

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, WATSON AND SWANGER, APRIL 23, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 30, 2014

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, temporary or
7 permanent in nature and location, where body art, whether or not
8 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 that results from
24 a transmissible infection, whether or not patent, apparent,
25 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, 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, any health, sanitation,
4 sterilization and safety standards.

5 (2) Temporary establishment requirements, including, but
6 not limited to, any health, sanitation, sterilization and
7 safety standards.

8 (3) Operator training requirements.

9 (4) Practitioner training requirements.

10 (5) Apprentice training requirements.

11 Section 4. Licensing and fees.

12 (a) Requirement.--No person may establish, maintain or
13 operate or hold itself out as authorized to establish, maintain
14 or operate a body art establishment without first obtaining a
15 license issued by the department.

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

20 (1) The applicant's legal name, home address and
21 telephone number, full business name, business address and
22 business telephone number. The applicant shall state whether
23 the applicant is an individual, partnership, firm or
24 corporation. If the applicant is a partnership, the names and
25 addresses of the partners shall be included on the
26 application. If the applicant is a corporation, the names and
27 addresses of all corporate officers shall be included on the
28 application.

29 (2) Plans and specifications that illustrate the
30 location of the proposed establishment and a floor plan of

1 the establishment as it is proposed to be operated. The plans
2 shall indicate the layout of the reception area, procedure
3 areas, cleaning and sterilization area, storage area and
4 toilet facilities.

5 (3) A complete description of all procedures to be
6 provided, the proposed hours of operation and the name of the
7 operator. The applicant shall include a copy of the informed
8 consent form proposed by the body art establishment for each
9 procedure.

10 (4) A signed and dated certification that the applicant
11 has read and understands the requirements of this act.

12 (5) Any additional information required by the
13 department.

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

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

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

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

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

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

30 (i) Denial, suspension or revocation.--The following shall

1 apply to the denial, suspension or revocation of a license:

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

4 (i) Submission of false statements in applications,
5 reports, plans or specifications.

6 (ii) For health, sterilization, sanitation or safety
7 conditions that violate this act.

8 (iii) Operation of the body art establishment in a
9 manner that threatens public health or safety.

10 (iv) Failure to allow the department to enter the
11 body art establishment during normal business hours for
12 inspection or investigation.

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

14 (2) (i) Except in cases involving an immediate threat
15 to public health and safety under section 8(c), the
16 department shall, prior to suspension or revocation of a
17 license, provide written notice to the licensee of the
18 facts or conduct which may warrant suspension or
19 revocation and shall provide the licensee with an
20 opportunity to demonstrate or achieve compliance.

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

23 Section 5. Inspection.

24 (a) Time.--The department shall conduct an initial
25 inspection of a body art establishment after receipt of an
26 application for a license under section 4 and shall randomly
27 inspect 20% of all licensed facilities each year thereafter.

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

30 (1) Health, sterilization, sanitation and safety

1 standards.

2 (2) Review of required records and training
3 documentation.

4 (3) Any other area that is required by this act.

5 Section 6. Duties and responsibilities of practitioners.

6 (a) General health.--The department shall establish by
7 regulation minimum health standards for all practitioners and
8 persons working in any area of a body art establishment which
9 may be necessary to prevent the contamination of body art
10 equipment, supplies or work surfaces with pathogenic organisms.

11 (b) Infectious disease.--The practitioner shall comply with
12 either of the following:

13 (1) The practitioner shall complete the Bloodborne
14 Pathogen Certification requirements under 29 CFR 1910.1030
15 (relating to bloodborne pathogens).

16 (2) A notarized statement from a licensed physician
17 shall be provided to the department, prior to the issuance of
18 a license under this act, that confirms that the practitioner
19 was examined by the physician, a test of the practitioner's
20 blood was made and the results of that test indicate that:

21 (i) the practitioner is free from all bloodborne
22 diseases, including, but not limited to, hepatitis B; or

23 (ii) antibody testing reveals that the practitioner
24 is immune to certain highly communicable diseases.

25 (c) Notifications.--

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

30 (2) The written instructions shall advise the customer

1 to consult a physician at the first sign of infection and
2 contain the name, address and telephone number of the body
3 art establishment.

4 Section 7. Minors.

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

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

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

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

19 Section 8. Tongue splitting limitations.

20 Tongue splitting shall only be performed by a physician or
21 dentist licensed in this Commonwealth.

22 Section 9. Violations and injunctions.

23 (a) Violations.--It is a violation of this act for an
24 operator or practitioner or apprentice to administer anesthetic
25 injections or other medications and prescription drugs to a
26 customer of any body art establishment.

27 (b) Penalty.--

28 (1) A person who operates a body art establishment in
29 violation of this act commits a misdemeanor and shall be
30 subject to suspension or revocation of the body art

1 establishment's license.

2 (2) A person who violates section 7 commits an offense
3 under 18 Pa.C.S. § 6311 (relating to tattooing and body
4 piercing).

5 (3) A person who violates section 8 commits a
6 misdemeanor of the first degree for the first violation and a
7 felony of the third degree for a second or subsequent
8 violation.

9 (c) Suspension or revocation.--If the department finds that
10 a violation of this act creates an immediate threat to the
11 health and safety of the public, the department may suspend or
12 revoke the body art establishment's license to operate.

13 (d) Procedure.--

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

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

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

20 (iii) Require a corrective action plan, including a
21 reasonable time schedule for completion. The department
22 shall review the corrective action plan and approve or
23 require modification of the plan.

24 (2) If a body art establishment fails to comply with the
25 conditions of the written notice provided under paragraph
26 (1), the department shall notify the operator, by certified
27 mail, that unless action is taken within five days of receipt
28 of the written notice, the body art establishment's license
29 shall be suspended or revoked.

30 Section 10. Construction.

1 Nothing is this act shall be construed to:

2 (1) Prevent a physician or surgeon licensed in this
3 Commonwealth from performing body art services for medical
4 reasons.

5 (2) Prevent a funeral director licensed in this
6 Commonwealth from performing body art services as required by
7 that profession.

8 (3) Require the license of permanent cosmetic
9 establishments physically located in a licensed physician's
10 office, hospital or clinic. Those establishments shall also
11 be exempt from facility requirements as provided in section
12 3(a)(1).

13 Section 11. Body Art Establishment Regulation Account.

14 (a) Establishment.--The Body Art Establishment Regulation
15 Account is established as a restricted account in the State
16 Treasury.

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

22 Section 12. Effective date.

23 This act shall take effect in 180 days.