

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## “CHAPTER ELECTROLOGISTS

§ -1 **Purpose.** The purpose of this chapter is the protection of public health and safety through the licensing and regulation of electrologists.

§ -2 **Definitions.** As used in this chapter:

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Electrologist” means any person who removes hair from the human body using a needle inserted in the hair follicle and uses direct electric current or shortwave alternating current to destroy the follicle but does not include any hair removal system that does not penetrate the skin.

§ -3 **License required.** Except as otherwise provided by law, no person shall practice the occupation of electrologist in this State either gratuitously or for pay, or shall announce oneself either publicly or privately as prepared or qualified to practice this occupation without having a license issued by the department pursuant to this chapter.

§ -4 **Regulation of electrologists.** (a) The department pursuant to chapter 91, may adopt rules as it deems necessary for the public health or safety relating to, but not limited to:

- (1) The education, training, experience or qualifications required to obtain a license under this chapter;
- (2) The practices, standards, or conduct of persons holding a license under this chapter; and
- (3) The use of anesthetic injections, topical anesthetics, other medications, and prescription drugs.

(b) The department shall receive the assistance of the department of health in formulating rules relating to section -4(a)(3). All matters relating to the establishment and enforcement of sanitation requirements shall be under the jurisdiction of the department of health.

§ -5 **Examination, fees required.** (a) No license shall be issued unless the applicant takes an examination as prescribed by the director and receives a passing score. No license shall be issued unless all fees required by the director have been paid.

(b) The department may contract with a professional testing service to prepare, administer, and grade the examination for licensure as an electrologist. For these purposes, the department may require applicants to pay the examination fee directly to the testing service.

**§ -6 Denial of licensure; hearing.** (a) No applicant shall be licensed as an electrologist if:

- (1) The applicant has been convicted of a crime and the basis of denial of licensure falls within the exceptions provided in section 831-3.1; or
- (2) The applicant has been declared mentally incompetent by any court and the decree has not since been dismissed; or
- (3) Proceedings brought against the applicant pursuant to this section resulted in findings of any of the causes listed in subsection -7(b).

(b) Any person whose application for licensure has been denied shall be given notice and the opportunity for a hearing.

**§ -7 Refusal to permit examination or issue license; discipline; complaints; grounds; proceedings; hearings.** (a) The director shall have the power to refuse to admit persons to its examinations or to issue or to renew a license, to revoke, limit, condition, or suspend a license as a electrologist and to fine or otherwise discipline a licensed electrologist for any violation of section -7(b).

(b) The department shall have the power to accept, investigate, prosecute, and hear complaints regarding any person, who is a licensed electrologist regarding the following allegations:

- (1) Unfitness or incompetence by reason of negligence, habits, or other causes regardless of whether actual damage or damage to the public is established;
- (2) Habitual intemperance, addiction, or dependency on alcohol or other habit-forming substances;
- (3) Mental incompetence resulting in an inability to practice as an electrologist;
- (4) Submitting to or filing with the department any application, notice, statement, or other document in procuring or attempting to procure licensure as an electrologist, which is false or untrue or contains any material misstatement of fact;
- (5) Using the title, licensed electrologist, or any designation tending to imply that the person is a licensed electrologist when the person is not in fact licensed or the person's license has been suspended or revoked;
- (6) Violating conditions or limitations upon which licensure is granted;
- (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm an individual or the public in the course of professional services or activities;
- (8) Having disciplinary action taken against the electrologist in another state;
- (9) Aiding or abetting an unlicensed person, knowingly combining or conspiring with an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as agent or associate of an unlicensed person to evade the use of title restrictions of this chapter;
- (10) Engaging in false or misleading advertising;
- (11) Engaging in sexual conduct in connection with professional services or activities; or
- (12) Violating chapter 321, department of health, or any rule adopted thereto.

(c) In any proceeding under this section the person subject to the proceeding shall be given notice and the opportunity for a hearing in conformity with chapter 91.

§ -8 Penalties. (a) Any person against whom proceedings have been brought pursuant to section -7 which resulted in findings of any of the causes listed in subsection -7(b) may be assessed a fine of not less than \$100 nor more than \$5,000 for each offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) The director may bring a civil action to enjoin any person for violation of section -7.

§ -9 Biennial renewal; failure to renew. The biennial renewal fee shall be paid to the department of commerce and consumer affairs on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee on or before such date shall constitute a forfeiture of the license.

§ -10 Fees. The director may establish fees by rules pursuant to chapter 91.

§ -11 License without necessity of examination. All persons holding valid licenses as electrologists from the department of health and practicing on the day prior to the effective date of this Act shall be considered licensed under this chapter on the effective date of this Act without necessity of examination.”

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . TATTOO ARTISTS

§321- Purpose. The purpose of this part is the protection of public health and safety through the licensing and regulation of tattoo artists.

§321- Definitions. As used in this part:

“Department” means the department of health.

“Director” means the director of health.

“Facial tattoo” means any tattoo applied above the jawline, anterior to the ear and frontal hairline including the eyelids, eyebrows, or lips.

“Tattoo artist” means any person who creates indelible marks or decorative designs by introducing pigments beneath the surface of the skin with the aid of needles, or other devices.

§321- Regulation of tattoo artists. (a) The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

- (1) Prohibiting the use of injections, unless administered by a physician licensed under chapter 453 or by a registered nurse licensed under chapter 457;
  - (2) Appropriate restrictions on topical anesthetics;
  - (3) Prescribing procedures and conditions for sterilization, storage of sterilized equipment, resterilization, and disposal of discarded needles and other equipment;
  - (4) Creating examination standards; and
  - (5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department.
- (b) The rules may provide for separate standards for facial tattoos.

**§321- License required; exemptions.** (a) Except as otherwise provided by law, no person shall practice the occupation of tattoo artist in this State either gratuitously or for pay, or shall announce oneself either publicly or privately as prepared or qualified to practice that occupation without having a valid unrevoked license to do so.

(b) Physicians holding a valid unrevoked license under chapter 453 are exempt from the requirements of this part.

**§321- Examination, fees required.** (a) No license shall be issued unless the applicant takes an examination as prescribed by the director and receives a passing score. No license shall be issued unless all fees required by the director have been paid.

(b) The department may contract with a professional testing service to prepare, administer, and grade the examination for licensure as a tattoo artist. For these purposes, the department may require applicants to pay the examination fee directly to the testing service.

**§321- Facial tattoos.** Application of facial tattoos shall be prohibited except by a physician licensed under chapter 453 or by a tattoo artist who is under the general supervision of such a physician.

**§321- Suspension or revocation of license.** The director may revoke or suspend the license of any person licensed under this part who:

- (1) Is found guilty of any fraud, deceit, or misconduct in the practice of the occupation of tattoo artist; or
- (2) Violates this part or any of the rules adopted by the department.

In every case where it is proposed to revoke or suspend a license, the director shall give the licensee concerned notice and a hearing. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing. All hearings shall be conducted pursuant to chapter 91.

**§321- Denial of licensure; hearing.** (a) No applicant shall be licensed as a tattoo artist if:

- (1) The applicant has been convicted of a crime and the basis of denial of licensure falls within the exceptions provided in section 831-3.1;
- (2) The applicant has been declared mentally incompetent by any court and the decree has not since been dismissed; or
- (3) Proceedings brought against the applicant pursuant to this section resulted in findings of any of the causes listed in subsection 321-(b).

(b) Any person whose application for licensure has been denied shall be given notice and the opportunity for a hearing.

**§321- Discipline; complaints; grounds; proceedings; hearings.** (a) The director shall have the power to revoke, limit, condition, or suspend a license as a tattoo artist and to fine or otherwise discipline a licensed tattoo artist for any violation of subsection (b).

(b) The department shall have the power to accept, investigate, prosecute, and hear complaints regarding any person, who is a licensed tattoo artist regarding the following allegations:

- (1) Unfitness or incompetence by reason of negligence, habits, or other causes regardless of whether actual damage or damage to the public is established;

- (2) Habitual intemperance, addiction, or dependency on alcohol or other habit-forming substances;
- (3) Mental incompetence resulting in an inability to practice as a tattoo artist;
- (4) Submitting to or filing with the department any application, notice, statement, or other document in procuring or attempting to procure licensure as a tattoo artist, which is false or untrue or contains any material misstatement of fact;
- (5) Using the title, licensed tattoo artist, or any designation tending to imply that the person is a licensed tattoo artist when the person is not in fact licensed or the person's license has been suspended or revoked;
- (6) Violating conditions or limitations upon which licensure occurs;
- (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm an individual or the public in the course of professional services or activities;
- (8) Having disciplinary action taken against the tattoo artist in another state;
- (9) Aiding or abetting an unlicensed person, knowingly combining or conspiring with an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as agent or associate of an unlicensed person to evade the use of title restrictions of this chapter;
- (10) Engaging in false or misleading advertising; or
- (11) Engaging in sexual conduct in connection with professional services or activities.

(c) In any proceeding under this section the person subject to the proceeding shall be given notice and the opportunity for a hearing in conformity with chapter 91.

**§321- Penalties.** (a) Any person against whom proceedings have been brought pursuant to section 321- which resulted in findings of any of the causes listed in subsection 321- (b) may be assessed a fine of not less than \$100 nor more than \$5,000 for each offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) The director may bring a civil action to enjoin any person for violation of section 321- (b).

**§321- Biennial renewal; failure to renew.** The biennial renewal fee shall be paid to the department of health on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee on or before such date shall constitute a forfeiture of the license.

**§321- Fees.** The director may establish fees by rules pursuant to chapter 91.

**§321- License without necessity of examination.** All persons holding valid licenses as tattoo artists from the department of health and practicing on the day prior to the effective date of this Act shall be considered licensed under this chapter on the effective date of this Act without necessity of examination."

SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of [registration of] professional engineers, architects, surveyors and landscape architects, board of hearing aid dealers and fitters, board of massage, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of detectives and guards, real estate commission, board of veterinary examiners, [and state] board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to sections 26H-4, 484, 514A, and 514E are placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 4. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“**§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, and laboratory technicians[, tattoo artists, electrologists, and sanitarians])

(b) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 468K (Travel Agencies)

(c) The following chapters and sections are hereby repealed effective December 31, 1992:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)
- (7) Chapter 463E (Podiatry)
- (8) Chapter 467D (Social Workers)
- (9) Sections 321-13 to 321-15 only as they relate to sanitarians

(d) The following chapters are hereby repealed effective December 31, 1993:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)

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- (4) Chapter 446 (Debt Adjusters)
- (5) Chapter 436E (Board of Acupuncture)
- (e) The following sections are hereby repealed effective December 31, 1993:
  - (1) Sections 445-21 to 38 (Auctions)
  - (2) Sections 445-131 to 136 (Pawnbrokers)
  - (3) Sections 445-171 to 172 (Secondhand Dealers)
  - (4) Sections 445-231 to 235 (Scrap Dealers)
- (f) The following chapters are hereby repealed effective December 31, 1994:
  - (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
  - (10) Chapter 468E (Speech Pathology and Audiology)
- (g) The following chapters are hereby repealed effective December 31, 1995:
  - (1) Chapter 439 (Board of Cosmetology)
  - (2) Chapter 444 (Contractors License Board)
  - (3) Chapter 448E (Board of Electricians and Plumbers)
  - (4) Chapter 454 (Mortgage Brokers and Solicitors)
  - (5) Chapter 454D (Real Estate Collection Servicing Agents)
  - (6) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
  - (7) Chapter 466 (Board of Public Accountancy)
  - (8) Chapter 467 (Real Estate Commission)
- (h) The following chapters are hereby repealed effective December 31, 1996:
  - (1) Chapter 321, part (Tattoo Artists)
  - (2) Chapter (Electrologists)
- ([h]) (i) The following chapters are hereby repealed effective December 31, 1997:
  - (1) Chapter 463 (Board of Private Detectives and Guards)
  - (2) Chapter 471 (Board of Veterinary Examiners).”

SECTION 5. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

“§321-11 **Subjects of health regulations, generally.** The department of health pursuant to chapter 91 may adopt rules as it deems necessary for the public health and safety respecting:

- (1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;
- (2) Adulteration and misbranding of food or drugs;
- (3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;

- (4) Privy vaults and cesspools;
- (5) Fish and fishing;
- (6) Interments and dead bodies;
- (7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of such bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead human body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
- (9) Laundries, and the laundering, sanitation, and sterilization of [all] articles [of] including linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, electrology shops, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bathhouses, midwives, masseurs, and others in similar calling, public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of such laundering, sanitation, and sterilization by those conducting any of such businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;
- (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, special treatment facilities and programs, home health agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child care institution". For the purpose of this paragraph, "adult foster home" means a private home providing care on a twenty-four hour basis for not more than two developmentally disabled adults at any point in time who are unrelated to the foster family;
- (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including, but not limited to, those built under federal funding;
- (12) Laboratories;
- (13) Any place or building where noisome or noxious trades or manufacturers are carried on, or intended to be carried on;
- (14) Milk;
- (15) Poisons and hazardous substances, the latter term including, but not limited to, any substance or mixture of substances which (A) is corrosive, (B) is an irritant, (C) is a strong sensitizer, (D) is inflammable, or (E) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
- (16) Pig and duck ranches;



- (17) Places of business, industry, employment, commerce, and processes, materials, tools, machinery, and methods of work done therein, and places of public gathering, recreation, or entertainment;
- (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;
- (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale or for consumption or use of any food, drug, or cosmetic;
- (20) Devices as defined in section 328-1;
- (21) Sources of ionizing radiation;
- (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to such medical examination, vaccination, revaccination, or immunization, whose parent or guardian shall in writing object thereto on grounds that such requirements are not in accordance with the religious tenets of an established church of which he is a member or adherent, but no such objection shall be recognized when, in the opinion of the department, there is danger of an epidemic from any communicable disease;
- (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
- (24) Fumigation. The process by which substances emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department, may be lethal, poisonous, noxious, or dangerous to human life;
- (25) Ambulances and ambulance equipment; and
- (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519.

The department may require such certificates, permits, or licenses as it may deem necessary to adequately regulate the conditions or businesses referred to in this section.”

SECTION 6. Section 321-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of health, with the approval of the governor, may prescribe such rules as it deems necessary for the public health or safety respecting:

- (1) The occupations or practices of midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, [electrologists, ]sanitarians, asbestos inspectors, asbestos management planners, and asbestos abatement project designers;
- (2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for [such] these occupations or practices may be issued;
- (3) The health, habits, character, practices, standards, or conduct of persons holding [such] these certificates or permits; or

(4) The grounds or causes for revoking or suspending [such] these certificates or permits.  
[Such] The rules shall have the force and effect of law.”

SECTION 7. All administrative rules of the department of health concerning the licensure and regulation of electrologists shall continue in effect until amended or repealed by the department of commerce and consumer affairs. The department of commerce and consumer affairs may enforce the administration rules of the department of health until amended or repealed.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. Sections 1, 3, 4, and 5 of this Act shall take effect upon its approval. Sections 2, 6, and 7 of this Act shall take effect on January 1, 1991.

(Approved June 25, 1990.)

**Note**

1. So in original.