

- SUBJECT:** Regulating tattooists and body piercers
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 5 ayes — Capelo, Dawson, McReynolds, Taylor, Zedler
0 nays
4 absent — Coleman, Laubenberg, Naishtat, Truitt
- SENATE VOTE:** On final passage, April 25 — voice vote
- WITNESSES:** *(On companion bill, HB 2535 by Uresti:)*
For — Brenda Lee Gloria, Permanent Cosmetics by Roxanne and American Micropigmentation Academy

Against — None
- BACKGROUND:** In 1993, the 73rd Legislature enacted HB 1217 by Delisi, which established a program to regulate the Texas tattoo industry. In 1995, the 74th Legislature modified tattoo regulation through HB 2402 by Thompson. Body piercing was added to the tattooing statutes in 1999 by the 76th Legislature with the enactment of SB 61 by Madla.

Tattooing and body piercing regulations are found in Health and Safety Code, Ch. 146. The law requires the Texas Department of Health (TDH) to license tattoo and body piercing studios. It also requires studio owners and operators, along with tattoo artists and body piercers, to practice aseptic techniques and follow sanitation rules established by the Texas Board of Health (TBH). Tattooists and body piercers are not required to be licensed or registered.
- DIGEST:** SB 1317 would require the registration of tattooists and body piercers beginning June 1, 2004, and would prohibit a tattoo or body piercing studio from employing unregistered practitioners. To register, a person would have to submit an application with fee and proof of six hours training in a TDH-approved course on bloodborne pathogens, infection control, and aseptic technique. For annual registration renewal, a tattooist or body piercer would

have to submit proof of four continuing education hours on the topics listed above, along with a renewal fee. TDH could prepare its own course of instruction or approve those offered by other entities that incorporated TDH standards ensuring that tattooists and body piercers developed the job skills and knowledge necessary to protect the public health and safety.

The bill would require a parent or guardian to be physically present for the tattooing of a minor, in addition to executing an affidavit and presenting identity documents to verify the parent-child relationship. Only a tattoo designed to cover an existing offensive tattoo would be permitted on a minor. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for a minor to claim falsely to be 18 years of age or older to a person engaged in the operation of a tattoo or body piercing studio. The bill also would remove language that permitted a court to order that an offensive tattoo be covered up with another tattoo on a minor without the parent's consent.

The bill would modify the definition of tattoo to include the application of permanent cosmetics.

The bill would specify grounds for TDH to refuse a license to a tattoo or body piercing studio, including that:

- the applicant had been convicted of violating Health and Safety Code, ch. 146 within two years of applying for license;
- the application was made within three years of finishing a sentence resulting from a conviction associated with tattooing or body piercing;
- the applicant violated a moral turpitude provision of Health and Safety Code, ch. 146 within six months of application;
- the applicant submitted false information or failed to answer a question on the license application;
- the applicant was indebted to the state for a fee under Health and Safety Code, ch. 146;
- the applicant was a minor,
- the applicant did not provide an adequate building at the address for which a license was sought; or
- there had been a shooting, stabbing, violent act, or an offense involving drugs on the studio premises that involved a patron or

employee of the studio or someone licensed or registered by TDH under Health and Safety Code, ch. 146.

The bill also would permit the revocation or suspension of a studio's license if TDH found, after notice and hearing, that the license holder:

- had violated or been convicted of violating Health and Safety Code, ch. 146 or related TDH rules;
- made a false statement in the license application;
- was indebted to the state for a fee under Health and Safety Code, ch. 146;
- knowingly misrepresented a tattoo or piercing jewelry to the public;
- was intoxicated on the licensed premises; or
- was shown by the comptroller as owing taxes.

Further, SB 1317 would allow the commissioner of public health to issue an emergency order, with or without notice and hearing, if the commissioner found conditions that presented an immediate, serious threat to human health or found that a violent or drug-related offense had occurred at the studio involving a tattooist or body piercer, and that no other TDH enforcement remedy would resolve the threat in time. TDH would be required to set a hearing to affirm, modify, or set aside the emergency order if the commissioner issued it without a hearing.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

SB 1317 would establish reasonable registration requirements for tattooists and body piercers and stricter licensing standards for tattoo and body piercing studios. The Occupational Health and Safety Administration (OSHA) requires employers to ensure that employees with occupational exposure receive training on bloodborne pathogens. This requirement is echoed in Texas law for tattooists and body piercers. However, there are no minimum standards prescribing adequacy of training, nor any mechanism to ensure that practitioners receive good training. The anecdotal evidence suggests that it is not uncommon for a practitioner to work with an insufficient understanding of aseptic technique, even after having attended a weekend seminar on bloodborne pathogen control. Without minimum curricular standards,

however, seminars and short training sessions may or may not adequately teach infection control.

The bill would set forth the minimum standards needed so that existing training courses could be modified to meet TDH criteria for both initial and continuing education hours. SB 1317 is needed to fill this gap between actual practice and what already is required, but not enforceable, under state and federal law. Additionally, the course approval process would provide TDH the opportunity to set standards regarding minimum job skills and allow TDH to approve only those courses with curricula that satisfactorily incorporated these standards.

Tattooing a minor currently is against the law, unless a parent consents for a minor's tattoo to be covered with another tattoo because the original tattoo is obscene or gang- or drug-related. Parents can consent either by being physically present and presenting evidence of the parent-child relationship or by giving written, notarized consent. However, police have a difficult time enforcing this law when they are called to a tattoo studio.

The bill would make two changes to allow law enforcement to respond better to investigations of tattooing a minor. It would require a parent to be physically present for the tattooing, removing the option of using notarized consent, and would make it a class B misdemeanor for a minor to claim falsely to be 18. These changes would clarify law enforcement's authority, help protect studios that legally tattooed minors, and help protect parents' rights. The bill would not have an adverse impact by removing the existing provision allowing court-ordered coverage of offensive tattoos without parental consent, because this clause never has been invoked.

Though most tattoo and body piercing studios make sincere efforts to comply with the law and provide safe, legal services, there are a very few studios whose premises are centers of crime and drug use. Currently, TDH and police have no authority over the studio itself unless it has violated health provisions in existing law. By granting TDH authority to deny or suspend a license for a studio with a crime problem on its premises, this bill would give studio owners and operators the incentive to keep their premises free of illegal criminal activity. TDH could add any specificity needed to the statutory

language regarding grounds for refusal, revocation, or suspension of a license in consultation with stakeholders through the rule making process.

Cosmetic tattooing, or permanent make up, is an emerging industry that currently is not included under the TDH definition of a tattoo. However, it is increasingly popular and new artists are entering the field, many of whom lack basic knowledge of bloodborne pathogens and aseptic technique. Though TDH interprets existing law to include permanent cosmetic artists, there is sufficient confusion on the matter such that only practitioners who want to be regulated currently register. This bill would alter the definition of tattoo to specifically include permanent cosmetics so that there would be no question as to whether permanent make-up artists were regulated by TDH in terms of licensure, registration, and training.

**OPPONENTS
SAY:**

This bill is overly broad in the grounds it would establish for refusal, revocation, and suspension of a studio's license. For example, grounds for refusal would include failing to answer a question on a license application. It would be entirely possible for an applicant, in good faith, to overlook a question on the application, and such minor mistakes should not be grounds for license refusal. Another reason for license refusal would be failure to provide an "adequate" facility for tattooing or body piercing. However, the bill does not define the word adequate, nor is it defined in existing rule or statute. TDH and applicants could have honest disagreements over what adequate meant. In most circumstances, the grounds for refusal, revocation, or suspension would not be problematic, but in some cases they could result in unfairly denying licensure to law abiding tattooists and body piercers.

The bill also would require TDH to deny a license if there had been a violent act or drug-related offense on studio premises, even if it involved a patron of the studio, but no employee. Managers of public accommodations have little control over what their customers do, and punishing a studio owner for a customer's offense would be unreasonable. At a minimum, the bill should be amended to permit, not require, refusal of a license under such conditions so that TDH had the discretion to allow a law abiding studio owner who was the victim of a law-breaking customer to continue doing business.

**OTHER
OPPONENTS
SAY:**

This bill would not go far enough in establishing minimum training requirements for tattoo artists and body piercers. The only mechanism in the bill for TDH to set job skill and knowledge standards would be the training course approval process. To better protect public health and safety, TDH should require demonstration of minimum skills as a registration requirement.

NOTES:

The identical companion bill, HB 2535 by Uresti, was reported favorably, as substituted, by the Public Health Committee on April 25.