

SENATE BILL REPORT

SHB 1085

As of March 11, 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: Passed House: 3/05/09, 96-1.

Committee Activity: Health & Long-Term Care:

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Edith Rice (786-7444)

Background: Sterilization Rules. 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, up to a \$1,000 fine, 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; that is 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

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- 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 Bill: Sterilization Rules. The 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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.