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HOUSE BILL 790

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Rhonda 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. -- For the purposes of 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 any fixed or

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1 mobile 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. "contaminated waste" means any liquid or  
5 semiliquid blood or other potentially infectious materials;  
6 contaminated items that would release blood or other  
7 potentially infectious materials in a liquid or semiliquid  
8 state if compressed; items that are caked with dried blood or  
9 other potentially infectious materials and are capable of  
10 releasing these materials during handling; and contaminated  
11 sharps and pathological and microbiological wastes containing  
12 blood and other potentially infectious materials;

13 E. "department" means the department of health;

14 F. "disinfection" means the killing of  
15 microorganisms, but not necessarily their spores, on inanimate  
16 objects;

17 G. "employee" means any person employed in a body  
18 art establishment who administers body piercing, tattooing or  
19 scarification;

20 H. "equipment" means all machinery, including  
21 fixtures, containers, vessels, tools, devices, implements,  
22 furniture, display and storage areas, sinks and all other  
23 apparatuses and appurtenances, used in connection with the  
24 operation of a body art establishment;

25 I. "handsink" means a lavatory equipped with hot

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1 and cold running water under pressure, used solely for washing  
2 hands, arms or other portions of the body;

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

7 K. "invasive" means entry into the body either by  
8 incision or insertion of an instrument into or through the  
9 skin or mucosa or by any other means intended to compromise  
10 the skin or mucosa;

11 L. "procedure surface" means any surface that  
12 contacts the client's unclothed body during a body art  
13 procedure or any associated work area that may require  
14 sanitizing;

15 M. "sanitize" or "sanitization" means a procedure  
16 that reduces the level of microbial contamination so that the  
17 item or surface is considered safe;

18 N. "scarification" means cutting into the skin  
19 with a sharp instrument to produce a permanent mark or design  
20 on the skin;

21 O. "sharps" means any sterilized object that is  
22 used for the purpose of penetrating the skin or mucosa,  
23 including needles, scalpel blades and razor blades;

24 P. "sharps container" means a puncture-resistant,  
25 leak-proof container that can be closed for handling, storage,

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1 transportation and disposal and is labeled with the  
2 international "biohazard" symbol;

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

9 R. "sterilization" means destruction of all forms  
10 of microbiotic life, including spores; and

11 S. "tattooing" means the practice of depositing  
12 pigment into the epidermis using needles, which is either  
13 permanent, semipermanent or temporary, by someone other than a  
14 state-licensed physician and includes permanent cosmetics,  
15 dermatography, micropigmentation, permanent color technology and  
16 micropigment implantation.

17 Section 4. PERMITS--APPLICATION--REVOCATION--  
18 SUSPENSION.--

19 A. No person may operate a body art establishment  
20 unless he possesses a valid and unsuspended permit issued by  
21 the department in accordance with the Body Art Safe Practices  
22 Act and the rules promulgated pursuant to that act. The  
23 permit shall be posted in a conspicuous place within the body  
24 art establishment. No person may display a permit unless it  
25 has been issued to him by the department and has not been

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1       revoked and is not under suspension.

2               B. Any person desiring to operate a body art  
3 establishment shall apply to the department for the issuance  
4 of a permit. Applications shall be made in the form and in  
5 accordance with procedures established by the rules of the  
6 department. The department shall issue a permit to any  
7 applicant that complies with the rules of the department  
8 covering the issuance of permits and who demonstrates to the  
9 satisfaction of the department his ability to comply with all  
10 of the provisions of the Body Art Safe Practices Act. The  
11 body art establishment shall renew the permit annually. The  
12 department shall charge a fee not to exceed fifty dollars  
13 (\$50.00) for the application for and renewal of a permit.

14               C. The department shall promulgate rules for the  
15 revocation or suspension of permits for those body art  
16 establishments that fail to come into compliance with a  
17 provision of the Body Art Safe Practices Act. No permit shall  
18 be suspended or revoked pursuant to the provisions of this  
19 subsection unless there have been repeated violations of the  
20 same standard and without first providing the operator of a  
21 body art establishment an opportunity for an administrative  
22 hearing. The hearing officer shall not be any person  
23 previously involved in the suspension or revocation action.  
24 No inspection made more than twenty-four months prior to the  
25 most recent inspection shall be used as a basis for suspension

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1 or revocation.

2 D. Within ninety days of the receipt of a permit,  
3 the body art operator shall provide proof of attendance at a  
4 blood-borne pathogen training program approved by the  
5 department. Subsequently, the body art operator shall attend  
6 a blood-borne pathogen training program at least once every  
7 three years.

8 E. A current body art establishment permit shall  
9 not be transferable from one person to another.

10 F. Body art establishments engaged in the body art  
11 business before the effective date of the Body Art Safe  
12 Practices Act shall have sixty days to comply with the  
13 permitting requirements.

14 G. The following information shall be kept on file  
15 on the premises of a body art establishment and available for  
16 inspection by the department:

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

19 (2) the following information pertaining to  
20 all employees:

- 21 (a) date of birth;
- 22 (b) gender;
- 23 (c) home address; and
- 24 (d) phone number;

25 (3) identification photographs of all

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- 1 employees;
- 2 (4) the body art establishment name and hours
- 3 of operation;
- 4 (5) the name and address of the body art
- 5 establishment owner;
- 6 (6) a complete description of all body art
- 7 performed;
- 8 (7) a list of all instruments, body jewelry,
- 9 sharps and inks used, including names of manufacturers and
- 10 serial or lot numbers or invoices or their documentation
- 11 sufficient to identify and locate the manufacturer; and
- 12 (8) a copy of the Body Art Safe Practices
- 13 Act.

14 Section 5. INSPECTION BY DEPARTMENT. --

15 A. The department shall inspect body art

16 establishments to determine compliance or lack of compliance

17 with the Body Art Safe Practices Act. The procedures for

18 inspection shall be in accordance with the rules of the

19 department. Upon request by the department to a body art

20 establishment operator or to his employee or agent in charge

21 of the body art establishment premises, he shall permit the

22 department official, upon proper identification, to enter the

23 premises, inspect all parts of the premises and inspect and

24 copy any records of the body art establishment. The operator,

25 his employee or agent in charge of the body art establishment

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1 premises shall be given an opportunity to accompany the  
2 department official on his inspection and to receive a report  
3 of the inspection within fourteen days after the inspection.  
4 Refusal to allow an inspection is grounds for revocation of  
5 the permit of the operator, provided that the department  
6 official tendered proper identification prior to the refusal.

7 B. During an inspection the department may take  
8 samples of equipment and supplies on the premises for the  
9 purpose of determining compliance with the provisions of the  
10 Body Art Safe Practices Act.

11 Section 6. REQUIREMENTS FOR SINGLE USE ITEMS. --

12 A. All sharps shall be sterilized prior to use and  
13 stored in paper peel-packs.

14 B. Single use items shall not be used on more than  
15 one client for any reason. After use, all single use needles,  
16 razors and other sharps shall be immediately disposed of in  
17 approved sharps containers. Piercing needles are strictly  
18 single use.

19 C. All body art stencils shall be single use and  
20 disposable. Petroleum jellies, soaps and other products used  
21 in the application of stencils shall be dispensed and applied  
22 on the area to be tattooed with sterile gauze or in a manner  
23 that prevents contamination of the original container and its  
24 contents. The gauze shall be used only once and then  
25 discarded.

1           Section 7.   SANITATION AND STERILIZATION. --

2           A.   All nondisposable instruments used to  
3 administer body art shall be cleaned thoroughly after each use  
4 by scrubbing with an antimicrobial soap solution and hot water  
5 or an appropriate disinfectant to remove blood and tissue  
6 residue and placed in an ultrasonic unit, which shall remain  
7 on the premises of the body art establishment and which shall  
8 be operated in accordance with the manufacturer's  
9 instructions.

10          B.   After cleaning, all non-disposable instruments  
11 used to administer body art shall be packed individually in  
12 paper peel-packs and sterilized. All paper peel-packs shall  
13 contain either a sterilizer indicator or internal-temperature  
14 indicator. Properly packaged, sterilized and stored equipment  
15 shall be stored no more than one year. Paper peel-packs shall  
16 be dated with an expiration date not to exceed one year.  
17 Sterile equipment may not be used after the expiration date  
18 without first repackaging and resterilization.

19          C.   All nondisposable instruments for body art  
20 shall be sterilized in an autoclave at the body art  
21 establishment. Off-site sterilization is prohibited. The  
22 sterilizer shall be used, cleaned and maintained according to  
23 manufacturer's instructions. A copy of the manufacturer's  
24 recommended procedures for the operation of the sterilization  
25 unit must be available for inspection by the department.

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1           D. Each holder of a permit to operate a body art  
2 establishment shall demonstrate that the sterilizer used is  
3 capable of attaining sterilization by monthly spore  
4 destruction tests. Those tests shall be verified through an  
5 independent laboratory. A permit shall not be issued or  
6 renewed until documentation of the sterilizer's ability to  
7 destroy spores is received by the department. These test  
8 records shall be retained by the operator for a period of  
9 three years and provided to the department upon request.

10           E. After sterilization, the instrument used for  
11 body art shall be stored in a dry, clean cabinet or other  
12 tightly covered container reserved for the storage of  
13 instruments.

14           F. All instruments used for body art shall remain  
15 stored in sterile packages until just prior to performing a  
16 body art procedure. When assembling instruments used for  
17 performing body art, the operator shall wear disposable  
18 medical gloves and use techniques to ensure that the  
19 instruments and gloves are not contaminated.

20           G. All inks, dyes, pigments and sharps shall be  
21 specifically manufactured for performing body art procedures  
22 and shall not be adulterated. Immediately before applying a  
23 tattoo, the quantity of the dye to be used for the tattoo  
24 shall be transferred from the bottle and placed into sterile,  
25 single use paper cups or plastic caps. Upon completion of the

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1 tattoo, these single use cups or caps and their contents shall  
2 be discarded.

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

20 Section 9. JUDICIAL REVIEW.--A person to whom the  
21 department denies a permit or whose permit is suspended or  
22 revoked by the agency may appeal pursuant to Section 39-3-1.1  
23 NMSA 1978.

24 Section 10. ENFORCEMENT.--

25 A. The department may seek relief in district

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1 court to enjoin the operation of a body art establishment not  
2 complying with the Body Art Safe Practices Act.

3 B. The district court may impose a civil penalty  
4 not exceeding five hundred dollars (\$500) on a person who  
5 violates a provision of the Body Art Safe Practices Act. Each  
6 and every violation of the provisions of the Body Art Safe  
7 Practices Act shall constitute a separate offense.

8 Section 11. DISEASE CONTROL. --

9 A. The department shall promulgate rules to ensure  
10 that a person with a disease that can be reasonably expected  
11 to be transmitted to other persons shall not work in a body  
12 art establishment.

13 B. Any skin or mucosa surface to receive a body  
14 art procedure shall be free of rash, infection or any other  
15 visible active pathological condition. The skin of the  
16 operator shall be free of rash, infection or any other visible  
17 pathological condition. No person or operator affected with  
18 boils, infected wounds, open sores, abrasions, exudative  
19 lesions, acute respiratory infection, nausea, vomiting or  
20 diarrhea shall work in any area of a body art establishment in  
21 any capacity in which there is a likelihood of contaminating  
22 body art equipment, supplies or working surfaces with  
23 pathogenic organisms.

24 Section 12. RECORDS RETENTION. -- The body art  
25 establishment shall keep a record of all persons who have had

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1 body art procedures performed. The record shall include the  
2 name, date of birth and address of the client; the date of the  
3 procedure; the name of the employee who performed the  
4 procedure; the type of procedure performed and its location on  
5 the client's body; the signature of the client; and if the  
6 client is a minor, written proof of parental or guardian  
7 presence and consent.

8 Section 13. BODY ART SAFE PRACTICES FUND.--The "body art  
9 safe practices fund" is created in the state treasury. All  
10 permit fees, charges and fines imposed by the department shall  
11 be deposited in the fund. Money in the fund is appropriated  
12 to the department for the purpose of carrying out the  
13 provisions of the Body Art Safe Practices Act. Any balance  
14 remaining in the fund at the end of a fiscal year shall not  
15 revert to the general fund.

16 Section 14. PARENTAL CONSENT.--A body art establishment  
17 shall require that all of its customers present proof that  
18 they are eighteen years of age or older prior to administering  
19 body art. If a customer is seventeen years of age or younger,  
20 the body art establishment must require that the customer  
21 present a notarized informed consent form from his parent or  
22 legal guardian before administering body art. Written consent  
23 shall be personally delivered to the body art establishment by  
24 the parent or legal guardian. Delivery by the person who is  
25 seventeen years of age or younger is not sufficient.

1 Photographic identification of the parent or legal guardian is  
2 required.

3 Section 15. MUNICIPALITIES. --The Body Art Safe Practices  
4 Act provides minimum standards for safe body art practices. A  
5 municipality may by ordinance provide more stringent  
6 standards.

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 February 25, 1999  
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8 Mr. Speaker:  
9

10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to  
11 whom has been referred  
12

13 HOUSE BILL 790  
14

15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, amended as follows:

17 1. On page 3, between lines 10 and 11, insert the  
18 following subsection:

19  
20 "L. "operator" means the owner or his agent in  
21 charge of a body art establishment;".  
22

23 2. Reletter the succeeding subsections accordingly.

24 3. On page 4, line 14, after "physician" insert "or a  
25 person under the supervision of a state-licensed physician".

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FIRST SESSION, 1999

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4. On page 5, lines 12 and 13, strike "fifty dollars (\$50.00)" and insert in lieu thereof "one hundred fifty dollars (\$150)".

5. On page 6, lines 2 through 7, strike Subsection D in its entirety.

6. Reletter the succeeding subsections accordingly.

7. On page 7, line 14, after "DEPARTMENT" insert "--EXEMPTION".

8. On page 7, line 15, after "shall" insert "annually".

9. On page 8, line 10, after the period insert:

"The department shall return any samples of equipment or supplies after the investigation is completed.".

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10. On page 8, between lines 10 and 11, insert the following subsection:

"C. A person who pierces only the outer perimeter and lobe of the ear using a pre-sterilized encapsulated single use stud ear piercing system, implementing appropriate procedures, shall be exempt from the requirements of the Body Art Safe Practices Act. A person who uses these ear piercing systems must conform to the manufacturer's directions on use and applicable United States food and drug administration requirements. All ear piercers must employ handwashing or use of an antibacterial gel and wear disposable medical gloves, which are to be discarded after use for each customer. The department may investigate consumer complaints relating to alleged misuse or improper procedures involving ear piercing systems."

11. On page 10, line 17, strike "operator" and insert in lieu thereof "employee".

12. On page 12, lines 9 through 12, strike Subsection A. in its entirety.

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13. Reletter the succeeding subsection.

14. On page 12, line 16, strike "operator" and insert  
in lieu thereof "employee".

15. On page 12, line 17, strike "person or operator"  
and insert in lieu thereof "employee".

16. On page 14, between lines 6 and 7, insert the  
following new section:

"Section 16. RULES.--The department shall promulgate  
any necessary rules to implement the provisions of the Body  
Art Safe Practices Act.".,

and thence referred to the APPROPRIATIONS & FINANCE  
COMMI TTEE.

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Respectfully submitted,

\_\_\_\_\_  
Patsy Trujillo Knauer,  
Chairwoman

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Vigil

Absent: None

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1 FORTY- FOURTH LEGISLATURE  
2 FIRST SESSION, 1999

3  
4 March 2, 1999

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6  
7 Mr. Speaker:

8  
9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
10 whom has been referred

11 HOUSE BILL 790, as amended

12  
13 has had it under consideration and reports same with  
14 recommendation that it DO PASS.

15  
16 Respectfully submitted,

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20 \_\_\_\_\_  
21 Max Coll, Chairman  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 5 Against

Yes: 9

No: Buffett, Parsons, Pearce, Townsend, Wallace

Excused: Heaton, Salazar, Watchman

Absent: None

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