

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 275

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

AN ACT

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

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

SECTION 1. 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~~] is administratively attached to  
the regulation and licensing department. The board [~~shall~~  
~~consist~~] consists of [~~nine~~] seven members appointed by the

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1 governor. Members shall serve three-year terms; provided that  
2 at the time of initial appointment, the governor shall appoint  
3 members to 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~~] seven members of the board, five  
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 members shall  
10 be licensed barbers, two members shall be licensed  
11 cosmetologists and one member shall represent school owners.  
12 [~~Two members shall be licensed body artists pursuant to the~~  
13 ~~Body Art Safe Practices Act and shall have at least five years~~  
14 ~~in practice in their occupation.~~] The remaining two members  
15 shall be public members. Neither the public members nor their  
16 spouses shall have ever been licensed pursuant to the  
17 provisions of the Barbers and Cosmetologists Act [~~the Body Art~~  
18 ~~Safe Practices Act~~] or similar prior legislation or have a  
19 financial interest in a school or establishment.

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

23 D. The board shall elect from among its members a  
24 chair and such other officers as it deems necessary. The board  
25 shall meet at the call of the chair, not less than four times

1 each year. A majority of members currently serving shall  
2 constitute a quorum for the conduct of business.

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

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

10 "61-17A-7. BOARD POWERS AND DUTIES.--

11 A. The board shall:

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

16 (2) establish fees;

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

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

23 (5) adopt a seal;

24 (6) furnish copies of rules and sanitary  
25 requirements adopted by the board to each owner or manager of

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1 an establishment, enterprise or school;

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

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

9 (9) establish administrative penalties and  
10 fines;

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

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

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

18 ~~(13)]~~ (12) issue cease and desist orders to  
19 persons violating the provisions of the Barbers and  
20 Cosmetologists Act [~~or the Body Art Safe Practices Act~~] and  
21 rules promulgated in accordance with [~~those acts~~] that act.

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

24 C. A member of the board, its employees or agents  
25 may enter and inspect a school, enterprise or establishment at

1 any time during regular business hours for the purpose of  
 2 determining compliance with the Barbers and Cosmetologists Act  
 3 [~~and the Body Art Safe Practices Act~~]."

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

6 "61-17B-1. SHORT TITLE.--~~[Sections 1 through 14 of this~~  
 7 ~~act]~~ Chapter 61, Article 17B NMSA 1978 may be cited as the  
 8 "Body Art Safe Practices Act"."

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

11 "61-17B-3. DEFINITIONS.--As used in the Body Art Safe  
 12 Practices Act:

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

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

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

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

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

24 F. "equipment" means machinery used in connection  
 25 with the operation of a body art establishment, including

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1 fixtures, containers, vessels, tools, devices, implements,  
2 furniture, display and storage areas, sinks and other  
3 apparatuses and appurtenances;

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

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

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

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

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

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

24 M. "tattooing" means the practice of depositing  
25 pigment, which is either permanent, semipermanent or temporary,

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

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

8 "61-17B-5. LICENSE--APPLICATION--REVOCATION--  
 9 SUSPENSION.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

underscored material = new  
[bracketed material] = delete

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

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

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

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

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1 a quorum for the conduct of business.

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

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

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

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

23 "[NEW MATERIAL] BOARD POWERS AND DUTIES.--

24 A. The board shall:

25 (1) in conjunction with the department of

1 health, promulgate rules necessary to implement the provisions  
 2 of the Body Art Safe Practices Act;

3 (2) establish fees;

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

7 (4) adopt a seal;

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

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

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

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

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

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

25 "[NEW MATERIAL] TERMINATION OF AGENCY LIFE--DELAYED

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underscored material = new  
 [bracketed material] = delete

1 REPEAL.--The board of body art practitioners is terminated on  
2 July 1, 2021 pursuant to the Sunset Act. The board shall  
3 continue to operate according to the provisions of the Body Art  
4 Safe Practices Act until July 1, 2022. Effective July 1, 2022,  
5 the Body Art Safe Practices Act is repealed."

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

10 A. On the effective date of this act:

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

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

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

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1 practitioners;

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

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

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

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

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1 the board of body art practitioners.

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

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

underscored material = new  
~~[bracketed material]~~ = delete