

Legislative Analysis



LICENSE BODY ART FACILITIES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 593 (Substitute H-1)

Sponsor: Sen. John J. Gleason

House Committee: Health Policy

Senate Committee: Health Policy

First Analysis (11-26-07)

BRIEF SUMMARY: The bill would create a body art facility license, establish license fees, regulate body art facilities, and establish penalties for violations.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local governments. A more detailed discussion of the fiscal implications follows later in this analysis.

THE APPARENT PROBLEM:

Once associated with sailors on shore leave, tattooing and body-piercing have gone mainstream. Now, people of all ages and professions sport tattoos as well as pierced ears, eyebrows, noses, and tongues, among other things. In Michigan, the body art industry, which includes tattooing, branding, body-piercing, and the application of permanent eye and lip liner, is largely unregulated. To date, only a handful of counties have adopted ordinances to license or regulate body art facilities. For well over a decade, though, there has been a nationwide movement to regulate the body art industry in response to public health and safety concerns.

When performed by untrained or undertrained personnel, body art procedures can transmit blood borne diseases (i.e., hepatitis, HIV) and skin diseases such as MRSA (a drug-resistant staph infection). In addition, some people experience allergic reactions to the dyes used in tattooing and permanent cosmetics applications. Tattoos can become infected if proper sanitation methods are not practiced, and an under- or untrained piercer 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.

Recently, body art has become so popular that the practice has now begun to affect the state's volunteer blood supply. According to the American Red Cross, a person who receives a tattoo is not eligible to donate blood for at least a year. This is because without uniform licensing across the state, body art facilities have no required health standards to follow. Without standardized health practices in place, clients are deemed to be at a greater risk for blood borne diseases, such as hepatitis, and so are deferred as donors for a year under federal regulations. With body-piercing, a person may donate if sterile, single-use needles were used in the procedure—something hard to verify without uniform, statewide standards.

The American Red Cross reports that approximately 20 percent of the blood supply is donated by high school and college students. With some high school and college blood drives reporting that half of the potential donors have to be turned away because of a recent body art service, the Red Cross estimates that as many as 5,000 potential donors a year are being deferred. Since a person may donate up to six times a year, this represents a potential loss of up to 30,000 units of blood a year. However, if a person receives body art services in a state-licensed facility, he or she is not deferred and is eligible to donate as desired. To address these concerns, legislation has been offered to create a statewide body art facility license.

THE CONTENT OF THE BILL:

The bill would amend Part 131 of the Public Health Code—entitled "Tattoo Parlors"—to create a body art facility license, establish license fees, regulate body art facilities, allow a civil action for injunctive relief, and establish civil and criminal penalties for violations of the bill's provisions. A "body art facility" would mean the location at which an individual performed tattooing, branding, and/or body-piercing.

Body art facility license. As of January 1, 2009, 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 Community Health (DCH) and accompanied by \$500 for an initial three-year license, \$300 for a three-year renewal license, and \$100 for a temporary license to operate a body art facility at a fixed location for not more than a two-week period.

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; a license would be renewed by the DCH for an applicant in compliance with Part 131 and any rules promulgated under it (as determined by the department in consultation with the appropriate local health department).

Responsibilities of licensees. The owner or operator of a body art facility would have to do all of the following:

- Display the license in a conspicuous place within the customer service area of the facility.
- Ensure that the facility as a whole and any individual engaged in tattooing, cleaning tattooing instruments, performing branding or body-piercing, or cleaning branding or body-piercing instruments comply with federal bloodborne pathogen safety standards.
- Ensure that licensed activities be performed in a sterile field with sterile needles and only single-use ink.

- Maintain a confidential record of each individual receiving a tattoo, brand, or body-piercing that included, at a minimum, the person's name, address, age, and signature; the date; design and location of the tattoo, brand, or body-piercing; the name of the individual who performed the procedure; and any known complications from the procedure or procedures. A copy would have to be given to the person receiving the tattoo, brand, or body-piercing at the time the procedure was performed. The records would have to be available for inspection by a local health department.
- Prohibit smoking within the facility.
- Provide each customer with a department-approved instruction sheet that included, at a minimum, care for the site of the tattoo, brand, or body-piercing; a recommendation that an individual seek medical attention if the site of the procedure became infected or painful, or if the person developed a fever soon after the procedure; and a notice that the individual may be allowed to donate blood within the standard waiting period if he or she presented a copy of the record provided by the body art facility to the blood donor facility.
- Maintain on file on the licensed premises, and have available for inspection by a local health department, all of the following: information on each technician employed by or who performed the regulated procedures at the facility as specified in the bill; full legal name of the body art facility; the facility's hours of operation; the legal name, home address, and work telephone number of each owner and operator of the facility; a complete inventory of instruments, body jewelry, sharps, and inks used in the procedures as specified in the bill; and a copy of Part 131 and any departmental rules promulgated under it.

In addition, an applicant for a body art facility license or a licensee would not be relieved from the responsibility of securing a local permit or complying with applicable local codes, regulations, or ordinances that were in addition to Part 131 of the health code.

Responsibilities of the DCH and local health departments. The Department of Community Health would be required to authorize a local health department to enforce Part 131 and any departmental rules promulgated under it. A local health department (LHD) so authorized would have to enforce Part 131 and departmental rules. In addition to the penalties and remedies allowed under Part 131, an LHD could fulfill its enforcement duties through an injunctive action as provided in Section 2465 of the code or any other appropriate action authorized by law.

The bill would create a mechanism by which a county or city could, through an intergovernmental agreement, contract with another local governing entity to perform the enforcement requirements of the bill if the local health department was unable or unwilling to perform those functions. The intergovernmental agreement would have to be approved by the DCH prior to execution.

The local governing entity of an LHD could fix and require the payment of fees by applicants and licensees for services required to be performed by the LHD under the bill's provisions.

An LHD would have to use as guidance in enforcing Part 131 the safety standards issued by the National Environmental Health Association in "Body Art: A Comprehensive Guidebook and Model Code," unless those guidelines conflicted with the standards of Part 131 or any department-promulgated rules regarding safety standards.

Further, the local governing entity of a local health department authorized to enforce Part 131 could adopt and enforce local codes, ordinances, or regulations that were more stringent than the minimum applicable standards set forth in Part 131 or rules promulgated under it. A licensee and applicant for a license would still be responsible to comply with any local requirements in addition to the requirements under Part 131 of the health code.

Remedies and penalties. A civil action for appropriate injunctive relief could be brought in a court of competent jurisdiction by a person alleging a violation of Part 131.

A violation of Part 131 or related departmental rules would be a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100, or both, for each violation.

A person who gave or sold to a minor a body-piercing kit or other body-piercing device would be responsible for a state civil infraction and subject to a civil fine of not more than \$500.

Minors. Current law already prohibits an individual from tattooing, branding, or performing body-piercing on a minor (person under 18 years of age) without the written informed consent of the parent or legal guardian. However, in this context, an emancipated minor is exempted from the definition of "minor" and so may consent to receive body art services. The bill would amend this provision by no longer exempting emancipated minors from the definition of a "minor;" thus, an emancipated minor would be treated the same as any other person under the age of 18 years and so could not legally receive body art services without the written informed consent of a parent or guardian.

MCL 333.13101 et al.

HOUSE COMMITTEE ACTION:

The committee substitute deleted the definition for "communicable disease."

BACKGROUND INFORMATION:

For the past decade, similar legislation has been introduced in every session to regulate facilities that perform tattoo, branding, or body-piercing services. House Bill 4475 was

passed by the House in the 1997-1998 legislative session, and House Bill 4451 was passed by the House in the 1999-2000 legislative session. Both bills failed to see action in the Senate.

FISCAL INFORMATION:

Fiscal impact on the state and local health departments. Senate Bill 593 (H-1) will have state fiscal implications for the Department of Community Health. Costs to the DCH will include establishing a permanent system and staff for the licensing process, start up tasks of promulgation of rules, and development of licensure application, including web-based application. Ongoing functions will include publicizing the requirement for licensure; processing, review, and approval of applications; and issuance of licenses. The Department estimates first year costs at \$180,000 and annual costs thereafter of approximately \$70,000 and one FTE position.

Revenue will come to the Department from the 3-year \$500 initial and \$300 renewal licensing fees which will support the licensing program, as well as the \$100 2-week licenses. The DCH and the Department of Environmental Quality estimate that there are currently about 300-400 tattoo or body piercing/art businesses in Michigan to which this bill may apply. DEQ administers the Medical Waste Regulatory Act, which also affects body art facilities that produce medical waste. Annual revenue will fluctuate due to the 3-year licensing period. The DCH estimates minimum first year revenue at \$175,000 and second year at \$45,000.

Enactment of the bill may have a beneficial impact on state costs for medical care, if increased regulation reduces medical events, including injuries, infections, and blood-borne disease transmission.

Local governments will incur costs under the bill given the requirement for local public health departments to inspect facilities prior to licensure and annually thereafter, provide results to the Department, and enforce the statute. The bill clarifies that the local government may charge licensees a fee for the costs of these required services.

Fiscal impact on state and local governments for corrections-related costs. The bill would have no fiscal impact on the Department of Corrections. Any fiscal impact of the bill on local units of government for corrections costs would depend on the extent to which it increased the number of misdemeanor convictions and on the sanctions levied for violations of the bill. Potential costs would derive from increases in misdemeanor probation supervision and jail time, both of which are borne locally and vary by jurisdiction. Any increase in penal fine revenue could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

Senate Bill 593 establishes that a person who gives or sells a body-piercing kit or other body-piercing device to a minor would be guilty of a state civil infraction and could be subject to a civil fine (Sec. 13110). The bill could increase the funding for local libraries and revenues to the Justice System Fund (JSF).

Under current law, each non-traffic-related civil infraction may be assessed the following: civil fines that go to county treasurers to benefit local libraries, a \$10 JSF assessment, and court costs. A violation under this bill would be assessed a fine of up to \$500. This revenue would be allocated to local libraries. Each infraction would also be assessed a \$10 Justice System Assessment which would be deposited into the state JSF. The JSF supports various justice-related endeavors in the judicial branch, the Department of State Police, and the Department of Corrections. In addition, the assessed court costs would generate additional revenue for the governmental unit that funds the local court.

ARGUMENTS:

For:

It is against state law to perform body art services on a minor without parental consent or on a person who is under the influence of drugs or alcohol. But, lacking a law to prohibit it, there is no penalty in many municipalities around the state for a tattoo artist or body piercer to reuse the same needles—without sterilizing them—on multiple customers. Tattooists and piercers can also perform their services in unsanitary conditions, not wash their hands between customers, and not wear gloves (or change gloves between customers) even though they are exposed to the bodily fluids of those customers and such practices are known risk factors for the spread of skin infections (including MRSA, a drug-resistant staph infection) and blood borne diseases such as hepatitis B and C, tetanus, tuberculosis, and HIV.

What makes these practices legal, so to speak, is the absence of laws regulating body art facilities and prohibiting such business practices. Regulation would establish minimum health and safety standards for owners and practitioners to follow. Regular health inspections of the licensed premises would be conducted, and violators would face administrative penalties that include fines and license sanctions, as well as be subject to criminal charges. Unlicensed facilities could be shut down by court order and the owners of and practitioners at facilities in violation of the act could also face criminal charges. Consumers would be able to identify, and so choose to do business with, licensed facilities. Since the bill includes a requirement that facilities and individuals engaged in tattooing, branding, or body-piercing (or cleaning instruments used in those services) follow federal laws on blood borne pathogen safety standards, the risk of contracting or spreading communicable diseases in a licensed facility would be minimized, if not eliminated entirely. Also of importance is that many of the diseases and infections that can be contracted via a tattoo or body piercing in which safety standards were not followed can also be spread by intimate (i.e., hepatitis, HIV) or casual (i.e., MRSA skin infections) contact with the general population. The bill therefore would be good public policy to protect and enhance the health and well-being of all the state's citizens.

For:

According to the American Red Cross, it is estimated that up to 30,000 units of blood are not collected each year because willing donors who have received body art services in the previous year must be turned away. Under federal regulations, unless the services were performed in a state-licensed facility, the donor must be deferred for a year from the date

of the service. A person tattooed at a facility licensed under local ordinances must also be deferred under the federal regulations on the rationale that only a state-based system of licensure can provide the uniformity of safety standards needed to ensure a safe blood supply. People receiving body-piercing services can donate if they can verify that the establishment used sterile, single use needles, but this can be difficult to do without uniform licensing standards. With the popularity of tattoos and body-piercing among high school and college students, who account for one-fifth of blood donors, the legislation is needed to ensure an adequate and safe blood supply. The information required to be given to each customer under the bill will suffice to verify that proper and safe methods were used by the body art practitioner as required by the federal law.

For:

The duties imposed on local health departments would not result in unfunded mandates as the bill would authorize local municipalities to establish and levy fees on applicants for a body art facility license and licensees to support enforcement and inspection activities. In addition, the body art industry has long been in favor of uniform laws establishing mandatory safety and sanitation standards to protect the public, and many of the national associations representing tattooists and body piercers have gone on record as supporting uniform statewide licensure systems.

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 code drafted by the National Environmental Health Association, which the bill references, contains some provisions that could be overly burdensome to the state department and local governments responsible for administering and enforcing any laws enacted. The bill would also indirectly require licensees to purchase the NEHA model code so that they would know what the enforcing agencies would be expecting them to follow; this would add an additional cost to an already hefty license fee.

Response:

Some of the procedures performed while giving a tattoo or piercing certain 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, in the past, questioned the legality of nonlicensed persons performing procedures that fall within the scope of practice of licensed health professionals.) The argument that licensing body art facilities is an attempt to boost business for those currently in the profession by closing the market to newcomers just doesn't hold up in light of the proven and documented risk of spreading infectious diseases and the potential risk for injuries 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. Senate Bill 593 is not based on that model, but does address some of the same issues, such as providing sterile procedures and record keeping. The bill does require local health departments to use the safety standards in the NEHA model code to enforce Part 131 of the health code, but that would only apply if the Department of Community Health did not issue departmental rules establishing safety standards, or if those standards in the model code did not conflict with Part 131. Departmental rules developed by the DCH establishing safety standards would supersede standards in the NEHA model code.

As to the license fee and cost of the model code, after the initial three-year license fee of \$500, the renewal fee is just \$300 for a three-year license; this is just \$100 a year, far lower than some occupational licenses. And, though NEHA publishes a comprehensive guidebook and model code priced at \$99, a smaller version that contains only the model code is available for \$45 for nonmembers. Departmental rules are available from the state agency that promulgates the rules and are also available on the Internet.

Against:

The penalties for operating an unlicensed tattoo or body-piercing facility (a minor misdemeanor and/or \$100 fine) 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 Community Health, and many local health departments, simply do not have sufficient staff to seek out unlicensed businesses (or licensed businesses who violate the bill) and then try and convince an overburdened prosecutor's office 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 facilities pose the serious health risks that proponents of the bill maintain, then the penalties for operating an unlicensed business or violating provisions of the bill should be severe enough to discourage the unlawful activities.

Against:

Some are concerned that the requirement for a licensed facility to keep detailed customer information on file could lead to issues related to confidentiality and privacy.

Response:

Should there be an outbreak of a communicable disease among people who recently received a tattoo or body piercing, public health investigators would need access to the information provided on these records to track down the source of the infection. These records are similar to what many establishments already keep in the normal course of business. If a facility did not keep the records confidential, such as under lock and key with restricted access by employees, the licensee would be subject to administrative and criminal penalties for violating the bill's provisions.

Against:

The bill excludes establishments that only pierce ears. However, industry members and others have long felt that piercing the cartilage of the ear should be subject to the bill's regulations as the cartilage contains nerves that can impact a person's general well-being. It has also been pointed out that the "guns" used to pierce ears, often in mall stores where many teens shop, can be disinfected but not sterilized. Therefore, some feel these establishments should also be under the bill's regulations.

POSITIONS:

The Department of Community Health indicated support for the bill. (10-18-07)

A representative of the American Red Cross testified in support of the bill. (10-18-07)

A representative of Splash of Color Tattoo and Piercing Studio testified in support of the bill. (10-18-07)

A representative of the Genesee County Health Department submitted written testimony in support of the bill. (10-18-07)

The Michigan Association for Local Public Health indicated support for the bill. (10-18-07)

The Michigan Community Blood Centers indicated support for the bill. (10-18-07)

The Michigan Association of Counties indicated support for the bill. (10-18-07)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey
Marilyn Peterson
Viola Bay Wild

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.