

SHB 2335 - S COMM AMD

By Committee on Health & Long-Term Care

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that the
4 practices of body piercing, tattooing, and other forms of body art
5 involve an invasive procedure with the use of needles, single-use
6 disposable sharps, reusable sharps, instruments, and jewelry. These
7 practices may be dangerous when improper sterilization techniques are
8 used, presenting a risk of infecting the client with bloodborne
9 pathogens including, but not limited to, HIV, hepatitis B, and
10 hepatitis C. It is in the interests of the public health, safety, and
11 welfare to establish requirements in the commercial practice of these
12 activities in this state.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter and RCW 5.40.050 unless the context clearly
15 requires otherwise.

16 (1) "Body art" means the practice of physical cosmetic body
17 adornment including the use of branding and scarification. "Body art"
18 also includes the intentional production of scars upon the body. "Body
19 art" does not include medical procedures performed by a licensed
20 physician or medical practitioner.

21 (2) "Body piercing" means the process of penetrating the skin or
22 mucous membrane to insert an object, including jewelry, for cosmetic
23 purposes. "Body piercing" also includes any scar tissue resulting from
24 or relating to the piercing. "Body piercing" does not include the use
25 of stud and clasp piercing systems to pierce the earlobe in accordance
26 with the manufacturer's directions and applicable United States food
27 and drug administration requirements. "Body piercing" does not include
28 any medical procedures performed by a licensed physician or medical
29 practitioner, nor does anything in this act authorize a person

1 registered to engage in the business of body piercing to implant or
2 embed foreign objects into the human body or otherwise engage in the
3 practice of medicine.

4 (3) "Director" means the director of the department of licensing.

5 (4) "Tattoo artist" means a person who practices the business of
6 tattooing for a fee.

7 (5) "Tattooing" means the introduction of an indelible mark,
8 figure, or decorative design by inserting nontoxic dyes or pigments
9 into or under the subcutaneous portion of the skin upon the body of a
10 live human being for cosmetic or figurative purposes.

11 NEW SECTION. **Sec. 3.** (1) Any person who practices body art, body
12 piercing, or tattooing shall comply with the rules adopted by the
13 department of health under RCW 70.54.340.

14 (2) Any person who practices body art, body piercing, or tattooing
15 shall comply with the rules adopted by the department of licensing,
16 after consulting with the department of health, which rules shall
17 include provisions relating to compliance with:

18 (a) Universal precautions for infection control, as recommended by
19 the United States centers for disease control, and guidelines for
20 infection control, as recommended by the national environmental health
21 association and the alliance of professional tattooists;

22 (b) Sterilization procedures using sterilization equipment approved
23 by the United States food and drug administration for the purpose of
24 sterilization, and adequate in size to accommodate necessary utensils
25 and instruments; and

26 (c) Retention of case history information for each client.

27 (3) Any person engaging in the practice of body art, body piercing,
28 or tattooing shall, within seventy-two hours of becoming aware of the
29 occurrence of any infection or allergic reaction resulting from body
30 art, body piercing, or tattooing performed by the person, provide a
31 written report to the department of health and the department of
32 licensing containing the following information:

33 (a) The name of the infected client;

34 (b) The name and address of the salon/shop where the body art, body
35 piercing, or tattooing was performed;

36 (c) The name, and registration number if any, of the tattoo artist
37 or person that performed the body art or body piercing;

1 (d) The date that the tattooing, body art, or body piercing was
2 performed;

3 (e) The location of the infection;

4 (f) The name and address of the health care practitioner, if any,
5 who was notified of the infection by either the client or the person
6 making the report; and

7 (g) Any other information that the department of licensing, by
8 rule, deems relevant to the situation.

9 (4) A violation of this section is a misdemeanor.

10 NEW SECTION. **Sec. 4.** No person, firm, or corporation may act or
11 engage in the practice of body art, body piercing, or tattooing unless,
12 prior to engaging in the business of body art, body piercing, or
13 tattooing, the person, firm, or corporation registers with the director
14 under this chapter and rules adopted under this chapter.

15 (1) The registration number must be conspicuously posted in the
16 place of business and must be included in all advertisements.

17 (2) The director shall issue duplicate registrations upon payment
18 of a duplicate registration fee to valid registration holders operating
19 more than one office. The duplicate registration fee for each office
20 shall be an amount equal to the original registration fee.

21 (3) No registration is assignable or transferable.

22 (4) If a person registered as engaging in the business of body art,
23 body piercing, or tattooing sells his or her business, when the new
24 owner becomes responsible for the business, the new owner must comply
25 with this chapter, including the registration provisions.

26 NEW SECTION. **Sec. 5.** An application to register as engaging in
27 the business of body art, body piercing, or tattooing shall be
28 submitted in the form prescribed by rule by the director, and shall
29 contain but not be limited to the following:

30 (1) The name, residence address, and telephone number of the person
31 applying to register as engaging in the business of body art, body
32 piercing, or tattooing;

33 (2) The business name, address, and telephone number where the
34 applicant will engage in the practice of body art, body piercing, or
35 tattooing;

1 (3) Proof that the person applying to register as engaging in the
2 practice of body art, body piercing, or tattooing holds a valid
3 business license or is employed by an entity that holds a valid
4 business license in the jurisdiction where the person will engage in
5 business; and

6 (4) A registration fee in an amount determined by rule.

7 NEW SECTION. **Sec. 6.** (1) Each person registered as engaging in
8 the business of body art, body piercing, or tattooing shall renew his
9 or her registration on or before the registrant's birthday of every
10 year or as otherwise determined by the director.

11 (2) Renewal of a registration is subject to the same provisions
12 covering disciplinary action as a registration originally issued.

13 (3) The director may refuse to renew a registration for any of the
14 grounds set out under RCW 18.235.130, and where the past conduct of the
15 applicant affords reasonable grounds for belief that the applicant will
16 not carry out the applicant's duties in accordance with law and with
17 integrity and honesty. The director shall promptly notify the
18 applicant in writing by certified mail of the directors intent to
19 refuse to renew the registration. The registrant may request a hearing
20 on the refusal as provided in RCW 18.235.050. The director may permit
21 the registrant to honor commitments already made to its customers, but
22 no new commitments may be incurred.

23 NEW SECTION. **Sec. 7.** (1) In addition to the unprofessional
24 conduct described in RCW 18.235.130, the director may take disciplinary
25 action based on the following conduct, acts, or conditions if the
26 applicant or registrant:

27 (a) Was previously the holder of a registration issued under this
28 chapter, and the registration was revoked for cause and never reissued
29 by the director, or the registration was suspended for cause and the
30 terms of the suspension have not been fulfilled;

31 (b) Suffers a judgment in a civil action involving willful fraud,
32 misrepresentation, or conversion;

33 (c) Has violated this chapter or failed to comply with a rule
34 adopted by the director under this chapter; or

35 (d) Has failed to display the registration as provided in this
36 chapter.

1 (2) If the person registered as engaging in the business of body
2 art, body piercing, or tattooing is found in violation of this chapter
3 or in violation of the consumer protection act, chapter 19.86 RCW, by
4 the entry of a judgment or by settlement of a claim, the director may
5 revoke the person's registration, and the director may reinstate the
6 registration at the director's discretion.

7 (3) The director shall immediately suspend the license or
8 certificate of a person who has been certified pursuant to RCW
9 74.20A.320 by the department of social and health services as a person
10 who is not in compliance with a support order. If the person has
11 continued to meet all other requirements for reinstatement during the
12 suspension, reissuance of the license or certificate shall be automatic
13 upon the director's receipt of a release issued by the department of
14 social and health services stating that the licensee is in compliance
15 with the order.

16 NEW SECTION. **Sec. 8.** (1) A nonresident person registered as
17 engaging in the business of body art, body piercing, or tattooing
18 soliciting business or engaging in the business of body art, body
19 piercing, or tattooing in the state of Washington, by mail, telephone,
20 or otherwise, either directly or indirectly, is deemed, absent any
21 other appointment, to have appointed the director to be the
22 nonresident's true and lawful attorney upon whom may be served any
23 legal process against that nonresident arising or growing out of a
24 transaction involving the practice of body art, body piercing, or
25 tattooing. That solicitation signifies the nonresident's agreement
26 that process against the nonresident that is served as provided in this
27 chapter is of the same legal force and validity as if served personally
28 on the nonresident.

29 (2) Service of process upon a nonresident shall be made by leaving
30 a copy of the process with the director. The fee for the service of
31 process shall be determined by the director by rule. That service is
32 sufficient service upon the nonresident if the plaintiff or plaintiff's
33 attorney of record sends notice of the service and a copy of the
34 process by certified mail before service or immediately after service
35 to the defendant at the address given by the nonresident in a
36 solicitation furnished by the nonresident, and the sender's post office
37 receipt of sending and the plaintiff's or plaintiff's attorney's

1 affidavit of compliance with this section are returned with the process
2 in accordance with Washington superior court civil rules.
3 Notwithstanding the foregoing requirements, however, once service has
4 been made on the director as provided in this section, in the event of
5 failure to comply with the requirement of notice to the nonresident,
6 the court may order that notice be given that will be sufficient to
7 apprise the nonresident.

8 NEW SECTION. **Sec. 9.** The director has the following powers and
9 duties:

10 (1) To adopt, amend, and repeal rules to carry out the purposes of
11 this chapter;

12 (2) To establish and collect fees, to be deposited into the
13 business and professions account under RCW 43.24.150;

14 (3) Upon receipt of a complaint, to inspect and audit the books and
15 records of a person engaging in the business of body art, body
16 piercing, or tattooing. The person engaging in the business of body
17 art, body piercing, or tattooing shall immediately make available to
18 the director those books and records as may be requested at the place
19 of business of the person engaging in the business of body art, body
20 piercing, or tattooing, or at a location designated by the director.
21 For that purpose, the director shall have full and free access to the
22 office and places of business of the person engaging in the business of
23 body art, body piercing, or tattooing during regular business hours;

24 (4) To do all things necessary to carry out the functions, powers,
25 and duties set forth in this chapter.

26 NEW SECTION. **Sec. 10.** The director, in the director's discretion,
27 may:

28 (1) Annually, or more frequently, make public or private
29 investigations within or without this state as the director deems
30 necessary to determine whether a registration should be subject to
31 disciplinary action, or whether a person has violated or is about to
32 violate this chapter or a rule adopted or order issued under this
33 chapter, or to aid in the enforcement of this chapter or in the
34 prescribing of rules and forms of this chapter;

35 (2) Publish information concerning a violation of this chapter or
36 a rule adopted or order issued under this chapter; and

1 (3) Investigate complaints concerning practices by persons engaging
2 in the business of body art, body piercing, or tattooing for which
3 registration is required by this chapter.

4 NEW SECTION. **Sec. 11.** The director or individuals acting on the
5 director's behalf are immune from suit in any action, civil or
6 criminal, based on acts performed in the course of their duties in the
7 administration and enforcement of this chapter.

8 NEW SECTION. **Sec. 12.** (1) A civil penalty may be imposed by the
9 court for each violation of this chapter in an amount not less than
10 five hundred dollars nor more than two thousand dollars per violation.

11 (2) If a person fails to pay an assessment after it has become a
12 final and unappealable order, or after the court has entered final
13 judgment in favor of the state, the director may recover the amount
14 assessed by action in the appropriate superior court. In the action,
15 the validity and appropriateness of the final order imposing the
16 penalty shall not be subject to review.

17 NEW SECTION. **Sec. 13.** In order to maintain or defend a lawsuit,
18 a person engaging in the business of body art, body piercing, or
19 tattooing must be registered with the department as required by this
20 chapter and rules adopted under this chapter.

21 NEW SECTION. **Sec. 14.** (1) Each person who knowingly violates this
22 chapter or who knowingly gives false or incorrect information to the
23 director, attorney general, or county prosecuting attorney in filing
24 statements required by this chapter, whether or not the statement or
25 report is verified, is guilty of a gross misdemeanor punishable under
26 chapter 9A.20 RCW.

27 (2) A person who violates this chapter or who gives false or
28 incorrect information to the director, attorney general, or county
29 prosecuting attorney in filing statements required by this chapter,
30 whether or not the statement or report is verified, is guilty of a
31 misdemeanor punishable under chapter 9A.20 RCW.

32 NEW SECTION. **Sec. 15.** In addition to any other penalties or
33 remedies under chapter 19.86 RCW, a person who is injured by a

1 violation of this chapter may bring an action for recovery of actual
2 damages, including court costs and attorneys' fees. No provision in
3 this chapter shall be construed to limit any right or remedy provided
4 under chapter 19.86 RCW.

5 NEW SECTION. **Sec. 16.** The legislature finds that the practices
6 governed by this chapter are matters vitally affecting the public
7 interest for the purpose of applying the consumer protection act,
8 chapter 19.86 RCW. Any violation of this chapter is not reasonable in
9 relation to the development and preservation of business and is an
10 unfair and deceptive act or practice and unfair method of competition
11 in the conduct of trade or commerce in violation of RCW 19.86.020.
12 Remedies provided by chapter 19.86 RCW are cumulative and not
13 exclusive.

14 NEW SECTION. **Sec. 17.** All information, documents, and reports
15 filed with the director under this chapter are matters of public record
16 and shall be open to public inspection, subject to reasonable
17 regulation. The director may make public, on a periodic or other
18 basis, the information as may be necessary or appropriate in the public
19 interest concerning the registration, reports, and information filed
20 with the director or any other matters to the administration and
21 enforcement of this chapter.

22 NEW SECTION. **Sec. 18.** The uniform regulation of business and
23 professions act, chapter 18.235 RCW, governs unlicensed practice, the
24 issuance and denial of licenses, and the discipline of licensees under
25 this chapter.

26 NEW SECTION. **Sec. 19.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 20.** This act takes effect July 1, 2007.

31 NEW SECTION. **Sec. 21.** The director of licensing, beginning July

1 1, 2006, may take such steps as are necessary to ensure that this act
2 is implemented on its effective date.

3 **Sec. 22.** RCW 70.54.340 and 2001 c 194 s 3 are each amended to read
4 as follows:

5 The secretary of health shall adopt by rule requirements, in
6 accordance with nationally recognized professional standards, for
7 precautions against the spread of disease, including the sterilization
8 of needles and other instruments, including single-use disposable
9 sharps, reusable sharps, and jewelry, employed by electrologists,
10 persons engaged in the practice of body piercing, and tattoo artists
11 (~~in accordance with nationally recognized professional standards~~).
12 The secretary shall consider the universal precautions for infection
13 control, as recommended by the United States centers for disease
14 control, and guidelines for infection control, as recommended by the
15 national environmental health association and the alliance of
16 professional tattooists, in the adoption of these sterilization
17 requirements.

18 **Sec. 23.** RCW 5.40.050 and 2001 c 194 s 5 are each amended to read
19 as follows:

20 A breach of a duty imposed by statute, ordinance, or administrative
21 rule shall not be considered negligence per se, but may be considered
22 by the trier of fact as evidence of negligence; however, any breach of
23 duty as provided by statute, ordinance, or administrative rule relating
24 to: (1) Electrical fire safety, (2) the use of smoke alarms, (3)
25 sterilization of needles and instruments used by persons engaged in the
26 practice of body art, body piercing, tattooing, or electrology, or
27 other precaution against the spread of disease, as required under RCW
28 70.54.350 or section 3 of this act, or (4) driving while under the
29 influence of intoxicating liquor or any drug, shall be considered
30 negligence per se.

31 **Sec. 24.** RCW 43.24.150 and 2005 c 25 s 1 are each amended to read
32 as follows:

33 (1) The business and professions account is created in the state
34 treasury. All receipts from business or professional licenses,

1 registrations, certifications, renewals, examinations, or civil
2 penalties assessed and collected by the department from the following
3 chapters must be deposited into the account:

- 4 (a) Chapter 18.11 RCW, auctioneers;
- 5 (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- 6 (c) Chapter 18.96 RCW, landscape architects;
- 7 (d) Chapter 18.145 RCW, court reporters;
- 8 (e) Chapter 18.165 RCW, private investigators;
- 9 (f) Chapter 18.170 RCW, security guards;
- 10 (g) Chapter 18.185 RCW, bail bond agents;
- 11 (h) Chapter 19.16 RCW, collection agencies;
- 12 (i) Chapter 19.31 RCW, employment agencies;
- 13 (j) Chapter 19.105 RCW, camping resorts;
- 14 (k) Chapter 19.138 RCW, sellers of travel;
- 15 (l) Chapter 42.44 RCW, notaries public; (~~and~~)
- 16 (m) Chapter 64.36 RCW, timeshares; and
- 17 (n) Sections 1 through 21 of this act.

18 Moneys in the account may be spent only after appropriation.
19 Expenditures from the account may be used only for expenses incurred in
20 carrying out these business and professions licensing activities of the
21 department. Any residue in the account shall be accumulated and shall
22 not revert to the general fund at the end of the biennium.

23 (2) The director shall biennially prepare a budget request based on
24 the anticipated costs of administering the business and professions
25 licensing activities listed in subsection (1) of this section, which
26 shall include the estimated income from these business and professions
27 fees.

28 NEW SECTION. **Sec. 25.** Sections 1 through 21 of this act
29 constitute a new chapter in Title 18 RCW."

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1 On page 1, line 3 of the title, after "requirements;" strike the
2 remainder of the title and insert "amending RCW 70.54.340, 5.40.050,
3 and 43.24.150; adding a new chapter to Title 18 RCW; prescribing
4 penalties; and providing an effective date."

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