

HOUSE BILL REPORT

HB 2109

As Reported by House Committee On:
Consumer Protection & Business
Appropriations

Title: An act relating to the regulation of permanent cosmetics.

Brief Description: Regulating permanent cosmetics.

Sponsors: Representatives Ryu, Eslick, Reed and Reeves.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/16/24, 1/24/24 [DPS];
Appropriations: 2/2/24, 2/5/24 [DP2S(w/o sub CPB)].

Brief Summary of Second Substitute Bill

- Creates new professional licenses for the practices of permanent cosmetics, enhanced permanent cosmetics, and corrective enhanced permanent cosmetics administered by the Department of Licensing under the Cosmetologists, Hair Designers, Barbers, Manicurists, and Estheticians Act.
- Establishes criminal penalties for practicing corrective, enhanced, or permanent cosmetics on a person under the age of 18.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Walen, Chair; Reeves, Vice Chair; Robertson, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Connors, Corry, Hackney, Ryu, Santos and Volz.

Staff: Michelle Rusk (786-7153).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Body Art, Body Piercing, and Tattooing.

The Department of Licensing (DOL) regulates body art, body piercing, and tattooing licenses under the Washington Body Art, Body Piercing, and Tattooing Act (Tattooing Act). It is unlawful for any person to engage in these practices or operate a shop doing the same without a license. Body art is the practice of invasive cosmetic adornment, including use of branding and scarification; body piercing is the penetration of skin or mucous membrane to insert an object for cosmetic purposes; and tattooing is the piercing or puncturing of the human skin with a needle for purposes of implanting an indelible mark or pigment.

The DOL sets licensing fees for individual licenses, and location licenses for shops. An applicant for an individual license must complete an application, complete blood-borne pathogen training, and pay a licensing fee. Practitioner licenses must be posted in each practitioner's work station. Individual licenses expire one year from issuance, and if a license has not been renewed within one year after its expiration date, the license must be cancelled. The person must submit an application, pay the license fee, and meet any other established licensing requirements to have the license reinstated.

Applicants for a location license for a body art, body piercing, and/or tattooing shop must complete an application, pay a licensing fee, carry public liability insurance policies, comply with zoning and fire codes, and meet safety and sanitation standards. Location licenses for shops must be posted in a reception area. Shop licenses expire one year from issuance or when the shop's insurance expires, whichever comes first.

The DOL may take action against a person who engages in body art, body piercing, or tattooing, or operates a shop without a license or with a license that is not in good standing.

The DOL must establish safety and sanitation standards for body art, body piercing, or tattooing practitioners as determined by the Department of Health. The DOL must also provide all businesses with a notice to customers stating that all body art, body piercing, and tattoo businesses must be licensed, comply with safety and sanitation standards, and customer complaints can be made to the DOL.

Summary of Substitute Bill:

Permanent Cosmetics and Enhanced Permanent Cosmetics Licenses Established.

Licenses are established and required for the practice of permanent cosmetics, the practice of enhanced permanent cosmetics, and the practice of corrective enhanced permanent cosmetics administered by the DOL under the Cosmetologists, Hair Designers, Barbers, Manicurists, and Estheticians Act (Cosmetology Act):

- The practice of permanent cosmetics includes the piercing or puncturing of the human skin with a needle or other instrument to apply permanent eyebrows, hair follicles, or scar camouflage for purposes of improving or restoring a person's appearance. A practitioner is a permanent cosmetics artist.
- The practice of enhanced permanent cosmetics includes the scope of practice for permanent cosmetics but also includes the piercing or puncturing of mucous membranes and areas adjacent to mucous membranes for applying eyeliner, lip liner, and lip color. Practitioners are enhanced permanent cosmetics artists.
- The practice of corrective enhanced permanent cosmetics includes the scope of practice for enhanced and permanent cosmetics but also includes performing corrective procedures to modify previously performed enhanced or permanent cosmetics procedures. Practitioners are corrective enhanced permanent cosmetics artists.

It is prohibited under the Cosmetology Act to practice corrective, enhanced, or permanent cosmetics on any person under the age of 18.

Individual Licenses.

New and separate licensing requirements are established for the practice of corrective, enhanced, or permanent cosmetics. An applicant for an individual license must complete an application, pay proper licensing fees and:

- be 18 years of age, or 16 years of age under specified circumstances;
- have graduated from a school, including a licensed permanent cosmetics program, in a curriculum approved by the DOL Director;
- obtain a bloodborne pathogen certification; and
- receive a passing grade on an applicable examination.

Schools include "permanent cosmetics programs," which are any programs exclusively offering curriculum of instruction in enhanced and/or permanent cosmetics and are licensed under the Cosmetology Act. The required school curriculum must include: (1) 100 hours for permanent cosmetics; (2) 200 hours for enhanced permanent cosmetics artists; or (3) 300 hours for corrective enhanced permanent cosmetics. Individuals enrolled in one of the foregoing curriculum may take the applicable examination when they are within 50 hours of completion of their respective curriculum. Additionally, individuals licensed as cosmetologists, hair designers, barbers, manicurists, estheticians, or master estheticians may receive up to 50 hours of credit in a corrective, enhanced, or permanent cosmetics curriculum, after submitting documentation of their experience.

Licenses expire two years from issuance. Persons licensed in good standing in a different state or jurisdiction of the United States are eligible for examination in Washington if the applicant submits the requisite application and fee, and provides proof to the DOL Director of their license in good standing in that jurisdiction.

Instructors.

New and separate requirements are established for instructors of corrective, enhanced, or permanent cosmetics, who must:

- provide classroom theory training on corrective, enhanced, or permanent cosmetics to individuals in a curriculum approved by the DOL Director;
- hold a license as an enhanced or permanent cosmetics artist, or have held an equivalent license issued by the DOL under the Tattooing Act for the five consecutive years before this act; and
- demonstrate five consecutive years of performing enhanced and/or permanent cosmetics procedures, or hold an instructor license in cosmetology, hair design, barbering, manicuring, esthetics, and/or master esthetics.

License Transition.

Procedures are established to allow for a transition from licensing under the Tattooing Act to a license under the Cosmetology Act:

- prior to December 31, 2026, any person holding a license issued by the DOL under the Tattooing Act may be licensed as an enhanced or permanent cosmetics artist after paying the appropriate licensing fee and demonstrating that they have held their license in good standing for the prior three consecutive years; and
- any enhanced or permanent cosmetics licensee wishing to renew a license granted under the foregoing authority must provide proof acceptable to the DOL of the person's certifications to perform the enhanced and/or permanent cosmetics procedures they perform. The DOL may establish rules for recognizing certifications.

Permanent Cosmetics Artist Shops.

New and separate requirements are established for permanent cosmetics shops, which are any building or structure, other than a school, where the commercial practice of corrective, enhanced, or permanent cosmetics is conducted. A permanent cosmetics shop must obtain a location license and:

- maintain a separate outside entrance from any room used for sleeping or residential purposes;
- provide and maintain adequate toilet facilities within or adjacent to the permanent cosmetics shop;
- meet zoning and fire code requirements;
- provide for safe storage and labeling of equipment and substances used;
- certify that the shop is covered by a public liability insurance policy in an amount not less than \$100,000;
- obtain a certificate of registration from the Department of Revenue; and
- make visible to the public the permanent cosmetics shop location license and individual licenses at an artist's work station.

The DOL Director may inspect a shop upon written complaint that it is violating provisions of the Cosmetology Act and, if necessary, issue penalties for continued noncompliance after notice of the noncompliance. Licenses expire one year from issuance, or when the required insurance expires, whichever occurs first.

Department of Licensing Authority.

The DOL is given authority to establish minimum safety and sanitation requirements for schools, including permanent cosmetics programs; corrective, enhanced, and permanent cosmetics artists; and permanent cosmetics shops. The practices of corrective, enhanced, and permanent cosmetics are made subject to the Uniform Regulation of Business and Professions Act, and the DOL Director has authority to take disciplinary action against individuals practicing corrective, enhanced, and/or permanent cosmetics, or operating a shop without a license, or performing the practices of corrective, enhanced, or permanent cosmetics on an individual under the age of 18.

Rulemaking must be completed no later than June 30, 2025.

Additional Changes.

The Cosmetology Act is renamed as the Washington Cosmetologists, Hair Designers, Barbers, Manicurists, Estheticians, and Permanent Cosmetics Act. The Cosmetology, Hair Design, Barbering, Esthetics, and Manicuring Advisory Board is renamed as the state Cosmetology, Hair Design, Barbering, Esthetics, Master Esthetics, Manicuring, Permanent Cosmetics, Enhanced Permanent Cosmetics, and Corrective Enhanced Permanent Cosmetics Advisory Board, and one position is added to the board. A representative from an approved permanent cosmetics shop and from the enhanced and permanent cosmetics industry are added to the membership of the board, and one of the seven practicing licensee members must hold a corrective, permanent, or enhanced permanent cosmetics license.

Other changes include:

- It is a misdemeanor to perform corrective, enhanced, or permanent cosmetics on a minor, though it is a defense if a bona fide attempt was made to ascertain an individual's true age.
- The definition of "tattooing" in the Tattooing Act is modified to exclude the practice of permanent cosmetics, the practice of enhanced permanent cosmetics, and the practice of corrective enhanced permanent cosmetics.
- A violation of corrective, enhanced, or permanent cosmetics laws or rules constitutes negligence per se.
- Corrective, enhanced, and permanent cosmetics artists are made subject to the Secretary of Health of the Department of Health rules regarding precautions against the spread of disease, including sterilization of needles and instruments, and makes violations of the Secretary's rules a criminal misdemeanor.
- Permanent cosmetics shops are prohibited from accepting public assistance electronic benefits cards as payment for services .
- Corrective, enhanced, and permanent cosmetics are added to the definition of "sale at retail" for purposes of applying the Business and Occupation statute.

Substitute Bill Compared to Original Bill:

The proposed substitute bill:

- creates a new and separate license for the practice of corrective enhanced permanent cosmetics;
- adds one member to the Cosmetology, Hair Design, Barbering, Esthetics, Master Esthetics, Permanent Cosmetics, Enhanced Permanent Cosmetics, and Corrective Enhanced Permanent Cosmetics Advisory Board;
- allows corrective, enhanced, and permanent cosmetics license applicants to take applicable examinations when they are within 50 hours of completion of their respective curriculum;
- modifies the qualifications for instructors of corrective, enhanced, and permanent cosmetics;
- permits students over the age of 16 to take applicable examinations under specified circumstances;
- allows an individual enrolled in a corrective, enhanced, or permanent cosmetics curriculum to submit documentation of experience as a licensed cosmetologist, hair designer, barber, manicurist, esthetician, or master esthetician to receive up to 50 hours of credit; and
- requires rulemaking to be completed no later than June 30, 2025, and modifies the effective date to November 1, 2027, for provisions implementing the new license requirements.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 26, 2024.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) This effort is a continuation of efforts that began at least seven or eight years ago, to set some type of standard and training for permanent cosmetics. In an effort to enhance appearance, these permanent cosmetics practices tend to occur on the face, and impact many women. Currently, zero training is required for these practitioners, only a blood-borne pathogen certificate. There is literally no standard regarding how well a permanent cosmetics practitioner is trained to work on a customer's face. Untrained professionals do not know what they do not know, and poorly trained instructors are not able to properly train future practitioners. When done incorrectly, these procedures can be medically dangerous and disfiguring, but can also dramatically harm a recipient's self-image. This absence of standards is stark in comparison to cosmetologists who must have at least 1,600 hours of training. The curriculum requirements of 100, 200, and 300 hours, depending on the license, seems like a reasonable number of hours and will protect the public health. Additionally, those who have been practicing for years have the opportunity

to have their experience count under the new licensing requirements, allowing for a transition.

(Opposed) None.

Persons Testifying: Representative Cindy Ryu, prime sponsor; Molly Klipp, Carefree Beauty Permanent Makeup; Penny Rudy; D'Arcy Harrison, Cosmetologists of Washington United; Frank Trieu, Evergreen Beauty College; and Pamela Neighbors.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Consumer Protection & Business. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Staff: Ryan Blake (786-7303).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Consumer Protection & Business:

The Appropriations Committee recommended the addition of a provision making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This issue has been worked on for about seven years now. Currently practitioners are only required to have eight hours of training in bloodborne pathogens. Cosmetologists are required to have 1,600 hours of training. We are finding a balance of 100 hours minimum depending on the practice. This bill is seen as both a consumer protection issue and as a way of increasing the professionalism of the practitioners.

(Opposed) None.

(Other) Licensing is not always the appropriate form of regulation because it is stringent. It adds hurdles to aspiring professionals which costs time and money, and it reduces the number of professionals in the field by 27 percent. Licensing laws in Washington increase income inequality by 10 percent, and minorities are disproportionately excluded from these professions. Licensing is not effective at improving quality of services. The training requirements are not unreasonable, but this is the opposite of the national trend. Many states have reduced hours for cosmetology training.

Persons Testifying: (In support) Representative Cindy Ryu, prime sponsor.

(Other) Conor Norris.

Persons Signed In To Testify But Not Testifying: None.