




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 593 (Substitute S-1 as reported)
Sponsor: Senator John J. Gleason
Committee: Health Policy

(as enacted)

Date Completed: 9-18-07

RATIONALE

As the popularity of body modification such as tattooing, branding, and body-piercing has increased, some have expressed concern about potential health and safety risks at the shops where these procedures are done. Improper practices with regard to cleanliness can result in skin disorders and scarring; skin infections that can lead to more serious conditions; allergic reactions; adverse reactions during some medical procedures, such as magnetic resonance imaging; and infection with various bloodborne pathogens, including hepatitis B, hepatitis C, tetanus, tuberculosis, and HIV.

Michigan law prohibits the tattooing, branding, or body-piercing of a minor without parental consent or of a person under the influence of alcohol or drugs. Otherwise, there is no statewide regulation of "body art" facilities, although some local units of government have adopted ordinances establishing regulations, including licensure requirements, for such facilities. Additionally, the prohibition against performing a body art procedure on a minor without parental consent does not apply to a legally emancipated minor. It has been suggested that body art facilities should be required to obtain a license from the State in order to operate, and that the exception for an emancipated minor should be eliminated.

CONTENT

The bill would amend Part 131 (Tattoo Parlors) of the Public Health Code to do all of the following:

-- Prohibit a person from tattooing, branding, or performing body-piercing on another individual unless

the service occurred at a body art facility licensed under Part 131, beginning January 1, 2009.

- Require the Department of Community Health (DCH) to authorize a local health department to enforce Part 131 and rules promulgated under it.**
- Require the appropriate local health department to inspect a body art facility before the DCH issued a license, and to inspect each licensed facility at least once a year.**
- Require a licensed body art facility to ensure that the facility and employees complied with Federal bloodborne pathogen safety standards; ensure that services were performed in a sterile field; maintain a confidential record of each customer; and perform other duties.**
- Authorize the governing entity of a local health department to adopt and enforce local codes, ordinances, or regulations that were more stringent than the minimum applicable standards set forth in Part 131 or rules promulgated under it.**
- Allow a person alleging a violation of Part 131 to bring a civil action for appropriate injunctive relief.**
- Prescribe a misdemeanor penalty for a violation of Part 131.**
- Prohibit a person from providing a minor with a body-piercing kit or device, and prescribe a civil fine for a violation.**
- Eliminate an exception for an emancipated minor from a prohibition against performing tattooing, branding, or body-piercing on a minor without parental consent.**

The bill also would change the title of Part 131 to "Body Art Facilities".

Facility Licensure

Beginning January 1, 2009, an individual could not tattoo, brand, or perform body-piercing on another individual unless the tattooing, branding, or body-piercing occurred at a body art facility licensed under Part 131. "Body art facility" would mean the location at which an individual performed tattooing, branding, and/or body-piercing for compensation.

The owner or operator of a body art facility could apply to the DCH for a license on a form provided by the Department. The owner or operator would have to pay to the DCH one of the following fees at the time of application:

- For an initial three-year license, \$500.
- For a three-year renewal of an annual license, \$300.
- For a temporary license to operate a body art facility at a fixed location for up to two weeks, \$100.

If the DCH determined that the application was complete and the body art facility proposed or operated by the applicant met the requirements of Part 131 and the rules promulgated under it, the Department would have to issue a license to the applicant for the operation of that facility. Except for a temporary license, the license would be effective for three years.

Before issuing a license, the DCH would have to receive the results of an inspection of the premises of the facility from the appropriate local health department. The local health department would have to convey the results of the inspection to the DCH as soon as practical after the inspection occurred. The appropriate local health department also would have to inspect each licensed facility at least annually to ensure compliance with Part 131. The DCH would have to authorize a local health department as prescribed in the Code to perform the annual inspections.

The Department would have to issue a license under Part 131 to a specific person for a body art facility at a specific location. A license would be nontransferable.

A licensed body art facility owner or operator would have to apply to the DCH for license renewal at least 30 days before the license expired. Upon payment of the renewal fee, the Department would have to renew the license, if the applicant were in compliance with Part 131 and rules promulgated under it. The DCH would have to consult with the appropriate local health department to determine compliance.

Licensee Requirements

The owner or operator of a licensed body art facility would have to do all of the following:

- Display the license in a conspicuous place within the facility's customer service area.
- Comply with and ensure that the facility was in compliance with Parts 131 and 138 (Medical Waste) and rules promulgated under those parts.
- Ensure that the facility as a whole and any individual engaged in tattooing or performing branding or body-piercing or cleaning tattooing, branding, or body-piercing instruments complied with the bloodborne pathogen safety standards under the Code of Federal Regulations.
- Ensure that tattooing, branding, and body-piercing were performed in a sterile field with sterile needles and only single-use ink.
- Prohibit smoking within the facility.

The owner or operator also would have to give each customer a written information sheet distributed or approved by the DCH that provided, at a minimum, all of the following:

- Instructions on the care of a tattoo, brand, or body-piercing site.
- A recommendation that an individual seek medical attention if the site became infected or painful or if the person developed a fever soon after being tattooed, branded, or having body-piercing performed.
- Notice that the individual could be allowed to donate blood within the standard deferral period if he or she presented a copy of a record from the facility (described below) to the blood donor facility.

The owner or operator would have to maintain a confidential record of each

individual who had been tattooed or branded or who had body-piercing performed at the facility and make the records available for inspection by the local health department. The record would have to include, at a minimum, the individual's name, address, age, and signature; the date; the design and location of the tattooing, branding, or body-piercing; the name of the individual performing the tattooing, branding, or body-piercing; and any known complications the individual had with any tattooing, branding, or body-piercing done at that facility. The owner, operator, manager, or person having control of the facility would have to give a copy of the record to the individual at the time her or she was tattooed or branded, or had body-piercing performed. The DCH would have to develop guidelines for the confidential handling of the record, including its maintenance, storage, inspection, and destruction.

In addition, the owner or operator of a licensed facility would have to maintain on file on the premises and have available for inspection by a local health department all of the following regarding each technician who was employed by or who performed tattooing, branding, or body-piercing at the facility: his or her full legal name, exact duties, date of birth, gender, home address, home and work telephone numbers, prior or other current places of employment as a technician, if known; training and experience; an identification photo; documentation of compliance with the educational, training, or experience requirements of the DCH under Part 131; and documentation of hepatitis B virus vaccination status or other vaccination status requirements of the DCH under Part 131.

The owner or operator also would have to maintain on file and make available for inspection all of the following:

- The full legal name of the body art facility.
- The facility's hours of operation.
- The full legal name, home address, and home and work telephone numbers of each owner and operator of the facility.
- A complete description of all tattooing, branding, or body-piercing performed at the facility.
- A copy of Part 131 and the rules promulgated under it.

- A complete inventory of all instruments, body jewelry, sharps, and inks used at the facility, including the name of the item's manufacturer and serial or lot number, if applicable.

The facility could provide invoices or orders to satisfy the inventory requirement if determined appropriate by the DCH or the local health department.

Local Health Department Powers & Duties

As prescribed in the Code, the DCH would have to authorize a local health department to enforce Part 131 and rules promulgated under it. An authorized local health department would have to enforce Part 131 and any rules promulgated under it pursuant to Sections 2461(2) and 2462 (described below). In addition to the penalties and remedies under Part 131, the local health department could enforce Part 131 and any rules promulgated under it through an action commenced pursuant to Section 2465 (described below) or any other appropriate action authorized by law.

(Under Section 2461(2), if a local health department representative believes that a person has violated the Code or a rule promulgated, regulation adopted, or order issued under it that the local health department has the authority and duty to enforce, the representative may issue a citation within 90 days after the discovery of the alleged violation. Section 2462 provides for an administrative hearing, review, and appeals process for a citation.)

Section 2465 authorizes a local health officer, without posting bond, to maintain injunctive action to restrain, prevent, or correct a violation of a law, rule, or order that the officer has the duty to enforce; or to restrain, prevent, or correct an activity or condition that the officer believes adversely affects the public health.)

If a local health department of a county or city were unable or unwilling to perform the functions required by the bill and the county or city were not part of a district that had created a district health department, the county or city, through an intergovernmental agreement, could contract with another local governing entity to have that entity's health department perform those functions. The contracting

parties would have to obtain the DCH's approval before executing the agreement.

As prescribed in the Code, the local governing entity of an authorized local health department could fix and require the payment of fees by applicants and licensees for services required to be performed by the local health department under the bill.

Unless they conflicted with standards of Part 131 or DCH rules regarding safety standards, a local health department would have to use as guidance in enforcing Part 131 the safety standards issued by the National Environmental Health Association in "Body Art: A Comprehensive Guidebook and Model Code".

Local Regulation

The local governing entity of a local health department authorized to enforce Part 131 could adopt and enforce local codes, ordinances, or regulations that were more stringent than the minimum applicable standards set forth in Part 131 or rules promulgated under it. Part 131 would not relieve a licensee or license applicant from the responsibility for securing a local permit or complying with applicable local codes, regulations, or ordinances in addition to Part 131.

Civil Action; Criminal Penalty

In addition to any other enforcement action authorized by law, a person alleging a violation of Part 131 could bring a civil action in a court of competent jurisdiction for appropriate injunctive relief.

Except as otherwise provided, a person who violated Part 131 or a rule promulgated under it would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$100.

The bill would prohibit a person from giving or selling to a minor a body-piercing kit or other body-piercing device. A person who violated this provision would be responsible for a State civil infraction and would be subject to a civil fine of up to \$500. These provisions would have to be enforced pursuant to Chapter 88 (State Civil Infractions) of the Revised Judicature Act.

Tattooing, Branding, or Piercing a Minor

The Code prohibits a person from tattooing, branding, or performing body-piercing on a minor unless he or she obtains the prior written informed consent of the minor's parent or legal guardian. The parent or legal guardian must execute the consent in the presence of the individual performing the tattooing, branding, or body-piercing, or in the presence of his or her employee or agent. Under the bill, these provisions would apply subject to the bill's provisions regarding facility licensure. The bill would delete a provision specifying that "minor" does not include an emancipated minor.

Influence of Alcohol

The Code prohibits an individual from tattooing, branding, or performing body-piercing on a person who is under the influence of intoxicating liquor or a controlled substance. The bill would refer to alcoholic liquor, rather than intoxicating liquor. "Alcoholic liquor" would mean that term as defined in the Michigan Liquor Control Code. (Under that statute, "alcoholic liquor" means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing at least one-half of 1% of alcohol by volume that are fit for use for beverage purposes as defined and classified by the Liquor Control Commission according to alcoholic content as belonging to one of the varieties defined in the statute.)

MCL 333.13101 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Not all local health departments exercise oversight over body art facilities, and the regulations between local health departments vary. Some body modification customers are unaware of the discrepancies and might obtain the services from a business that does not follow the proper procedures to prevent injury and infection. Additionally, some local health departments that regulate the facilities reportedly do not

perform inspections as frequently as they should. The bill's licensing and inspection requirements would establish a common standard of protection for consumers all over the State. Additionally, local health departments could implement regulations beyond those established by the bill. The bill would ensure protection against injury and disease not only for those who undergo the procedures, but also for others who come into contact with them and for those who perform the procedures.

Supporting Argument

Because body art facilities currently are not subject to any State health and safety standards, people who have gotten tattoos or body-piercing in Michigan may not donate blood for one year. According to the American Red Cross, only about 5% of eligible donors in Michigan give blood. The donor pool is further reduced because of the body modification deferrals, of which the Red Cross estimates there are 5,000 annually. One person can donate blood up to six times per year, meaning that potentially 30,000 life-saving units of blood cannot be collected. Under the bill, donors could avoid the deferral period by presenting verification that they had undergone the tattooing or piercing in a sterile environment with a minimal risk of infection.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would lead to an indeterminate increase in administrative expense for the Department of Community Health. The DCH would have to devote additional staff to the enforcement and processing of applications for licensure and the creation and enforcement of standards for the safe application of tattoos, brands, and body-piercing. The extent of cost would be determined by revenue generated by licensing fees.

Local governments would see an increase in administrative cost associated with the requirement that local health departments inspect body art facilities to ensure compliance with State standards. This increase in expense is indeterminate at this time and could be affected by the number of counties that already inspect tattoo facilities.

The bill would have an indeterminate fiscal impact on local government corrections costs. There are no data to indicate how many offenders would be convicted of violating Part 131. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: David Fosdick
Lindsay Hollander

A0708\593a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.