

LICENSE TATTOO PARLORS

House Bill 4475 as introduced First Analysis (12-2-97)

Sponsor: Rep. Derrick Hale
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

According to a recent article on body piercing in a Daytona Beach, Florida newspaper (The News Journal, 8-18-97), body piercing and other forms of invasive body art can be performed in most parts of the country "by anyone with a sharp object." In Michigan, the body art business, which includes tattooing, branding, body piercing, and the application of permanent eye and lip liner, is largely unregulated. Reportedly, only a handful of counties have adopted ordinances to license or regulate tattoo facilities. In response to constituent concerns, legislation in the form of Public Act 223 of 1996 was enacted to prohibit a person from tattooing, branding, or piercing a minor without parental consent or an individual under the influence of alcohol or a controlled substance.

Though a step in the right direction, many believe that more comprehensive standards for the body art industry should be adopted, especially in light of the public health and safety issues raised by such invasive procedures. Body art procedures can transmit blood borne diseases and can also result in injuries and infections, yet are often performed by untrained or undertrained personnel. Though as yet undocumented, it is theoretically possible for body art procedures to transmit HIV infection. It has been documented by the Centers for Disease Control (CDC) that such procedures have been associated with the spread of hepatitis. Data recorded by the Viral Hepatitis Surveillance Program (VHSP) for 1993 show that 1.8 percent of the reported hepatitis A cases, 4.3 percent of hepatitis B, and 5.7 of hepatitis C cases recorded having had a tattoo within six weeks to six months prior to the illness. As the cases reported to the VHSP represent approximately one-third or less of the hepatitis cases reported to the National Notifiable Diseases Surveillance System, actual figures could be higher.

Besides transmitting hepatitis, other blood borne diseases, and possibly HIV, industry members and public health officials alike point to the problem of injuries and infection resulting from body art that may go unreported but result in trips to doctors' offices and emergency rooms. According to a spokesperson from the Association of Professional Piercers, an under- or

untrained person can injure a client by the improper placement of jewelry or by using poor quality jewelry. The National Environmental Health Association (NEHA), a national organization of public health officials, universities, private industry, and the U.S. Public Health Service, reports that currently little information is available on the number and types of such injuries and infections because facilities are not required to report incidences to local health agencies. However, improper piercing has been linked with toxic shock syndrome and infections, and improper piercing of the tongue can result in nerve damage and chipped teeth. Reportedly, though some establishments do practice proper procedures in regards to sanitation, others reuse piercing needles, use improper equipment, and fail to sterilize equipment. An inspection of body piercing establishments in Volusia County, Florida revealed that some piercers were not washing their hands before or after a procedure or even wearing gloves.

According to information supplied by NEHA, there is a nationwide movement to regulate the body art industry due to public health and safety issues. Wisconsin, Oregon, Kansas, and Ohio have recently adopted laws to regulate the industry, and several other states are considering legislation to do so. In an attempt to assist city, county, and state health departments in writing regulations for the body art industry, as well as to assist body art professionals in the operation of their establishments, NEHA has drafted a model code based on input from public health officials and members of the body art profession. (The model code is currently in draft form, and should be formalized early in 1998.)

Many in Michigan also feel that the body art industry should be regulated. Though data is scarce as to how extensive problems with disease transmittal or infection are across the state, it is reasonable to assume that similar practices noted in other states are occurring here. Though not based on the recently released draft model legislation by NEHA, legislation has been introduced to license facilities that perform tattooing and body piercing and so to increase protection for the public.

House Bill 4475 (12-2-97)

THE CONTENT OF THE BILL:

The bill would amend Part 131 of the Public Health Code, entitled "Tattoo Parlors", to create a tattoo facility license, establish license fees, regulate tattoo facilities, and establish penalties for violations. Specifically, the bill would do the following:

*Not tattoo, brand, or body-pierce a person under the influence of alcohol or a controlled substance.

Tattoo facility license. After the effective date of rules required to be promulgated under the bill, an individual could not tattoo, brand, or do body-piercing unless the activity were performed in a licensed facility. Applications for a license would have to be made on a form provided by the department and accompanied by \$250 for an initial license, \$200 for a one-year renewal license, and \$50 for a temporary license to operate a tattoo facility at a fixed location for not more than a two-week period. (Note: The bill amends a section of the code that is under the jurisdiction of the Department of Community Health. However, licensing and inspection functions are carried out by the Department of Consumer and Industry Services, which administrates Article 15, entitled Occupations, of the code.) The license would have to be issued to a specific person for a specific location and would not be transferable. License renewals would have to be made at least 30 days before the license expired. The department would have to inspect a facility before issuing a license and would have to conduct periodic inspections thereafter.

Licensees. The owner or operator of a tattoo facility would have to do the following:

- *Display the license in a conspicuous place within the customer service area of the facility.
- *Ensure the facility is in compliance with Part 138 of the code, entitled "Medical Wastes", and rules promulgated under it.
- *Ensure that a person wears department-approved disposable gloves when doing tattooing, branding, or body-piercing or cleaning the instruments used to perform those procedures.
- *Maintain a permanent record of each individual receiving a tattoo, brand, or body-piercing that includes, at a minimum, the person's name, address, age, and signature; the date; design and location of the tattoo, brand, or body-piercing; and the name of the person who performed the procedure.
- *Prohibit smoking within the facility.

*Give each customer a department-approved instruction sheet on the care for the site of the tattoo, brand, or body-piercing that included a recommendation for a person to seek medical attention if the site became infected or painful, or if the person developed a fever soon after the procedure.

*Notify the department or a local health department within 24 hours of becoming aware that a procedure was performed on a person infected with a communicable disease.

Department requirements. The department would have to do the following:

*Enforce the bill’s requirements and rules promulgated under it.

*Promulgate rules to implement the bill, including rules pertaining to tattoo facility design and construction; equipment standards, which would include cleaning and sterilization requirements; tattoo dye standards; inspection of tattoo facilities; and tattoo facility license renewal.

The department would be permitted to appoint an advisory committee to assist the department in developing rules. The department could also -- after a notice and opportunity for a hearing -- suspend, revoke, or deny a license or license renewal for a violation of the bill or rules promulgated under it. A local health department authorized to enforce the bill would have to do so under existing provisions in the code.

Penalties. In addition to any other enforcement action allowed by law, a person alleging a violation of the bill could bring a civil action for appropriate injunctive relief. For violations other than performing a procedure on a minor without a parent’s written consent or a person under the influence of alcohol or a controlled substance, a person violating the bill’s provisions would be guilty of a misdemeanor that was punishable by up to 90 days in jail or a fine of up to \$100, or both. (Under the code, a person performing a procedure on a minor or a person under the influence of alcohol or a controlled substance is guilty of a misdemeanor that is punishable by up to 90 days in jail, a fine up to \$500, or both.)

MCL 333.13101 et al.

FISCAL IMPLICATIONS:

The bill as introduced amends a section of the Public Health Code that is under the jurisdiction of the

Department of Community Health, though the Department of Consumer and Industry Services typically regulates the licensing and inspection of facilities. The House Fiscal Agency reports that the department in charge of regulating tattoo facilities would see an indeterminate cost and revenue impact by the bill’s requirements. However, the agency reports that such licensing activities are generally established within parameters to be fiscally neutral in their net impact. (11-6-97)

ARGUMENTS:

For:

According to information from the Association of Professional Piercers, since “body piercing involves the creation of a puncture wound and the installation of a surgical grade implant into the hole”, “piercers routinely handle the bodily fluids of dozens of people a day.” In a similar manner, tattooists also puncture the skin and are exposed to bodily fluids. This poses a health risk to both the client and the piercer or tattooist in regards to diseases transmitted through exposure to blood and body fluids such as hepatitis. Cosmetologists and manicurists, who are less likely to transmit a serious or deadly disease, are required to be licensed by the state, yet the body art industry is largely unregulated.

Tattooists and body piercers should be held to a basic standard of sterilization, disinfection, and use of sterile techniques in order to prevent disease transmission. The body art industry has grown rapidly in recent years, and is difficult to self-regulate, especially considering the fact that tattooists and piercers have even operated at flea markets and fairs. Untrained and undertrained practitioners can also injure clients or increase the likelihood of an infection. Though many injuries and infections are not serious, some can result in permanent nerve damage or life-threatening infections such as toxic shock syndrome.

On a national level, there appears to be a move to regulate the body art industry, primarily due to the public health risk posed by infection and disease transmittal. As the body art industry continues to grow, regulation is necessary to prevent outbreaks of disease and to minimize the incidences of injuries. Several states have enacted laws to regulate body art, and the National Environmental Health Association, which includes as members local health departments, has recently drafted model legislation to be used to help standardize the body art industry on a national basis. National professional organizations for tattooists, body piercers, and permanent cosmetics professionals support regulation that would protect the public health and bring more professionalism to the industry.

Statewide, there is little regulation of the body art industry. Recent legislation, Public Act 223 of 1996, did create a misdemeanor offense for people tattooing or piercing a minor without parental consent or a person under the influence of drugs or alcohol, but did not speak to the public safety issue of proper sterilization methods to minimize disease and infection. In light of the potentially serious diseases, infections, and injuries that can occur from unsanitary or improperly done procedures, legislation should be adopted to protect the public health.

Response:

The bill contains an incorrect reference to the Department of Community Health as being the department charged with the licensing and inspection duties for tattoo and body piercing facilities. The bill should be amended to specify that it would be the Department of Consumer and Industry Affairs that would fulfill the regulating duties under the bill. Also, a requirement regarding facilities keeping records of procedures done should be clarified so to ensure confidentiality for clients as to who would have access to the records. As written, it would appear that the records would be public and so could be subject to public disclosure. Further, it has been pointed out by members of the tattoo and body piercers industry that where piercing of the earlobe should be exempted from regulation under the bill, piercing the cartilage of the ear should be subject to the bill's regulations.

Against:

Licensure statutes generally tend to be promoted by those in the affected profession, and act as economic protection against competition within the profession. The climate in Michigan in recent years, as well as across the country, has been to reduce government regulations, not create new regulatory structures. Besides, the model legislation drafted by the National Environmental Health Association contains some provisions that could be overly burdensome to state and local health departments who would be responsible for administering and enforcing any laws enacted.

Response:

The code offered by NEHA is just a model to assist state and local governments in drafting their own laws. House Bill 4475 would be an important first step in regulating the body art industry in Michigan without placing undue burdens on either state or local health agencies or on members of the body art profession.

POSITIONS:

The Alliance of Professional Tattooists has indicated support for the bill. (11-28-97)

Body Work Productions, Inc. supports the concept of the bill and suggests that each service (tattooing, branding, and body piercing) be regulated separately. (11-29-97)

The Department of Consumer and Industry Services has no formal position on the bill. (12-1-97)

Analyst: S. Stutzky