

AN ACT

RELATING TO HEALTH; ENACTING THE BODY ART SAFE PRACTICES ACT;  
AMENDING THE BARBERS AND COSMETOLOGISTS ACT; MAKING AN  
APPROPRIATION.

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

Section 1. SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Body Art Safe Practices Act".

Section 2. PURPOSE.--The purpose of the Body Art Safe Practices Act is to provide a safe and healthy environment for the administration of body art.

Section 3. DEFINITIONS.--As used in the Body Art Safe Practices Act:

A. "board" means the board of barbers and cosmetologists;

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

C. "body art establishment" means a fixed or mobile place where body art is administered on the premises;

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

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

F. "equipment" means machinery used in connection

with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances;

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

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

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

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

K. "single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves;

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

M. "tattooing" means the practice of depositing

pigment, which is either permanent, semipermanent or temporary, into the epidermis using needles by someone other than a state-licensed physician or a person under the supervision of a state-licensed physician and includes permanent cosmetics, dermography, micropigmentation, permanent color technology and micropigment implantation.

Section 4. ISSUANCE OF A BODY ART LICENSE.--The board has authority to issue a body art license to a body artist who has demonstrated the ability to perform body art and who conforms with the board's rules with respect to safety, sterilization and sanitation and a body art operator license to an operator who conforms with the board's rules.

Section 5. LICENSE--APPLICATION--REVOCATION--SUSPENSION.--

A. A body artist shall obtain a body art license, requirements for which shall be defined by the board that demonstrate that the body artist has the training and experience necessary to perform body piercing, tattooing or scarification and to establish and maintain a sanitary and sterile body art establishment.

B. An operator or body artist shall possess and post in a conspicuous place a valid and unsuspended license issued by the board in accordance with the Body Art Safe Practices Act and the rules promulgated pursuant to that act. An operator or a body artist shall not display a license

unless it has been issued to the operator or body artist by the board and has not been suspended or revoked.

C. An operator or body artist shall apply to the board for the issuance of a license annually and pay license fees established by the board. The operator or body artist shall renew the license annually. The board shall set license fees and license renewal fees in amounts necessary to administer the provisions of the Body Art Safe Practices Act.

D. The board shall promulgate rules for the revocation or suspension of a license for an operator or body artist who fails to comply with a provision of the Body Art Safe Practices Act. A license shall not be suspended or revoked pursuant to the Body Art Safe Practices Act without providing the operator or the body artist an opportunity for an administrative hearing unless conditions in the body art establishment warrant immediate suspension pursuant to Section 9 of the Body Art Safe Practices Act. The hearing officer shall not be a person previously involved in the suspension or revocation action. An inspection made more than twenty-four months prior to the most recent inspection shall not be used as a basis for suspension or revocation.

E. The board shall charge a fee not to exceed three hundred dollars (\$300) for the application or annual renewal of a license. The operator or body artist shall provide proof of current immunization as required by the

board, attendance at a blood-borne pathogen training program and other training as required and approved by the board before a license is issued or renewed.

F. A current body art or body art operator license shall not be transferable from one person to another.

G. Operators and body artists engaged in the body art business before the effective date of the Body Art Safe Practices Act shall have one hundred eighty days from the issuance of rules promulgated by the board to comply with license requirements.

H. The following information shall be kept on file on the premises of a body art establishment and available for inspection by the board:

(1) the full names of all employees in the establishment and their exact duties;

(2) the board-issued license with identification photograph;

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

(4) the name and address of the body art establishment owner;

(5) a complete description of all body art performed;

(6) a list of all instruments, body jewelry, sharps and inks used, including names of manufacturers and

serial or lot numbers or invoices or other documentation sufficient to identify and locate the manufacturer; and

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

I. An operator shall notify the board in writing not less than thirty days before changing the location of a body art establishment. The notice shall include the street address of the new location.

Section 6. INSPECTION BY BOARD.--

A. The board shall annually inspect body art establishments to determine compliance with the Body Art Safe Practices Act. An operator or body artist shall allow a board official, upon proper identification, to enter the premises, inspect all parts of the premises and inspect and copy records of the body art establishment. The operator or body artist shall be given an opportunity to accompany the board official on the inspection and to receive a report of the inspection within fourteen days after the inspection.

B. Refusal to allow an inspection is grounds for suspension or revocation of the license of the operator or body artist, provided that the board official tendered proper identification prior to the refusal.

Section 7. EXEMPTIONS.--

A. A person who pierces only the outer perimeter of the ear, not including any cartilage, using a

pre-sterilized encapsulated single use stud ear piercing system, implementing appropriate procedures, is exempt from the requirements of the Body Art Safe Practices Act.

B. A member of a federally recognized tribe, band, nation or pueblo who performs scarification rituals for religious purposes is exempt from the requirements of the Body Art Safe Practices Act.

Section 8. STERILE PROCEDURES AND SANITATION.--The board shall establish by rule requirements for:

A. the use and disposal of equipment and instruments; provided that:

(1) all sharps shall be sterilized prior to use;

(2) single use items shall not be used on more than one client for any reason; and

(3) all body art stencils shall be single use and disposable;

B. the sterilization or sanitation of non-disposable items;

C. the prohibition of off-site sterilization; and

D. procedures to control disease borne by contact with customer or body artist skin mucosa.

Section 9. IMMEDIATE SUSPENSION.--The board may suspend a license immediately without prior notice to the holder of the license if it determines, after inspection, that

conditions within a body art establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize a body art establishment. A suspension action taken pursuant to this section is effective when communicated to the operator or body artist. Suspension action taken pursuant to this section shall not continue beyond the time that the conditions causing the suspension cease to exist, as determined by a board inspection at the request of the operator or body artist. A license holder may request an administrative hearing, as provided by Section 5 of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within ten days.

Section 10. JUDICIAL REVIEW.--An applicant denied a license or an operator or body artist whose license is suspended or revoked by the board may appeal pursuant to Section 39-3-1.1 NMSA 1978.

Section 11. ENFORCEMENT.--

A. The board may seek relief in district court to enjoin the operation of a body art establishment or the practice of a body artist not in compliance with the Body Art Safe Practices Act.

B. The district court may impose a civil penalty not exceeding five hundred dollars (\$500) for a violation of the Body Art Safe Practices Act. Each violation of the provisions of the Body Art Safe Practices Act constitutes a



separate offense.

C. The board may promulgate rules imposing a schedule of penalties for violations of the Body Art Safe Practices Act, provided that no penalty exceeds one hundred fifty dollars (\$150).

Section 12. USE OF BARBERS AND COSMETOLOGISTS FUND.-- All license fees and penalties imposed by the board pursuant to the Body Art Safe Practices Act shall be deposited in the barbers and cosmetologists fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Section 13. MUNICIPALITIES.--The Body Art Safe Practices Act provides minimum standards for safe body art practices. A municipality may by ordinance provide more stringent standards.

Section 14. RULES.--The board shall, in conjunction with the department of health, promulgate rules necessary to implement the provisions of the Body Art Safe Practices Act by December 31, 2007.

Section 15. Section 61-17A-6 NMSA 1978 (being Laws 1993, Chapter 171, Section 6, as amended) is amended to read:

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

A. The "board of barbers and cosmetologists" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist

of nine members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow staggering of subsequent appointments. Vacancies shall be filled in the manner of the original appointment.

B. Of the nine members of the board, five shall be licensed pursuant to the Barbers and Cosmetologists Act and shall have at least five years' practical experience in their respective occupations. Of those five, two members shall be licensed barbers, two members shall be licensed cosmetologists and one member shall represent school owners. Two members shall be licensed body artists pursuant to the Body Art Safe Practices Act and shall have at least five years in practice in their occupation. The remaining two members shall be public members. Neither the public members nor their spouses shall have ever been licensed pursuant to the provisions of the Barbers and Cosmetologists Act, the Body Art Safe Practices Act or similar prior legislation or have a financial interest in a school or establishment.

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

D. The board shall elect from among its members a chair and such other officers as it deems necessary. The

board shall meet at the call of the chair, not less than four times each year. A majority of members currently serving shall constitute a quorum for the conduct of business.

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

Section 16. Section 61-17A-7 NMSA 1978 (being Laws 1993, Chapter 171, Section 7, as amended) is amended to read:

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

A. The board shall:

(1) adopt and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Barbers and Cosmetologists Act and the Body Art Safe Practices Act;

(2) establish fees;

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

(4) establish standards for and provide for the examination, licensure and license renewal of manicurists-pedicurists, estheticians, electrologists and body artists and operators pursuant to the Body Art Safe Practices Act;

(5) adopt a seal;

(6) furnish copies of rules and sanitary

requirements adopted by the board to each owner or manager of an establishment, enterprise or school;

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

(8) provide for the licensure of barbers, cosmetologists, manicurists-pedicurists, estheticians, body artists and operators pursuant to the Body Art Safe Practices Act, electrologists, instructors, schools, enterprises and establishments;

(9) establish administrative penalties and fines;

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

(11) establish guidelines for schools to calculate tuition refunds for withdrawing student; and

(12) hire an administrator and other such staff as necessary to carry out the provisions of the Body Art Safe Practices Act.

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

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

Section 17. Section 61-17A-20 NMSA 1978 (being Laws 1993, Chapter 171, Section 20, as amended) is amended to read:

"61-17A-20. DURATION, RESTORATION AND RENEWAL OF LICENSES.--

A. The original issuance and renewal of licenses to practice as a barber, cosmetologist, instructor, esthetician, manicurist-pedicurist or electrologist shall be for a period of one year or less from the date of issuance. If the licensee fails to renew the license for the next year, the license is void; provided the license may be restored at any time during the year following expiration upon the payment of the appropriate fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the licensee fails to restore the license within one year following its expiration, the licensee may request restoration of the license pursuant to rules promulgated by the board.

B. The original issuance and annual renewal of licenses to operate an establishment or school shall be for a period of twelve months or less following the issuance of the license. If the licensee fails to renew the license within thirty days after its expiration, the license is void, and, to again obtain a license, an application, required documentation, payment of the renewal fee and a late fee not to exceed one hundred dollars (\$100) as established by board rules is required.

C. The board may establish a staggered system of license expiration."

Section 18. APPROPRIATION.--Three hundred thousand dollars (\$300,000) is appropriated from the barbers and cosmetology fund to the board of barbers and cosmetologists for expenditure in fiscal year 2008 for administration of the Body Art Safe Practices Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall revert to the general fund.

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