

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed: S2/27/13 H3/22/13
A Bill

SENATE BILL 388

By: Senator Irvin

For An Act To Be Entitled

AN ACT TO AMEND VARIOUS PROVISIONS CONCERNING BODY ARTISTS; TO CLARIFY THE NATURE AND PENALTIES FOR VIOLATIONS OF LAWS AND RULES REGARDING BODY ARTISTS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND VARIOUS PROVISIONS CONCERNING BODY ARTISTS AND TO CLARIFY THE NATURE AND PENALTIES FOR VIOLATIONS OF LAWS AND RULES REGARDING BODY ARTISTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code §§ 20-27-1501 through 20-27-1503 are amended to read as follows:

20-27-1501. Definitions.

As used in this subchapter:

- (1) "Artist" means any person other than a licensed physician who performs body art on a human;
- (2) "Artist in training" means a person who:
 - (A) Is in training under the supervision of an artist trainer or a physician; and
 - (B) Shall not independently perform body art;
- (3) "Artist trainer" means an artist who:
 - (A) ~~Is~~ Has been licensed by the Department of Health as an artist for at least five (5) years in the specified field of body art in which he or she will offer training;



(B) Has worked in a body art establishment licensed by the department for at least three (3) years and been in compliance with department rules governing body artists;

(C) Has completed the course required under § 20-27-1506; and

(D) Is a registered instructor for the specified field of body art with the State Board of Private Career Education;

(4) “Body art” means procedures that include:

- (A) Tattooing;
- (B) Body piercing;
- (C) Branding; or
- (D) Permanent cosmetics;

(5)(A) *“Body piercing” and “body piercing procedure” means mean the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration, the puncturing of a part of the body of a live human being to create a hole for ornamentation or decoration, or a single-point perforation of a body part to insert an anchor with a single stud protruding from or flush with the skin.*

(B) “Body piercing” or “body piercing procedure” shall not include piercing an ~~ear~~ earlobe with a presterilized disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ~~ear~~ earlobe;

(6) “Branding” means a permanent mark made on human tissue by burning with a hot iron or other instrument;

(7) “Critical item” means an aspect of operation or condition of a facility or equipment that constitutes the greatest hazard to health and safety, including imminent health hazards;

~~(7)~~(8) “Establishment” means any place or facility:

- (A) Where body art is performed; and
- (B) That has a body artist licensed in Arkansas on staff;

~~(8)~~(9) “Guest artist” means ~~a body~~ an artist from a state other than Arkansas or a country other than the United States who:

(A) holds Holds a license from the body art regulatory board or agency, if in existence, in that state or country; or

(B) If an artist license is not available in the guest artist’s state or country, can submit to the department of evidence of

professional experience, employment, and education including:

(i) Proof of blood-borne pathogen certification; and

(ii) Proof of employment in a licensed body art

facility for at least two (2) years;

(10) "Instrument" means equipment used during body art, including without limitation:

(A) Forceps;

(B) Hemostats;

(C) Needles;

(D) Permanent cosmetic needles and tips;

(E) Receiving tubes; and

(F) Tattoo barrels and tubes;

~~(9)~~(11) "Permanent cosmetics" and "permanent cosmetic procedure" means mean the application of permanent or semipermanent pigmentation by the penetration of the skin with a needle or instrument to:

(A) The face for cosmetic purposes; or

(B) Any part of the body for scar coverage or other corrective purposes; and

(12) "Repigmentation" means recoloration of the skin sought due to:

(A) Dermabrasion, chemical peels, removal or resolution of birthmarks, vitiligo, or other skin conditions that result in the loss of melanin to the skin;

(B) Scarring caused by surgical procedures, including without limitation face lifts, mole or wart removal, cauterization, and other similar procedures;

(C) Mastectomy, including recreation of an areola or nipple; or

(D) Blotchy pigmentation.

(13) "Sponsor" means an individual or business entity, including an event coordinator or manager, responsible for the organization of a convention, trade show, or other temporary event that includes a body art demonstration booth; and

~~(10)~~~~(A)~~(14)(A) "Tattooing" and "tattoo procedure" means mean any method of placing designs, letters, scrolls, figures, symbols, or any other marks upon or under the skin by introducing pigments or by the

production of scars to form indelible marks with the aid of needles or other instruments.

(B) "Tattooing" and "tattoo procedure" ~~does do~~ not include permanent cosmetics.

20-27-1502. Unlawful to perform body art on a person under eighteen years of age - Documentation and consent.

(a)(1) A person under eighteen (18) years of age shall not undergo body art unless:

~~(1)(A)~~ (A) Written consent is given by the person's parent or legal guardian; ~~and~~

~~(2)(A)(B)~~ (B) The parent or legal guardian is present during the procedure;

~~(B) When providing written consent, the parent or legal guardian shall produce photo-bearing identification and attest in writing that the individual is the person's parent or legal guardian.~~

(C) The person to undergo body art and the parent or legal guardian each provide a valid government-issued form of identification that includes a name, date of birth, and photo; and

(D) The parent or legal guardian presents proof of guardianship that matches the identification given, including without limitation a birth certificate or a court or state record for adoption, legal guardianship, emancipation, or a marriage license.

(2) The artist shall retain for at least two (2) years a copy of a photo identification and a proof of guardianship presented under subdivision (a)(1) of this section.

(b) A person shall not perform body art on a person under sixteen (16) years of age, regardless of parental consent, except:

(1) When authorized or prescribed by a physician's statement exclusively for repigmentation; or

(2) When piercing the earlobe.

(c) It is unlawful to perform body art on the nipple or genitalia of a person under eighteen (18) years of age regardless of parental consent, except when authorized or prescribed by a physician's statement exclusively for repigmentation.

(d) It is unlawful to perform branding on a person under the age of

eighteen (18) years of age regardless of parental consent.

~~(b)(e)~~ Regardless of age, the person receiving the body art shall attest to the fact that he or she is not under the influence of drugs or alcohol.

~~(e)(f)~~ Printed and verbal instructions on the care of the skin and the body art shall be given to each person after the procedure, and a copy of the instructions shall be posted in a conspicuous place in the body art establishment.

~~(d)(1)(g)(1)(A)~~ In addition to the attestations required in subsections (a) and ~~(b)(e)~~ of this section, records shall be kept ~~of the names~~ of all persons receiving body art and of the parents or guardians giving consent under the rules promulgated by the State Board of Health to implement this subchapter.

(B) If the person to undergo body art is under eighteen (18) years of age, the printed legal name and signature of the parent or legal guardian.

(2) All records shall be retained for at least two (2) years from the last date recorded in the bound book.

~~(2)(3)~~ All required signatures shall be in ink, and required records shall be available at a reasonable time for examination by the Department of Health and by local health officials.

~~(e)(1)(f)(1)~~ Except as provided in ~~subsection (a)~~ subsections (a)-(c) of this section, it is unlawful to perform body art on a person under eighteen (18) years of age, and any person who pleads guilty or nolo contendere to or is found guilty of a violation of this subdivision ~~(e)(1)(f)(1)~~ is guilty of a ~~Class C~~ Class A misdemeanor.

(2) Any person who falsely claims to be the minor's parent or legal guardian for the purpose of obtaining body art for a person under eighteen (18) years of age shall be guilty of a ~~Class A misdemeanor~~ Class D felony.

(3) It is not a defense to a criminal prosecution under subdivision (f)(1) of this section that at the time of the offense, the person who received the body art possessed a letter of consent from the person's parent or legal guardian if the letter was forged or if a person falsely assumed the identity of the minor's parent or legal guardian.

~~(f)(1)(g)(1)~~ It is unlawful to perform body art ~~on any person under~~

~~eighteen (18) years of age~~ in any unlicensed facility.

(2) A person who pleads guilty or nolo contendere to or is found guilty of a violation of subdivision ~~(f)(1)~~(g)(1) of this section is guilty of a Class D felony.

(3) A fine collected under this section, less court fees, shall be allocated as follows:

(A) Fifty percent (50%) to the State of Arkansas;

(B) Twenty-five percent (25%) to the city or county that levied and collected the fine; and

(C) Twenty-five percent (25%) to be deposited into the State Treasury, credited to the Public Health Fund, and used exclusively for the Body Art Program of the department.

20-27-1503. Department of Health to license, regulate, and inspect for health hazards.

(a)(1) Body art establishments which and artists who perform body art shall be licensed by the Department of Health.

(2) A body art training facility shall be licensed by the department as an establishment and by the State Board of Private Career Education as an approved body art training facility.

(3) An artist from a state other than Arkansas or a country outside of the United States who holds a license from the body art regulatory board or agency in that state or country may submit an application for qualifications review by the department to determine eligibility for a body art license based upon criteria established by the department.

~~(2)(4)~~ (4) The business premises, equipment, procedures, techniques, and conditions of those businesses shall be subject to ~~periodic~~ at least one (1) inspection by the department per year.

(b)(1) The department may adopt appropriate rules regarding the artists, premises, equipment, procedures, techniques, and conditions of establishments which perform procedures subject to this subchapter to assure that the premises, equipment, procedures, techniques, and conditions are aseptic and do not constitute a health hazard.

(2) Any rule affecting body art establishments in effect on August 13, ~~2001~~ 2013, shall remain in effect until the State Board of Health adopts rules pursuant to this subchapter.

(c) Applicants for a license shall file applications upon forms prescribed by the department.

(d) A license shall be issued only for the premises and persons in the application and shall not be transferable.

(e)(1)(A) The department shall levy and collect an annual fee of one hundred fifty dollars (\$150) per facility for issuance of a license to an establishment that performs body art.

(B) The department shall levy and collect an annual fee of one hundred dollars (\$100) per artist for issuance of a license to an artist who performs body art.

(2)(A) The department shall collect a one-time fee of five hundred dollars (\$500) per artist licensed in a state other than Arkansas or a country other than the United States who applies for qualifications review by the department.

(B) The fee for written and practical exams under § 20-27-1508 is not required for an applicant under subdivision (e)(2)(A) of this section for exams taken to complete requirements established by the department.

(C) Upon satisfactory completion of the requirements by the applicant and approval of qualifications established by the department, a body artist license shall be issued to an applicant under subdivision (e)(2)(A) of this section.

(D) The department shall collect the annual artist fee of one hundred dollars (\$100) after the issuance of a license under subdivision (e)(2)(C) of this section.

~~(2)(3)~~ The annual fee for an artist or for an establishment shall be based upon the calendar year, January 1 through December 31, with fees for any given year due by December 31 of the previous year.

~~(3)(4)~~ If the annual fee for a licensed establishment has not been paid by March 1 of the calendar year, the establishment shall be closed until a new license has been issued by the department and the annual fee has been paid.

~~(4)(A)(5)(A)~~ If the annual fee for a licensed artist has not been paid by March 1 of the calendar year, the artist shall have his or her license ~~revoked~~ shall be suspended for ninety (90) days.

(B) If an artist has his or her license ~~revoked~~ suspended,

he or she shall ~~be retested and complete a new residency as an artist in training under a licensed artist~~ before a license may be reissued within ninety (90) days after the suspension:

(i) Pay a reinstatement fee of one hundred dollars (\$100) and pay all overdue licensing fees;

(ii) Complete a written exam with the department and a practical exam in the studio in which the artist is licensed; and

(iii) Meet current requirements established by the department for artists.

(C) If an artist whose license is suspended has not met the requirements under subdivision (e)(5)(B) within ninety (90) days after the suspension, the artist may apply for qualification review.

~~(5)(6)~~ (6) In addition to the penalty provisions found in this subsection, any studio or business owner operating without a current license is ~~subject to the penalties and fines allowed by § 20-7-101~~ commits a Class D felony.

(f) All fees levied and collected under this subchapter are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund to be used exclusively for the ~~Tattoo and Piercing~~ Body Art Program of the department.

(g) Subject to any rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department may transfer all unexpended funds relative to the health facility services that pertain to fees collected under this subchapter, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

SECTION 2. Arkansas Code §§ 20-27-1506 through 20-27-1509 are amended to read as follows:

20-27-1506. Blood-borne pathogens course.

(a)(1) Each artist, artist trainer and artist in training shall complete a Occupational Safety and Health Administration blood-borne pathogens ~~course~~ training approved by the Department of Health on or before December 1, 2014.

(2) An approved online course may be used to satisfy the requirement under subdivision (a)(1) of this section.

~~(2)(b)~~ Each artist trainer shall complete the course before training any artist in training.

~~(3)(c)~~ Each artist in training shall complete the course before applying for the examination required under § 20-27-1508.

(d)(1) After completion of a first Occupational Safety and Health Administration blood-borne pathogens training approved by the department, an artist, an artist trainer, and an artist in training shall renew the training annually.

(2) A copy of each annual certification under subdivision (d)(1) of this section shall be submitted to the department with the license renewal.

~~(b)(1)(A) The department shall promulgate rules to establish standards for the blood-borne pathogens course required under this section.~~

~~(B) The course shall require a minimum of two (2) hours of direct instruction.~~

~~(2) The course may be taught by providers approved by the department, including without limitation:~~

~~(A) The American Red Cross;~~

~~(B) Any nationally recognized body art organization;~~

~~(C) Any institution of higher learning; and~~

~~(D) Any other individual or group approved by the~~

~~department.~~

20-27-1507. Education of artist in training.

(a) An artist trainer shall be a registered instructor in a school licensed by the State Board of Private Career Education.

(b) The State Board shall develop standards to determine:

(1) The maximum number of artists in training in a training facility at one time; and

(2) The length of the program in hours and across a range of months.

~~(b)(1)(A)(c)(1)(A) During the artist training in the fields of tattoo, body piercing, or permanent cosmetics, each artist in training shall complete not less than three hundred seventy-five (375) hours of supervised body art work and classroom instruction in a period not less than six (6) months or more than twenty-four (24) months in an establishment licensed under § 20-27-~~

1503 and § 6-51-601 et seq.

(B) During the artist training in the field of branding, each artist in training shall complete not less than three hundred seventy-five (375) clock hours of supervised body art work and classroom instruction in a period not less than six (6) months or more than twenty-four (24) months in an establishment licensed under § 20-27-1503 and § 6-51-601 et seq.

~~(B)~~(C) Additional fields of body art training may be added by completing not less than two hundred fifty (250) clock hours of technical and procedural training in each of the other fields of body art in which an artist in training is to be licensed.

(D) An artist in training studying multiple fields of body art at the same time shall complete the total clock hours of all fields in not less than twelve (12) months or more than twenty-four (24) months.

(2)(A) The artist trainer shall maintain a training log of the clock hours completed by the artist in training on forms approved by the State Board of Private Career Education.

(B) The training log shall include without limitation a record of:

- (i) Hours of both theory and practical education;
- (ii) The procedures observed and completed; and
- (iii) A list of resources used for training.

(C) The artist in training shall keep available for inspection a bound record book that is separate from the record book of another artist or artist in training.

~~(B)~~(D) The completed training log shall be submitted to the Department of Health at the time of the practical examination under § 20-27-1508.

(d) An artist trainer may offer training only in the area in which the artist trainer holds a current license from the department.

(e) The state board shall adopt a minimum curriculum for each area of body art training that shall be followed by all artist trainers, artists in training, and body art training facilities.

20-27-1508. Examination – Fee.

(a)(1)(A) Each artist in training seeking licensure as an artist under the rules of the Department of Health shall take a written examination ~~and a~~

~~practical examination~~ prepared or approved by the department before beginning training.

(B) Upon completion of the hours required under § 20-27-1507, a practical examination shall be conducted by the department in each field of training for which the artist in training is seeking licensure.

(2) Until an artist in training receives a passing grade on ~~both the written examination and~~ the practical examination, no artist in training may:

(A) Be licensed as an artist;

(B) Hold himself or herself out as a licensed artist; or

(C) Independently perform a body art procedure without the supervision of a body art trainer.

(b) The department shall levy and collect a nonrefundable fee of fifty dollars (\$50.00) from each artist in training who applies to take the written and practical examinations required under this section for licensure as an artist.

(c) A fee collected under this section shall be deposited into the State Treasury, credited to the Public Health Fund, and used exclusively for the Body Art Program of the department.

20-27-1509. Temporary demonstration license.

(a) The Department of Health may issue a temporary demonstration license to an artist or establishment or to a supplier of materials for body art for:

(1) Educational purposes where body art is performed;

(2) Trade shows where body art is performed;

(3) Demonstrations of body art products or procedures; and

(4) An appearance as a guest artist.

(b) A temporary demonstration license shall be valid for no more than fourteen (14) consecutive calendar days.

~~(c) The department shall levy and collect a fee of one hundred fifty dollars (\$150) for each temporary demonstration license.~~

(c)(1) The sponsor of a body art event for an educational purpose, a trade show, a demonstration, or a combination of an educational purpose, a trade show, a demonstration of body art procedures where body art is performed shall obtain the necessary permits to conduct business in the

jurisdiction in which the event will be held, including without limitation a permit issued by the department.

(2) The department shall collect a nonrefundable sponsor fee of fifty dollars (\$50.00) per artist who performs body art at an event, not to exceed two thousand dollars (\$2,000) per event.

(3) In addition to the penalties under § 20-27-1502, a sponsor who violates this subsection is subject to closure of the temporary body art event and a penalty not to exceed three (3) times the cost of the permit.

(d) The department shall levy and collect a nonrefundable fee of fifty dollars (\$50.00) from a guest artist for a temporary demonstration license.

~~(d)(1)~~(e)(1) An application for a temporary demonstration license shall be submitted to the department not less than forty-five (45) days prior to the event ~~or appearance as a guest artist~~ for educational purposes, trade show, or demonstration of body art products and procedures where body art is performed.

(2) An application for a temporary demonstration license shall be submitted to the department not less than seven (7) days before the appearance of a guest artist.

~~(2)(3)~~ An artist shall provide evidence of completion of a Occupational Safety and Health Administration blood-borne pathogens ~~course~~ training with the application.

~~(e)(1)~~(f)(1) A person applying for a temporary demonstration license to appear as a guest artist shall provide documentation of licensure as an artist in another state or country or employment history in a studio licensed by the regulatory board or agency in another state or country before the temporary demonstration license may be granted.

(2) The establishment where the guest artist is appearing shall have a licensed body artist on its staff.

(3) A guest artist may be issued a temporary demonstration license to appear as a guest artist no more than one (1) time every ~~six (6)~~ three (3) months.

(g) A fee levied and collected under this section is special revenue and shall be deposited into the State Treasury, to be credited to the Public Health Fund to be used exclusively for the Body Art Program of the department.

SECTION 3. Arkansas Code Title 20, Chapter 27, Subchapter 15, is amended to add additional sections to read as follows:

20-27-1510. Critical items for closure of a body art establishment.

(a)(1) The Department of Health shall create and publish a list of critical items for closure of an establishment.

(2) The department shall list the prohibitions under § 20-27-1511 as critical items for closure.

(b)(1) An establishment that violates a critical item from the list established under subsection (a) of this section is subject to immediate closure by the department.

(2) An establishment closed under subdivision (b)(1) of this section shall remain closed until:

(A) Fines or penalties, or both, that are assessed under this subchapter have been paid; and

(B) Upon inspection by the department, the establishment is no longer in violation of a critical item.

20-27-1511. Prohibitions.

(a) Body art is prohibited:

(1) On a person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;

(2) On a person who shows signs of recent intravenous drug use;

(3) On an area with sunburn, open lesions, rashes, or wounds;

(4) With the use of a product or ink banned or restricted by the United States Food and Drug Administration;

(5) In a procedure area that is not physically and permanently separated from beauty facilities, such as hair and nail services; and

(6) On an animal in a facility licensed for the application of body art on human beings;

(b) A piercing gun shall be used only to pierce an earlobe.

(c) An person shall not:

(1) Perform a piercing with a manually loaded spring operated piercing device;

(2) Pierce an earlobe with a piercing gun that does not use a pre-sterilized encapsulated stud and clasp system; or

(3)(A) An artist shall not use jewelry for initial piercing that

is not certified by ASTM International or the International Organization for Standardization, or both, as an implant-grade material except for specified types of glass, gold, and niobium as approved by the rules established by the Department of Health.

(B) An artist shall maintain on file for inspection a Mill Test Certificate confirming certification by ASTM International or the International Organization for Standardization, or both, for steel and titanium jewelry for initial piercing.

(d)(1) A person shall not sell a body piercing needle, tattoo needle, or body art instrument, or a combination of these, including without limitation tattoo ink, barrel, drip, and tattoo machine to a person within this state who is not licensed as an artist by the department.

(2)(A) A violation of subdivision (d)(1) of this section is a Class A misdemeanor.

(B) Each violation of subdivision (d)(1) of this section is a separate offense.

(e)(1) Possession of a body piercing needle, tattoo needle, or body art instrument, or a combination of these, including without limitation tattoo ink, barrel, drip, and tattoo machine by a person within this state who is not licensed as an artist by the department is prohibited.

(2)(A) A violation of subdivision (e)(1) of this section is a Class A misdemeanor.

(B) Each violation of subdivision (e)(1) of this section is a separate offense.

(f) A fine collected under this section, less court fees, shall be allocated as follows:

(1) Fifty percent (50%) to the State of Arkansas;

(2) Twenty-five percent (25%) to the city or county that levied and collected the fine; and

(3) Twenty-five percent (25%) to be deposited into the State Treasury, credited to the Public Health Fund, and used exclusively for the Body Art Program of the department.

20-27-1512. Penalties.

(a) An artist who violates this subchapter or rules adopted by the State Board of Health pertaining to body art commits a misdemeanor punishable

by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) for each offense.

(b) After notice of a violation has been given, each violation of this subchapter constitutes a separate offense unless another penalty is specifically provided in this subchapter.

/s/Irvin