
SENATE BILL 5391

State of Washington 61st Legislature 2009 Regular Session

By Senators Kastama, Haugen, Fairley, Roach, and Pflug

Read first time 01/21/09. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to regulating tattooing and body piercing
2 businesses; amending RCW 70.54.340, 5.40.050, and 43.24.150; adding a
3 new chapter to Title 18 RCW; creating a new section; prescribing
4 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 unless the context clearly
18 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 medical procedures performed by a licensed
5 physician or medical practitioner.

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 medical procedures performed by a licensed physician or medical
14 practitioner, nor does anything in this act authorize a person
15 registered to engage in the business of body piercing to implant or
16 embed foreign objects into the human body or otherwise engage in the
17 practice of medicine.

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

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

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

25 NEW SECTION. **Sec. 3.** (1) A person who practices body art, body
26 piercing, or tattooing shall comply with the rules adopted by the
27 department of health under RCW 70.54.340.

28 (2) A person who practices body art, body piercing, or tattooing
29 shall comply with the rules adopted by the department of licensing,
30 after consulting with the department of health, which rules must
31 include provisions relating to compliance with:

32 (a) Universal precautions for infection control, as recommended by
33 the United States centers for disease control, and guidelines for
34 infection control, as recommended by the national environmental health
35 association and the alliance of professional tattooists;

36 (b) Sterilization procedures using sterilization equipment approved

1 by the United States food and drug administration for the purpose of
2 sterilization, and adequate in size to accommodate necessary utensils
3 and instruments; and

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

5 (3) A person engaging in the practice of body art, body piercing,
6 or tattooing shall, within seventy-two hours of becoming aware of the
7 occurrence of any infection or allergic reaction resulting from body
8 art, body piercing, or tattooing performed by the person, provide a
9 written report to the department of health and the department of
10 licensing containing the following information:

11 (a) The name of the infected client;

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

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

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

18 (e) The location of the infection;

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

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

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

25 NEW SECTION. **Sec. 4.** No person, firm, or corporation may act or
26 engage in the practice of body art, body piercing, or tattooing unless,
27 prior to engaging in the business of body art, body piercing, or
28 tattooing, the person, firm, or corporation registers with the director
29 under this chapter and rules adopted under this chapter.

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

32 (2) The director shall issue duplicate registrations upon payment
33 of a duplicate registration fee to valid registration holders operating
34 more than one office. The duplicate registration fee for each office
35 must be an amount equal to the original registration fee.

36 (3) No registration is assignable or transferable.

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

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

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

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

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

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

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

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

27 (3) The director may refuse to renew a registration for any of the
28 grounds set out under RCW 18.235.130, and where the past conduct of the
29 applicant affords reasonable grounds for belief that the applicant will
30 not carry out the applicant's duties in accordance with law and with
31 integrity and honesty. The director shall promptly notify the
32 applicant in writing by certified mail of the directors intent to
33 refuse to renew the registration. The registrant may request a hearing
34 on the refusal as provided in RCW 18.235.050. The director may permit
35 the registrant to honor commitments already made to its customers, but
36 no new commitments may be incurred.

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

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

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

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

13 (d) Has failed to display the registration as provided in this
14 chapter.

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

21 (3) The director shall immediately suspend the license or
22 certificate of a person who has been certified pursuant to RCW
23 74.20A.320 by the department of social and health services as a person
24 who is not in compliance with a support order. If the person has
25 continued to meet all other requirements for reinstatement during the
26 suspension, reissuance of the license or certificate must be automatic
27 upon the director's receipt of a release issued by the department of
28 social and health services stating that the licensee is in compliance
29 with the order.

30 NEW SECTION. **Sec. 8.** (1) A nonresident person registered as
31 engaging in the business of body art, body piercing, or tattooing
32 soliciting business or engaging in the business of body art, body
33 piercing, or tattooing in the state of Washington, by mail, telephone,
34 or otherwise, either directly or indirectly, is deemed, absent any
35 other appointment, to have appointed the director to be the
36 nonresident's true and lawful attorney upon whom may be served any
37 legal process against that nonresident arising or growing out of a

1 transaction involving the practice of body art, body piercing, or
2 tattooing. That solicitation signifies the nonresident's agreement
3 that process against the nonresident that is served as provided in this
4 chapter is of the same legal force and validity as if served personally
5 on the nonresident.

6 (2) Service of process upon a nonresident must be made by leaving
7 a copy of the process with the director. The director, by rule, must
8 determine the fee for the service of process. That service is
9 sufficient service upon the nonresident if the plaintiff or plaintiff's
10 attorney of record sends notice of the service and a copy of the
11 process by certified mail before service or immediately after service
12 to the defendant at the address given by the nonresident in a
13 solicitation furnished by the nonresident, and the sender's post office
14 receipt of sending and the plaintiff's or plaintiff's attorney's
15 affidavit of compliance with this section are returned with the process
16 in accordance with Washington superior court civil rules.
17 Notwithstanding the foregoing requirements, however, once service has
18 been made on the director as provided in this section, in the event of
19 failure to comply with the requirement of notice to the nonresident,
20 the court may order that notice be given that will be sufficient to
21 apprise the nonresident.

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

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

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

28 (3) Upon receipt of a complaint, to inspect and audit the books and
29 records of a person engaging in the business of body art, body
30 piercing, or tattooing. The person engaging in the business of body
31 art, body piercing, or tattooing shall immediately make available to
32 the director those books and records as may be requested at the place
33 of business of the person engaging in the business of body art, body
34 piercing, or tattooing, or at a location designated by the director.
35 For that purpose, the director must have full and free access to the
36 office and places of business of the person engaging in the business of
37 body art, body piercing, or tattooing during regular business hours;

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

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

5 (1) Annually, or more frequently, make public or private
6 investigations within or without this state as the director deems
7 necessary to determine whether a registration should be subject to
8 disciplinary action, or whether a person has violated or is about to
9 violate this chapter or a rule adopted or order issued under this
10 chapter, or to aid in the enforcement of this chapter or in the
11 prescribing of rules and forms of this chapter;

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

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

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

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

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

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

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

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

12 NEW SECTION. **Sec. 15.** In addition to any other penalties or
13 remedies under chapter 19.86 RCW, a person who is injured by a
14 violation of this chapter may bring an action for recovery of actual
15 damages, including court costs and attorneys' fees. No provision in
16 this chapter may be construed to limit any right or remedy provided
17 under chapter 19.86 RCW.

18 NEW SECTION. **Sec. 16.** The legislature finds that the practices
19 governed by this chapter are matters vitally affecting the public
20 interest for the purpose of applying the consumer protection act,
21 chapter 19.86 RCW. Any violation of this chapter is not reasonable in
22 relation to the development and preservation of business and is an
23 unfair and deceptive act or practice and unfair method of competition
24 in the conduct of trade or commerce in violation of RCW 19.86.020.
25 Remedies provided by chapter 19.86 RCW are cumulative and not
26 exclusive.

27 NEW SECTION. **Sec. 17.** All information, documents, and reports
28 filed with the director under this chapter are matters of public record
29 and must be open to public inspection, subject to reasonable
30 regulation. The director may make public, on a periodic or other
31 basis, the information as may be necessary or appropriate in the public
32 interest concerning the registration, reports, and information filed
33 with the director or any other matters to the administration and
34 enforcement of this chapter.

1 NEW SECTION. **Sec. 18.** The uniform regulation of business and
2 professions act, chapter 18.235 RCW, governs unlicensed practice, the
3 issuance and denial of licenses, and the discipline of licensees under
4 this chapter.

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

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

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

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

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

35 (1) The business and professions account is created in the state

1 treasury. All receipts from business or professional licenses,
2 registrations, certifications, renewals, examinations, or civil
3 penalties assessed and collected by the department from the following
4 chapters must be deposited into the account:

- 5 (a) Chapter 18.11 RCW, auctioneers;
- 6 (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- 7 (c) Chapter 18.96 RCW, landscape architects;
- 8 (d) Chapter 18.145 RCW, court reporters;
- 9 (e) Chapter 18.165 RCW, private investigators;
- 10 (f) Chapter 18.170 RCW, security guards;
- 11 (g) Chapter 18.185 RCW, bail bond agents;
- 12 (h) Chapter 18.280 RCW, home inspectors;
- 13 (i) Chapter 19.16 RCW, collection agencies;
- 14 (j) Chapter 19.31 RCW, employment agencies;
- 15 (k) Chapter 19.105 RCW, camping resorts;
- 16 (l) Chapter 19.138 RCW, sellers of travel;
- 17 (m) Chapter 42.44 RCW, notaries public; (~~and~~);
- 18 (n) Chapter 64.36 RCW, timeshares; and
- 19 (o) Chapter 18.-- RCW (the new chapter created in section 24 of
20 this act).

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

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

31 NEW SECTION. **Sec. 22.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

35 NEW SECTION. **Sec. 23.** The director of licensing, beginning on the

1 effective date of this section, may take such steps as are necessary to
2 ensure that this act is implemented July 1, 2010.

3 NEW SECTION. **Sec. 24.** Sections 1 through 18 and 22 of this act
4 constitute a new chapter in Title 18 RCW.

5 NEW SECTION. **Sec. 25.** Sections 1 through 22 of this act take
6 effect July 1, 2010.

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