guidelines for infection control, as recommended by the National Environmental Health Association and the Alliance of Professional Tattooists.

There are no similar rules for body piercing or body art.

Misdemeanors.

A misdemeanor is a criminal offense punishable by up to 90 days in jail, a fine of up to \$1,000, or both.

Negligence Per Se.

Generally speaking, in a civil action for negligence, a plaintiff must prove that the defendant breached a duty of care that proximately caused damage to the plaintiff. Under common law, violation of a statute could be considered negligence per se; i.e., the plaintiff does not have to prove that a duty of care was breached. Washington has eliminated the doctrine of negligence per se in most circumstances. It is, however, still negligence per se to violate a statute, ordinance, or administrative rule relating to:

- electrical fire safety;
- the use of smoke alarms;
- sterilization of needles and instruments used in tattooing or electrology; or
- driving under the influence of intoxicating liquor or any drug.

The Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. The Attorney General may bring an action to enforce the provisions of the CPA. In addition, a person injured by a violation of the CPA may bring a civil action in which the person may be awarded court costs, attorney fees, and treble damages.

Exculpatory Clauses.

An exculpatory clause (or liability waiver) is a clause in a contract that protects one of the parties from liability, usually for negligence. An exculpatory clause is void insofar as it purports to protect a party from damages arising from gross negligence or if it violates public policy.

Summary of Substitute Bill:

Sterilization Rules.

The Secretary of Health (Secretary) must adopt by rule requirements for standard universal precautions, as recommended by the United States Centers for Disease Control and Prevention, for preventing the spread of disease and the sterilization of needles, single-use disposable sharps, reusable sharps, instruments, and jewelry used by a person who practices body piercing and body art. A person practicing body piercing or body art must adhere to the rules, even if the person's client has agreed to waive such adherence.

"Body piercing" is defined as the process of penetrating the skin or mucous membrane for the purpose of insertion of an object for cosmetic purposes. The term does not include ear piercing or any health-related procedures performed by licensed practitioners.

"Body art" is defined as the practice of physical cosmetic body adornment including branding, scarification, or the intentional production of scars. As with body piercing, body art does not include health-related procedures performed by licensed practitioners.

Misdemeanors.

Violation of the Secretary's rules by a practitioner of body piercing or body art is a misdemeanor.

Negligence Per Se.

Violation of the Secretary's rules is negligence per se.

The Consumer Protection Act.

Violations of the Secretary's rules are violations of the CPA.

Exculpatory Clauses.

Any exculpatory clause or liability waiver that waives liability for damages arising from violations of the rules adopted by the Secretary violates public policy and is therefore void.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is important to prevent infections like Methicillin-Resistant Staphylococcus Aurea (MRSA), which is the biggest threat to the industry. This bill is simple and is the correct first step to take.

(With concerns) his bill does not go far enough. There are no enforcement, registration, inspection, or record-keeping requirements. This bill conflicts with other state laws that define the practice of medicine, surgery, and dentistry.

(Opposed) Under this bill, consumers will have no way of knowing whether a practitioner is safe; currently, some practitioners follow universal precautions and some do not. The bill only makes a difference once someone is already infected. The bill does not address the fact that there are currently no education requirements for these practitioners.

Persons Testifying: (In support) Representative Appleton, prime sponsor; and Troy Amundson, Apocalypse Tattoo and Body Piercing.

(With concerns) Kitty Candelaria, National Hepatitis C Institute.

(Opposed) David Kile, Washington State Cosmetology Association.

Persons Signed In To Testify But Not Testifying: None