

1 SENATE BILL 275

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Jacob R. Candelaria

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10 AN ACT

11 RELATING TO BODY ART; CREATING THE BOARD OF BODY ART
12 PRACTITIONERS; CREATING THE BODY ART PRACTITIONERS FUND;
13 PROVIDING POWERS AND DUTIES; REVISING POWERS AND DUTIES OF THE
14 BOARD OF BARBERS AND COSMETOLOGISTS; REPEALING SECTIONS
15 61-17B-12 AND 61-17B-14 NMSA 1978 (BEING LAWS 2007, CHAPTER
16 181, SECTIONS 12 AND 14); MAKING AN APPROPRIATION.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "61-17A-6. BOARD CREATED--MEMBERSHIP.--

22 A. The "board of barbers and cosmetologists" is
23 created. The board [~~shall be~~] is administratively attached to
24 the regulation and licensing department. The board [~~shall~~
25 ~~consist~~] consists of nine members appointed by the governor.

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

6 B. Of the nine members of the board, [~~five~~] seven
7 shall be licensed pursuant to the Barbers and Cosmetologists
8 Act and shall have at least five years' practical experience in
9 their respective occupations. Of those [~~five, two~~] seven,
10 three members shall be licensed barbers, [~~two~~] three members
11 shall be licensed cosmetologists and one member shall represent
12 school owners. [~~Two members shall be licensed body artists~~
13 ~~pursuant to the Body Art Safe Practices Act and shall have at~~
14 ~~least five years in practice in their occupation.~~] The
15 remaining two members shall be public members. Neither the
16 public members nor their spouses shall have ever been licensed
17 pursuant to the provisions of the Barbers and Cosmetologists
18 Act [~~the Body Art Safe Practices Act~~] or similar prior
19 legislation or have a financial interest in a school or
20 establishment.

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

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

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

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

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

11 "61-17A-7. BOARD POWERS AND DUTIES.--

12 A. The board shall:

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

17 (2) establish fees;

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

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

24 (5) adopt a seal;

25 (6) furnish copies of rules and sanitary

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

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

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

10 (9) establish administrative penalties and
11 fines;

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

14 (11) establish guidelines for schools to
15 calculate tuition refunds for withdrawing students; and

16 [~~(12) hire an administrator and other such~~
17 ~~staff as necessary to carry out the provisions of the Body Art~~
18 ~~Safe Practices Act; and~~

19 ~~(13)]~~ (12) issue cease and desist orders to
20 persons violating the provisions of the Barbers and
21 Cosmetologists Act [~~or the Body Art Safe Practices Act~~] and
22 rules promulgated in accordance with [~~those acts~~] that act.

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

25 C. A member of the board, its employees or agents

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1 may enter and inspect a school, enterprise or establishment at
2 any time during regular business hours for the purpose of
3 determining compliance with the Barbers and Cosmetologists Act
4 [~~and the Body Art Safe Practices Act~~]."

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

7 "61-17B-1. SHORT TITLE.--~~[Sections 1 through 14 of this~~
8 ~~act]~~ Chapter 61, Article 17B NMSA 1978 may be cited as the
9 "Body Art Safe Practices Act"."

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

12 "61-17B-3. DEFINITIONS.--As used in the Body Art Safe
13 Practices Act:

14 A. "board" means the board of [~~barbers and~~
15 ~~cosmetologists~~] body art practitioners;

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

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

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

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

25 F. "equipment" means machinery used in connection

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

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

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

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

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

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

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

25 M. "tattooing" means the practice of depositing

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

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

9 "61-17B-5. LICENSE--APPLICATION--REVOCATION--
10 SUSPENSION.--

11 A. A body artist shall obtain a body art license,
12 and an operator shall obtain a body art operator license, the
13 requirements for which shall be defined by the board and shall
14 include the requirement that a body artist applicant
15 demonstrate that the body artist has the training and
16 experience necessary to perform body piercing, tattooing or
17 scarification and [~~to establish and maintain~~] the requirement
18 that a sanitary and sterile body art establishment be
19 maintained.

20 B. An operator or body artist shall possess and
21 post in a conspicuous place a valid and unsuspended license
22 issued by the board in accordance with the Body Art Safe
23 Practices Act and the rules promulgated pursuant to that act.
24 An operator or a body artist shall not display a license unless
25 it has been issued to [~~the~~] that operator or body artist by the

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1 board and has not been suspended or revoked.

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

18 D. The board shall promulgate rules for the
19 revocation or suspension of a license for an operator or body
20 artist who fails to comply with a provision of the Body Art
21 Safe Practices Act or rules promulgated pursuant to that act.
22 A license shall not be suspended or revoked pursuant to the
23 Body Art Safe Practices Act without providing the operator or
24 the body artist with an opportunity for an administrative
25 hearing unless conditions in the body art establishment warrant

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1 immediate suspension pursuant to Section [~~9 of the Body Art~~
2 ~~Safe Practices Act~~] 61-17B-9 NMSA 1978. The hearing officer
3 shall not be a person previously involved in the suspension or
4 revocation action. An inspection made more than twenty-four
5 months prior to the most recent inspection shall not be used as
6 a basis for suspension or revocation.

7 E. The board shall charge a fee not to exceed three
8 hundred dollars (\$300) for the application [~~or annual renewal~~
9 ~~of a~~] to issue a new or renewed license. The [~~operator or body~~
10 ~~artist~~] applicant shall provide proof of current immunization
11 as required by the board and proof of the applicant's
12 attendance at a blood-borne pathogen training program and other
13 training as required [~~and approved~~] by the board before a
14 license is issued or renewed.

15 F. A current body art or [~~body art~~] operator
16 license shall not be transferable from one person to another.

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

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

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

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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 hours
6 of operation;

7 (4) the name and address of the [~~body art~~
8 ~~establishment owner~~] operator;

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

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

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

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

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

24 "[NEW MATERIAL] BOARD CREATED--MEMBERSHIP.--

25 A. The "board of body art practitioners" is

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

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

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

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

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1 E. A board member shall not serve more than two
2 full consecutive terms, and a member who fails to attend three
3 meetings shall automatically be recommended for removal unless
4 the member's absence is excused for reasons set forth by board
5 rule."

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

8 "[NEW MATERIAL] BODY ART PRACTITIONERS FUND CREATED.--The
9 "body art practitioners fund" is created in the state treasury.
10 The fund consists of appropriations; license fees, charges and
11 fines that are imposed by the board and that shall be deposited
12 into the fund; and money otherwise accruing to the fund. Money
13 in the fund is appropriated to the board for the purpose of
14 carrying out the provisions of the Body Art Safe Practices Act.
15 Money in the fund shall be disbursed on warrants signed by the
16 secretary of finance and administration pursuant to vouchers
17 signed by the chair of the board or the chair's authorized
18 representative. Any balance remaining in the fund at the end
19 of a fiscal year 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 "[NEW MATERIAL] 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 provisions

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- 1 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 and
- 8 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 licensed
- 12 operators and body artists;
- 13 (7) hire an administrator and other necessary
- 14 staff to carry out the provisions of the Body Art Safe
- 15 Practices Act; and
- 16 (8) issue cease and desist orders to persons
- 17 who violate the provisions of the Body Art Safe Practices Act
- 18 or rules promulgated pursuant to that act.

19 B. The board may establish continuing education or
20 other requirements for licensure.

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

25 SECTION 9. A new section of the Body Art Safe Practices

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1 Act is enacted to read:

2 "[NEW MATERIAL] TERMINATION OF AGENCY LIFE--DELAYED
3 REPEAL.--The board of body art practitioners is terminated on
4 July 1, 2021 pursuant to the Sunset Act. The board shall
5 continue to operate according to the provisions of the Body Art
6 Safe Practices Act until July 1, 2022. Effective July 1, 2022,
7 the Body Art Safe Practices Act is repealed."

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

12 A. On the effective date of this act:

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

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

24 (3) all existing contracts, agreements and
25 other obligations that relate to the Body Art Safe Practices

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1 Act or the board of barbers and cosmetologists work pursuant to
2 that act shall be binding on the board of body art
3 practitioners;

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

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

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

24 B. Licenses that were issued before the effective
25 date of this act by the board of barbers and cosmetologists

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1 pursuant to the Body Art Safe Practices Act shall remain in
2 effect until the license expires or is renewed or reissued by
3 the board of body art practitioners.

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

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

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