

## LICENSE TATTOO PARLORS

### House Bill 4451 with committee amendment First Analysis (5-20-99)

**Sponsor: Rep. Derrick Hale**  
**Committee: Regulatory Reform**

#### ***THE APPARENT PROBLEM:***

By stating that body piercing and other forms of invasive body art can be performed in most parts of the country "by anyone with a sharp object", an article in a Daytona Beach, Florida newspaper (The News Journal, 8-18-97) succinctly summed up the current climate of the body art industry. In Michigan, the body art industry, 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 regarding the increasing popularity of tattoos and pierced noses, tongues, eyebrows, and so on by teenagers, 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. Often performed by untrained or undertrained personnel, body art procedures can transmit blood borne diseases and can also result in injuries and infections. 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 cases, 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. Though as yet undocumented, it is theoretically possible for body art procedures to also transmit HIV infection.

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. Some people experience allergic reactions to the dyes used in tattooing and permanent cosmetics applications. Tattoos may become infected if proper sanitation methods are not practiced. 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. 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 tattoo and piercing needles, use improper equipment, and fail to sterilize equipment. For example, an inspection of body piercing establishments in Volusia County, Florida revealed that some piercers were not wearing gloves or even washing their hands before or after a procedure. 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.

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 little information is currently available on the number and types of such injuries caused and infections spread by tattooing and body piercing because facilities are not required to report incidents to local health agencies. However, according to information supplied by NEHA, there is a nationwide movement to regulate the body art industry in response to public health and safety concerns. 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.)

Due primarily to concerns over the spread of blood-borne diseases and anecdotal reports of infections and injuries, many in Michigan feel that the body art industry should be regulated. 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.

### ***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:

**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 of Consumer and Industry Services and accompanied by \$250 for an initial license, \$200 for a 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. Initial and renewal licenses would be valid for at least one year or other time period as prescribed by departmental rule. 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. The department could authorize a local health department to perform the required inspections.

**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.

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

\*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 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.

\*Develop and distribute the information sheets on tattoo care that licensees are required to give to customers. The department could approve information sheets developed by other entities.

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.

**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.) Further, a person who gave or sold a body-piercing kit or other body-piercing device to a minor would be subject to a state civil infraction and a civil fine of up to \$500. This latter provision would be enforced under provisions of Chapter 88 of the Revised Judicature Act (MCL 600.8801- 600.8855).

MCL 333.13101 et al.

### **BACKGROUND INFORMATION:**

House Bill 4451 is nearly identical to House Bill 4475 that was introduced in the 1997-1998 legislative session and was passed by the House.

### **FISCAL IMPLICATIONS:**

Fiscal information is not available.

### **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.

In Michigan, there is little regulation of the body art industry. Only a handful of counties have local ordinances regulating tattoo or piercing parlors. Recent legislation, Public Act 223 of 1996, created 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.

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 body piercers often operate in back rooms of their homes and 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 and disfigurement or life-threatening infections such as toxic shock syndrome and hepatitis B and C.

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. The fact that several states have enacted laws to regulate body art and that the National Environmental Health Association, which includes local health departments as members, has recently drafted model legislation to be used to help standardize the body art industry on a national basis, underscores the growing awareness that unregulated tattooists and body piercers pose a threat to the public's health and safety. Further, 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.

#### **Response:**

A requirement regarding facilities keeping records of procedures done should be clarified to ensure confidentiality of client records. As written, it would appear that the records would be public and so could be subject to public disclosure. Also, 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 the state department responsible for administering and enforcing any laws enacted.

### ***Response:***

Some of the procedures performed while giving a tattoo or piercing various body parts are not very different from procedures performed by physicians, dentists, and oral surgeons, all of whom must be licensed and must adhere to strict standards in the Public Health Code regarding sterilization of implements and proper disposal of medical wastes. (In fact, some members of the dental profession have questioned the legality of nonlicensed persons performing procedures that fall within the scope of practice of licensed health professionals.) The argument that licensing tattoo facilities is an attempt to boost business for those currently in the profession by closing the market to newcomers just doesn't hold in light of the proven and documented risk of spreading infectious diseases and potential injury to customers. Tattooing and body piercing have been around for centuries, and are not fads that will soon pass. This is an industry that should have been regulated by the state long ago.

In regards to the code offered by NEHA, it is just a model to assist state and local governments in drafting their own laws. House Bill 4451 is not based on that model, but does address some of the same issues such as providing sterile procedures and record keeping, and therefore would be an important first step in regulating the body art industry in Michigan without placing undue burdens on state agencies or on members of the body art profession.

### ***Against:***

The penalties in the bill for operating an unlicensed tattoo or body-piercing facility are insufficient to discourage unlicensed activity. Unless the penalties are raised on a level similar to penalties imposed on other occupations for engaging in unlicensed activities, there will be little incentive for currently unregulated businesses to seek licensure. There is only so much that government can protect consumers from. The Department of Consumer and Industry Services, which oversees all occupational licensure (health professions, cosmetology, construction, etc.) and licenses and regulates nursing homes, simply does not have the staff to seek out unlicensed businesses and then try and convince a prosecutor to take on the case in an overburdened court system for what amounts to a slap on the wrist. If unregulated tattoo and body-piercing establishments pose the serious health risks that proponents of the bill maintain, then the penalties for operating an unlicensed business should be severe enough to discourage unlawful activities.

### ***POSITIONS:***

Splash of Color, a tattoo and body-piercing establishment, supports the bill. (5-19-99)

The Department of Consumer and Industry Services does not support the bill. (5-19-99)

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