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**SUBSTITUTE SENATE BILL 5391**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Health & Long-Term Care (originally sponsored by Senators Kastama, Haugen, Fairley, Roach, and Pflug)

READ FIRST TIME 02/24/09.

1       AN ACT Relating to regulating body art, body piercing, and  
2       tattooing practitioners, shops, and businesses; amending RCW 70.54.340,  
3       5.40.050, and 43.24.150; adding a new chapter to Title 18 RCW; creating  
4       a new section; prescribing penalties; and providing an effective date.

5       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

16      NEW SECTION.   **Sec. 2.** The definitions in this section apply  
17      throughout this chapter and RCW 5.40.050 and 70.54.340 unless the  
18      context clearly requires otherwise.

1 (1) "Body art" means the practice of physical cosmetic body  
2 adornment including the use of branding and scarification. "Body art"  
3 also includes the intentional production of scars upon the body. "Body  
4 art" does not include any health-related procedures performed by  
5 licensed health care practitioners under their scope of practice.

6 (2) "Body piercing" means the process of penetrating the skin or  
7 mucous membrane to insert an object, including jewelry, for cosmetic  
8 purposes. "Body piercing" also includes any scar tissue resulting from  
9 or relating to the piercing. "Body piercing" does not include the use  
10 of stud and clasp piercing systems to pierce the earlobe in accordance  
11 with the manufacturer's directions and applicable United States food  
12 and drug administration requirements. "Body piercing" does not include  
13 any health-related procedures performed by licensed health care  
14 practitioners under their scope of practice, nor does anything in this  
15 act authorize a person registered to engage in the business of body  
16 piercing to implant or embed foreign objects into the human body or  
17 otherwise engage in the practice of medicine.

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

19 (4) "Individual license" means a body art, body piercing, or tattoo  
20 practitioner license issued under this chapter.

21 (5) "Location license" means a license issued under this chapter  
22 for a shop or business.

23 (6) "Shop or business" means a body art, body piercing, or  
24 tattooing shop or business.

25 (7) "Tattoo artist" means a person who practices the business of  
26 tattooing for a fee.

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

31 NEW SECTION. **Sec. 3.** In addition to any other duties imposed by  
32 law, including RCW 18.235.030 and 18.235.040, the director has the  
33 following powers and duties:

34 (1) To set all license, examination, and renewal fees in accordance  
35 with RCW 43.24.086;

36 (2) To adopt rules necessary to implement this chapter;

1 (3) To prepare and administer or approve the preparation and  
2 administration of licensing;

3 (4) To establish minimum safety and sanitation standards for  
4 practitioners of body art, body piercing, or tattooing as determined by  
5 the department of health;

6 (5) To maintain the official department record of applicants and  
7 licensees;

8 (6) To set license expiration dates and renewal periods for all  
9 licenses consistent with this chapter;

10 (7) To ensure that all informational notices produced and mailed by  
11 the department regarding statutory and regulatory changes affecting any  
12 particular class of licensees are mailed to each licensee in good  
13 standing in the affected class whose mailing address on record with the  
14 department has not resulted in mail being returned as undeliverable for  
15 any reason; and

16 (8) To make information available to the department of revenue to  
17 assist in collecting taxes from persons and businesses required to be  
18 licensed under this chapter.

19 NEW SECTION. **Sec. 4.** (1) It is unlawful for any person to engage  
20 in a practice listed in subsection (2) of this section unless the  
21 person has a license in good standing as required by this chapter. A  
22 license issued under this chapter is considered to be "in good  
23 standing" except when:

24 (a) The license has expired or has been canceled and has not been  
25 renewed in accordance with section 6 of this act;

26 (b) The license has been denied, revoked, or suspended under  
27 section 12 or 14 of this act, and has not been reinstated; or

28 (c) The license is held by a person who has not fully complied with  
29 an order of the director issued under section 12 of this act requiring  
30 the licensee to pay restitution or a fine, or to acquire additional  
31 training.

32 (2) The director may take action under RCW 18.235.150 and  
33 18.235.160 against any person who does any of the following without  
34 first obtaining, and maintaining in good standing, the license required  
35 by this chapter:

36 (a) Engages in the practice of body art, body piercing, or  
37 tattooing; or

1 (b) Operates a shop or business.

2 NEW SECTION. **Sec. 5.** (1) Upon completion of an application  
3 approved by the department and payment of the proper fee, the director  
4 shall issue the appropriate location license to any person who  
5 completes an application approved by the department, provides  
6 certification of insurance, and provides payment of the proper fee.

7 (2) The director may consult with the state board of health and the  
8 department of labor and industries in establishing additional  
9 requirements.

10 NEW SECTION. **Sec. 6.** (1) The director shall issue the appropriate  
11 license to any applicant who meets the requirements as outlined in this  
12 chapter. The director has the authority to set appropriate licensing  
13 fees for body art, body piercing, and tattooing shops and businesses  
14 and body art, body piercing, and tattooing individual practitioners.  
15 Licensing fees for individual practitioners must be set in an amount  
16 less than licensing fees for shops and businesses.

17 (2) Failure to renew a license by its expiration date subjects the  
18 holder to a penalty fee and payment of each year's renewal fee, at the  
19 current rate.

20 (3) A person whose license has not been renewed within one year  
21 after its expiration date must have his or her license canceled and  
22 must be required to submit an application, pay the license fee, meet  
23 current licensing requirements, and pass any applicable examination or  
24 examinations, in addition to the other requirements of this chapter,  
25 before the license may be reinstated.

26 (4) Nothing in this section authorizes a person whose license has  
27 expired to engage in a practice prohibited under section 4 of this act  
28 until the license is renewed or reinstated.

29 (5) Upon request and payment of an additional fee to be established  
30 by rule by the director, the director shall issue a duplicate license  
31 to an applicant.

32 NEW SECTION. **Sec. 7.** (1) Subject to subsection (2) of this  
33 section, licenses issued under this chapter expire as follows:

34 (a) A body art, body piercing, or tattooing shop or business

1 location license expires one year from issuance or when the insurance  
2 required by section 8(1)(g) of this act expires, whichever occurs  
3 first; and

4 (b) Body art, body piercing, or tattooing practitioner individual  
5 licenses expire one year from issuance.

6 (2) The director may provide for expiration dates other than those  
7 set forth in subsection (1) of this section for the purpose of  
8 establishing staggered renewal periods.

9 NEW SECTION. **Sec. 8.** (1) A body art, body piercing, or tattooing  
10 shop or business shall meet the following minimum requirements:

11 (a) Maintain an outside entrance separate from any rooms used for  
12 sleeping or residential purposes;

13 (b) Provide and maintain for the use of its customers adequate  
14 toilet facilities located within or adjacent to the shop or business;

15 (c) Any room used wholly or in part as a shop or business may not  
16 be used for residential purposes, except that toilet facilities may be  
17 used for both residential and business purposes;

18 (d) Meet the zoning requirements of the county, city, or town, as  
19 appropriate;

20 (e) Provide for safe storage and labeling of equipment and  
21 substances used in the practices under this chapter;

22 (f) Meet all applicable local and state fire codes; and

23 (g) Certify that the shop or business is covered by a public  
24 liability insurance policy in an amount not less than one hundred  
25 thousand dollars for combined bodily injury and property damage  
26 liability.

27 (2) The director may by rule determine other requirements that are  
28 necessary for safety and sanitation of shops or businesses. The  
29 director may consult with the state board of health and the department  
30 of labor and industries in establishing minimum shop and business  
31 safety requirements.

32 (3) Upon receipt of a written complaint that a shop or business has  
33 violated any provisions of this chapter, chapter 18.235 RCW, or the  
34 rules adopted under either chapter, or at least once every two years  
35 for an existing shop or business, the director or the director's  
36 designee shall inspect each shop or business. If the director  
37 determines that any shop or business is not in compliance with this

1 chapter, the director shall send written notice to the shop or  
2 business. A shop or business which fails to correct the conditions to  
3 the satisfaction of the director within a reasonable time is, upon due  
4 notice, subject to the penalties imposed by the director under RCW  
5 18.235.110. The director may enter any shop or business during  
6 business hours for the purpose of inspection. The director may  
7 contract with health authorities of local governments to conduct the  
8 inspections under this subsection.

9 (4) A shop or business shall obtain a certificate of registration  
10 from the department of revenue.

11 (5) Shop or business location licenses issued by the department  
12 must be posted in the shop or business's reception area.

13 (6) Body art, body piercing, and tattooing practitioner individual  
14 licenses issued by the department must be posted at the licensed  
15 person's work station.

16 NEW SECTION. **Sec. 9.** The director shall prepare and provide to  
17 all licensed shops or businesses a notice to consumers. At a minimum,  
18 the notice must state that body art, body piercing, and tattooing shops  
19 or businesses are required to be licensed, that shops or businesses are  
20 required to maintain minimum safety and sanitation standards, that  
21 customer complaints regarding shops or businesses may be reported to  
22 the department, and a telephone number and address where complaints may  
23 be made.

24 NEW SECTION. **Sec. 10.** It is a violation of this chapter for any  
25 person to engage in the commercial practice of body art, body piercing,  
26 or tattooing except in a licensed shop or business with the appropriate  
27 individual body art, body piercing, or tattooing license.

28 NEW SECTION. **Sec. 11.** In addition to the unprofessional conduct  
29 described in RCW 18.235.130, the director may take disciplinary action  
30 against any applicant or licensee under this chapter if the licensee or  
31 applicant:

32 (1) Has been found to have violated any provisions of chapter 19.86  
33 RCW;

34 (2) Has engaged in a practice prohibited under section 4 of this

1 act without first obtaining, and maintaining in good standing, the  
2 license required by this chapter;

3 (3) Has failed to display licenses required in this chapter; or

4 (4) Has violated any provision of this chapter or any rule adopted  
5 under it.

6 NEW SECTION. **Sec. 12.** If, following a hearing, the director finds  
7 that any person or an applicant or licensee has violated any provision  
8 of this chapter or any rule adopted under it, the director may impose  
9 one or more of the following penalties:

10 (1) Denial of a license or renewal;

11 (2) Revocation or suspension of a license;

12 (3) A fine of not more than five hundred dollars per violation;

13 (4) Issuance of a reprimand or letter of censure;

14 (5) Placement of the licensee on probation for a fixed period of  
15 time;

16 (6) Restriction of the licensee's authorized scope of practice;

17 (7) Requiring the licensee to make restitution or a refund as  
18 determined by the director to any individual injured by the violation;  
19 or

20 (8) Requiring the licensee to obtain additional training or  
21 instruction.

22 NEW SECTION. **Sec. 13.** Any person aggrieved by the refusal of the  
23 director to issue any license provided for in this chapter, or to renew  
24 the same, or by the revocation or suspension of any license issued  
25 under this chapter or by the application of any penalty under section  
26 12 of this act has the right to appeal the decision of the director to  
27 the superior court of the county in which the person maintains his or  
28 her place of business. The appeal must be filed within thirty days of  
29 the director's decision.

30 NEW SECTION. **Sec. 14.** The department shall immediately suspend  
31 the license of a person who has been certified under RCW 74.20A.320 by  
32 the department of social and health services as a person who is not in  
33 compliance with a support order. If the person has continued to meet  
34 all other requirements for reinstatement during the suspension,

1 reissuance of the license is automatic upon the department's receipt of  
2 a release issued by the department of social and health services  
3 stating that the licensee is in compliance with the order.

4 NEW SECTION. **Sec. 15.** The legislature finds that the practices  
5 covered by this chapter are matters vitally affecting the public  
6 interest for the purpose of applying the consumer protection act,  
7 chapter 19.86 RCW. A violation of this chapter is not reasonable in  
8 relation to the development and preservation of business and is an  
9 unfair or deceptive act in trade or commerce and an unfair method of  
10 competition for the purpose of applying the consumer protection act,  
11 chapter 19.86 RCW.

12 NEW SECTION. **Sec. 16.** The uniform regulation of business and  
13 professions act, chapter 18.235 RCW, governs unlicensed practice, the  
14 issuance and denial of licenses, and the discipline of licensees under  
15 this chapter.

16 NEW SECTION. **Sec. 17.** This act shall be known and may be cited as  
17 the "Washington body art, body piercing, and tattooing act."

18 NEW SECTION. **Sec. 18.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 **Sec. 19.** RCW 70.54.340 and 2001 c 194 s 3 are each amended to read  
23 as follows:

24 The secretary of health shall adopt by rule requirements, in  
25 accordance with nationally recognized professional standards, for  
26 precautions against the spread of disease, including the sterilization  
27 of needles and other instruments, including single-use disposable  
28 sharps, reusable sharps, and jewelry, employed by electrologists,  
29 persons engaged in the practice of body art, body piercing, and tattoo  
30 artists ((in accordance with nationally recognized professional  
31 ~~standards~~)). The secretary shall consider the ((universal)) standard  
32 precautions for infection control, as recommended by the United States  
33 centers for disease control, and guidelines for infection control, as



1 recommended by (~~the national environmental health association and the~~  
2 ~~alliance of professional tattooists,~~) national industry standards in  
3 the adoption of these sterilization requirements.

4 **Sec. 20.** RCW 5.40.050 and 2001 c 194 s 5 are each amended to read  
5 as follows:

6 A breach of a duty imposed by statute, ordinance, or administrative  
7 rule shall not be considered negligence per se, but may be considered  
8 by the trier of fact as evidence of negligence; however, any breach of  
9 duty as provided by statute, ordinance, or administrative rule relating  
10 to: (1) Electrical fire safety, (2) the use of smoke alarms, (3)  
11 sterilization of needles and instruments used by persons engaged in the  
12 practice of body art, body piercing, tattooing, or electrology, or  
13 other precaution against the spread of disease, as required under RCW  
14 70.54.350, or (4) driving while under the influence of intoxicating  
15 liquor or any drug, shall be considered negligence per se.

16 **Sec. 21.** RCW 43.24.150 and 2008 c 119 s 22 are each amended to  
17 read as follows:

18 (1) The business and professions account is created in the state  
19 treasury. All receipts from business or professional licenses,  
20 registrations, certifications, renewals, examinations, or civil  
21 penalties assessed and collected by the department from the following  
22 chapters must be deposited into the account:

- 23 (a) Chapter 18.11 RCW, auctioneers;
- 24 (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- 25 (c) Chapter 18.96 RCW, landscape architects;
- 26 (d) Chapter 18.145 RCW, court reporters;
- 27 (e) Chapter 18.165 RCW, private investigators;
- 28 (f) Chapter 18.170 RCW, security guards;
- 29 (g) Chapter 18.185 RCW, bail bond agents;
- 30 (h) Chapter 18.280 RCW, home inspectors;
- 31 (i) Chapter 19.16 RCW, collection agencies;
- 32 (j) Chapter 19.31 RCW, employment agencies;
- 33 (k) Chapter 19.105 RCW, camping resorts;
- 34 (l) Chapter 19.138 RCW, sellers of travel;
- 35 (m) Chapter 42.44 RCW, notaries public; (~~and~~)
- 36 (n) Chapter 64.36 RCW, timeshares; and

1       (o) Chapter 18.-- RCW (the new chapter created in section 23 of  
2 this act).

3       Moneys in the account may be spent only after appropriation.  
4 Expenditures from the account may be used only for expenses incurred in  
5 carrying out these business and professions licensing activities of the  
6 department. Any residue in the account shall be accumulated and shall  
7 not revert to the general fund at the end of the biennium.

8       (2) The director shall biennially prepare a budget request based on  
9 the anticipated costs of administering the business and professions  
10 licensing activities listed in subsection (1) of this section, which  
11 shall include the estimated income from these business and professions  
12 fees.

13       NEW SECTION.    Sec. 22.    The director of licensing and the  
14 department of health, beginning on the effective date of this section,  
15 may take such steps as are necessary to ensure that this act is  
16 implemented July 1, 2010.

17       NEW SECTION.    Sec. 23.    Sections 1 through 18 of this act  
18 constitute a new chapter in Title 18 RCW.

19       NEW SECTION.    Sec. 24.    Sections 1 through 21 of this act take  
20 effect July 1, 2010.

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