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HOUSE BILL 615

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Rhonda S. King

AN ACT

RELATING TO HEALTH; ENACTING THE BODY ART SAFE PRACTICES ACT;
MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Body Art Safe Practices Act".

Section 2. PURPOSE.--The purpose of the Body Art Safe
Practices Act is to provide a safe and healthy environment for
body art.

Section 3. DEFINITIONS.--As used in the Body Art Safe
Practices Act:

A. "body art" means tattooing, body piercing or
scarification but does not include practices that are
considered medical procedures by a state medical board;

B. "body art establishment" means a fixed or mobile

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1 place where body art is administered on the premises;

2 C. "body piercing" means to cut, stab or penetrate
3 the skin to create a permanent hole or opening;

4 D. "department" means the department of health;

5 E. "employee" means a person employed in a body art
6 establishment who administers body art;

7 F. "equipment" means all machinery, including
8 fixtures, containers, vessels, tools, devices, implements,
9 furniture, display and storage areas, sinks and all other
10 apparatuses and appurtenances used in connection with the
11 operation of a body art establishment;

12 G. "instruments used for body art" means hand
13 pieces, needles, needle bars and other instruments that may
14 come into contact with a person's body during the
15 administration of body art;

16 H. "operator" means the owner or his agent in
17 charge of a body art establishment;

18 I. "procedure surface" means any surface that comes
19 in contact with the client's unclothed body during a body art
20 procedure or an associated work area that may require
21 sanitizing;

22 J. "sanitize" or "sanitization" means a procedure
23 that reduces the level of microbial contamination so that the
24 item or surface is considered safe;

25 K. "scarification" means cutting into the skin with

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1 a sharp instrument to produce a permanent mark or design on the
2 skin;

3 L. "sharps" means a sterilized object that is used
4 for the purpose of penetrating the skin or mucosa, including
5 needles, scalpel blades and razor blades;

6 M. "single-use" means products or items that are
7 intended for one-time, one-person use and are disposed of after
8 use, including cotton swabs or balls, tissues or paper
9 products, paper or plastic cups, gauze and sanitary coverings,
10 razors, piercing needles, scalpel blades, stencils, ink cups
11 and protective gloves;

12 N. "sterilization" means destruction of all forms
13 of microbiotic life, including spores; and

14 O. "tattooing" means the practice of depositing
15 permanent, semi permanent or temporary pigment into the
16 epidermis using needles and includes permanent cosmetics,
17 dermatography, micropigmentation, permanent color technology and
18 micropigment implantation.

19 Section 4. RULES.--The department shall promulgate rules
20 to implement the provisions of the Body Art Safe Practices Act.

21 Section 5. EXEMPTION.--A person who pierces only the
22 outer perimeter and lobe of the ear using a pre-sterilized
23 encapsulated single-use stud ear piercing system, implementing
24 appropriate procedures, shall be exempt from the requirements
25 of the Body Art Safe Practices Act. A person who uses such ear

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1 piercing systems must conform to the manufacturer's directions
2 and applicable United States food and drug administration
3 requirements. All ear piercers must employ handwashing or use
4 of an antibacterial gel and wear disposable medical gloves,
5 which are to be discarded after use for each customer. The
6 department may investigate consumer complaints relating to
7 alleged misuse or improper procedures involving ear piercing
8 systems.

9 Section 6. LICENSE--APPLICATION--REVOCATION--
10 SUSPENSION.--

11 A. A person shall not operate a body art
12 establishment unless he possesses a valid license for that body
13 art establishment issued by the department in accordance with
14 the Body Art Safe Practices Act and rules promulgated pursuant
15 to that act. An operator is required to have a license for
16 each body art establishment he owns or operates. The license
17 shall be posted in a conspicuous place in the body art
18 establishment. An operator shall not display a license unless
19 it has been issued for that body art establishment and it has
20 not been suspended or revoked. Licenses may be renewed
21 annually.

22 B. A person desiring to operate a body art
23 establishment shall apply to the department for a license.
24 Applications shall be made in the form prescribed by the
25 department. The body art establishment for which the operator

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1 seeks licensure shall meet department health and safety
2 requirements and may be inspected by the department prior to
3 issuance of a license.

4 C. The department shall charge a fee not to exceed
5 one hundred fifty dollars (\$150) for the application or renewal
6 of a license.

7 D. The department shall promulgate rules for the
8 denial, revocation or suspension of licenses in accordance with
9 the Uniform Licensing Act. A license may be denied if the
10 operator has had a similar license suspended or revoked in this
11 or another jurisdiction within the last five years. An
12 inspection made more than twenty-four months prior to the most
13 recent inspection shall not be used as a basis for suspension
14 or revocation. A person aggrieved by a decision of the
15 department pursuant to this section may appeal to the district
16 court as provided in Section 39-3-1.1 NMSA 1978.

17 E. A license to operate a body art establishment
18 shall not be transferable.

19 F. Persons engaged in the body art business before
20 the effective date of the Body Art Safe Practices Act shall
21 have sixty days to comply with the licensing requirements.

22 G. The following information shall be kept on file
23 on the premises of the body art establishment and available for
24 inspection by the department:

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

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1 body art establishment and their exact duties;

2 (2) the following information pertaining to
3 all employees:

4 (a) date of birth;

5 (b) gender;

6 (c) home address; and

7 (d) phone number;

8 (3) identification photographs of all
9 employees;

10 (4) the body art establishment name and hours
11 of operation;

12 (5) the name and address of the operator;

13 (6) a complete description of all body art
14 performed; and

15 (7) a list of all instruments, body jewelry,
16 sharps and inks used, including names of manufacturers and
17 serial or lot numbers or invoices or their documentation
18 sufficient to identify and locate the manufacturer.

19 Section 7. SANITATION AND STERILIZATION. -- The department
20 shall adopt rules pertaining to sanitation; sterilization of
21 equipment and nondisposable instruments; the use of sharps,
22 stencils and other single-use items; and other public health
23 concerns in body art establishments.

24 Section 8. DISEASE CONTROL. -- Any skin or mucosa surface
25 to receive a body art procedure shall be free of rash,

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1 infection or any other visible active pathological condition.
2 The skin of the employee shall be free of rash, infection or
3 any other visible pathological condition. An employee affected
4 with boils, infected wounds, open sores, abrasions, exudative
5 lesions, acute respiratory infection, nausea, vomiting or
6 diarrhea shall not work in any area of a body art establishment
7 in any capacity in which there is a likelihood of contaminating
8 equipment, supplies or procedure surfaces with pathogenic
9 organisms.

10 Section 9. INSPECTION BY DEPARTMENT. --

11 A. The department shall annually inspect body art
12 establishments to determine compliance with the Body Art Safe
13 Practices Act. A department inspector may enter and inspect
14 the premises and records of a body art establishment at any
15 reasonable time. The operator or his employee shall be given
16 an opportunity to accompany the department inspector on his
17 inspection and to receive the report of the inspection within
18 fourteen days after the inspection. Refusal to allow an
19 inspection is grounds for revocation of the license of the
20 operator if the department inspector tendered proper
21 identification prior to the refusal.

22 B. During an inspection, the department inspector
23 may take samples of equipment and supplies on the premises for
24 the purpose of determining compliance with the provisions of
25 the Body Art Safe Practices Act. The department shall return

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1 samples of equipment or supplies after the investigation is
2 completed.

3 Section 10. IMMEDIATE SUSPENSION. --The department may
4 suspend a license immediately without prior notice to the
5 license holder if it determines, after inspection, that
6 conditions in the body art establishment present a substantial
7 danger of illness, serious physical harm or death to customers
8 who might patronize the body art establishment. A suspension
9 action taken pursuant to this section is effective when
10 communicated to the operator or an employee on the premises.
11 If there is no designated person in charge of the premises,
12 communication to an employee physically present on the premises
13 is sufficient communication to make the suspension effective.
14 No suspension action taken pursuant to this section shall
15 continue beyond the time that the conditions causing the
16 suspension cease to exist, as determined by an inspection by
17 the department at the request of the operator.

18 Section 11. BODY ART SAFE PRACTICES FUND. --The "body art
19 safe practices fund" is created in the state treasury. License
20 fees imposed by the department shall be deposited in the fund.
21 Any balance remaining in the fund at the end of a fiscal year
22 shall not revert to the general fund. The fund shall be
23 administered by the department and money in the fund is
24 appropriated to the department to carry out the provisions of
25 the Body Art Safe Practices Act.

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