

HOUSE BILL REPORT

SSB 5391

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to regulating body art, body piercing, and tattooing practitioners, shops, and businesses.

Brief Description: Regulating body art, body piercing, and tattooing practitioners, shops, and businesses.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kastama, Haugen, Fairley, Roach and Pflug).

Brief History:

Committee Activity:

Health Care & Wellness: 3/19/09, 3/26/09 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Requires a person who practices body art, body piercing, or tattooing to be licensed.
- Requires a person who operates a body art, body piercing, or tattooing business to be licensed.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 12 members: Representatives Cody, Chair; Driscoll, Vice Chair; Ericksen, Ranking Minority Member; Campbell, Clibborn, Green, Herrera, Hinkle, Kelley, Moeller, Morrell and Pedersen.

Minority Report: Do not pass. Signed by 1 member: Representative Bailey.

Staff: Jim Morishima (786-7191)

Background:

Body Artists, Body Piercers, and Tattoo Artists.

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.

Tattoo artists and electrologists must follow sterilization standards adopted by the Department of Health (DOH). Violation of these standards constitutes a misdemeanor (punishable by 90 days in jail, a fine of up to \$1,000, or both) and negligence per se; i.e., the plaintiff does not have to prove that there was a breach of duty in a negligence case. There are no similar requirements for body piercers or body artists.

There are no licensure requirements for tattoo artists, body piercers, or body artists.

The Uniform Regulation of Business and Professions Act.

The Uniform Regulation of Business and Professions Act (URBPA) governs the licensure and discipline of certain business professions. Unprofessional conduct under the URBPA includes:

- the commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or the operation of the person's business;
- misrepresentation or concealment of a material fact in obtaining, renewing, or reinstating a license;
- false, deceptive, or misleading advertising;
- incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another;
- the suspension, revocation, or restriction of a license to engage in any business or profession by any state, federal, or foreign jurisdiction;
- failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection;
- failure to comply with an order issued by the disciplinary authority;
- violating the provisions of the URBPA or the statutes or rules of a disciplinary authority;
- aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;
- practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;
- misrepresentation of any aspect of the conduct of the business or profession;
- failure to adequately supervise or oversee auxiliary staff;
- conviction of any gross misdemeanor or felony relating to the practice of the person's profession or operation of the person's business;
- interference with an investigation or disciplinary action; and
- engaging in an unlicensed practice.

Under the URBPA, the disciplinary authority may investigate possible incidences of unprofessional conduct and file charges against the license holder. A license holder may request a hearing from the disciplinary authority, which must be conducted under the Administrative Procedures Act. Upon a finding of unprofessional conduct, the disciplinary authority may issue an order providing for any of the following (or a combination thereof):

- revocation of the license for a period of time;
- suspension of the license for a fixed or indefinite term;
- restriction or limitation of the practice;

- satisfactory completion of a specific program of remedial education or treatment;
- monitoring of the practice in a manner directed by the disciplinary authority;
- censure or reprimand;
- probation;
- a fine not to exceed \$5,000 per violation; or
- denial of an initial or renewal license application.

A person who has been disciplined under the URBPA may appeal to the superior court under the Administrative Procedures Act.

License Suspension for Child Support Obligations.

When a person is in non-compliance with a child support order, the Department of Social and Health Services (DSHS) may certify that he or she is in non-compliance. Upon such certification, the non-compliant person is subject to the suspension of several licenses; e.g., a driver's license, fishing license, or hunting license. Once the person is back into compliance, the licenses may be reinstated.

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.

Summary of Amended Bill:

Beginning on July 1, 2010, no person may practice body art, body piercing, or tattooing, or operate a body art, body piercing, or tattooing shop or business, unless he or she has a license in good standing issued by the Department of Licensing (DOL). For purposes of the act:

- "Body art" is defined as the practice of invasive cosmetic adornment, including the use of branding and scarification and does not include health-related procedures performed by licensed practitioners.
- "Body piercing" is defined as the process of penetrating the skin or mucous membrane to insert an object, including jewelry, for cosmetic purposes and does not include ear piercing or health-related procedures performed by licensed practitioners.
- "Tattooing" is defined as to pierce or puncture the human skin with a needle or other instrument for the purpose of implanting an indelible mark, or pigment, into the skin.

Licenses relating to body art, body piercing, or tattooing are considered in "good standing" unless they have expired, been denied, been revoked, been suspended, or are held by a person who has not complied with an order from the Director of the DOL (Director) requiring the payment of restitution or a fine, or to acquire additional training. The Director must set fees for the issuance and renewal of the licenses, which must be higher for businesses than for individuals.

Licenses relating to body art, body piercing, or tattooing expire after one year, unless the Director has established a different expiration date in order to establish staggered renewal periods. Failure to renew by a license's renewal date subjects the license holder to a monetary penalty. A person who does not renew his or her license within one year of the expiration date will have his or her license cancelled and must submit a new application, pay the license fee, meet current licensing requirements, and pass any applicable examination before the license may be reinstated.

The Secretary of the Department of Health (Secretary) must adopt precautions against the spread of disease for body artists, body piercers, tattoo artists, and electrologists. Violation of the precautions is negligence per se. When adopting the precautions, the Secretary must consider federal and industry standards. The Director must establish minimum safety and sanitation standards for practitioners of body art, body piercing, or tattooing as determined by the DOH.

A body art, body piercing, or tattooing shop or business must:

- maintain an outside entrance separate from any used for sleeping or residential purposes;
- provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the shop or business;
- refrain from using any room used as part of the shop or business, except the toilet facilities, for residential purposes;
- meet all applicable zoning requirements;
- provide for safe storage and labeling of equipment and substances;
- meet all applicable fire codes;
- certify that the shop or business is covered by a public liability insurance policy in an amount not less than \$100,000 for combined bodily injury and property damage liability (proof of this insurance must accompany the shop or business' licensing application);
- obtain a certificate of registration from the Department of Revenue;
- post the shop or business' license in the reception area;
- post the licenses of the individuals working at the shop in each individual's work station; and
- meet any other safety or sanitation requirements established by the Director (the Director is authorized to consult with the State Board of Health and the Department of Labor and Industries when establishing any new requirements).

The Director must prepare a notice to consumers that must be provided to all licensed shops or businesses. At a minimum, the notice must state that body art, body piercing, and tattooing shops or businesses are required to be licensed, that shops or businesses are required to maintain minimum safety and sanitation standards, that customer complaints regarding shops or businesses may be reported to the Department, and a telephone number and address where complaints may be made.

The Director must inspect each body art, body piercing, or tattoo shop or business upon receipt of a written complaint or at least once every two years. The Director may enter any shop or business during business hours for purposes of inspection and may contract with

local health authorities to conduct the inspections. If the Director finds that the shop or business is out of compliance with applicable requirements, he or she must send written notice to the shop or business, which has a reasonable period of time to get back into compliance.

The URBPA governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensed body artists, body piercers, tattoo artists, and body art, body piercing, and tattoo shops and businesses. In addition to unprofessional conduct defined in the URBPA, the Director is authorized to take disciplinary action for violations of the CPA; the unlicensed practice of body art, body piercing, or tattooing; failure to display a body art, body piercing, or tattooing license; or violation of any other statutes or rules relating to body art, body piercing, or tattooing.

If, following a hearing, the Director finds that a person has violated the statutes or rules relating to body art, body piercing, or tattooing, the Director may:

- deny a license or renewal;
- revoke or suspend a license;
- impose a fine of no more than \$500 per violation;
- issue a reprimand or letter of censure;
- place the licensee on probation;
- restrict the licensee's scope of practice;
- require the licensee to make restitution or a refund; or
- require the licensee to obtain additional training or instruction.

Any person aggrieved by the refusal of the Director to issue or renew a license, by the revocation or suspension of a license, or by a penalty imposed for a violation, has the right to appeal the decision of the Director to the superior court of the county in which the person maintains his or her business. The appeal must be filed within 30 days of the Director's decision.

The DOL must suspend the license of any body artist, body piercer, or tattoo artist who the DSHS has certified as being in non-compliance with a child support order. If the person continues to meet all other requirements for reinstatement during the period of suspension, the DOL must automatically reinstate the license once the DSHS has certified that the license holder is back in compliance with the child support order.

Violations of the requirements relating to body artists, body piercers, and tattooists violate the CPA.

Amended Bill Compared to Original Bill:

The amended bill:

- requires that the precautions against the spread of disease adopted by the Secretary cover the sterilization of "sharps" rather than "single-use disposable sharps and reusable sharps;"
- changes the definition of "body art" from "the practice of physical cosmetic adornment" to "the practice of invasive cosmetic adornment;"

- changes the definition of "tattooing" from "the introduction of an indelible mark, figure, or decorative design by inserting nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being for cosmetic or figurative purposes" to "to pierce or puncture the human skin with a needle or other instrument for the purpose of implanting an indelible mark, or pigment, into the skin;"
 - changes the definition of "tattoo artist" to be consistent with the new definition of "tattooing;"
 - clarifies that the DOL's authority to impose additional requirements on shops and businesses only applies to safety and sanitation requirements; and
 - adds body artists, body piercers, and tattoo artists to the section of the Uniform Regulation of Business and Professions Act (URBPA) that lists the businesses and professions covered by the URBPA.
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Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Sections 1-21, which establish the licensing program, take effect on July 1, 2010. Sections 22 and 23, which authorize the Director to take steps to ensure that the act is implemented by July 1, 2010, and provide codification instructions, take effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a health and safety measure. It establishes a licensing and inspection program for tattooing, body art, and body piercing, which could serve as a national model. This bill is funded by fees and will have no effect on the State General Fund. Hepatitis C is an epidemic. The disease is deadly and has no cure. Tattooing, body art, and body piercing are modes of transmission of this disease.

(Opposed) None.

Persons Testifying: Senator Kastama, prime sponsor; Kitty Candelaria, National Hepatitis C Institute; and Troy Amundson, Apocalypse Tattoo and Body Piercing.

Persons Signed In To Testify But Not Testifying: None.