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BILL ANALYSIS

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Senate Bill 593 (as introduced 6-19-07)
Sponsor: Senator John J. Gleason
Committee: Health Policy

Date Completed: 9-10-07

CONTENT

The bill would amend Part 131 (Tattoo Parlors) of the Public Health Code to do the following:

- **Prohibit a person from tattooing, branding, or performing body-piercing on another individual unless the service occurred at a tattoo facility licensed under Part 131.**
- **Require the Department of Community Health (DCH) to promulgate rules to implement Part 131.**
- **Require the DCH to enforce Part 131 and rules promulgated under it.**
- **Require the DCH to inspect a tattoo facility before issuing a license.**
- **Require the DCH to inspect each licensed tattoo facility periodically, and allow the DCH to authorize a local health department to perform periodic inspections.**
- **Prescribe duties for a licensed tattoo facility, including notifying the DCH that a customer was infected with a communicable disease.**
- **Authorize the DCH to suspend, revoke, or deny a license for a violation of Part 131.**
- **Allow a person alleging a violation of Part 131 to bring a civil action for appropriate injunctive relief.**
- **Prescribe a misdemeanor penalty for a violation of Part 131.**
- **Prohibit a person from providing a minor with a body-piercing kit or device, and prescribe a civil fine for a violation.**
- **Eliminate an exception for an emancipated minor from a prohibition against performing tattooing, branding, or body-piercing on a minor without parental consent.**
- **Revise provisions prohibiting a person from performing tattooing, branding, or body-piercing on a person who is under the influence of alcohol.**

Facility Licensure

After the effective date of the rules promulgated by the DCH under the bill, an individual could not tattoo, brand, or perform body-piercing on another individual unless the tattooing, branding, or body-piercing occurred at a tattoo facility licensed under Part 131. "Tattoo facility" would mean the location at which an individual performed tattooing, branding, and/or body-piercing for compensation.

The owner or operator of a tattoo facility could apply to the DCH for a license on a form provided by the Department. The owner or operator would have to pay to the DCH one of the following fees at the time of application:

- For an initial annual license, \$250.
- For a one-year, or other period of time prescribed by Department rule, renewal of an annual license, \$200.
- For a temporary license to operate a tattoo facility at a fixed location for up to two weeks, \$50.

If the DCH determined that the application was complete and the tattoo facility proposed or operated by the applicant met the requirements of Part 131 and the rules promulgated under it, the Department would have to issue a license to the applicant for the operation of that facility. The license would be effective for one year or for a time period prescribed by DCH rule.

Before issuing a license, the DCH would have to inspect the premises of the facility. The DCH also would have to inspect each licensed facility periodically to ensure compliance with Part 131. The DCH could authorize a local health department as prescribed in the Code to perform the periodic inspections.

The Department would have to issue a license under Part 131 to a specific person for a tattoo facility at a specific location. A license would be nontransferable.

A licensed tattoo facility owner or operator would have to apply to the DCH for license renewal at least 30 days before the license expired. Upon payment of the renewal fee, the Department would have to renew the license, if the applicant were in compliance with Part 131 and rules promulgated under it.

After notice and an opportunity for a hearing, the Department could suspend, revoke, or deny a license or license renewal for a violation of Part 131 or a rule promulgated under it.

Licensee Requirements

The owner or operator of a licensed tattoo facility would have to do all of the following:

- Display the license in a conspicuous place within the facility's customer service area.
- Comply with and ensure that the facility was in compliance with Parts 131 and 138 (Medical Waste) and rules promulgated under those parts.
- Ensure that an individual engaged in tattooing in the facility wore disposable gloves approved by the DCH when tattooing and performing branding or body-piercing or cleaning instruments.
- Prohibit smoking within the facility.
- Notify the DCH within 24 hours of becoming aware that an individual tattooed, branded, or body-pierced at the facility was infected with a communicable disease.

The owner or operator also would have to give each customer a written information sheet distributed or approved by the DCH that provided instructions on the care of a tattoo, brand, or body-piercing site and that included a recommendation that an individual seek medical attention if the site became infected or painful or if the person developed a fever soon after being tattooed, branded, or having body-piercing performed.

In addition, the owner or operator would have to maintain a permanent record of each individual who had been tattooed or branded or who had body-piercing performed at the facility and make the records available for inspection by the DCH or a local health department. The record would have to include, at a minimum, the individual's name, address, age, and signature; the date; the design and location of the tattooing, branding, or body-piercing; and the name of the individual performing the tattooing, branding, or body-piercing.

"Communicable disease" would mean that term as defined in Section 5101 of the Code, i.e., an illness due to a specific infectious agent or its toxic products that results from transmission of that infectious agent or its products from a reservoir to a susceptible host, directly as from an infected individual or animal, or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

DCH Powers & Duties

The DCH would have to enforce Part 131 and the rules promulgated under it. Additionally, the Department would have to promulgate rules necessary to implement Part 131, including rules governing the following:

- Tattoo facility design and construction.
- Tattoo, branding, and body-piercing equipment standards, including cleaning and sterilization requirements.
- Tattoo dye standards.
- Inspection of tattoo facilities.
- Tattoo facility license renewal.

The DCH could appoint an advisory committee to assist it in rule development.

The DCH would have to develop and distribute the required customer information sheet or approve information sheets developed by another entity.

Civil Action; Criminal Penalty

In addition to any other enforcement action authorized by law, a person alleging a violation of Part 131 could bring a civil action in a court of competent jurisdiction for appropriate injunctive relief.

Except as otherwise provided, a person who violated Part 131 or a rule promulgated under it would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$100.

The bill would prohibit a person from giving or selling to a minor a body-piercing kit or other body-piercing device. A person who violated this provision would be responsible for a State civil infraction and would be subject to a civil fine of up to \$500. These provisions would have to be enforced pursuant to Chapter 88 (State Civil Infractions) of the Revised Judicature Act.

Tattooing, Branding, or Piercing a Minor

The Code prohibits a person from tattooing, branding, or performing body-piercing on a minor unless he or she obtains the prior written informed consent of the minor's parent or legal guardian. The parent or legal guardian must execute the consent in the presence of the individual performing the tattooing, branding, or body-piercing, or in the presence of his or her employee or agent. Under the bill, these provisions would apply subject to the bill's provisions regarding tattoo facility licensure. The bill would delete a provision specifying that "minor" does not include an emancipated minor.

Influence of Alcohol

The Code prohibits an individual from tattooing, branding, or performing body-piercing on a person who is under the influence of intoxicating liquor or a controlled substance. The bill would refer to alcoholic liquor, rather than intoxicating liquor. "Alcoholic liquor" would mean that term as defined in the Michigan Liquor Control Code. Under that statute, "alcoholic

liquor" means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing at least one-half of 1% of alcohol by volume that are fit for use for beverage purposes as defined and classified by the Liquor Control Commission according to alcoholic content as belonging to one of the varieties defined in the statute.

MCL 333.13101 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Enactment of the bill would lead to an indeterminate increase in administrative expense for the Department of Community Health. The Department would have to devote additional staff to the enforcement and processing of applications for licensure, creation and enforcement of standards for the safe application of tattoos, brands and body piercing, and the inspection of tattoo facilities. The extent of cost to the Department would be determined by revenue generated by licensing fees imposed upon facilities seeking licensure and whether local health departments would be used for inspection functions by the Department.

Local governments could see an increase in administrative cost associated with passage of the bill if the Department designated local health departments to inspect tattoo facilities to ensure compliance with State standards. This increase in expense is indeterminate at this time and would be affected by the number of counties that already inspect tattoo facilities.

The bill would have an indeterminate fiscal impact on local government corrections costs. There are no data to indicate how many offenders would be convicted of violating the sections of the Public Health Code relating to tattoo facilities and operators. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.