

SSB 5860 - S AMD 110
By Senator Kastama

1 Strike everything after the enacting clause and insert the
2 following:

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

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter and RCW 5.40.050 unless the context clearly
15 requires otherwise.

16 (1) "Body art" means the practice of physical cosmetic body
17 adornment including the use of branding and scarification. "Body art"
18 also includes the intentional production of scars upon the body. "Body
19 art" does not include medical procedures performed by a licensed
20 physician or medical practitioner.

21 (2) "Body piercing" means the process of penetrating the skin or
22 mucous membrane to insert an object, including jewelry, for cosmetic
23 purposes. "Body piercing" also includes any scar tissue resulting from
24 or relating to the piercing. "Body piercing" does not include the use
25 of stud and clasp piercing systems to pierce the earlobe in accordance
26 with the manufacturer's directions and applicable United States food
27 and drug administration requirements. "Body piercing" does not include
28 any medical procedures performed by a licensed physician or medical
29 practitioner, nor does anything in this act authorize a person

1 registered to engage in the business of body piercing to implant or
2 embed foreign objects into the human body or otherwise engage in the
3 practice of medicine.

4 (3) "Director" means the director of the department of licensing or
5 the director's designee.

6 (4) "Tattoo artist" means a person who practices the business of
7 tattooing for a fee.

8 (5) "Tattooing" means the introduction of an indelible mark,
9 figure, or decorative design by inserting nontoxic dyes or pigments
10 into or under the subcutaneous portion of the skin upon the body of a
11 live human being for cosmetic or figurative purposes.

12 (6) "Local health jurisdiction" or "jurisdiction" means a county
13 board of health organized under chapter 70.05 RCW, a health district
14 organized under chapter 70.46 RCW, or a combined city-county health
15 department organized under chapter 70.08 RCW.

16 NEW SECTION. **Sec. 3.** (1) Any person who practices body art, body
17 piercing, or tattooing shall comply with the rules adopted by the
18 department of health under RCW 70.54.340.

19 (2) Any person who practices body art, body piercing, or tattooing
20 shall comply with the rules adopted by the department of licensing,
21 after consulting with the department of health, which rules shall
22 include provisions relating to compliance with:

23 (a) Universal precautions for infection control, as recommended by
24 the United States centers for disease control, and guidelines for
25 infection control, as recommended by the national environmental health
26 association and the alliance of professional tattooists;

27 (b) Sterilization procedures using sterilization equipment approved
28 by the United States food and drug administration for the purpose of
29 sterilization, and adequate in size to accommodate necessary utensils
30 and instruments; and

31 (c) Retention of case history information for each client.

32 (3) Any person engaging in the practice of body art, body piercing,
33 or tattooing shall, within seventy-two hours of becoming aware of the
34 occurrence of any infection or allergic reaction resulting from body
35 art, body piercing, or tattooing performed by the person, provide a
36 written report to the department of health and the department of
37 licensing containing the following information:

- 1 (a) The name of the infected client;
- 2 (b) The name and address of the salon/shop where the body art, body
3 piercing, or tattooing was performed;
- 4 (c) The name, and registration number if any, of the tattoo artist
5 or person that performed the body art or body piercing;
- 6 (d) The date that the tattooing, body art, or body piercing was
7 performed;
- 8 (e) The location of the infection;
- 9 (f) The name and address of the health care practitioner, if any,
10 who was notified of the infection by either the client or the person
11 making the report; and
- 12 (g) Any other information that the department of licensing, by
13 rule, deems relevant to the situation.
- 14 (4) A violation of this section is a misdemeanor.

15 NEW SECTION. **Sec. 4.** No person, firm, or corporation may act or
16 engage in the practice of body art, body piercing, or tattooing unless,
17 prior to engaging in the business of body art, body piercing, or
18 tattooing, the person, firm, or corporation registers with the director
19 under this chapter and rules adopted under this chapter.

20 (1) The registration number must be conspicuously posted in the
21 place of business and must be included in all advertisements.

22 (2) The director shall issue duplicate registrations upon payment
23 of a duplicate registration fee to valid registration holders operating
24 more than one office. The duplicate registration fee for each office
25 shall be an amount equal to the original registration fee.

26 (3) No registration is assignable or transferable.

27 (4) If a person registered as engaging in the business of body art,
28 body piercing, or tattooing sells his or her business, when the new
29 owner becomes responsible for the business, the new owner must comply
30 with this chapter, including the registration provisions.

31 NEW SECTION. **Sec. 5.** An application to register as engaging in
32 the business of body art, body piercing, or tattooing shall be
33 submitted in the form prescribed by rule by the director, and shall
34 contain but not be limited to the following:

35 (1) The name, residence address, and telephone number of the person

1 applying to register as engaging in the business of body art, body
2 piercing, or tattooing;

3 (2) The business name, address, and telephone number where the
4 applicant will engage in the practice of body art, body piercing, or
5 tattooing;

6 (3) Proof that the person applying to register as engaging in the
7 practice of body art, body piercing, or tattooing holds a valid
8 business license or is employed by an entity that holds a valid
9 business license in the jurisdiction where the person will engage in
10 business; and

11 (4) A registration fee in an amount determined by rule.

12 NEW SECTION. **Sec. 6.** (1) Each person registered as engaging in
13 the business of body art, body piercing, or tattooing shall renew his
14 or her registration on or before the registrant's birthday of every
15 year or as otherwise determined by the director.

16 (2) Renewal of a registration is subject to the same provisions
17 covering disciplinary action as a registration originally issued.

18 (3) The director may refuse to renew a registration for any of the
19 grounds set out under RCW 18.235.130, and where the past conduct of the
20 applicant affords reasonable grounds for belief that the applicant will
21 not carry out the applicant's duties in accordance with law and with
22 integrity and honesty. The director shall promptly notify the
23 applicant in writing by certified mail of the directors intent to
24 refuse to renew the registration. The registrant may request a hearing
25 on the refusal as provided in RCW 18.235.050. The director may permit
26 the registrant to honor commitments already made to its customers, but
27 no new commitments may be incurred.

28 NEW SECTION. **Sec. 7.** (1) In addition to the unprofessional
29 conduct described in RCW 18.235.130, the director may take disciplinary
30 action based on the following conduct, acts, or conditions if the
31 applicant or registrant:

32 (a) Was previously the holder of a registration issued under this
33 chapter, and the registration was revoked for cause and never reissued
34 by the director, or the registration was suspended for cause and the
35 terms of the suspension have not been fulfilled;

1 (b) Suffers a judgment in a civil action involving willful fraud,
2 misrepresentation, or conversion;

3 (c) Has violated this chapter or failed to comply with a rule
4 adopted by the director under this chapter; or

5 (d) Has failed to display the registration as provided in this
6 chapter.

7 (2) If the person registered as engaging in the business of body
8 art, body piercing, or tattooing is found in violation of this chapter
9 or in violation of the consumer protection act, chapter 19.86 RCW, by
10 the entry of a judgment or by settlement of a claim, the director may
11 revoke the person's registration, and the director may reinstate the
12 registration at the director's discretion.

13 (3) The director shall immediately suspend the license or
14 certificate of a person who has been certified pursuant to RCW
15 74.20A.320 by the department of social and health services as a person
16 who is not in compliance with a support order. If the person has
17 continued to meet all other requirements for reinstatement during the
18 suspension, reissuance of the license or certificate shall be automatic
19 upon the director's receipt of a release issued by the department of
20 social and health services stating that the licensee is in compliance
21 with the order.

22 NEW SECTION. **Sec. 8.** (1) A nonresident person registered as
23 engaging in the business of body art, body piercing, or tattooing
24 soliciting business or engaging in the business of body art, body
25 piercing, or tattooing in the state of Washington, by mail, telephone,
26 or otherwise, either directly or indirectly, is deemed, absent any
27 other appointment, to have appointed the director to be the
28 nonresident's true and lawful attorney upon whom may be served any
29 legal process against that nonresident arising or growing out of a
30 transaction involving the practice of body art, body piercing, or
31 tattooing. That solicitation signifies the nonresident's agreement
32 that process against the nonresident that is served as provided in this
33 chapter is of the same legal force and validity as if served personally
34 on the nonresident.

35 (2) Service of process upon a nonresident shall be made by leaving
36 a copy of the process with the director. The fee for the service of
37 process shall be determined by the director by rule. That service is

1 sufficient service upon the nonresident if the plaintiff or plaintiff's
2 attorney of record sends notice of the service and a copy of the
3 process by certified mail before service or immediately after service
4 to the defendant at the address given by the nonresident in a
5 solicitation furnished by the nonresident, and the sender's post office
6 receipt of sending and the plaintiff's or plaintiff's attorney's
7 affidavit of compliance with this section are returned with the process
8 in accordance with Washington superior court civil rules.
9 Notwithstanding the foregoing requirements, however, once service has
10 been made on the director as provided in this section, in the event of
11 failure to comply with the requirement of notice to the nonresident,
12 the court may order that notice be given that will be sufficient to
13 apprise the nonresident.

14 NEW SECTION. **Sec. 9.** The director has the following powers and
15 duties:

16 (1) To adopt, amend, and repeal rules to carry out the purposes of
17 this chapter;

18 (2) To establish and collect fees, to be deposited into the
19 business and professions account under RCW 43.24.150;

20 (3) Upon receipt of a complaint, to inspect and audit the books and
21 records of a person engaging in the business of body art, body
22 piercing, or tattooing. The person engaging in the business of body
23 art, body piercing, or tattooing shall immediately make available to
24 the director those books and records as may be requested at the place
25 of business of the person engaging in the business of body art, body
26 piercing, or tattooing, or at a location designated by the director.
27 For that purpose, the director shall have full and free access to the
28 office and places of business of the person engaging in the business of
29 body art, body piercing, or tattooing during regular business hours;

30 (4) To do all things necessary to carry out the functions, powers,
31 and duties set forth in this chapter.

32 NEW SECTION. **Sec. 10.** The director, in the director's discretion,
33 may:

34 (1) Annually, or more frequently, make public or private
35 investigations within or without this state as the director deems
36 necessary to determine whether a registration should be subject to

1 disciplinary action, or whether a person has violated or is about to
2 violate this chapter or a rule adopted or order issued under this
3 chapter, or to aid in the enforcement of this chapter or in the
4 prescribing of rules and forms of this chapter;

5 (2) Publish information concerning a violation of this chapter or
6 a rule adopted or order issued under this chapter; and

7 (3) Investigate complaints concerning practices by persons engaging
8 in the business of body art, body piercing, or tattooing for which
9 registration is required by this chapter.

10 NEW SECTION. **Sec. 11.** The director or individuals acting on the
11 director's behalf are immune from suit in any action, civil or
12 criminal, based on acts performed in the course of their duties in the
13 administration and enforcement of this chapter.

14 NEW SECTION. **Sec. 12.** Local health jurisdictions may be
15 contracted with to conduct annual inspections of facilities where the
16 practice of body art, body piercing, or tattooing is performed to
17 determine compliance with licensing, safety, infection control, and
18 sterilization requirements imposed by statute or rule of the state and
19 local boards of health.

20 NEW SECTION. **Sec. 13.** (1) A civil penalty may be imposed by the
21 court for each violation of this chapter in an amount not less than
22 five hundred dollars nor more than two thousand dollars per violation.

23 (2) If a person fails to pay an assessment after it has become a
24 final and unappealable order, or after the court has entered final
25 judgment in favor of the state, the director may recover the amount
26 assessed by action in the appropriate superior court. In the action,
27 the validity and appropriateness of the final order imposing the
28 penalty shall not be subject to review.

29 NEW SECTION. **Sec. 14.** In order to maintain or defend a lawsuit,
30 a person engaging in the business of body art, body piercing, or
31 tattooing must be registered with the department as required by this
32 chapter and rules adopted under this chapter.

1 NEW SECTION. **Sec. 15.** (1) Each person who knowingly violates this
2 chapter or who knowingly gives false or incorrect information to the
3 director, attorney general, or county prosecuting attorney in filing
4 statements required by this chapter, whether or not the statement or
5 report is verified, is guilty of a gross misdemeanor punishable under
6 chapter 9A.20 RCW.

7 (2) A person who violates this chapter or who gives false or
8 incorrect information to the director, attorney general, or county
9 prosecuting attorney in filing statements required by this chapter,
10 whether or not the statement or report is verified, is guilty of a
11 misdemeanor punishable under chapter 9A.20 RCW.

12 NEW SECTION. **Sec. 16.** In addition to any other penalties or
13 remedies under chapter 19.86 RCW, a person who is injured by a
14 violation of this chapter may bring an action for recovery of actual
15 damages, including court costs and attorneys' fees. No provision in
16 this chapter shall be construed to limit any right or remedy provided
17 under chapter 19.86 RCW.

18 NEW SECTION. **Sec. 17.** The legislature finds that the practices
19 governed by this chapter are matters vitally affecting the public
20 interest for the purpose of applying the consumer protection act,
21 chapter 19.86 RCW. Any violation of this chapter is not reasonable in
22 relation to the development and preservation of business and is an
23 unfair and deceptive act or practice and unfair method of competition
24 in the conduct of trade or commerce in violation of RCW 19.86.020.
25 Remedies provided by chapter 19.86 RCW are cumulative and not
26 exclusive.

27 NEW SECTION. **Sec. 18.** All information, documents, and reports
28 filed with the director under this chapter are matters of public record
29 and shall be open to public inspection, subject to reasonable
30 regulation. The director may make public, on a periodic or other
31 basis, the information as may be necessary or appropriate in the public
32 interest concerning the registration, reports, and information filed
33 with the director or any other matters to the administration and
34 enforcement of this chapter.

1 practice of body art, body piercing, tattooing, or electrology, or
2 other precaution against the spread of disease, as required under RCW
3 70.54.350 or section 3 of this act, or (4) driving while under the
4 influence of intoxicating liquor or any drug, shall be considered
5 negligence per se.

6 **Sec. 24.** RCW 43.24.150 and 2005 c 25 s 1 are each amended to read
7 as follows:

8 (1) The business and professions account is created in the state
9 treasury. All receipts from business or professional licenses,
10 registrations, certifications, renewals, examinations, or civil
11 penalties assessed and collected by the department from the following
12 chapters must be deposited into the account:

- 13 (a) Chapter 18.11 RCW, auctioneers;
- 14 (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- 15 (c) Chapter 18.96 RCW, landscape architects;
- 16 (d) Chapter 18.145 RCW, court reporters;
- 17 (e) Chapter 18.165 RCW, private investigators;
- 18 (f) Chapter 18.170 RCW, security guards;
- 19 (g) Chapter 18.185 RCW, bail bond agents;
- 20 (h) Chapter 19.16 RCW, collection agencies;
- 21 (i) Chapter 19.31 RCW, employment agencies;
- 22 (j) Chapter 19.105 RCW, camping resorts;
- 23 (k) Chapter 19.138 RCW, sellers of travel;
- 24 (l) Chapter 42.44 RCW, notaries public; (~~and~~)
- 25 (m) Chapter 64.36 RCW, timeshares; and
- 26 (n) Sections 1 through 21 of this act.

27 Moneys in the account may be spent only after appropriation.
28 Expenditures from the account may be used only for expenses incurred in
29 carrying out these business and professions licensing activities of the
30 department. Any residue in the account shall be accumulated and shall
31 not revert to the general fund at the end of the biennium.

32 (2) The director shall biennially prepare a budget request based on
33 the anticipated costs of administering the business and professions
34 licensing activities listed in subsection (1) of this section, which
35 shall include the estimated income from these business and professions
36 fees.

1 NEW SECTION. **Sec. 25.** Sections 1 through 21 of this act
2 constitute a new chapter in Title 18 RCW."

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3 On page 1, line 1 of the title, after "Relating to" strike the
4 remainder of the title and insert "regulating tattooing and body
5 piercing businesses; amending RCW 70.54.340, 5.40.050, and 43.24.150;
6 adding a new chapter to Title 18 RCW; and prescribing penalties."

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