

A bill for an act

relating to health occupations; establishing a regulation system for technicians performing body art procedures and for body art establishments; proposing coding for new law as Minnesota Statutes, chapter 146B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[146B.01] DEFINITIONS.**

Subdivision 1. **Scope.** The terms defined in this section apply to this chapter.

Subd. 2. **Body art.** "Body art" means physical adornment using the following techniques: body piercing, tattooing, and cosmetic tattooing.

Subd. 3. **Body art establishment.** "Body art establishment" means any place or premise, whether public or private, temporary or permanent in nature or location, where the practice of body art is performed, whether or not for profit.

Subd. 4. **Body piercing.** "Body piercing" means the penetration or puncturing of the skin or mucous membrane for the purpose of inserting jewelry or other objects. This definition does not include any medical procedure performed by licensed medical or dental professionals or to the puncturing of the outer perimeter or lobe of the ear using presterilized single-use stud and clasp ear-piercing system.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 6. **Department.** "Department" means the Department of Health.

Subd. 7. **Equipment.** "Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in the operation of a body art establishment.

Subd. 8. **Jewelry.** "Jewelry" means any personal ornament inserted into a newly pierced area.

Subd. 9. **Operator.** "Operator" means any person who controls, operates, or manages a body art establishment, whether that person actually performs body art procedures or not.

Subd. 10. **Tattooing.** "Tattooing" means any method of placing ink, dye, or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This definition includes cosmetic procedures such as eye lining, lip lining, or repigmentation.

Subd. 11. **Technician.** "Technician" means any individual who performs body art activities.

Subd. 12. **Temporary event.** "Temporary event" means any place or premise operating at a fixed location where an operator performs body art procedures for no more than 21 days in conjunction with a single event or celebration.

Sec. 2. **[146B.02] LICENSURE FOR BODY ART TECHNICIANS.**

Subdivision 1. **Licensure required.** Except as provided in subdivision 3, no person shall perform body art procedures unless the person holds a valid technician license issued by the commissioner under this chapter.

Subd. 2. **Designation.** No person shall use the title of "tattooist," "tattoo artist," "body piercer," "body piercing artist," or other letters or titles in connection with that person's name which in any way represents that the person is engaged in the practice of tattooing or body piercing, or authorized to do so unless the person is licensed and authorized to perform body art procedures under this chapter.

Subd. 3. **Exceptions.** The following persons may perform body art procedures within the scope of their practice without a technician's license:

(1) a physician licensed under chapter 147;

(2) a nurse licensed under sections 148.171 to 148.285;

(3) a chiropractor licensed under chapter 148;

(4) an acupuncturist licensed under chapter 147B;

(5) a physician's assistant registered under chapter 147A;

(6) a cosmetologist licensed under chapter 155A; or

(7) a dental professional licensed or registered under chapter 150A.

Subd. 4. **Licensure requirements.** An applicant for licensure under this section shall submit to the commissioner:

(1) proof that the applicant is over the age of 18;

(2) a completed application for licensure on a form provided by the commissioner;

(3) all fees required under section 146B.06;

(4) proof of having satisfactorily completed a training course approved by the commissioner that includes no less than six hours related to bloodborne pathogens, infection control, and aseptic technique. Courses to be considered for approval by the commissioner may include those administered by one of the following:

(i) the American Red Cross;

(ii) United States Occupational Safety and Health Administration (OSHA); or

(iii) the Alliance of Professional Tattooists; and

(5) any other information requested by the commissioner.

Subd. 5. Action on licensure applications. Within 120 days upon receipt of the application, the commissioner must notify the applicant in writing of the action taken on the application. An applicant denied licensure must be notified of the determination and the grounds for it, and may request a hearing on the determination by filing a written statement of issues with the commissioner within 20 days after receipt of the notice from the commissioner. After the hearing, the commissioner must notify the applicant in writing of the decision.

Subd. 6. Licensure term; renewal. (a) A technician's license is valid for one year from the date of issuance.

(b) A technician's license may be renewed annually upon:

(1) payment of the renewal fee; and

(2) submission of proof of having satisfactorily completed a training course approved by the commissioner that includes not less than four hours related to bloodborne pathogens, infection control, and aseptic technique.

Subd. 7. License by reciprocity. The commissioner shall issue a technician's license to a person who holds a current license, certification, or registration from a municipality located within the state or from another jurisdiction if the commissioner determines that the standards for licensure, certification, or registration in the other jurisdiction meet or exceed the requirements for licensure stated in this chapter and a letter is received from that jurisdiction that the applicant is in good standing.

Subd. 8. Transfer and display of license. A license issued under this section is not transferable to another person. A valid license shall be located onsite and available to the public upon request.

Sec. 3. [146B.03] LICENSURE FOR BODY ART ESTABLISHMENTS.

Subdivision 1. Licensure required. (a) No person acting severally or jointly with any other person shall maintain, own, or operate a body art establishment in the state without an establishment license issued by the commissioner under this chapter.

(b) No person shall describe provided services in any manner under the title "Tattoo" or "Body Piercing" unless the services are performed in a body art establishment that is licensed by the commissioner according to this chapter.

Subd. 2. **Exceptions.** This section does not apply to:

(1) a medical facility licensed under chapter 144;

(2) an office or clinic of a professional identified under section 146B.02, subdivision 3; or

(3) an establishment in which only ear piercing is performed.

Subd. 3. **Licensure requirements.** (a) An applicant for licensure under this section shall submit to the commissioner at least 120 days before the opening of the establishment:

(1) a completed application for licensure on a form provided by the commissioner;

(2) the name of the owner and operator of the establishment;

(3) appropriate certificates of compliance with all applicable local and state codes;

(4) a copy of operating policies and procedures pertaining to the nature of services provided, sanitation, sterilization, and safety procedures established for the protection of the clients and technicians;

(5) all fees required under section 146B.06; and

(6) any other information required by the commissioner to ensure public health safety.

(b) Upon approval, the commissioner shall issue a license. The license is valid for one year from the date of issuance and may be renewed upon inspection and approval by the commissioner.

Subd. 4. **Inspection.** Before issuing a license to a new establishment, the commissioner shall inspect each body art establishment and at least once a year conduct a routine inspection. The inspection shall ensure that required sanitation, sterilization, and safety standards are maintained. The commissioner shall have the authority to enter the premises of a body art establishment to make any investigation or inspection required according to this chapter. Refusal to permit inspection or investigation shall constitute valid grounds for licensure denial or revocation.

Subd. 5. **Location restricted.** No person shall perform body art procedures at any place other than a licensed body art establishment.

Subd. 6. **Transfer and display of license.** An establishment license shall be issued to a specific person and shall not be transferable. A valid license shall be located onsite and available to the public upon request.

Subd. 7. **Temporary events.** Temporary body art establishments and individuals performing body art procedures at a temporary event must meet the requirements of this chapter.

Subd. 8. **Change of ownership, operation, or location.** (a) When a change of ownership, location, or discontinuation of business as a body art establishment is contemplated, the owner or manager shall notify the commissioner in writing before the proposed change.

(b) Upon a change in ownership or in the operation or control of a licensed body art establishment, the license shall immediately become void and shall be returned to the commissioner. The commissioner may extend the expiration date of the license allowing the establishment to operate under the same conditions that applied to the prior licensee for the time that is required for processing a new application.

Subd. 9. **Grounds for closure.** Upon finding any of the following, the commissioner may order the discontinuance of all operations of a body art establishment:

(1) failure to possess a valid license as required under this chapter;

(2) evidence of the existence of a public health threat;

(3) using equipment or jewelry that is not sterile;

(4) failure to properly dispose of sharps, blood or body fluids, or items containing blood or body fluids;

(5) failure to properly report complaints to the commissioner or local health authority of potential bloodborne pathogen transmission; or

(6) evidence of a violation of this chapter.

Subd. 10. **Establishment information.** The following information must be kept on file for two years on the premises of the establishment and must be made available for inspection by the commissioner:

(1) a description of all body art procedures performed at the establishment;

(2) an inventory of instruments, body jewelry, sharps, inks, or pigments used for all procedures, including the names of manufacturers and serial and lot numbers; and

(3) the name, address, and license number for each technician employed or performing body art procedures at the establishment.

Sec. 4. **[146B.04] PROFESSIONAL CONDUCT.**

Subdivision 1. **Standard practice.** (a) A technician shall require proof of age before performing any body art procedure on a client. Proof of age shall be established by one of the following methods:

(1) a valid driver's license or identification card issued by the state of Minnesota or another state that includes a photograph and date of birth of the individual;

(2) a valid military identification card issued by the United States Department of Defense;

(3) a valid passport; or

(4) a resident alien card.

(b) No technician shall tattoo or pierce any individual under the age of 18 years unless the individual provides the written permission of both custodial and noncustodial parents, where applicable. The written permission of at least one parent must be provided in person at the establishment. Nipple and genital piercing or tattooing is prohibited on a minor under age 18 regardless of parental consent.

(c) Before performing any body art procedure, the technician must provide the client with a release form that indicates whether the client has:

(1) diabetes;

(2) a history of hemophilia;

(3) a history of skin diseases, skin lesions, or skin sensitivities to soap or disinfectants;

(4) a history of epilepsy, seizures, fainting, or narcolepsy;

(5) any condition that requires the client to take medications such as anticoagulants that thin the blood or interferes with blood clotting; or

(6) any other information that would aid the technician in the body art procedure process evaluation.

The technician must ask the client to sign and date the release form confirming that the information listed on the form was obtained or an attempt was made to obtain the information on the form.

(d) No technician shall perform body art procedures on any individual who appears to be under the influence of alcohol, a controlled substance as defined in section 152.01, subdivision 4, or a hazardous substance as defined in Minnesota Rules, parts 5206.0100 and 5206.1500.

(e) No technician shall perform body art procedures while under the influence of alcohol, a controlled substance as defined in section 152.01, subdivision 4, or a hazardous substance as defined in Minnesota Rules, parts 5206.0100 and 5206.1500.

(f) No technician shall administer anesthetic injections or other medications.

Subd. 2. **Informed consent.** Before performing a body art procedure, the technician must obtain from the client a signed and dated informed consent form. The consent form must disclose:

(1) that a tattoo is permanent and may only be removed with a surgical procedure and that any effective removal may leave scarring; and

(2) that a piercing may leave scarring.

Subd. 3. **Client record maintenance.** The body art establishment operator must maintain proper records for each client. The records of the procedure must be kept for two years and must be available for inspection by the commissioner upon request. The record must include the following:

(1) the date of the procedure;

(2) the information on the required picture identification showing the name, age, and current address of the client;

(3) a copy of the release form signed and dated by the client required under subdivision 1, paragraph (c);

(4) a description of the body art procedure performed;

(5) the name and the license number of the technician performing the procedure;

(6) a copy of the consent form required under this subdivision; and

(7) a copy of the written permission of the parents if the client is a minor as required under subdivision 1.

Subd. 4. **Tools and equipment.** A technician performing a body art procedure must use tools and equipment that have been properly sterilized and kept in a sterile condition that meets the standards of the National Centers for Disease Control and Prevention.

Subd. 5. **Aftercare.** Upon the completion of the procedure, a technician must provide each client with verbal and written instructions for the care of the tattooed or pierced site. The written instructions shall advise the client to consult a health care professional at the first sign of infection.

Subd. 6. **State and municipal public health regulations.** An operator and technician must comply with all applicable state and municipal requirements regarding public health.

Subd. 7. **Notification.** The operator of the body art establishment must immediately notify the commissioner or local health authority of any reports they receive of a potential bloodborne pathogen transmission.

Sec. 5. [146B.05] INVESTIGATION PROCESS AND DISCIPLINARY ACTION.

Subdivision 1. **Investigations of complaints.** The commissioner may initiate an investigation upon receiving a signed complaint or other signed written communication that alleges or implies that an individual or establishment has violated requirements of this chapter or rules adopted according to this chapter. According to section 214.13,

subdivision 6, in the receipt, investigation, and hearing of a complaint that alleges or implies an individual or establishment has violated requirements of this chapter, the commissioner shall follow the procedures in section 214.10.

Subd. 2. **Rights of applicants and licensees.** The rights of an applicant denied licensure are defined in section 146B.02, subdivision 5. A licensee shall not be subjected to disciplinary action under this section without first having an opportunity for a contested case hearing under chapter 14.

Subd. 3. **Grounds for disciplinary action by commissioner.** The commissioner may take any of the disciplinary actions listed in subdivision 4 on proof that a technician or an operator of an establishment has:

(1) intentionally submitted false or misleading information to the commissioner;

(2) failed, within 30 days, to provide by certified mail information in response to a written request by the commissioner;

(3) violated sections 146B.01 to 146B.07;

(4) failed to perform services with reasonable judgment, skill, or safety due to the use of alcohol or drugs, or other physical or mental impairment;

(5) aided or abetted another person in violating any requirement of this chapter;

(6) been or is being disciplined by another jurisdiction, if any of the grounds for the discipline is the same or substantially equivalent to those under this chapter;

(7) not cooperated with the commissioner in an investigation conducted according to subdivision 1;

(8) advertised in a manner that is false or misleading;

(9) engaged in conduct likely to deceive, defraud, or harm the public;

(10) demonstrated a willful or careless disregard for the health, welfare, or safety of a client;

(11) obtained money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud; or

(12) failed to refer a client for medical evaluation or to other health care professionals when appropriate or when a client indicated symptoms associated with diseases that could be medically or surgically treated.

Subd. 4. **Disciplinary actions.** If the commissioner finds that a technician or an operator of an establishment should be disciplined according to subdivision 3, the commissioner may take any one or more of the following actions:

(1) refuse to grant or renew licensure;

(2) suspend licensure for a period not exceeding one year;

(3) revoke licensure;

(4) take any reasonable lesser action against an individual upon proof that the individual has violated the requirements of this chapter; or

(5) impose, for each violation, a civil penalty not exceeding \$10,000 that deprives the licensee of any economic advantage gained by the violation and that reimburses the department for costs of the investigation and proceedings resulting in disciplinary action, including the amount paid for services of the Office of Administrative Hearings, the amount paid for services of the Office of the Attorney General, attorney fees, court reporters, witnesses, reproduction of records, department staff time, and expenses incurred by department staff.

Subd. 5. Consequences of disciplinary actions. Upon the suspension or revocation of licensure, the technician or establishment shall cease to perform body art procedures, to use titles protected under this chapter, and to represent to the public that the technician or establishment is licensed by the commissioner.

Subd. 6. Reinstatement requirements after disciplinary action. A technician who has had licensure suspended may petition on forms provided by the commissioner for reinstatement following the period of suspension specified by the commissioner. The requirements of section 146B.02 for renewing licensure must be met before licensure may be reinstated.

Sec. 6. [146B.06] FEES.

Subdivision 1. Annual licensing fees. (a) The fee for the initial technician licensure and annual licensure renewal is \$.....

(b) The fee for the initial establishment licensure and annual licensure renewal is \$.....

Subd. 2. Penalty for late renewals. The penalty fee for late submission for renewal applications is \$.....

Subd. 3. Deposit. Fees collected by the commissioner under this section must be deposited in the state government special revenue fund.

Sec. 7. [146B.07] MUNICIPAL REGULATION.

Nothing in this chapter preempts or supersedes any municipal ordinances relating to land use, building and construction requirements, nuisance control, or the licensing of commercial enterprises in general.

Sec. 8. [146B.08] RULES.

H.F. No. 402, as introduced - 86th Legislative Session (2009-2010) [09-1349]

10.1 The commissioner shall adopt rules necessary to administer sections 146B.01 to
10.2 146B.07 to protect the health and safety of the public, including rules governing the
10.3 following health and safety standards:
10.4 (1) skin preparation;
10.5 (2) hand washing and hygiene;
10.6 (3) glove use; and
10.7 (4) proper handling and disposal of needles, other sharp instruments, blood and other
10.8 body fluids, and contaminated products as required by the National Centers for Disease
10.9 Control and Prevention.