

By: Noriega

H.B. No. 1162

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of tattoo studios; providing a criminal penalty.

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

SECTION 1. Chapter 146, Health and Safety Code, is amended by adding Sections 146.0041, 146.0042, and 146.0043 to read as follows:

Sec. 146.0041. PREMISES INELIGIBLE FOR TATTOO STUDIO LICENSE. If an order suspending a tattoo studio license is pending or unexpired, or if the department has initiated action to suspend or revoke a tattoo studio license, the department may not issue or transfer a tattoo studio license for the same licensed premises.

Sec. 146.0042. GENERAL GROUNDS FOR REFUSAL. (a) The department may refuse to issue an original or renewal tattoo studio license with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted of a violation of this chapter during the two years immediately preceding the filing of the application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

(3) the applicant violated or caused to be violated a provision of this chapter or a rule of the department adopted under

1 this chapter involving moral turpitude during the six months
2 immediately preceding the filing of the application;

3 (4) the applicant failed to answer or falsely or
4 incorrectly answered a question in an original or renewal
5 application;

6 (5) the applicant is indebted to the state for a fee or
7 penalty imposed by this chapter or by rule of the department adopted
8 under this chapter;

9 (6) the applicant is not of good moral character or the
10 applicant's reputation for being a peaceable, law-abiding resident
11 in the community where the applicant resides is bad;

12 (7) the applicant is a minor;

13 (8) the place or manner in which the applicant may
14 conduct business warrants the refusal of a license based on the
15 general welfare, health, peace, morals, and safety of the people
16 and on the public sense of decency;

17 (9) the applicant is in the habit of using alcoholic
18 beverages to excess or is physically or mentally incapacitated;

19 (10) the applicant does not provide an adequate
20 building available at the address for which the license is sought
21 before conducting any activity authorized by the license;

22 (11) the applicant is residentially domiciled with a
23 person whose tattoo studio license has been revoked for cause
24 during the 12 months immediately preceding the date the application
25 is filed;

26 (12) the applicant has failed or refused to furnish a
27 true copy of the application to the department following a request

1 by the department; or

2 (13) during the six months immediately preceding the
3 filing of the application the premises for which the license is
4 sought have been operated, used, or frequented for a purpose or in a
5 manner that is lewd, immoral, or offensive to public decency.

6 (b) The department shall refuse to issue an original tattoo
7 studio license unless the applicant for the license files with the
8 application a certificate issued by the comptroller stating that
9 the applicant holds, or has applied for and satisfies all legal
10 requirements for the issuance of, a sales tax permit, if required,
11 for the place of business for which the license is sought.

12 (c) The department shall refuse to issue for a period of one
13 year after revocation a tattoo studio license for a premises where a
14 tattoo studio license has been revoked during the preceding 12
15 months as a result of a shooting, stabbing, or other violent act, or
16 as a result of an offense involving drugs.

17 Sec. 146.0043. REVOCATION OR SUSPENSION OF TATTOO STUDIO
18 LICENSE. (a) In Subsection (b), "license holder" also includes
19 each member of a partnership or association and, with respect to a
20 corporation, each officer and the owner or owners of a majority of
21 the corporate stock.

22 (b) The department may suspend for not more than 60 days or
23 revoke an original or renewal tattoo studio license if it is found,
24 after notice and hearing, that any of the following is true:

25 (1) the license holder has been finally convicted of a
26 violation of this chapter;

27 (2) the license holder violated a provision of this

1 chapter or a rule of the department adopted under this chapter;

2 (3) the license holder was finally convicted of a
3 felony while holding an original or renewal tattoo studio license;

4 (4) the license holder made a false or misleading
5 statement in connection with the original or renewal application,
6 either in the formal application itself or in any other written
7 instrument relating to the application submitted to the department;

8 (5) the license holder is indebted to the state for
9 fees or payment of penalties imposed by this chapter or by a rule of
10 the department adopted under this chapter;

11 (6) the license holder is not of good moral character
12 or the license holder's reputation for being a peaceable and
13 law-abiding resident in the community where the license holder
14 resides is bad;

15 (7) the place or manner in which the license holder
16 conducts business warrants the suspension or revocation of the
17 license based on the general welfare, health, peace, morals, and
18 safety of the people and on the public sense of decency;

19 (8) the license holder maintains a noisy, lewd,
20 disorderly, or unsanitary establishment;

21 (9) the license holder is insolvent or mentally or
22 physically unable to carry on the management of the tattoo studio;

23 (10) the license holder is in the habit of using
24 alcoholic beverages to excess;

25 (11) the license holder knowingly misrepresented to a
26 customer or the public any tattoo sold by the license holder;

27 (12) the license holder was intoxicated on the

1 licensed premises;

2 (13) the license holder is residentially domiciled
3 with a person whose tattoo studio license was revoked for cause
4 during the 12 months preceding the filing of the applicant's
5 application; or

6 (14) the license holder failed to promptly report to
7 the department a breach of the peace occurring on the licensed
8 premises.

9 (c) The department may refuse to renew or, after notice and
10 hearing, suspend for not more than 60 days or revoke a tattoo studio
11 license if the department finds that the license holder:

12 (1) no longer holds a sales tax permit, if required,
13 for the place of business covered by the license; or

14 (2) is shown on the records of the comptroller as being
15 subject to a final determination of taxes due and payable under
16 Chapter 151, Tax Code, or is shown on the records of the comptroller
17 as being subject to a final determination of taxes due and payable
18 under Chapter 321, Tax Code.

19 (d) The department without a hearing may for investigative
20 purposes summarily suspend a tattoo studio license for not more
21 than seven days if the department finds that a shooting, stabbing,
22 or murder has occurred on the licensed premises that is likely to
23 result in a subsequent act of violence. The department shall notify
24 the license holder of the order suspending the license before the
25 expiration of 24 hours after the time the violent act occurs. If
26 the license holder cannot be located, the department shall provide
27 notice by posting a copy of the order on the front door of the

1 licensed premises.

2 (e) The department shall revoke an original or renewal
3 tattoo studio license if it is found, after notice and hearing, that
4 the license holder knowingly allowed a person to possess a firearm
5 in a building on the licensed premises. This subsection does not
6 apply if the person possessing the firearm:

7 (1) holds a security officer commission issued under
8 Chapter 1702, Occupations Code, if:

9 (A) the person is engaged in the performance of
10 the person's duties as a security officer;

11 (B) the person is wearing a distinctive uniform;
12 and

13 (C) the weapon is in plain view;

14 (2) is a peace officer;

15 (3) is a license holder or an employee of a license
16 holder if the person is supervising the operation of the premises;
17 or

18 (4) lawfully possesses a concealed handgun of the same
19 category the person is licensed to carry under Subchapter H,
20 Chapter 411, Government Code, unless the person is on the premises
21 of a business described by Section 46.035(b)(1), Penal Code.

22 SECTION 2. Section 146.012, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 146.012. TATTOOS PROHIBITED FOR CERTAIN PERSONS. (a)
25 A tattooist may not tattoo:

26 (1) a person younger than 18 years of age without
27 consent from the person's [~~individual's~~] parent or guardian [~~who~~

1 ~~determines it to be in the best interest to cover a tattoo which~~
2 ~~contains:~~

3 ~~[(A) obscene or offensive language or symbols,~~

4 ~~[(B) gang-related names, symbols, or markings,~~

5 ~~[(C) drug-related names, symbols, or pictures,~~

6 ~~or~~

7 ~~[(D) some other type of words, symbols, or~~

8 ~~markings that the court considers would be in the best interest of~~

9 ~~the minor to cover]; or~~

10 (2) a person who ~~[whom]~~ the tattooist suspects is
11 under the influence of alcohol or drugs.

12 (b) The consent required by Subsection (a) may be satisfied
13 by~~+~~

14 ~~[(1) written and notarized consent by the individual's~~
15 ~~parent or guardian; or~~

16 ~~[(2)]~~ the individual's parent or guardian:

17 (1) ~~[(A)]~~ being physically present at the tattoo
18 studio at the time the tattooing is performed;

19 (2) ~~[(B)]~~ executing an affidavit stating that the
20 person is the parent or guardian of the individual on whom the
21 tattooing is to be performed;

22 (3) ~~[(C)]~~ presenting evidence of the person's identity
23 to the person who will perform the tattooing; and

24 (4) ~~[(D)]~~ presenting evidence of the person's status
25 as parent or guardian of the individual who will receive the tattoo.

26 (c) A ~~[If a]~~ parent or guardian of a person younger than 18
27 years of age may seek an order from a district court or a court with

1 jurisdiction of a civil proceeding brought under Title 3, 4, or 5,
2 Family Code, to compel the minor to cover a tattoo. The court shall
3 issue the order if the court determines that covering the tattoo is
4 in the minor's best interest and that the tattoo contains:

5 (1) obscene or offensive language or symbols;

6 (2) gang-related names, symbols, or markings;

7 (3) drug-related names, symbols, or pictures; or

8 (4) some other type of words, symbols, or markings

9 that the court considers would be in the best interest of the child
10 to cover [~~the minor and the minor agree to the covering of a tattoo~~
11 ~~described by Subsection (a), a justice court may issue the order. If~~
12 ~~the parent or guardian and the minor do not agree, the order must be~~
13 ~~issued by a district court or other court with jurisdiction of a~~
14 ~~suit affecting the parent-child relationship or a civil proceeding~~
15 ~~brought under Title 3 or 4, Family Code].~~

16 (d) A person younger than 18 years of age commits an offense
17 if the person falsely states that the person is 18 years of age or
18 older or presents any document that indicates that the person is 18
19 years of age or older to a person engaged in the operation of a
20 tattoo studio. An offense under this subsection is a Class B
21 misdemeanor. [~~The consent required by Subsection (a) must indicate~~
22 ~~the location on the person's body at which the tattoo may be~~
23 ~~placed.~~]

24 SECTION 3. (a) This Act takes effect September 1, 2003.

25 (b) The change in law made by this Act to Section 146.012,
26 Health and Safety Code, applies only to an offense committed on or
27 after the effective date of this Act. For purposes of this section,

1 an offense is committed before the effective date if any element of
2 the offense occurs before the effective date.

3 (c) An offense committed before the effective date of this
4 Act is governed by the law in effect when the offense was committed,
5 and the former law is continued in effect for that purpose.