

ACT 130

S.B. NO. 1263

A Bill for an Act Relating to Tattoo Artists.

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

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part XXX to be appropriately designated and to read as follows:

**“§321- Permit; required for tattoo shop and temporary locations.** (a) No person, partnership, firm, corporation, or other legal entity shall operate a tattoo shop or temporary location without a permit pursuant to department rules.

(b) Each initial permit application under this section shall be accompanied by a fee of \$125 for a permit valid for one year. For renewal of a permit,

each applicant shall pay a fee of \$75 per year. Initial permit application and renewal fees may be increased by not more than \$10 per year.

(c) All permits shall expire on December 31 of each year. The application for a permit renewal shall be submitted to the department in writing on or before December 31 annually.

(d) The department may issue a temporary permit valid for a maximum of seven consecutive days per calendar year for locations other than a permitted tattoo shop for the purpose of a trade show, product demonstration, or educational demonstration; provided that the show or demonstration shall meet all safety and hygiene standards as specified by the director and in this chapter. The temporary permit application shall be made in writing to the department at least sixty days prior to the scheduled event, shall include specific measures to meet specified health and safety standards, and may be subject to a site inspection. Temporary permit applicants shall pay a \$50 nonrefundable application fee in addition to:

- (1) A \$500 nonrefundable permit fee for an event featuring not more than forty participating tattoo artists; or
- (2) A \$50 nonrefundable permit fee for an event featuring less than three participating tattoo artists demonstrating for educational purposes only, without compensation, consideration, or donation by the public;

provided that the department may annually increase the fees specified in paragraphs (1) and (2) by not more than \$100 and \$10 per year, respectively.”

SECTION 2. Section 321-372, Hawaii Revised Statutes, is amended as follows:

1. By repealing the definition of “facial tattoo”:

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

2. By amending the definition of “tattoo artist” to read:

“Tattoo artist” means any person who creates indelible marks or decorative designs by introducing pigments beneath the surface of the skin, resulting in permanent or semi-permanent markings, with the aid of needles, electric machines, hand tools, or other devices[;] or means.”

SECTION 3. Section 321-373, Hawaii Revised Statutes, is amended to read as follows:

**“§321-373 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 460,]~~ 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, reesterilization, 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.]”~~

SECTION 4. Section 321-374, Hawaii Revised Statutes, is amended to read as follows:

“§321-374 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], with or without compensation, consideration, or donation, or shall announce oneself either publicly or privately as prepared or qualified to practice that occupation without having a valid unrevoked license from the department to do so.

(b) Physicians holding a valid unrevoked license under chapter 453 [or 460] are exempt from the requirements of this part.

(c) The department may issue, to tattoo artists who are not licensed in the State, temporary licenses that are valid for a maximum of fourteen consecutive days per calendar year for:

- (1) Educational, trade show, or product demonstration purposes; or
- (2) The purpose of practicing the occupation of tattoo artist at a permitted tattoo location.

Temporary licensees shall be subject to this part and applicable rules.

(d) Applications for temporary licenses shall be made in writing to the department at least sixty days prior to the proposed event and accompanied by a non-refundable application fee of \$100 and written proof satisfying the requirements under subsection (e). An applicant shall be notified of the disposition of the application within twenty business days of the receipt of application.

(e) An applicant for a temporary license shall have either:

- (1) Passed a blood borne pathogen course developed specifically for the tattoo industry, approved by the director, within two years of the date of application; or
- (2) Passed the state tattoo artist written examination within two years of the date of the application.

(f) Temporary license fees may be increased annually by not more than

\$10.

(g) Licensed tattoo artists shall tattoo only in a shop or temporary location that has a valid unrevoked permit issued by the director.”

SECTION 5. Section 321-375, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No license shall be issued unless the applicant takes an examination as prescribed by the director and receives a passing score[;] or meets the criteria specified in section 321-374(e). No license shall be issued unless all fees required by the director have been paid.”

SECTION 6. Section 321-377, Hawaii Revised Statutes, is amended to read as follows:

“§321-377 Suspension[;] or revocation[; or denial of the renewal] of permit or license. (a) The director may revoke[;] or suspend[; or deny the renewal of] the permit or license of any person [applying to be] permitted or 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.

(b) In every case where it is proposed to revoke[;] or suspend[; or deny the renewal of] a permit or license, the director shall give the permittee or licensee [or applicant] 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.”

SECTION 7. Section 321-379, Hawaii Revised Statutes, is amended to read as follows:

~~“[§321-379] Discipline; complaints; grounds; proceedings; hearings.] Enforcement; penalties.~~ (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).] If the department determines that any person has violated or is violating any provision of this part, any rule adopted pursuant to this part, or any term or condition of a permit or license issued pursuant to this part, the department may take enforcement action and impose penalties as provided in section 321-20, except that the department may impose a penalty not to exceed \$10,000 per offense.~~

~~(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:] Violations of this part include but are not limited to:~~

- ~~[(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) (1) 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] that~~ is false or untrue or contains any material misstatement of fact~~[:];~~, or assisting another party in doing so;~~
- ~~[(5) (2) Using the title~~[:]~~ licensed tattoo artist~~[:]~~ or any other 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) (3) Violating the conditions or limitations ~~[upon which licensure occurs;]~~ of a permit or a license or assisting another party in violating those conditions;~~
- ~~[(7) (4) Engaging in ~~[dishonorable, unethical, or unprofessional]~~ conduct ~~[of a character likely to deceive, defraud, or harm]~~ resulting in physical injury to 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) (5) 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 part;~~
- ~~[(10) Engaging in false or misleading advertising; or~~
- ~~[(11) Engaging in sexual conduct in connection with professional services or activities.]~~
- ~~[(6) Tattooing any person under the age of eighteen without the written consent of the person's parent or legal guardian or not maintaining~~

the consent forms in a confidential manner at the tattoo shop for not less than two years; or

(7) Making a false or misleading statement to the department relating to any matter under this part.

(c) An enforcement action under this section may be combined with a permit or license revocation or suspension under section 321-377 and may be brought together as one administrative action.

~~(e)~~ (d) 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.”

SECTION 8. Section 321-376, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 321-378, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 321-380, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 321-383, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect upon approval.

(Approved June 17, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.