

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5391

61st Legislature
2009 Regular Session

Passed by the Senate April 22, 2009
YEAS 45 NAYS 2

President of the Senate

Passed by the House April 13, 2009
YEAS 95 NAYS 2

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5391** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5391

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Kastama, Haugen, Fairley, Roach, and Pflug)

READ FIRST TIME 02/24/09.

1 AN ACT Relating to regulating body art, body piercing, and
2 tattooing practitioners, shops, and businesses; amending RCW 70.54.340,
3 5.40.050, 43.24.150, and 18.235.020; adding a new chapter to Title 18
4 RCW; creating a new section; prescribing penalties; and providing an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds and declares that the
8 practices of body piercing, tattooing, and other forms of body art
9 involve an invasive procedure with the use of needles, sharps,
10 instruments, and jewelry. These practices may be dangerous when
11 improper sterilization techniques are used, presenting a risk of
12 infecting the client with bloodborne pathogens including, but not
13 limited to, HIV, hepatitis B, and hepatitis C. It is in the interests
14 of the public health, safety, and welfare to establish requirements in
15 the commercial practice of these activities in this state.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter and RCW 5.40.050 and 70.54.340 unless the
18 context clearly requires otherwise.

1 (1) "Body art" means the practice of invasive cosmetic adornment
2 including the use of branding and scarification. "Body art" also
3 includes the intentional production of scars upon the body. "Body art"
4 does not include any health-related procedures performed by licensed
5 health care practitioners under their scope of practice.

6 (2) "Body piercing" means the process of penetrating the skin or
7 mucous membrane to insert an object, including jewelry, for cosmetic
8 purposes. "Body piercing" also includes any scar tissue resulting from
9 or relating to the piercing. "Body piercing" does not include the use
10 of stud and clasp piercing systems to pierce the earlobe in accordance
11 with the manufacturer's directions and applicable United States food
12 and drug administration requirements. "Body piercing" does not include
13 any health-related procedures performed by licensed health care
14 practitioners under their scope of practice, nor does anything in this
15 act authorize a person registered to engage in the business of body
16 piercing to implant or embed foreign objects into the human body or
17 otherwise engage in the practice of medicine.

18 (3) "Director" means the director of the department of licensing.

19 (4) "Individual license" means a body art, body piercing, or tattoo
20 practitioner license issued under this chapter.

21 (5) "Location license" means a license issued under this chapter
22 for a shop or business.

23 (6) "Shop or business" means a body art, body piercing, or
24 tattooing shop or business.

25 (7) "Tattoo artist" means a person who pierces or punctures the
26 human skin with a needle or other instrument for the purpose of
27 implanting an indelible mark, or pigment, into the skin for a fee.

28 (8) "Tattooing" means to pierce or puncture the human skin with a
29 needle or other instrument for the purpose of implanting an indelible
30 mark, or pigment, into the skin.

31 NEW SECTION. **Sec. 3.** In addition to any other duties imposed by
32 law, including RCW 18.235.030 and 18.235.040, the director has the
33 following powers and duties:

34 (1) To set all license, examination, and renewal fees in accordance
35 with RCW 43.24.086;

36 (2) To adopt rules necessary to implement this chapter;

1 (3) To prepare and administer or approve the preparation and
2 administration of licensing;

3 (4) To establish minimum safety and sanitation standards for
4 practitioners of body art, body piercing, or tattooing as determined by
5 the department of health;

6 (5) To maintain the official department record of applicants and
7 licensees;

8 (6) To set license expiration dates and renewal periods for all
9 licenses consistent with this chapter;

10 (7) To ensure that all informational notices produced and mailed by
11 the department regarding statutory and regulatory changes affecting any
12 particular class of licensees are mailed to each licensee in good
13 standing in the affected class whose mailing address on record with the
14 department has not resulted in mail being returned as undeliverable for
15 any reason; and

16 (8) To make information available to the department of revenue to
17 assist in collecting taxes from persons and businesses required to be
18 licensed under this chapter.

19 NEW SECTION. **Sec. 4.** (1) It is unlawful for any person to engage
20 in a practice listed in subsection (2) of this section unless the
21 person has a license in good standing as required by this chapter. A
22 license issued under this chapter is considered to be "in good
23 standing" except when:

24 (a) The license has expired or has been canceled and has not been
25 renewed in accordance with section 6 of this act;

26 (b) The license has been denied, revoked, or suspended under
27 section 12 or 14 of this act, and has not been reinstated; or

28 (c) The license is held by a person who has not fully complied with
29 an order of the director issued under section 12 of this act requiring
30 the licensee to pay restitution or a fine, or to acquire additional
31 training.

32 (2) The director may take action under RCW 18.235.150 and
33 18.235.160 against any person who does any of the following without
34 first obtaining, and maintaining in good standing, the license required
35 by this chapter:

36 (a) Engages in the practice of body art, body piercing, or
37 tattooing; or

1 (b) Operates a shop or business.

2 NEW SECTION. **Sec. 5.** Upon completion of an application approved
3 by the department and payment of the proper fee, the director shall
4 issue the appropriate location license to any person who completes an
5 application approved by the department, provides certification of
6 insurance, and provides payment of the proper fee.

7 NEW SECTION. **Sec. 6.** (1) The director shall issue the appropriate
8 license to any applicant who meets the requirements as outlined in this
9 chapter. The director has the authority to set appropriate licensing
10 fees for body art, body piercing, and tattooing shops and businesses
11 and body art, body piercing, and tattooing individual practitioners.
12 Licensing fees for individual practitioners must be set in an amount
13 less than licensing fees for shops and businesses.

14 (2) Failure to renew a license by its expiration date subjects the
15 holder to a penalty fee and payment of each year's renewal fee, at the
16 current rate.

17 (3) A person whose license has not been renewed within one year
18 after its expiration date must have his or her license canceled and
19 must be required to submit an application, pay the license fee, meet
20 current licensing requirements, and pass any applicable examination or
21 examinations, in addition to the other requirements of this chapter,
22 before the license may be reinstated.

23 (4) Nothing in this section authorizes a person whose license has
24 expired to engage in a practice prohibited under section 4 of this act
25 until the license is renewed or reinstated.

26 (5) Upon request and payment of an additional fee to be established
27 by rule by the director, the director shall issue a duplicate license
28 to an applicant.

29 NEW SECTION. **Sec. 7.** (1) Subject to subsection (2) of this
30 section, licenses issued under this chapter expire as follows:

31 (a) A body art, body piercing, or tattooing shop or business
32 location license expires one year from issuance or when the insurance
33 required by section 8(1)(g) of this act expires, whichever occurs
34 first; and

1 (b) Body art, body piercing, or tattooing practitioner individual
2 licenses expire one year from issuance.

3 (2) The director may provide for expiration dates other than those
4 set forth in subsection (1) of this section for the purpose of
5 establishing staggered renewal periods.

6 NEW SECTION. **Sec. 8.** (1) A body art, body piercing, or tattooing
7 shop or business shall meet the following minimum requirements:

8 (a) Maintain an outside entrance separate from any rooms used for
9 sleeping or residential purposes;

10 (b) Provide and maintain for the use of its customers adequate
11 toilet facilities located within or adjacent to the shop or business;

12 (c) Any room used wholly or in part as a shop or business may not
13 be used for residential purposes, except that toilet facilities may be
14 used for both residential and business purposes;

15 (d) Meet the zoning requirements of the county, city, or town, as
16 appropriate;

17 (e) Provide for safe storage and labeling of equipment and
18 substances used in the practices under this chapter;

19 (f) Meet all applicable local and state fire codes; and

20 (g) Certify that the shop or business is covered by a public
21 liability insurance policy in an amount not less than one hundred
22 thousand dollars for combined bodily injury and property damage
23 liability.

24 (2) The director may by rule determine other requirements that are
25 necessary for safety and sanitation of shops or businesses. The
26 director may consult with the state board of health and the department
27 of labor and industries in establishing minimum shop and business
28 safety requirements.

29 (3) Upon receipt of a written complaint that a shop or business has
30 violated any provisions of this chapter, chapter 18.235 RCW, or the
31 rules adopted under either chapter, or at least once every two years
32 for an existing shop or business, the director or the director's
33 designee shall inspect each shop or business. If the director
34 determines that any shop or business is not in compliance with this
35 chapter, the director shall send written notice to the shop or
36 business. A shop or business which fails to correct the conditions to
37 the satisfaction of the director within a reasonable time is, upon due

1 notice, subject to the penalties imposed by the director under RCW
2 18.235.110. The director may enter any shop or business during
3 business hours for the purpose of inspection. The director may
4 contract with health authorities of local governments to conduct the
5 inspections under this subsection.

6 (4) A shop or business shall obtain a certificate of registration
7 from the department of revenue.

8 (5) Shop or business location licenses issued by the department
9 must be posted in the shop or business's reception area.

10 (6) Body art, body piercing, and tattooing practitioner individual
11 licenses issued by the department must be posted at the licensed
12 person's work station.

13 NEW SECTION. **Sec. 9.** The director shall prepare and provide to
14 all licensed shops or businesses a notice to consumers. At a minimum,
15 the notice must state that body art, body piercing, and tattooing shops
16 or businesses are required to be licensed, that shops or businesses are
17 required to maintain minimum safety and sanitation standards, that
18 customer complaints regarding shops or businesses may be reported to
19 the department, and a telephone number and address where complaints may
20 be made.

21 NEW SECTION. **Sec. 10.** It is a violation of this chapter for any
22 person to engage in the commercial practice of body art, body piercing,
23 or tattooing except in a licensed shop or business with the appropriate
24 individual body art, body piercing, or tattooing license.

25 NEW SECTION. **Sec. 11.** In addition to the unprofessional conduct
26 described in RCW 18.235.130, the director may take disciplinary action
27 against any applicant or licensee under this chapter if the licensee or
28 applicant:

29 (1) Has been found to have violated any provisions of chapter 19.86
30 RCW;

31 (2) Has engaged in a practice prohibited under section 4 of this
32 act without first obtaining, and maintaining in good standing, the
33 license required by this chapter;

34 (3) Has failed to display licenses required in this chapter; or

1 (4) Has violated any provision of this chapter or any rule adopted
2 under it.

3 NEW SECTION. **Sec. 12.** If, following a hearing, the director finds
4 that any person or an applicant or licensee has violated any provision
5 of this chapter or any rule adopted under it, the director may impose
6 one or more of the following penalties:

7 (1) Denial of a license or renewal;

8 (2) Revocation or suspension of a license;

9 (3) A fine of not more than five hundred dollars per violation;

10 (4) Issuance of a reprimand or letter of censure;

11 (5) Placement of the licensee on probation for a fixed period of
12 time;

13 (6) Restriction of the licensee's authorized scope of practice;

14 (7) Requiring the licensee to make restitution or a refund as
15 determined by the director to any individual injured by the violation;
16 or

17 (8) Requiring the licensee to obtain additional training or
18 instruction.

19 NEW SECTION. **Sec. 13.** Any person aggrieved by the refusal of the
20 director to issue any license provided for in this chapter, or to renew
21 the same, or by the revocation or suspension of any license issued
22 under this chapter or by the application of any penalty under section
23 12 of this act has the right to appeal the decision of the director to
24 the superior court of the county in which the person maintains his or
25 her place of business. The appeal must be filed within thirty days of
26 the director's decision.

27 NEW SECTION. **Sec. 14.** The department shall immediately suspend
28 the license of a person who has been certified under RCW 74.20A.320 by
29 the department of social and health services as a person who is not in
30 compliance with a support order. If the person has continued to meet
31 all other requirements for reinstatement during the suspension,
32 reissuance of the license is automatic upon the department's receipt of
33 a release issued by the department of social and health services
34 stating that the licensee is in compliance with the order.

1 NEW SECTION. **Sec. 15.** The legislature finds that the practices
2 covered by this chapter are matters vitally affecting the public
3 interest for the purpose of applying the consumer protection act,
4 chapter 19.86 RCW. A violation of this chapter is not reasonable in
5 relation to the development and preservation of business and is an
6 unfair or deceptive act in trade or commerce and an unfair method of
7 competition for the purpose of applying the consumer protection act,
8 chapter 19.86 RCW.

9 NEW SECTION. **Sec. 16.** The uniform regulation of business and
10 professions act, chapter 18.235 RCW, governs unlicensed practice, the
11 issuance and denial of licenses, and the discipline of licensees under
12 this chapter.

13 NEW SECTION. **Sec. 17.** This act shall be known and may be cited as
14 the "Washington body art, body piercing, and tattooing act."

15 NEW SECTION. **Sec. 18.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 **Sec. 19.** RCW 70.54.340 and 2001 c 194 s 3 are each amended to read
20 as follows:

21 The secretary of health shall adopt by rule requirements, in
22 accordance with nationally recognized professional standards, for
23 precautions against the spread of disease, including the sterilization
24 of needles and other instruments, including sharps and jewelry,
25 employed by electrologists, persons engaged in the practice of body
26 art, body piercing, and tattoo artists (~~(in accordance with nationally~~
27 ~~recognized professional standards)~~). The secretary shall consider the
28 (~~(universal)~~) standard precautions for infection control, as
29 recommended by the United States centers for disease control, and
30 guidelines for infection control, as recommended by (~~(the national~~
31 ~~environmental health association and the alliance of professional~~
32 ~~tattooists,)~~) national industry standards in the adoption of these
33 sterilization requirements.

1 **Sec. 20.** RCW 5.40.050 and 2001 c 194 s 5 are each amended to read
2 as follows:

3 A breach of a duty imposed by statute, ordinance, or administrative
4 rule shall not be considered negligence per se, but may be considered
5 by the trier of fact as evidence of negligence; however, any breach of
6 duty as provided by statute, ordinance, or administrative rule relating
7 to: (1) Electrical fire safety, (2) the use of smoke alarms, (3)
8 sterilization of needles and instruments used by persons engaged in the
9 practice of body art, body piercing, tattooing, or electrology, or
10 other precaution against the spread of disease, as required under RCW
11 70.54.350, or (4) driving while under the influence of intoxicating
12 liquor or any drug, shall be considered negligence per se.

13 **Sec. 21.** RCW 43.24.150 and 2008 c 119 s 22 are each amended to
14 read as follows:

15 (1) The business and professions account is created in the state
16 treasury. All receipts from business or professional licenses,
17 registrations, certifications, renewals, examinations, or civil
18 penalties assessed and collected by the department from the following
19 chapters must be deposited into the account:

- 20 (a) Chapter 18.11 RCW, auctioneers;
21 (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
22 (c) Chapter 18.96 RCW, landscape architects;
23 (d) Chapter 18.145 RCW, court reporters;
24 (e) Chapter 18.165 RCW, private investigators;
25 (f) Chapter 18.170 RCW, security guards;
26 (g) Chapter 18.185 RCW, bail bond agents;
27 (h) Chapter 18.280 RCW, home inspectors;
28 (i) Chapter 19.16 RCW, collection agencies;
29 (j) Chapter 19.31 RCW, employment agencies;
30 (k) Chapter 19.105 RCW, camping resorts;
31 (l) Chapter 19.138 RCW, sellers of travel;
32 (m) Chapter 42.44 RCW, notaries public; (~~and~~)
33 (n) Chapter 64.36 RCW, timeshares; and
34 (o) Chapter 18.-- RCW (the new chapter created in section 24 of
35 this act).

36 Moneys in the account may be spent only after appropriation.
37 Expenditures from the account may be used only for expenses incurred in

1 carrying out these business and professions licensing activities of the
2 department. Any residue in the account shall be accumulated and shall
3 not revert to the general fund at the end of the biennium.

4 (2) The director shall biennially prepare a budget request based on
5 the anticipated costs of administering the business and professions
6 licensing activities listed in subsection (1) of this section, which
7 shall include the estimated income from these business and professions
8 fees.

9 **Sec. 22.** RCW 18.235.020 and 2008 c 119 s 21 are each amended to
10 read as follows:

11 (1) This chapter applies only to the director and the boards and
12 commissions having jurisdiction in relation to the businesses and
13 professions licensed under the chapters specified in this section.
14 This chapter does not apply to any business or profession not licensed
15 under the chapters specified in this section.

16 (2)(a) The director has authority under this chapter in relation to
17 the following businesses and professions:

- 18 (i) Auctioneers under chapter 18.11 RCW;
- 19 (ii) Bail bond agents and bail bond recovery agents under chapter
20 18.185 RCW;
- 21 (iii) Camping resorts' operators and salespersons under chapter
22 19.105 RCW;
- 23 (iv) Commercial telephone solicitors under chapter 19.158 RCW;
- 24 (v) Cosmetologists, barbers, manicurists, and estheticians under
25 chapter 18.16 RCW;
- 26 (vi) Court reporters under chapter 18.145 RCW;
- 27 (vii) Driver training schools and instructors under chapter 46.82
28 RCW;
- 29 (viii) Employment agencies under chapter 19.31 RCW;
- 30 (ix) For hire vehicle operators under chapter 46.72 RCW;
- 31 (x) Limousines under chapter 46.72A RCW;
- 32 (xi) Notaries public under chapter 42.44 RCW;
- 33 (xii) Private investigators under chapter 18.165 RCW;
- 34 (xiii) Professional boxing, martial arts, and wrestling under
35 chapter 67.08 RCW;
- 36 (xiv) Real estate appraisers under chapter 18.140 RCW;

1 (xv) Real estate brokers and salespersons under chapters 18.85 and
2 18.86 RCW;

3 (xvi) Security guards under chapter 18.170 RCW;

4 (xvii) Sellers of travel under chapter 19.138 RCW;

5 (xviii) Timeshares and timeshare salespersons under chapter 64.36
6 RCW;

7 (xix) Whitewater river outfitters under chapter 79A.60 RCW; and

8 (xx) Home inspectors under chapter 18.280 RCW; and

9 (xxi) Body artists, body piercers, and tattoo artists, and body
10 art, body piercing, and tattooing shops and businesses, under chapter
11 18.-- RCW (the new chapter created in section 24 of this act).

12 (b) The boards and commissions having authority under this chapter
13 are as follows:

14 (i) The state board of registration for architects established in
15 chapter 18.08 RCW;

16 (ii) The cemetery board established in chapter 68.05 RCW;

17 (iii) The Washington state collection agency board established in
18 chapter 19.16 RCW;

19 (iv) The state board of registration for professional engineers and
20 land surveyors established in chapter 18.43 RCW governing licenses
21 issued under chapters 18.43 and 18.210 RCW;

22 (v) The state board of funeral directors and embalmers established
23 in chapter 18.39 RCW;

24 (vi) The state board of registration for landscape architects
25 established in chapter 18.96 RCW; and

26 (vii) The state geologist licensing board established in chapter
27 18.220 RCW.

28 (3) In addition to the authority to discipline license holders, the
29 disciplinary authority may grant or deny licenses based on the
30 conditions and criteria established in this chapter and the chapters
31 specified in subsection (2) of this section. This chapter also governs
32 any investigation, hearing, or proceeding relating to denial of
33 licensure or issuance of a license conditioned on the applicant's
34 compliance with an order entered under RCW 18.235.110 by the
35 disciplinary authority.

36 NEW SECTION. **Sec. 23.** The director of licensing and the

1 department of health, beginning on the effective date of this section,
2 may take such steps as are necessary to ensure that this act is
3 implemented July 1, 2010.

4 NEW SECTION. **Sec. 24.** Sections 1 through 18 of this act
5 constitute a new chapter in Title 18 RCW.

6 NEW SECTION. **Sec. 25.** Sections 1 through 21 of this act take
7 effect July 1, 2010.

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