

HOUSE BILL REPORT

SHB 1158

As Passed House:
March 11, 2019

Title: An act relating to regulation of permanent cosmetics under the Washington body art, body piercing, and tattooing act.

Brief Description: Regulating permanent cosmetics under the Washington body art, body piercing, and tattooing act.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Ryu, Eslick, Appleton, Lovick, Blake, Stanford, Reeves, Kirby and Santos).

Brief History:

Committee Activity:

Consumer Protection & Business: 1/29/19, 1/30/19 [DPS].

Floor Activity:

Passed House: 3/11/19, 64-33.

Brief Summary of Substitute Bill

- Adds permanent cosmetics to the Washington Body Art, Body Piercing, and Tattooing Act (Act), and renames the Act accordingly.
- Requires an applicant for a permanent cosmetics license to have completed a permanent cosmetics curriculum, which must include a minimum of 100 hours of training on permanent cosmetics taught by a permanent cosmetics trainer.
- Includes an exemption from the 100 hours of training for a person with a license or endorsement issued by the Department of Licensing (DOL) to perform permanent cosmetics that is in good standing on the effective date of the Act.
- Establishes requirements for permanent cosmetics trainers and grants rulemaking authority to the DOL to establish additional requirements.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kirby, Chair; Reeves, Vice Chair; Blake, Ryu, Santos, Stanford and Walen.

Minority Report: Do not pass. Signed by 5 members: Representatives Vick, Ranking Minority Member; Barkis, Dufault, Volz and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Hoff, Assistant Ranking Minority Member.

Staff: Serena Dolly (786-7150).

Background:

The Department of Licensing (DOL) licenses and regulates practitioners of body art, body piercing, and tattooing pursuant to the Washington Body Art, Body Piercing, and Tattooing Act (Act). An individual must be licensed, as well as the shop or business at which the licensed individual engages in the practice of body art, body piercing, or tattooing.

Body art is the practice of invasive cosmetic adornment including the use of branding and scarification. Body piercing is the process of penetrating the skin or mucous membrane to insert an object, including jewelry, for cosmetic purposes. "Tattooing" means to pierce or puncture the human skin with a needle or other instrument for the purpose of implanting an indelible mark, or pigment, into the skin. Certain limited exclusions apply to these definitions.

The DOL's powers and duties pertaining to the commercial practice of body art, body piercing, and tattooing include, among others, setting license, examination, and renewal fees, adopting rules necessary to implement the Act, and establishing minimum safety and sanitation standards for practitioners as determined by the Department of Health.

It is unlawful for any person to engage in the practice of body art, body piercing, or tattooing, or to operate a shop or business for that purpose, unless the person has a license in good standing. The DOL may take action pursuant to the Uniform Regulation of Business and Professions Act to investigate or discipline a person who, without a license, engages in the practice of body art, body piercing, or tattooing, or operates a shop or business. The DOL may also discipline an applicant or licensee for violating the Uniform Regulation of Business and Professions Act or the Consumer Protection Act.

The minimum requirements for a shop or business license include the following:

- completing an application developed by the DOL and paying the license fee established by the DOL;
- maintaining an outside entrance separate from rooms used for sleeping and residential purposes;
- providing and maintaining, for the use of customers, adequate toilet facilities located within or adjacent to the shop or business;

- ensuring any room used wholly or in part as a shop or business is not used for residential purposes, except that toilet facilities may be used for both residential and business purposes;
- providing for safe storage and labeling of equipment; and
- certifying that the shop or business is covered by a public liability insurance policy in an amount not less than \$100,000 for combined bodily injury and property damage liability.

Rules developed by the DOL require an applicant for an individual license to provide proof of blood-borne pathogen certification. Pursuant to those rules, a person must hold the certification from a training course with standards in compliance with federal Occupational Health and Safety Administration rules at 29 C.F.R. 1910.1030, which establish duties, practices, and procedures pertaining to all occupation exposure to blood or other potentially infectious materials in a workplace.

Upon receipt of a written complaint that a shop or business has violated the Act or rules, or at least once every two years for an existing shop or business, the DOL must inspect each shop or business. If the DOL determines a shop or business is not in compliance with the Act, the DOL must send written notice to the shop or business. A shop or business that fails to correct the conditions to the satisfaction of the DOL within a reasonable time is, upon due notice, subject to the penalties imposed by the DOL in accordance with the Uniform Regulation of Business and Professions Act. The DOL may enter any shop or business during business hours for the purpose of inspection, and may contract with health authorities of local governments to conduct the required inspections.

It is a violation of the Act for a person to engage in the commercial practice of body art, body piercing, or tattooing except in a licensed shop or business with the appropriate individual body art, body piercing, or tattooing license. Following a hearing, if the DOL finds any person or an applicant or licensee has violated any provision of the Act or rules, the DOL may impose one or more of the following penalties:

- denial of a license or renewal, or revocation or suspension of a license;
- a fine of not more than \$500 per violation;
- issuance of a reprimand or letter of censure;
- placement of the licensee on probation for a fixed period of time or restriction of the licensee's authorized scope of practice;
- requiring the licensee to make restitution or a refund as determined by the DOL to any individual injured by the violation; or
- requiring the licensee to obtain additional training or instruction.

Any person aggrieved by the refusal of the DOL to issue any license or to renew a license, or by the revocation or suspension of a license, or by the application of any of the penalties listed above, may appeal the decision to superior court. An appeal must be filed within 30 days of the DOL's decision.

The DOL must immediately suspend any license issued under the Act if the DOL receives information that the license holder has not complied with the requirement to disable the ability of automatic-teller machines and point-of-sale machines located on their business premises to accept electronic benefit cards. Also, the DOL must suspend the license of a

person who has been certified by the Department of Social and Health Services as a person who is not in compliance with a support order.

A violation of the Act is considered a violation of the Consumer Protection Act.

The license application forms and regulations developed by the DOL include the practice of permanent cosmetics as a distinct type of tattooing, body art, or body piercing regulated under the Act.

Summary of Substitute Bill:

Permanent cosmetics is added to the Washington Body Art, Body Piercing, and Tattooing Act. The Washington Body Art, Body Piercing, and Tattooing Act is renamed the Washington Body Art, Body Piercing, Tattooing, and Permanent Cosmetics Act (Act).

"Permanent cosmetics" is defined as the process of using tattooing techniques to apply permanent eyebrows, eyeliner, lip liner, lip color, hair follicles, or scar camouflage, to improve or restore a person's appearance. It also includes the repigmentation of skin by a permanent cosmetics artist following an initial application of permanent eyebrows, eyeliner, lip liner, lip color, hair follicles, or scar camouflage through the use of tattooing techniques. It is established that permanent cosmetics is a form of tattooing.

A permanent cosmetics artist is a person who uses tattooing techniques to apply permanent eyebrows, eyeliner, lip liner, lip color, hair follicles, or scar camouflage, to improve or restore a person's appearance. All of the requirements applicable to tattoo, body art, and body piercing practitioners, and shops or businesses, are applicable to permanent cosmetics artists and shops or businesses. However, the additional requirement of completing a permanent cosmetics curriculum applies to applicants for a permanent cosmetics artist license.

A permanent cosmetics curriculum is defined as training required pursuant to rules adopted by the DOL which must include a minimum of 100 hours of training on permanent cosmetics taught by a permanent cosmetics trainer who is approved by the DOL. To qualify as a permanent cosmetics trainer, a person must hold a current license as a permanent cosmetics artist and have held a permanent cosmetics artist license for at least five consecutive years.

A person with a license or endorsement to perform permanent cosmetics issued by the DOL, that is in good standing on the effective date of the bill, is not required to complete a permanent cosmetics curriculum in order to be issued a permanent cosmetics license or to renew such a license.

The following license requirements for individual body art, body piercing, tattoo, and permanent cosmetics artists are moved from the DOL's rules to statute: (1) a person must be age 18 or over; and (2) a person must provide proof the person holds a blood-borne pathogens certification from a training course with standards in compliance with federal Occupational Health and Safety Administration rules.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2020.

Staff Summary of Public Testimony:

(In support) Permanent cosmetics artists have no training or educational requirements. Cosmetologists must complete 1,600 hours of education and training and pass a test. Barbers must complete 1,000 hours of education and training and pass a test. Nail technicians must complete 600 hours of training. These are permanent, invasive procedures often done on the face. It is not semi-permanent as some claim. Yet providers have to meet minimal requirements and have no regulations. The lack of training requirements creates great risk to consumers. Fixing poorly done permanent cosmetics is very invasive. A training requirement will help ensure the public is safe. Most clients are not aware that there are no training or educational requirements. Many providers learn from videos or social media. By watching a video and paying \$250, anyone can become a permanent cosmetics artist. Trainers sometimes do not even have formal training. Some providers are operating without insurance. Permanent cosmetics artists need to be trained, licensed, regulated, insured, and taxed. Sometimes permanent cosmetics are used by people to cover scars from surgery or who are no longer able to apply cosmetics due to age or disability. Technicians need to know what medical questions to ask and when a person should be referred to a doctor for advice.

(Opposed) None.

(Other) This bill makes an artificial distinction between permanent cosmetics artists and tattoo artists. Tattoo artists sometimes tattoo faces, and the equipment used by permanent cosmetics artists can be used to tattoo.

Persons Testifying: (In support) Representative Ryu, prime sponsor; Penny Rudy; Molly Klipp; Helen Piatt; and James Rudy.

(Other) Stacey Kalkus.

Persons Signed In To Testify But Not Testifying: None.