

By: Van de Putte

S.B. No. 1317

A BILL TO BE ENTITLED

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AN ACT

relating to the regulation of tattooists, persons who perform body piercing, tattoo studios, and certain body piercing studios; providing criminal penalties.

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

SECTION 1. Section 146.001, Health and Safety Code, is amended by adding Subdivision (1-a) and amending Subdivision (3) to read as follows:

(1-a) "Body piercer" means a person who performs body piercing.

(3) "Tattoo" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment. The term includes the application of permanent cosmetics.

SECTION 2. Chapter 146, Health and Safety Code, is amended by adding Section 146.0021 to read as follows:

Sec. 146.0021. EMPLOYMENT OF TATTOOISTS AND BODY PIERCERS; REGISTRATION REQUIRED. A tattoo studio or a body piercing studio may not employ a tattooist or a body piercer unless the person is registered with the department under this chapter.

SECTION 3. Chapter 146, Health and Safety Code, is amended by adding Sections 146.0041 and 146.0042 to read as follows:

Sec. 146.0041. GENERAL GROUNDS FOR REFUSAL. (a) The

1 department may refuse to issue an original or renewal tattoo studio
2 or body piercing studio license if it has reasonable grounds to
3 believe and finds that any of the following circumstances exist:

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

7 (2) three years have not elapsed since the
8 termination, by pardon or otherwise, of a sentence imposed on the
9 applicant for a conviction associated with tattooing or body
10 piercing;

11 (3) the applicant violated or caused to be violated a
12 provision of this chapter or a rule of the department adopted under
13 this chapter involving moral turpitude during the six months
14 immediately preceding the filing of the application;

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

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

21 (6) the applicant is a minor; or

22 (7) the applicant does not provide an adequate
23 building available at the address for which the license is sought
24 before conducting any activity authorized by the license.

25 (b) The department shall refuse to issue or renew, for a
26 period of one year from the date of application for the initial or
27 renewal license, a tattoo studio or body piercing studio license

1 for a premises where a shooting, stabbing, or other violent act or
2 an offense involving drugs occurred that involved a license
3 applicant, license holder, or registrant under this chapter or a
4 patron or employee of the studio.

5 Sec. 146.0042. REVOCATION OR SUSPENSION OF LICENSE.

6 (a) In Subsection (b), "license holder" includes each member of a
7 partnership or association and, with respect to a corporation, each
8 officer and the owner or owners of a majority of the corporate
9 stock.

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

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

16 (2) the license holder violated a provision of this
17 chapter or a rule of the department adopted under this chapter;

18 (3) the license holder made a false or misleading
19 statement in connection with the original or renewal application,
20 either in the formal application itself or in any other written
21 instrument relating to the application submitted to the department;

22 (4) the license holder is indebted to the state for
23 fees or payment of penalties imposed by this chapter or by a rule of
24 the department adopted under this chapter;

25 (5) the license holder knowingly misrepresented to a
26 customer or the public any tattoo or body piercing jewelry sold by
27 the license holder; or

1 (6) the license holder was intoxicated on the licensed
2 premises.

3 (c) The department may refuse to renew or, after notice and
4 hearing, suspend for not more than 60 days or revoke a tattoo studio
5 or body piercing studio license if the department finds that the
6 license holder is shown on the records of the comptroller as being
7 subject to a final determination of taxes due and payable under
8 Chapter 151, Tax Code, or is shown on the records of the comptroller
9 as being subject to a final determination of taxes due and payable
10 under Chapter 321, Tax Code.

11 (d) If a license holder cannot be located for any notice
12 required under this section, the department shall provide notice by
13 posting a copy of the order on the front door of the licensed
14 premises.

15 SECTION 4. Subsection (a), Section 146.005, Health and
16 Safety Code, is amended to read as follows:

17 (a) The board shall set license and registration fees and
18 license and registration renewal fees in amounts necessary to
19 administer this chapter.

20 SECTION 5. Section 146.012, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 146.012. TATTOOS PROHIBITED FOR CERTAIN PERSONS.

23 (a) A tattooist may not tattoo:

24 (1) except as provided by Subsection (a-1), a person
25 younger than 18 years of age [~~without consent from the individual's~~
26 ~~parent or guardian who determines it to be in the best interest to~~
27 ~~cover a tattoo which contains:~~

1 ~~[(A) obscene or offensive language or symbols;~~
 2 ~~[(B) gang-related names, symbols, or markings;~~
 3 ~~[(C) drug-related names, symbols, or pictures;~~
 4 ~~or~~
 5 ~~[(D) some other type of words, symbols, or~~
 6 ~~markings that the court considers would be in the best interest of~~
 7 ~~the minor to cover]; or~~

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

10 (a-1) A tattooist may tattoo a person younger than 18 years
 11 of age if:

12 (1) the tattoo will cover a tattoo that contains:
 13 (A) obscene or offensive language or symbols;
 14 (B) gang-related names, symbols, or markings;
 15 (C) drug-related names, symbols, or pictures; or
 16 (D) other words, symbols, or markings that the
 17 person's parent or guardian considers would be in the best interest
 18 of the person to cover; and

19 (2) the person has obtained consent from the person's
 20 parent or guardian to cover the tattoo.

21 (b) The consent required by Subsection (a-1) ~~[(a)]~~ may be
 22 satisfied by~~+~~

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

25 ~~[(2)]~~ the individual's parent or guardian:
 26 (1) ~~[(A)]~~ being physically present at the tattoo
 27 studio at the time the tattooing is performed;

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

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

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

8 (c) A person younger than 18 years of age commits an offense
9 if the person falsely states that the person is 18 years of age or
10 older or presents any document that indicates that the person is 18
11 years of age or older to a person engaged in the operation of a
12 tattoo studio. An offense under this subsection is a Class B
13 misdemeanor [~~If a parent or guardian of the minor and the minor~~
14 ~~agree to the covering of a tattoo described by Subsection (a), a~~
15 ~~justice court may issue the order. If the parent or guardian and~~
16 ~~the minor do not agree, the order must be issued by a district court~~
17 ~~or other court with jurisdiction of a suit affecting the~~
18 ~~parent-child relationship or a civil proceeding brought under Title~~
19 ~~3 or 4, Family Code.~~

20 ~~[(d) The consent required by Subsection (a) must indicate~~
21 ~~the location on the person's body at which the tattoo may be~~
22 ~~placed].~~

23 SECTION 6. Section 146.0125, Health and Safety Code, is
24 amended by amending Subsection (c) and adding Subsection (d) to
25 read as follows:

26 (c) The consent required by Subsections (a) and (b) may be
27 satisfied by[+]

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

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

4 (1) ~~[(A)]~~ being physically present at the body
5 piercing studio at the time the body piercing is performed;

6 (2) ~~[(B)]~~ executing an affidavit stating that the
7 person is the parent or guardian of the individual on whom the body
8 piercing is to be performed;

9 (3) ~~[(C)]~~ presenting evidence of the person's identity
10 to the person who will perform the body piercing; and

11 (4) ~~[(D)]~~ presenting evidence of the person's status
12 as parent or guardian of the individual who will receive the body
13 piercing.

14 (d) A person younger than 18 years of age commits an offense
15 if the person falsely states that the person is 18 years of age or
16 older or presents any document that indicates that the person is 18
17 years of age or older to a person engaged in the operation of a body
18 piercing studio. An offense under this subsection is a Class B
19 misdemeanor.

20 SECTION 7. Chapter 146, Health and Safety Code, is amended
21 by adding Sections 146.021 through 146.025 to read as follows:

22 Sec. 146.021. EMERGENCY ORDERS. (a) The commissioner may,
23 with or without notice or hearing, issue an emergency order
24 relating to regulation under this chapter of a tattooist or body
25 piercer, or to the operation of a tattoo studio or body piercing
26 studio, if the commissioner finds:

27 (1) that:

1 (A) the operation of the tattoo studio or body
2 piercing studio or the performance of tattooing or body piercing by
3 the tattooist or body piercer presents an immediate and serious
4 threat to human health; or

5 (B) a shooting, stabbing, or other violent act or
6 an offense involving drugs:

7 (i) occurred at the tattoo studio or body
8 piercing studio; or

9 (ii) involved the tattooist or body
10 piercer; and

11 (2) that other procedures available to the department
12 to remedy or prevent the threat will result in an unreasonable
13 delay.

14 (b) If the commissioner issues an emergency order under this
15 section without a hearing, the department shall set a hearing under
16 Chapter 2001, Government Code, to affirm, modify, or set aside the
17 emergency order.

18 (c) If the license or registration holder cannot be located
19 for a notice required under this section, the department shall
20 provide notice by posting a copy of the order on the front door of
21 the premises of the license holder or the premises where the
22 registration holder is employed.

23 Sec. 146.022. REGISTRATION REQUIRED FOR TATTOOISTS AND BODY
24 PIERCERS. (a) A person may not perform tattooing or body piercing
25 at a tattoo studio or a body piercing studio unless the person holds
26 a registration issued by the department as a tattooist or body
27 piercer under this section.

1 (b) The registration holder shall display the registration
2 in a prominent place at each tattoo studio or body piercing studio
3 or temporary location where the person is employed.

4 Sec. 146.023. REGISTRATION APPLICATION. To receive a
5 tattooist or body piercer registration, the person must submit:

6 (1) a signed registration application to the
7 department on a form prescribed by the department;

8 (2) the application fee; and

9 (3) proof of completion of a training course approved
10 by the department for tattooists and body piercers that includes
11 not less than six hours related to bloodborne pathogens, infection
12 control, and aseptic technique.

13 Sec. 146.024. REGISTRATION TERM; RENEWAL. (a) A tattooist
14 or body piercer registration is valid for one year from the date of
15 issuance.

16 (b) A tattooist or body piercer registration may be renewed
17 annually on:

18 (1) payment of the required renewal fee; and

19 (2) submission of proof of completion of a training
20 course approved by the department that includes not less than four
21 hours related to bloodborne pathogens, infection control, and
22 aseptic technique.

23 Sec. 146.025. COURSE OF INSTRUCTION FOR TATTOOISTS AND BODY
24 PIERCERS; RULES; FEES. (a) The department shall prepare or
25 approve a course of instruction sufficient to meet the requirements
26 for application for a registration under Section 146.023 or renewal
27 of a registration under Section 146.024.

1 (b) The department may approve a course of instruction based
2 on standards set by the department to reasonably ensure that a
3 tattooist or body piercer develops the job skills and knowledge
4 necessary to protect public health and safety.

5 (c) A prospective course provider must submit to the
6 department for approval the course length and curriculum content
7 for each course offered by the provider. The provider may implement
8 a course length and curriculum content only after department
9 approval.

10 (d) The department by rule shall set a fee in an amount
11 reasonable and necessary to cover the cost of reviewing the course
12 content and issuing the approval.

13 SECTION 8. (a) The changes in law made by this Act to
14 Sections 146.012 and 146.0125, Health and Safety Code, apply only
15 to an offense committed on or after the effective date of this Act.
16 For purposes of this section, an offense is committed before the
17 effective date of this Act if any element of the offense occurs
18 before the effective date.

19 (b) An offense committed before the effective date of this
20 Act is governed by the law in effect when the offense was committed,
21 and the former law is continued in effect for that purpose.

22 SECTION 9. A tattooist or body piercer is not required to
23 hold a registration issued under Chapter 146, Health and Safety
24 Code, as amended by this Act, before June 1, 2004.

25 SECTION 10. This Act takes effect September 1, 2003.