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BILL



ANALYSIS

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Senate Bill 1486 (as reported without amendment)
Sponsor: Senator John J. Gleason
Committee: Health Policy

(as enrolled)

Date Completed: 9-24-10

RATIONALE

Public Act 149 of 2007 amended the Public Health Code to establish a statewide system for the licensure and regulation of facilities that perform tattooing, branding, and body-piercing. Previously, the regulation of such businesses was inconsistent; some local governments did not regulate them at all, and among local units that did, requirements and enforcement measures varied. Due to concerns regarding potential health and safety risks, it was suggested that a uniform system of regulation be implemented at the State level. While the legislation has brought more oversight to the body art industry, now that this regulatory scheme has been in place for several years, it appears that there is room for improvement. For example, some have expressed concern that local health departments, which are granted enforcement authority under the Code, are not equipped to conduct sufficient inspections, leaving the industry open to bad actors. Some facilities reportedly continue to perform tattooing, branding, and body-piercing on minors without the consent of a parent or guardian. In addition, some people are worried that measures to prevent the transmission of bloodborne infectious diseases are inadequate. It has been suggested that the regulations regarding body art facilities be revised to strengthen oversight and enforcement.

CONTENT

The bill would amend Part 131 (Body Art Facilities) of the Public Health Code do the following:

-- Require a parent or legal guardian giving consent for a minor to obtain

a tattoo, branding, or body piercing to provide proof of parenthood or guardianship.

- Prohibit a person under the influence of alcohol or a controlled substance from tattooing, branding, or performing body piercing.**
- Authorize the Department of Community Health (DCH) or a local health department to order the immediate cessation of tattooing, branding, and body piercing at an unlicensed body art facility, or any facility that was found to be an imminent danger.**
- Provide that a body art facility license would be valid for one year, rather than three; and revise license fees.**
- Require the DCH to distribute a portion of the license fee revenue to local health departments under a cost reimbursement program.**
- Require a local health department to make a recommendation to the DCH on whether an applicant should be issued a body art facility license.**
- Require an applicant or licensee to give the local health department access to the body art facility and all of its books and records.**
- Require a local health department to give the DCH a report of its findings related to a compliance inspection, including a compliance schedule for a facility where critical violations were found.**
- Authorize a local health department to place limitations on a body art facility license.**

- **Require a licensee to develop and maintain a bloodborne infectious disease exposure control plan.**
- **Require a licensee to ensure that employees and agents received annual training in bloodborne infectious diseases.**
- **Increase the penalties for a violation of Part 131.**
- **Allow a local health department to grant a variance to a body art facility from a requirement of Part 131, under certain circumstances.**

Minors: Parental Consent

The Code prohibits a person from tattooing, branding, or performing body piercing on a minor without the written informed consent of the minor's parent or legal guardian. The bill also would require proof of that individual's authority to give the informed consent. The minor's parent or legal guardian would have to present to the licensee or the licensee's employee or agent the minor's birth certificate or legal proof of guardianship to establish the individual's authority to give the informed consent.

Alcohol/Controlled Substance

The Code prohibits a person from tattooing, branding, or performing body piercing on another individual who is under the influence of alcoholic liquor or a controlled substance. The bill also would prohibit an individual who was under the influence from tattooing, branding, or performing body piercing on another individual.

Imminent Danger

The Code allows an individual to tattoo, brand, or perform body piercing on another individual at a licensed body art facility. Under the bill, any tattooing, branding, or body piercing occurring in Michigan other than at a licensed facility would be considered an imminent danger and the DCH or a local health department could order the immediate cessation of that activity as prescribed in the Code.

Also, if the local health department determined that the continued operation of a body art facility would be an imminent danger, the local health department would have to order the immediate cessation of the facility's operation in the manner prescribed

in the Code. A facility ordered to cease operations would have to do so immediately and could not resume operations until the local health department conducted an inspection, determined that the operation was no longer an imminent danger, and issued an order allowing the facility to resume operations.

("Imminent danger" means the existence of a condition or practice that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided. Upon a determination that an imminent danger to the health or lives of individuals exists in Michigan, the DCH Director immediately must inform affected individuals and issue an order that requires immediate action necessary to avoid, correct, or remove the danger. Local health departments have similar authority with regard to an imminent danger in the areas they serve.)

Body Art Facility Licensure; Fees

The Code requires the owner or operator of a body art facility to apply to the DCH for a license and pay a licensing fee. Under the bill, the DCH would have to issue a license on an annual basis to a body art facility that met the requirements of Part 131 or for a time period not to exceed 14 consecutive days to a temporary body art facility that met the requirements of Part 131. ("Temporary body art facility" would mean a body art facility that operates at a fixed or temporary location in Michigan for a time period that does not exceed 14 consecutive days. The term would include out-of-State facilities operating within Michigan.)

Currently, except for a temporary license, a license is effective for three years. Under the bill, a license would be effective for up to one year. It would expire at 12 midnight on December 31.

The Code prescribes a \$500 fee for an initial three-year license and a \$300 fee for a three-year renewal. The bill would eliminate the reference to a renewal license, and would delete these fees. Instead, a license applicant would have to pay \$500 for an annual license. In addition, the bill would increase from \$100 to \$150 the license fee for a temporary body art facility.

An applicant for a new annual license filed on or after July 1 would have to pay only 50% of the annual license fee. A licensee that failed to submit an application for a renewal by December 1 would have to pay a \$250 late fee in addition to the license fee. The DCH would have to issue a duplicate license upon a licensee's request and the payment of a \$50 fee.

The Code required the DCH to establish a cost reimbursement program to reimburse local health departments for certain eligible services. Under the bill, unless a different distribution were provided for in a cost reimbursement program, the DCH would have to distribute a portion of a body art facility license fee from an applicant or licensee to a local health department authorized to enforce Part 131 as follows:

- From the annual license fee and, if applicable, from the late fee, 50%.
- From the temporary license fee, 75%.
- From the duplicate license fee, 50%.

The DCH annually would have to adjust the license fees by an amount determined by the State Treasurer to reflect the cumulative annual percentage change in the Detroit-Ann Arbor-Flint consumer price index, but not by more than 5%.

Under the Code, before issuing a license, the DCH must receive the results of the local health department's inspection of the facility's premises. The local health department must convey the results of the inspection as soon as possible. Under the bill, the local health department also would have to convey its recommendation on whether the DCH should issue a license to that facility.

The Code requires the DCH to issue a license to a specific person for a body art facility at a specific location. Under the bill, the DCH also could issue a license to a specific person for a facility at a temporary location.

Facility Access

The bill would require an applicant or licensee to give the local health department access to the body art facility and all of its books and records during all hours of operation and during other reasonable hours to allow the local health department to determine if the facility was in compliance

with Part 131. An inspection could be announced or unannounced. An applicant or licensee could not do any of the following:

- Refuse to permit the local health department to enter or inspect the facility.
- Refuse to produce the facility's books and records for inspection.
- Take any other action that impeded the local health department's ability to carry out its prescribed duties.

As part of an inspection, the local health department could examine, take photographs, or make copies of the facility's books and records.

Upon completion of an inspection, the local health department would have to write its findings on a form prescribed by the DCH. The report would have to include a summary of all findings with regard to items of compliance with Part 131. If any critical violations were found, the report would have to include a compliance schedule for the facility to follow that was consistent with the DCH's standards for body art facilities.

(Under the bill, "critical violation" would mean a violation of Part 131 that the DCH or a local health department determined to be more likely than other violations to contribute to illness in humans.)

An authorized representative of the local health department who participated in the inspection would have to sign and date the report and obtain the signature of the licensee. A copy of the signed and dated report would have to be delivered to the licensee.

License Limitations

The bill would allow a local health department, at any time it determined appropriate, to place limitations on the license of a body art facility, including the imposition of restrictions and/or conditions on the facility's operations. A body art facility would have to comply with all license limitations until the local health department conducted an inspection, determined that the limitations were no longer necessary, and issued an order allowing the facility to resume operations without the limitations.

Bloodborne Infectious Disease Requirements

The Code prescribes certain duties for a body art facility licensee. The bill also would require a licensee to develop and maintain a bloodborne infectious disease exposure control plan that was specific to the location of that facility and that complied with applicable Michigan Occupational Safety and Health Administration standards, including the standards for bloodborne infectious diseases under the Michigan Administrative Code.

Currently, a licensee must ensure that the facility as a whole and any individual engaged in tattooing, performing branding or body piercing, or cleaning instruments comply with Federal bloodborne pathogen safety standards. Under the bill, instead, the licensee would have to ensure that the facility, the owner or operator, an agent of the owner or operator, an employee, and any individual engaged in tattooing, performing branding or body piercing, or cleaning instruments who had the potential for occupational exposure to blood or other potentially infectious materials received annual training on bloodborne infectious diseases.

The bill would require a licensee to maintain on file on the premises and have available for inspection by a local health department a copy of the current bloodborne infectious disease exposure control plan and documentation of the required annual training.

Safety Standards

Currently, unless they conflict with standards of Part 131 or DCH rules regarding safety standards, a local health department must 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". Under the bill, instead, a local health department would have to use as guidance any safety standards or other requirements issued by the DCH applicable to body art facilities.

Part 131 Violation

Currently, with the exception of certain violations involving minors (described below), a person who violates Part 131 or a

rule promulgated under it is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$100 for each violation. The bill would increase the maximum imprisonment to 93 days and the maximum fine to \$2,500.

In addition, a violator would be liable in a civil action for actual damages or \$1,000, whichever was greater, plus reasonable court costs, attorney fees, and any other fines, fees, or claims for reimbursement as determined by the court or the DCH.

Under the Code, a person who tattoos, brands, or performs body piercing on a minor without the consent of a parent or legal guardian is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$500 for each violation. The bill would repeal the section establishing this penalty. (Instead, the penalty for other Part 131 violations would apply.)

The Code prohibits a person from giving or selling to a minor a body piercing kit or other body piercing device. A violator is responsible for a State civil infraction and is subject to a civil fine of up to \$500. Under the bill, the prohibition and penalty also would apply to a person who gave or sold to a minor a kit or other device for tattooing or branding.

Local Authority

Under the Code, a local governing entity of a local health department authorized to enforce Part 131 may adopt and enforce local codes, ordinances, or regulations that are more stringent than the minimal applicable standards set forth in Part 131 or Part 131 rules. Under the bill, a local governing entity also could adopt and enforce codes, ordinances, or regulations that were more stringent than any safety standards or other requirements issued by the DCH applicable to body art facilities.

The bill would allow a local health department to grant a variance to a body art facility from a requirement of Part 131 if the local health department determined it would not create or increase the potential for a health hazard or nuisance and that the activity or condition for which the variance was proposed would not violate any other provisions of Part 131. The applicant or

licensee would have to request the variance in writing. The request would have to include all of the following:

- A statement of the proposed variance and a citation to the requirement of Part 131 for which the variance was requested.
- An analysis of the rationale for the variance.
- A description of the alternative methods the applicant or licensee would use to ensure that the variance would not create or increase the potential for any health hazard or nuisance.

A variance would have to be in writing. The local health department would have to maintain it in the records for that body art facility.

MCL 333.13101 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Despite the implementation of the statewide regulatory system, risks remain in the body art industry. Due to limited resources, local health departments are unable to perform regular inspections and enforce the law; this reportedly has led to more than 200 unlicensed body art facilities operating in Michigan. These unlicensed facilities provide a disincentive for currently licensed owners to pay for license renewals. Apparently, inadequate enforcement also has led some operators of temporary body art facilities to forgo licensure; rather than pay a license fee, they choose to take the relatively small chance of being caught and paying a fine.

The bill would strengthen the system of regulation by implementing an annual license renewal system, rather than a three-year license; dedicating a portion of the license fees to local health departments for performing their duties associated with body art facilities; and providing local health departments with explicit authority to place limitations on a license and shut down businesses that operate without a license or under unsafe conditions. In addition, the bill would reduce health risks by requiring that each facility develop a bloodborne infectious

disease exposure plan and ensure that all employees have proper training in this area. These measures, combined with the bill's requirement that a person consenting to a procedure on a minor provide proof of parenthood or guardianship, and the increased penalties for violations, should enhance the State's ability to protect the public.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would direct the Department of Community Health to provide license fee revenue to local health departments to cover enforcement costs. The amount of revenue that would be provided is unknown so the fiscal impact on State and local government is indeterminate.

There are no data to indicate how many offenders would be convicted of a misdemeanor under Part 131 and subject to the increased penalties under the bill. Local governments would incur the costs of incarceration in local facilities, which vary by county. Any additional penal fine revenue collected under the bill would benefit public libraries.

Fiscal Analyst: Steve Angelotti
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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.