

HOUSE BILL REPORT

HB 2369

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to regulation of permanent cosmetics under the Washington body art, body piercing, and tattooing act.

Brief Description: Concerning regulation of permanent cosmetics under the Washington body art, body piercing, and tattooing act.

Sponsors: Representatives Ryu and Appleton.

Brief History:

Committee Activity:

Business & Financial Services: 1/10/18, 1/16/18 [DPS].

Brief Summary of Substitute Bill

- Adds permanent cosmetics to the Washington Body Art, Body Piercing, and Tattooing Act (Act), and renames the Act accordingly.
- Requires an applicant for a permanent cosmetics license to have completed a permanent cosmetics curriculum, which must include a minimum of 100 hours of training on permanent cosmetics taught by a permanent cosmetics trainer.
- Includes an exemption from the 100 hours of training for a person with a license or endorsement issued by the Department of Licensing (DOL) to perform permanent cosmetics that is in good standing on the effective date of the Act.
- Establishes requirements for permanent cosmetics trainers and grants rule-making authority to the DOL to establish additional requirements.
- Adds, from rule to statute, the requirements that a person be age 18 or over and provide proof the person has a blood-borne pathogens certification to qualify for a body art, body piercing, tattoo, or permanent cosmetics license.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kirby, Chair; Reeves, Vice Chair; Barkis, Bergquist, Blake, Jenkin, McCabe, Santos and Stanford.

Minority Report: Do not pass. Signed by 1 member: Representative Vick, Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Walsh, Assistant Ranking Minority Member.

Staff: Peter Clodfelter (786-7127).

Background:

The Department of Licensing (DOL) licenses and regulates practitioners of body art, body piercing, and tattooing pursuant to the Washington Body Art, Body Piercing, and Tattooing Act (Act). An individual must be licensed, as well as the shop or business at which the licensed individual engages in the practice of body art, body piercing, or tattooing.

Body art is the practice of invasive cosmetic adornment including the use of branding and scarification. Body piercing is the process of penetrating the skin or mucous membrane to insert an object, including jewelry, for cosmetic purposes. "Tattooing" means 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. Certain limited exclusions apply to these definitions.

The DOL's powers and duties pertaining to the commercial practice of body art, body piercing, and tattooing include, among others, setting license, examination, and renewal fees, adopting rules necessary to implement the Act, and establishing minimum safety and sanitation standards for practitioners, as determined by the Department of Health.

It is unlawful for any person to engage in the practice of body art, body piercing, or tattooing, or to to operate a shop or business for that purpose, unless the person has a license in good standing. The DOL may take action pursuant to the Uniform Regulation of Business and Professions Act to investigate or discipline a person who, without a license, engages in the practice of body art, body piercing, or tattooing, or operates a shop or business. The DOL may also discipline an applicant or licensee for violating the Uniform Regulation of Business and Professions Act or the Consumer Protection Act.

The minimum requirements for a shop or business license include the following:

- completing an application developed by the DOL and paying the license fee established by the DOL;
- maintaining an outside entrance separate from rooms used for sleeping and residential purposes;
- providing and maintaining for the use of customers, adequate toilet facilities located within or adjacent to the shop or business;

- ensuring any room used wholly or in part as a shop or business is not used for residential purposes, except that toilet facilities may be used for both residential and business purposes;
- providing for safe storage and labeling of equipment; and
- certifying 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.

Rules developed by the DOL require an applicant for an individual license to provide proof of blood-borne pathogen certification. Pursuant to those rules, a person must hold the certification from a training course with standards in compliance with federal Occupational Health and Safety Administration rules at 29 C.F.R. 1910.1030, which establish duties, practices, and procedures pertaining to all occupation exposure to blood or other potentially infectious materials in a workplace.

Upon receipt of a written complaint that a shop or business has violated the Act or rules, or at least once every two years for an existing shop or business, the DOL must inspect each shop or business. If the DOL determines a shop or business is not in compliance with the Act, the DOL must send written notice to the shop or business. A shop or business that fails to correct the conditions to the satisfaction of the DOL within a reasonable time is, upon due notice, subject to the penalties imposed by the DOL in accordance with the Uniform Regulation of Business and Professions Act. The DOL may enter any shop or business during business hours for the purpose of inspection, and may contract with health authorities of local governments to conduct the required inspections.

It is a violation of the Act for a person to engage in the commercial practice of body art, body piercing, or tattooing except in a licensed shop or business with the appropriate individual body art, body piercing, or tattooing license. Following a hearing, if the DOL finds any person or an applicant or licensee has violated any provision of the Act or rules, the DOL may impose one or more of the following penalties:

- denial of a license or renewal, or revocation or suspension of a license;
- a fine of not more than \$500 per violation;
- issuance of a reprimand or letter of censure;
- placement of the licensee on probation for a fixed period of time or restriction of the licensee's authorized scope of practice;
- requiring the licensee to make restitution or a refund as determined by the DOL to any individual injured by the violation; or
- requiring the licensee to obtain additional training or instruction.

Any person aggrieved by the refusal of the DOL to issue any license or to renew a license, or by the revocation or suspension of a license, or by the application of any of the penalties listed above, may appeal the decision to superior court. An appeal must be filed within 30 days of the DOL's decision.

The DOL must immediately suspend any license issued under the Act if the DOL receives information that the license holder has not complied with the requirement to disable the ability of automatic-teller machines and point-of-sale machines located on their business premises to accept electronic benefit cards. Also, the DOL must suspend the license of a

person who has been certified by the Department of Social and Health Services as a person who is not in compliance with a support order.

A violation of the Act is considered a violation of the Consumer Protection Act.

An applicant with military training or experience satisfies the training or experience requirements of the Act unless the director determines the military training or experience is not substantially equivalent to the standards of this state.

The license application forms and regulations developed by the DOL include the practice of permanent cosmetics as a distinct type of tattooing, body art, or body piercing regulated under the Act.

Summary of Substitute Bill:

Permanent cosmetics is added to the Washington Body Art, Body Piercing, and Tattooing Act. The Washington Body Art, Body Piercing, and Tattooing Act is renamed the Washington Body Art, Body Piercing, Tattooing, and Permanent Cosmetics Act (Act). "Permanent cosmetics" is defined as the process of using tattooing techniques to apply permanent eyebrows, eyeliner, lip liner, lip color, hair follicles, or scar camouflage, to improve or restore a person's appearance. It also includes the repigmentation of skin by a permanent cosmetics artist following an initial application of permanent eyebrows, eyeliner, lip liner, lip color, hair follicles, or scar camouflage through the use of tattooing techniques. It is established that permanent cosmetics is a form of tattooing.

A permanent cosmetics artist is a person who uses tattooing techniques to apply permanent eyebrows, eyeliner, lip liner, lip color, hair follicles, or scar camouflage, to improve or restore a person's appearance. All of the requirements applicable to tattoo, body art, and body piercing practitioners, and shops or businesses, are applicable to permanent cosmetics artists and shops or businesses. However, the additional requirement of completing a permanent cosmetics curriculum applies to applicants for a permanent cosmetics artist license.

A permanent cosmetics curriculum is defined as training required pursuant to rules adopted by the Department of Licensing (DOL), which must include a minimum of 100 hours of training on permanent cosmetics taught by a permanent cosmetics trainer who is approved by the DOL. To qualify as a permanent cosmetics trainer, a person must hold a current license as a permanent cosmetics artist and have held a permanent cosmetics artist license for at least five consecutive years.

A person with a license or endorsement to perform permanent cosmetics issued by the DOL, that is in good standing on the effective date of the Act, is not required to complete a permanent cosmetics curriculum in order to be issued a permanent cosmetics license or to renew such a license.

The following license requirements for individual body art, body piercing, tattoo, and permanent cosmetics artists are moved from the DOL's rules to statute: (1) a person must be

age 18 or over; and (2) a person must provide proof the person holds a blood-borne pathogens certification from a training course with standards in compliance with federal Occupational Health and Safety Administration rules.

Substitute Bill Compared to Original Bill:

It is established that a person with a license or endorsement to perform permanent cosmetics issued by the Department of Licensing, that is in good standing on the effective date of the act, is not required to complete a permanent cosmetics curriculum in order to be issued a permanent cosmetics license or to renew such a license. An effective date of January 1, 2019, is added.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 16, 2018.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2019.

Staff Summary of Public Testimony:

(In support) This is an important consumer protection bill to regulate the practice of permanent cosmetics, and is a result of work by stakeholders in the industry as well as the Department of Licensing (DOL). Although the DOL regulates permanent cosmetics artists currently through its administrative rules adopted under the Washington Body Art, Body Piercing, and Tattooing Act, this bill expressly adds permanent cosmetics to the law. Tattoo artists and people who are currently licensed as permanent cosmetics artists by the DOL will not be affected by the bill and will not have to complete the permanent cosmetics curriculum of at least 100 hours of training. There is a national training course with 100 hours that would satisfy the requirement in the bill for people who want to be licensed who currently are not. Washington has minimal requirements to engage in the commercial practice of permanent cosmetics or the commercial practice of tattooing, body piercing, and body art. Currently there are zero educational requirements and this creates a risk to the public. For comparison, cosmetology licensing requires around 1,600 hours of training, barbers require about 1,000 hours of training, skin care practitioners require around 750 hours of training, and nail technicians require around 600 hours of training. There are public health and safety concerns with permanent cosmetics because there is such a low barrier to entry. Although the industries of tattooing, body piercing, body art, and permanent cosmetics share similarities, they have all developed independent of each other, and it is time to refine the regulatory framework. There is a real need for adequate training programs for permanent cosmetics, which the bill will address. Currently, out-of-state companies come to Washington for a day or two and charge people large amounts of money for a short amount of training, which is insufficient to gain the required skills. Foreign companies also offer training programs over the Internet, which do not provide the training actually required to perform this practice well. As a result, people are being disfigured. The only way to reverse damage is with painful and expensive laser removal of the permanent cosmetics. Some people call permanent cosmetics temporary tattoos but this is inaccurate, it is permanent and is a form of tattooing.

(Opposed) This bill has problems that need work, and will create a new barrier to entry in the field of permanent cosmetics and will harm practitioners as well as trainers. This is about creating barriers to entry rather than public safety. One problem is that the wording of the types of authorized services for permanent cosmetics artists is too restrictive and limited, and there are other problems. It is also unclear whether existing practitioners of permanent cosmetics are grandfathered in under the bill. Permanent cosmetics artists are often working or single mothers who want to increase their family's income. Many students take their training seriously and are adequately prepared to practice permanent cosmetics commercially. Although it is not mandatory, many people go above and beyond the current requirements and have invested money in training and building a business. People are already paying for insurance, licensing fees, shop fees, and other expenses, and this just adds to the costs of this profession. There should be a cap on how much a trainer may charge if training is now required. If the bill moves forward, it is also necessary to further define what is required within the training other than the requirement that it be 100 hours. The reports of problems and complaints in this industry are overblown. Consumers already have a remedy if they are injured, they can sue the practitioner and the practitioner has insurance. If there are trainers or schools for permanent cosmetics that are bad actors, the state should just go after those schools rather than burdening the individual practitioners. This will result in less tax revenue for the state if people are forced out of business or are unable to start a business. Former President Obama's administration issued a report in 2014 calling on states to reduce occupational licensing burdens, and this bill takes the opposite approach by enacting new barriers. As explained in the 2014 report, immigrants often face the brunt of the patchwork of state occupational licensing requirements and must complete duplicate training. And further, occupational licensing often does not yield the health and safety benefits promised. The bill has holes in it and will put people out of work.

(Other) Last year the DOL began looking looking at existing rules on permanent cosmetics, and has since worked with stakeholders on their development of this bill. The DOL asks that a January 1, 2019, effective date be added to enable time for rulemaking. The bloodborne-pathogens certification currently required under the DOL's rules, which the bill adds to law, must be completed annually (i.e., a person must complete a new course each year). The DOL currently licenses permanent cosmetics artists, and any existing licensees will not have to complete the permanent cosmetics curriculum of 100 hours, that requirement is for future licensees not licensed when the bill becomes effective.

Persons Testifying: (In support) Representative Ryu, prime sponsor; Penny Rudy, Chrysalis Clinic of Permanent Cosmetics; Troy Amundson; Christy Lillard, Damask Tattoo, Laughing Buddha Tattoo and Body Piercing; and Karly Williams, Klassy Permanent Cosmetics.

(Opposed) Anna Kellogg; Dawn Hunter; Keely Clevenger; Tammy Kelly, Forever Pretty Permanent Cosmetics; David Nguyen, iBrows Academy; and Todd Myers, Washington Policy Center.

(Other) Stephanie Sams and Susan Colard, Department of Licensing.

Persons Signed In To Testify But Not Testifying: None.