

1 AN ACT

2 RELATING TO BODY ART; CREATING THE BOARD OF BODY ART  
3 PRACTITIONERS; CREATING THE BODY ART PRACTITIONERS FUND;  
4 PROVIDING POWERS AND DUTIES; REVISING POWERS AND DUTIES OF  
5 THE BOARD OF BARBERS AND COSMETOLOGISTS; REPEALING SECTIONS  
6 61-17B-12 AND 61-17B-14 NMSA 1978 (BEING LAWS 2007, CHAPTER  
7 181, SECTIONS 12 AND 14); MAKING AN APPROPRIATION.

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 SECTION 1. Section 61-17A-6 NMSA 1978 (being Laws 1993,  
11 Chapter 171, Section 6, as amended) is amended to read:

12 "61-17A-6. BOARD CREATED--MEMBERSHIP.--

13 A. The "board of barbers and cosmetologists" is  
14 created. The board is administratively attached to the  
15 regulation and licensing department. The board consists of  
16 seven members appointed by the governor. Members shall serve  
17 three-year terms; provided that at the time of initial  
18 appointment, the governor shall appoint members to  
19 abbreviated terms to allow staggering of subsequent  
20 appointments. Vacancies shall be filled in the manner of the  
21 original appointment.

22 B. Of the seven members of the board, five shall  
23 be licensed pursuant to the Barbers and Cosmetologists Act  
24 and shall have at least five years' practical experience in  
25 their respective occupations. Of those five, two members

1 shall be licensed barbers, two members shall be licensed  
2 cosmetologists and one member shall represent school owners.  
3 The remaining two members shall be public members. Neither  
4 the public members nor their spouses shall have ever been  
5 licensed pursuant to the provisions of the Barbers and  
6 Cosmetologists Act or similar prior legislation or have a  
7 financial interest in a school or establishment.

8 C. Members of the board shall be reimbursed  
9 pursuant to the Per Diem and Mileage Act and shall receive no  
10 other compensation, perquisite or allowance.

11 D. The board shall elect from among its members a  
12 chair and such other officers as it deems necessary. The  
13 board shall meet at the call of the chair, not less than four  
14 times each year. A majority of members currently serving  
15 shall constitute a quorum for the conduct of business.

16 E. No board member shall serve more than two full  
17 consecutive terms and any member who fails to attend, after  
18 proper notice, three meetings shall automatically be  
19 recommended for removal unless excused for reasons set forth  
20 by board rule."

21 SECTION 2. Section 61-17A-7 NMSA 1978 (being Laws 1993,  
22 Chapter 171, Section 7, as amended) is amended to read:

23 "61-17A-7. BOARD POWERS AND DUTIES.--

24 A. The board shall:

25 (1) adopt and file, in accordance with the

1 State Rules Act, rules necessary to carry out the provisions  
2 of the Barbers and Cosmetologists Act;

3 (2) establish fees;

4 (3) provide for the examination, licensure  
5 and license renewal of applicants for licensure;

6 (4) establish standards for and provide for  
7 the examination, licensure and license renewal of  
8 manicurists-pedicurists, estheticians and electrologists;

9 (5) adopt a seal;

10 (6) furnish copies of rules and sanitary  
11 requirements adopted by the board to each owner or manager of  
12 an establishment, enterprise or school;

13 (7) keep a record of its proceedings and a  
14 register of applicants for licensure;

15 (8) provide for the licensure of barbers,  
16 cosmetologists, manicurists-pedicurists, estheticians,  
17 electrologists, instructors, schools, enterprises and  
18 establishments;

19 (9) establish administrative penalties and  
20 fines;

21 (10) create and establish standards and  
22 fees for special licenses;

23 (11) establish guidelines for schools to  
24 calculate tuition refunds for withdrawing students; and

25 (12) issue cease and desist orders to

1 persons violating the provisions of the Barbers and  
2 Cosmetologists Act and rules promulgated in accordance with  
3 that act.

4 B. The board may establish continuing education  
5 requirements as requirements for licensure.

6 C. A member of the board, its employees or agents  
7 may enter and inspect a school, enterprise or establishment  
8 at any time during regular business hours for the purpose of  
9 determining compliance with the Barbers and Cosmetologists  
10 Act."

11 SECTION 3. Section 61-17B-1 NMSA 1978 (being Laws 2007,  
12 Chapter 181, Section 1) is amended to read:

13 "61-17B-1. SHORT TITLE.--Chapter 61, Article 17B NMSA  
14 1978 may be cited as the "Body Art Safe Practices Act"."

15 SECTION 4. Section 61-17B-3 NMSA 1978 (being Laws 2007,  
16 Chapter 181, Section 3) is amended to read:

17 "61-17B-3. DEFINITIONS.--As used in the Body Art Safe  
18 Practices Act:

19 A. "board" means the board of body art  
20 practitioners;

21 B. "body art" means tattooing, body piercing or  
22 scarification but does not include practices that are  
23 considered medical procedures by the New Mexico medical  
24 board;

25 C. "body art establishment" means a fixed or

1 mobile place where body art is administered on the premises;

2 D. "body artist" means a person who administers  
3 body piercing, tattooing or scarification;

4 E. "body piercing" means to cut, stab or penetrate  
5 the skin to create a permanent hole or opening;

6 F. "equipment" means machinery used in connection  
7 with the operation of a body art establishment, including  
8 fixtures, containers, vessels, tools, devices, implements,  
9 furniture, display and storage areas, sinks and other  
10 apparatuses and appurtenances;

11 G. "instruments used for body art" means hand  
12 pieces, needles, needle bars and other items that may come  
13 into contact with a person's body during the administration  
14 of body art;

15 H. "operator" means the owner in charge of a body  
16 art establishment;

17 I. "scarification" means cutting into the skin  
18 with a sharp instrument or branding the skin with a heated  
19 instrument to produce a permanent mark or design on the skin;

20 J. "sharps" means any sterilized object that is  
21 used for the purpose of penetrating the skin or mucosa,  
22 including needles, scalpel blades and razor blades;

23 K. "single use" means products or items that are  
24 intended for one-time, one-person use and are disposed of  
25 after use on each client, including cotton swabs or balls,

1 tissues or paper products, paper or plastic cups, gauze and  
2 sanitary coverings, razors, piercing needles, scalpel blades,  
3 stencils, ink cups and protective gloves;

4 L. "sterilization" means destruction of all forms  
5 of microbiotic life, including spores; and

6 M. "tattooing" means the practice of depositing  
7 pigment, which is either permanent, semipermanent or  
8 temporary, into the epidermis using needles by someone other  
9 than a state-licensed physician or a person under the  
10 supervision of a state-licensed physician and includes  
11 permanent cosmetics, dermography, micropigmentation,  
12 permanent color technology and micropigment implantation."

13 SECTION 5. Section 61-17B-5 NMSA 1978 (being Laws 2007,  
14 Chapter 181, Section 5) is amended to read:

15 "61-17B-5. LICENSE--APPLICATION--REVOCATION--  
16 SUSPENSION.--

17 A. A body artist shall obtain a body art license,  
18 and an operator shall obtain a body art establishment  
19 license, the requirements for which shall be defined by the  
20 board and shall include the requirement that a body artist  
21 applicant demonstrate that the body artist has the training  
22 and experience necessary to perform body piercing, tattooing  
23 or scarification and the requirement that a sanitary and  
24 sterile body art establishment be maintained.

25 B. An operator or body artist shall possess and

1 post in a conspicuous place a valid and unsuspended license  
2 issued by the board in accordance with the Body Art Safe  
3 Practices Act and the rules promulgated pursuant to that act.  
4 An operator or a body artist shall not display a license  
5 unless it has been issued to that operator or body artist by  
6 the board and has not been suspended or revoked.

7 C. An operator or body artist shall apply to the  
8 board for the issuance or renewal of a license annually and  
9 shall pay license fees established by the board. The board  
10 shall set license fees, license renewal fees and late fees in  
11 amounts necessary to administer the provisions of the Body  
12 Art Safe Practices Act. If an operator or body artist fails  
13 to renew a license for the next year, the license is void;  
14 provided that the voided license may be restored at any time  
15 during the year following the license's expiration upon the  
16 payment of the appropriate license renewal fee and a late  
17 charge not to exceed one hundred dollars (\$100) as set forth  
18 by board rules. If the operator or body artist fails to  
19 restore a license within one year following the license's  
20 expiration, the operator or body artist may request  
21 restoration of the license pursuant to rules promulgated by  
22 the board.

23 D. The board shall promulgate rules for the  
24 revocation or suspension of a license for a body art  
25 establishment or a body artist who fails to comply with a

1 provision of the Body Art Safe Practices Act or rules  
2 promulgated pursuant to that act. A license shall not be  
3 suspended or revoked pursuant to the Body Art Safe Practices  
4 Act without providing the operator or the body artist with an  
5 opportunity for an administrative hearing unless conditions  
6 in the body art establishment warrant immediate suspension  
7 pursuant to Section 61-17B-9 NMSA 1978. The hearing officer  
8 shall not be a person previously involved in the suspension  
9 or revocation action. An inspection made more than  
10 twenty-four months prior to the most recent inspection shall  
11 not be used as a basis for suspension or revocation.

12 E. The board shall charge a fee not to exceed  
13 three hundred dollars (\$300) for the application to issue a  
14 new or renewed license. The applicant shall provide proof of  
15 current immunization as required by the board and proof of  
16 the applicant's attendance at a blood-borne pathogen training  
17 program and other training as required by the board before a  
18 license is issued or renewed.

19 F. A current body art license or body art  
20 establishment license shall not be transferable from one  
21 person to another.

22 G. The following information shall be kept on the  
23 premises of a body art establishment and shall be available  
24 for inspection by the board:

- 25 (1) the full names of all employees in the



1 establishment and their exact duties;

2 (2) the board-issued license with  
3 identification photograph for the operator and any body  
4 artists;

5 (3) the body art establishment name and  
6 hours of operation;

7 (4) the name and address of the operator;

8 (5) a complete description of all body art  
9 performed at the body art establishment;

10 (6) a list of all instruments, body jewelry,  
11 sharps and inks used at the body art establishment, including  
12 names of manufacturers and serial or lot numbers or invoices  
13 or other documentation sufficient to identify and locate the  
14 manufacturer of those items; and

15 (7) a current copy of the Body Art Safe  
16 Practices Act.

17 H. An operator shall notify the board in writing  
18 not less than thirty days before changing the location of a  
19 body art establishment. The notice shall include the street  
20 address of the body art establishment's new location."

21 SECTION 6. A new section of the Body Art Safe Practices  
22 Act is enacted to read:

23 "BOARD CREATED--MEMBERSHIP.--

24 A. The "board of body art practitioners" is  
25 created. The board is administratively attached to the

1 regulation and licensing department and consists of five  
2 members appointed by the governor. Members shall serve  
3 three-year terms; provided that at the time of initial  
4 appointment, the governor shall appoint members to  
5 abbreviated terms to allow for the terms of subsequent  
6 appointments to be staggered. Vacancies shall be filled in  
7 the manner of the original appointment.

8 B. Of the five members of the board, four shall be  
9 licensed pursuant to the Body Art Safe Practices Act and  
10 shall have at least five years' practical experience in their  
11 occupations. Of those four, two members shall be operators  
12 and two members shall be body artists. The remaining one  
13 member shall be a public member. The public member shall not  
14 have ever been licensed pursuant to the provisions of the  
15 Body Art Safe Practices Act or similar prior legislation or  
16 have a financial interest in a body art establishment.

17 C. Members of the board shall be reimbursed  
18 pursuant to the Per Diem and Mileage Act and shall receive no  
19 other compensation, perquisite or allowance.

20 D. The board shall elect from among its members a  
21 chair and such other officers as it deems necessary. The  
22 board shall meet at the call of the chair, not less than two  
23 times each year. A majority of members currently serving  
24 constitutes a quorum for the conduct of business.

25 E. A board member shall not serve more than two

1 full consecutive terms, and a member who fails to attend  
2 three meetings shall automatically be recommended for removal  
3 unless the member's absence is excused for reasons set forth  
4 by board rule."

5 SECTION 7. A new section of the Body Art Safe Practices  
6 Act is enacted to read:

7 "BODY ART PRACTITIONERS FUND CREATED.--The "body art  
8 practitioners fund" is created in the state treasury. The  
9 fund consists of appropriations; license fees, charges and  
10 fines that are imposed by the board and that shall be  
11 deposited into the fund; and money otherwise accruing to the  
12 fund. Money in the fund is appropriated to the board for the  
13 purpose of carrying out the provisions of the Body Art Safe  
14 Practices Act. Money in the fund shall be disbursed on  
15 warrants signed by the secretary of finance and  
16 administration pursuant to vouchers signed by the chair of  
17 the board or the chair's authorized representative. Any  
18 balance remaining in the fund at the end of a fiscal year  
19 shall not revert to the general fund."

20 SECTION 8. A new section of the Body Art Safe Practices  
21 Act is enacted to read:

22 "BOARD POWERS AND DUTIES.--

23 A. The board shall:

24 (1) in conjunction with the department of  
25 health, promulgate rules necessary to implement the

1 provisions of the Body Art Safe Practices Act;

2 (2) establish fees;

3 (3) establish standards and provide for the  
4 issuance of new and renewal operator and body artist licenses  
5 to applicants;

6 (4) adopt a seal;

7 (5) furnish copies of rules and sanitation  
8 and sterilization requirements adopted by the board to each  
9 operator of a body art establishment;

10 (6) keep a record of its proceedings, a  
11 register of applicants for licensure and a register of  
12 licensed operators and body artists; and

13 (7) issue cease and desist orders to persons  
14 who violate the provisions of the Body Art Safe Practices Act  
15 or rules promulgated pursuant to that act.

16 B. The board may establish continuing education or  
17 other requirements for licensure.

18 C. A member of the board, its employees or agents  
19 may enter and inspect a body art establishment at any time  
20 during regular business hours for the purpose of determining  
21 compliance with the Body Art Safe Practices Act."

22 SECTION 9. A new section of the Body Art Safe Practices  
23 Act is enacted to read:

24 "TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board  
25 of body art practitioners is terminated on July 1, 2021

1 pursuant to the Sunset Act. The board shall continue to  
2 operate according to the provisions of the Body Art Safe  
3 Practices Act until July 1, 2022. Effective July 1, 2022,  
4 the Body Art Safe Practices Act is repealed."

5 SECTION 10. TEMPORARY PROVISION--TRANSFER OF  
6 APPROPRIATIONS, PROPERTY, EQUIPMENT, SUPPLIES, PERSONNEL,  
7 MONEY, CONTRACTS AND LEGAL AND ADMINISTRATIVE PROCEEDINGS--  
8 EXISTING LICENSES--STATUTORY REFERENCES.--

9 A. On the effective date of this act:

10 (1) all personnel and all money,  
11 appropriations, records, furniture, equipment, supplies and  
12 other property that belonged or were allocated to the board  
13 of barbers and cosmetologists for use in connection with the  
14 implementation of the Body Art Safe Practices Act are  
15 transferred to the board of body art practitioners;

16 (2) all money that is in the barbers and  
17 cosmetologists fund that was paid into the fund pursuant to  
18 the Body Art Safe Practices Act or regulations promulgated  
19 pursuant to that act shall be transferred to the body art  
20 practitioners fund;

21 (3) all existing contracts, agreements and  
22 other obligations that relate to the Body Art Safe Practices  
23 Act or the board of barbers and cosmetologists work pursuant  
24 to that act shall be binding on the board of body art  
25 practitioners;

1                   (4) all pending court cases, legal actions,  
2 appeals and other legal proceedings and all pending  
3 administrative proceedings that involve the board of barbers  
4 and cosmetologists that relate solely to the implementation  
5 of the Body Art Safe Practices Act shall be unaffected and  
6 shall continue in the name of the board of body art  
7 practitioners. Pending legal or administrative proceedings  
8 described in this paragraph that relate to the board of  
9 barbers and cosmetologists and to the implementation of the  
10 Body Art Safe Practices Act shall be unaffected, but the  
11 board of body art practitioners shall be joined as a party;

12                   (5) all rules, orders and other official  
13 acts of the board of barbers and cosmetologists pursuant to  
14 the Body Art Safe Practices Act shall continue in effect  
15 until amended, replaced or repealed by the board of body art  
16 practitioners; and

17                   (6) references in the law, rules and orders  
18 to the board of barbers and cosmetologists in connection with  
19 the Body Art Safe Practices Act shall be deemed references to  
20 the board of body art practitioners.

21                   B. Licenses that were issued before the effective  
22 date of this act by the board of barbers and cosmetologists  
23 pursuant to the Body Art Safe Practices Act shall remain in  
24 effect until the license expires or is renewed or reissued by  
25 the board of body art practitioners.

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SECTION 11. REPEAL.--Sections 61-17B-12 and 61-17B-14  
NMSA 1978 (being Laws 2007, Chapter 181, Sections 12 and 14)  
are repealed.

SECTION 12. EFFECTIVE DATE.--The effective date of the  
provisions of this act is July 1, 2015. \_\_\_\_\_