

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1249 Session of 2013

INTRODUCED BY R. BROWN, BOBACK, CALTAGIRONE, COHEN, DAY, DEASY, DONATUCCI, FRANKEL, HARKINS, HEFFLEY, MAHER, MILLARD, MUNDY, MURT, QUINN, SCAVELLO AND WATSON, APRIL 23, 2013

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 3, 2013

AN ACT

1 Regulating tattoo, body-piercing and permanent-cosmetic artists;
2 limiting tongue splitting; providing for powers and duties of
3 the Department of Health; establishing the Body Art
4 Regulation Fund; and imposing penalties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Body Art
9 Establishment Regulation Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Apprentice." A person who performs the art of tattooing,
15 permanent cosmetics or body piercing under the direct
16 supervision of a practitioner in order to learn body art
17 procedures.

18 "Body art." The practice of physical body adornment in

1 permitted establishments by operators utilizing, but not limited
2 to, the following techniques:

3 (1) Body piercing.

4 (2) Tattooing.

5 (3) Permanent cosmetics.

6 "Body art establishment." A place or premise, ~~whether public~~ <--
7 ~~or private,~~ temporary or permanent in nature and location, where
8 body art, whether or not for profit, is performed.

9 "Body piercing." Puncturing or penetrating the skin for the
10 purpose of insertion of any object, including, but not limited
11 to, jewelry for cosmetic purposes. The term does not include ear
12 piercing or nail piercing.

13 "Department." The Department of Health of the Commonwealth.

14 "Equipment." All machinery, including fixtures, containers,
15 vessels, tools, devices, implements, furniture, display and
16 storage areas, sinks and all other apparatus and appurtenances
17 used in conjunction with the operation of a body art
18 establishment.

19 "Establishment." A physical place of business, permanent in
20 nature, and includes all areas used by a practitioner and the
21 practitioner's customers, including, but not limited to,
22 treatment areas, waiting areas and reception areas.

23 "Infectious disease." A disease of humans ~~or animals~~ that <--
24 results from a transmissible infection, whether or not patent,
25 apparent, inapparent, latent, clinical or subclinical.

26 "Operator." The owner or an owner's designee who has
27 ownership, control or custody of any place of business or
28 employment and manages the day-to-day operations of a body art
29 establishment.

30 "Person." An individual, partnership, corporation or

1 association.

2 "Permanent cosmetics." The implanting of inert pigments,
3 colors or dyes intradermally which results in permanent
4 alteration of tissue to gain a cosmetic effect.

5 "Practitioner." A person who performs the act of tattooing,
6 permanent cosmetics or body piercing.

7 "Sanitization." The reduction of the population of
8 microorganisms to safe levels as determined by public health
9 officials.

10 "Sterilization." A process that results in the destruction
11 of all forms of microbial life, including, but not limited to,
12 highly resistant bacterial spores.

13 "Tattooing." A method of placing ink or other inert pigment
14 into or under the skin or mucosa by the aid of needles or any
15 other instrument used to puncture the skin and which method
16 results in permanent coloration of the skin or mucosa. This term
17 includes any form of permanent cosmetics.

18 "Temporary establishment." An establishment that performs
19 body art services, is operated by an operator licensed under
20 this act and operates outside of the licensed facility for a
21 period of time of not more than seven consecutive days in
22 conjunction with a single event.

23 "Tongue splitting." The cutting of a human tongue into two
24 or more parts.

25 Section 3. Powers and duties of department.

26 (a) General rule.--The department, in the exercise of its
27 duties under this act, ~~may~~ SHALL adopt such regulations as are <--
28 reasonably necessary to carry out the purposes of this act.
29 Regulations shall be adopted in conformity with the provision of
30 the act of June 25, 1982 (P.L.633, No.181), known as the

1 Regulatory Review Act, and shall include, but not be limited to:

- 2 (1) Body art establishment license requirements,
3 ~~including, but not limited to:~~ <--
 - 4 ~~(i) Physical location.~~
 - 5 ~~(ii) Specifications of walls, ceilings, floors,~~
6 ~~partitions, fixtures and equipment.~~
 - 7 ~~(iii) Lighting~~
 - 8 ~~(iv) Ventilation.~~
 - 9 ~~(v) Water supply.~~
 - 10 ~~(vi) Liquid waste disposal.~~
 - 11 ~~(vii) Refuse storage and disposal.~~
 - 12 ~~(viii) Toilets and lavatories.~~
 - 13 ~~(ix) Sinks.~~
 - 14 ~~(x) Insect and rodent control.~~

15 INCLUDING, BUT NOT LIMITED TO, ANY HEALTH, SANITATION, <--
16 STERILIZATION AND SAFETY STANDARDS.

17 (2) Temporary establishment requirements, INCLUDING, BUT <--
18 NOT LIMITED TO, ANY HEALTH, SANITATION, STERILIZATION AND
19 SAFETY STANDARDS.

20 (3) Operator training requirements.

21 (4) Practitioner training requirements.

22 (5) Apprentice training requirements.

23 ~~(6) Health, sanitization, sterilization and safety~~ <--
24 ~~standards for body art establishments and temporary~~
25 ~~establishments.~~

26 ~~(7) Body art establishment and temporary establishment~~
27 ~~recordkeeping.~~

28 Section 4. Licensing and fees.

29 (a) Requirement.--No person may establish, maintain or
30 operate or hold itself out as authorized to establish, maintain

1 or operate a body art establishment without first obtaining a
2 license issued by the department.

3 (b) Application.--A person may apply for a license required
4 under subsection (a) by submitting an application to the
5 department on a form prescribed by the department. The form
6 shall require all of the following:

7 (1) The applicant's legal name, home address and
8 telephone number, full business name, business address and
9 business telephone number. The applicant shall state whether
10 the applicant is an individual, partnership, firm or
11 corporation. If the applicant is a partnership, the names and
12 addresses of the partners shall be included on the
13 application. If the applicant is a corporation, the names and
14 addresses of all corporate ~~offices~~ OFFICERS shall be included <--
15 on the application.

16 (2) Plans and specifications that illustrate the
17 location of the proposed establishment and a floor plan of
18 the establishment as it is proposed to be operated. The plans
19 shall indicate the layout of the reception area, procedure
20 areas, cleaning and sterilization area, storage area and
21 toilet facilities.

22 (3) A complete description of all ~~services~~ PROCEDURES to <--
23 be provided, the proposed hours of operation, AND the name of <--
24 the operator ~~and the names of all practitioners and their~~ <--
25 ~~exact duties~~. The applicant shall include a copy of the
26 informed consent FORM PROPOSED BY THE BODY ART ESTABLISHMENT <--
27 for each procedure.

28 ~~(4) The names and addresses of all manufacturers of~~ <--
29 ~~processing equipment, instruments, jewelry and inks used for~~
30 ~~any and all body art procedures.~~

1 ~~(5)~~ (4) A signed and dated certification that the <--
2 applicant has read and understands the requirements of this
3 act.

4 ~~(6)~~ (5) Any additional information required by the <--
5 department.

6 (c) Determination.--The department shall issue a license to
7 the applicant upon determination that the applicant meets all of
8 the requirements of this act.

9 (d) Fees.--An applicant must pay a license fee of \$100 per
10 body art establishment. The department may increase fees by
11 regulation in an amount sufficient to cover the cost of annual
12 inspection and administration of this act.

13 (e) Posting.--A licensee shall post its license in a
14 location clearly visible to its customers.

15 (f) Expiration.--A license shall expire annually on the date
16 specified in the license.

17 (g) Renewal.--A licensee must file an application for
18 renewal on a form prescribed by the department prior to
19 expiration of its current license.

20 (h) Nontransferable.--A license shall not be transferable
21 from one person or one body art establishment to another.

22 (i) Denial, suspension or revocation.--The following shall
23 apply to the denial, suspension or revocation of a license:

24 (1) The department may deny, suspend or revoke licensure
25 for any of the following reasons:

26 (i) Submission of false statements in applications,
27 reports, plans or specifications.

28 (ii) For HEALTH, STERILIZATION, SANITATION OR SAFETY <--
29 conditions that violate this act.

30 (iii) Operation of the body art establishment in a

1 manner that threatens public health or safety.

2 (iv) Failure to allow the department to enter the
3 body art establishment ~~at reasonable~~ DURING NORMAL <--
4 BUSINESS hours for inspection or investigation.

5 (v) Failure to pay the required license fee.

6 (2) (i) Except in cases involving an immediate threat
7 to public health and safety under section ~~10(e)~~ 8(C), the <--
8 department shall, prior to suspension or revocation of a
9 license, provide written notice to the licensee of the
10 facts or conduct which may warrant suspension or
11 revocation and shall provide the licensee with an
12 opportunity to demonstrate or achieve compliance.

13 (ii) The licensee may request an administrative
14 hearing upon receipt of the written notice.

15 Section 5. Inspection.

16 (a) Time.--The department ~~may~~ SHALL conduct an initial <--
17 inspection of a body art establishment after receipt of an
18 application for a license under section 4 and shall randomly
19 inspect 20% OF ALL licensed facilities each year thereafter. <--

20 (b) Conduct.--Inspections conducted by the department under
21 this section shall encompass all of the following matters:

22 (1) ~~The operation of the body art establishment~~ HEALTH, <--
23 STERILIZATION, SANITATION AND SAFETY STANDARDS.

24 (2) Review of required records and training
25 documentation.

26 ~~(3) Operator understanding and competency.~~ <--

27 ~~(4)~~ (3) Any other area that is required by this act. <--

28 Section 6. Duties and responsibilities of practitioners.

29 (a) General health.--The department shall establish by
30 regulation minimum health standards for all practitioners and

1 persons working in any area of a body art establishment which
2 may be necessary to prevent the contamination of body art
3 equipment, supplies or work surfaces with pathogenic organisms.

4 ~~(b) Infectious disease. A notarized statement from a~~ <--

5 (B) INFECTIOUS DISEASE.--THE PRACTITIONER SHALL COMPLY WITH <--

6 EITHER OF THE FOLLOWING:

7 (1) THE PRACTITIONER SHALL COMPLETE THE BLOODBORNE
8 PATHOGEN CERTIFICATION REQUIREMENTS UNDER 29 CFR 1910.1030
9 (RELATING TO BLOODBORNE PATHOGENS).

10 (2) A NOTARIZED STATEMENT FROM A licensed physician
11 shall be provided to the department, prior to the issuance of
12 a license under this act, that confirms that the practitioner
13 was examined by the physician, a test of the practitioner's
14 blood was made and the results of that test indicate that:

15 ~~(1) the practitioner is free from all contagious and~~ <--
16 ~~infectious diseases, including hepatitis B;~~

17 ~~(2) the practitioner has completed a vaccination series;~~

18 ~~(3) antibody testing reveals that the practitioner is~~
19 ~~immune to certain diseases;~~

20 ~~(4) a vaccine is contradicted for medical reasons; or~~

21 ~~(5) the practitioner has a Blood Borne Pathogen~~
22 ~~Certification.~~

23 (I) THE PRACTITIONER IS FREE FROM ALL BLOODBORNE <--
24 DISEASES, INCLUDING, BUT NOT LIMITED TO, HEPATITIS B; OR

25 (II) ANTIBODY TESTING REVEALS THAT THE PRACTITIONER
26 IS IMMUNE TO CERTAIN HIGHLY COMMUNICABLE DISEASES.

27 (c) Notifications.--

28 (1) Verbal and written instructions for the care of the
29 tattooed or pierced site on the body shall be provided to
30 each customer by the practitioner upon the completion of the

1 procedure.

2 (2) The written instructions shall advise the customer
3 to consult a physician at the first sign of infection and
4 contain the name, address and telephone number of the body
5 art establishment.

6 Section 7. Minors.

7 (a) Prohibitions.--It shall be unlawful for any person to
8 perform body art services on any other person 18 years of age or
9 younger without the presence, written consent and proper
10 identification of the other person's parent or legal guardian.

11 (b) Regulations.--The department shall promulgate
12 regulations establishing standards for verification of age and
13 documentation of consent.

14 (c) Revocation.--Any person who KNOWINGLY violates <--
15 subsection (a) shall have the license under this act revoked for
16 two years.

17 (d) License.--Any person who KNOWINGLY violates subsection <--
18 (a) may not be licensed for two years from the date of the
19 violation or revocation, whichever is later.

20 ~~Section 8. Inspections, violations and injunctions.~~ <--

21 ~~(a) Access. The department shall have access at reasonable~~
22 ~~times to any body art establishment, including its records, to~~
23 ~~inspect and determine whether a violation of this act has or~~
24 ~~will occur.~~

25 SECTION 8. TONGUE SPLITTING LIMITATIONS. <--

26 TONGUE SPLITTING SHALL ONLY BE PERFORMED BY A PHYSICIAN OR
27 DENTIST LICENSED IN THIS COMMONWEALTH.

28 SECTION 9. VIOLATIONS AND INJUNCTIONS.

29 ~~(b)~~ (A) Violations.--It is a violation of this act for an <--
30 operator or practitioner or apprentice to administer anesthetic

1 injections or other medications and prescription drugs to a
2 customer of any body art establishment.

3 ~~(e)~~ (B) Penalty.-- <--

4 (1) A person who operates a body art establishment in
5 violation of this act commits a misdemeanor and shall be
6 subject to suspension or revocation of the body art
7 establishment's license. ~~A person who operates a body art~~ <--
8 ~~establishment in violation of this act commits a misdemeanor.~~

9 ~~(2) A person who violates section 7 shall be subject to~~
10 ~~a civil penalty of not more than \$500 for the first~~
11 ~~violation, up to \$1,000 for the second violation and up to~~
12 ~~\$2,000 for each subsequent violation. The penalty shall be~~
13 ~~paid to the Department of Health for deposit in the State~~
14 ~~Treasury.~~

15 (2) A PERSON WHO VIOLATES SECTION 7 COMMITS AN OFFENSE <--
16 UNDER 18 PA.C.S. § 6311 (RELATING TO TATTOOING AND BODY
17 PIERCING).

18 (3) A PERSON WHO VIOLATES SECTION 8 COMMITS A
19 MISDEMEANOR OF THE FIRST DEGREE FOR THE FIRST VIOLATION AND A
20 FELONY OF THE THIRD DEGREE FOR A SECOND OR SUBSEQUENT
21 VIOLATION.

22 ~~(d)~~ (C) Suspension or revocation.--If the department finds <--
23 that a violation of this act creates an immediate threat to the
24 health and safety of the public, the department may suspend or
25 revoke the body art establishment's license to operate.

26 ~~(e)~~ (D) Procedure.-- <--

27 (1) The department may take the following action, in
28 writing or by using any other act or regulation, to enforce
29 the provisions of this act:

30 (i) Cite each section of the act violated.

1 (ii) Specify the manner in which the operator or
2 practitioner failed to comply with this act.

3 (iii) Require a corrective action plan, including a
4 reasonable time schedule for completion. The department
5 shall review the corrective action plan and approve or
6 require modification of the plan.

7 (2) If a body art establishment fails to comply with the
8 conditions of the written notice provided under paragraph
9 (1), the department shall notify the operator, by certified
10 mail, that unless action is taken within five days of receipt
11 of the written notice, the body art establishment's license
12 shall be suspended or revoked.

13 ~~Section 9. Tongue splitting limitation.~~ <--

14 ~~(a) General rule. No person may perform tongue splitting on~~
15 ~~another person unless the person is a physician or dentist~~
16 ~~licensed in this Commonwealth.~~

17 ~~(b) Grading. Any person who violates the provisions of this~~
18 ~~section commits a misdemeanor of the first degree for a first~~
19 ~~offense and a felony of the third degree for a second or~~
20 ~~subsequent offense.~~

21 Section 10. Construction.

22 Nothing in this act shall be construed to:

23 (1) Prevent a physician or surgeon licensed in this
24 Commonwealth from performing body art services for medical
25 reasons.

26 (2) Prevent a funeral director licensed in this
27 Commonwealth from performing body art services as required by
28 that profession.

29 (3) Require the license of permanent cosmetic
30 establishments physically located in a licensed physician's

1 office, hospital or clinic. Those establishments shall also
2 be exempt from facility requirements as provided in section
3 3(a)(1).

4 Section 11. Body Art Establishment Regulation Account.

5 (a) Establishment.--The Body Art Establishment Regulation
6 Account is established as a restricted account in the State
7 Treasury.

8 (b) Disposition of moneys.--All fees, fines and civil
9 penalties imposed in accordance with this act shall be paid into
10 the Body Art Establishment Regulation Account and are hereby
11 appropriated to the department on a continuing basis for use in
12 the performance of its duties under this act.

13 Section 12. Effective date.

14 This act shall take effect in ~~six months~~ 180 DAYS.

<--