

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1368

By: Lindley

AS INTRODUCED

An Act relating to professions and occupations; creating the Tattoo Studio and Tattoo Artist Licensing Act; defining terms; prohibiting certain actions; providing exceptions; creating the Tattooing Standards Advisory Board; providing for qualifications, membership and appointment; providing for terms and elections; providing for vacancies and reimbursements; providing for promulgation of rules; providing for content; requiring licensure and procedures; specifying certain requirements; providing for fees; prohibiting certain tattooing; providing penalty; requiring records; providing for hearings and notice; providing for procedures; providing for orders; repealing 21 O.S. 1991, Sections 841 and 842, which relate to tattooing; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Tattoo Studio and Tattoo Artist Licensing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3102 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Tattoo Studio and Tattoo Artist Licensing Act:

1. "Advisory Board" means the Tattooing Standards Advisory Board;
2. "Board" means the State Board of Health;
3. "Commissioner" means the State Commissioner of Health;
4. "Department" means the State Department of Health;

5. "Physician" means a person who is currently licensed pursuant to the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act;

6. "Tattooing" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment;

7. "Tattooist" or "tattoo artist" means a person who practices or performs tattooing; and

8. "Tattoo studio" means an establishment or facility in which tattooing is performed.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3103 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 2002:

1. No person shall conduct, operate or maintain a tattoo studio unless the person holds a current tattoo studio license issued by the State Department of Health to operate the studio;

2. No person shall perform or practice tattooing unless the person holds a current license to practice tattooing issued by the Department; and

3. A person who owns, operates, or maintains a tattoo studio or who practices tattooing shall comply with the provisions of the Tattoo Studio and Tattoo Artist Licensing Act and the rules promulgated pursuant thereto.

B. The Tattoo Studio and Tattoo Artist Licensing Act does not apply to:

1. Physicians;

2. An office or clinic of a physician; or

3. A hospital or related institution licensed pursuant to Article 7 of the Oklahoma Public Health Code.

C. Beginning January 1, 2002 any person who willfully violates any provision of the Tattoo Studio and Tattoo Artist Licensing Act, or rule promulgated or order issued pursuant thereto shall be subject, except as otherwise provided by the Tattoo Studio and Tattoo Artist Licensing Act, to the penalties set forth in Sections 1-1701, 1-1701.1A, and 1-1702 of Title 63 of the Oklahoma Statutes. Each day a person is not in compliance with the Tattoo Studio and Tattoo Artist Licensing Act shall constitute a separate violation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3104 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Tattooing Standards Advisory Board. The Advisory Board shall be composed of five (5) members appointed by the State Commissioner of Health as follows:

1. Two physicians, at least one of whom shall be a plastic and reconstructive surgeon;

2. One person who shall be an instructor of nursing who is skilled in the instruction of sterile techniques and infection control; and

3. Two persons representing a statewide association representing tattoo studios and tattooists.

B. The members of the Advisory Board shall be appointed for a term of three (3) years, and may be reappointed. The initial terms staggered as follows:

1. One physician and one person representing the statewide association representing tattoo studios and tattooists shall each serve a three-year term;

2. The instructor of nursing and the other person representing a statewide association representing tattoo studios and tattooists shall each serve a two-year term; and

3. The other physician shall serve a one-year term.

C. At its first meeting, and annually thereafter, the members of the Advisory Board shall elect a chair and a cochair.

D. The members of the Advisory Board shall serve without compensation, but may be reimbursed in accordance with the State Travel Reimbursement Act.

E. The Advisory Board shall advise and assist the State Board of Health, the Commissioner and the State Department of Health with regard to rules and standards for the licensure of tattoo studios, the education, training and licensure of tattooists, the safe operation and maintenance of tattoo studios and the practice of tattooing, and the implementation of the Tattoo Studio and Tattoo Artist Licensing Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3105 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall promulgate rules to implement the provisions of the Tattoo Studio and Tattoo Artist Licensing Act. The rules shall include, but not be limited to:

1. Sanitation requirements for tattoo studios and the practice of tattooing;

2. Any necessary requirements relating to the building or part of the building in which a tattoo studio is located. A tattoo studio may only be located in a permanent, nonresidential building zoned for commercial use;

3. Requirements that tattooing is permitted only at a licensed location and is in compliance with the Tattoo Studio and Tattoo Artist Licensing Act and rules promulgated pursuant thereto;

4. Education, training and experience requirements and any appropriate examination requirements for licensure as a tattooist;
and

5. Recognition of a license to practice tattooing issued in another state, when the licensure requirements are comparable to those of this state.

B. The State Board of Health shall set application fees, tattooist examination fees, license fees, license renewal fees and administrative penalties for violations in amounts necessary to administer the Tattoo Studio and Tattoo Artist Licensing Act. The fees and fines shall be deposited in the Public Health Special Fund.

C. The State Department of Health shall enforce the provisions of the Tattoo Studio and Tattoo Artist Licensing Act and the rules promulgated pursuant thereto.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3106 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. On and after January 1, 2002, an application for a license, or renewal thereof, to operate a tattoo studio shall be accompanied by a fee established by the State Board of Health. All tattoo studio licenses shall be on a form prescribed by the State Department of Health. The license shall:

- a. not be transferable or assignable,
- b. be posted in a conspicuous place on the licensed premises,
- c. be issued only for the premises named in the application,
- d. be valid for one (1) year from the date of issuance, and
- e. except as provided in the Tattoo Studio and Tattoo Artist Licensing Act, be renewed annually on payment of the required renewal fee.

2. In addition, the applicant shall submit confirmation from the appropriate building and zoning officials in the municipality or county in which the studio is proposed to be located to determine

compliance with existing building and zoning codes applicable to the studio.

B. The issuance or renewal of a tattoo studio license after notice of a violation has been sent shall not constitute a waiver by the State Department of Health of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action under the Tattoo Studio and Tattoo Artist Licensing Act arising out of the notice of violation.

C. 1. When transfer of ownership or operation of a tattoo studio is proposed, the transferee shall notify the Department of the transfer and apply for a new license at least thirty (30) days prior to final transfer.

2. The transferor shall remain responsible for the operation of the tattoo studio until such time as a license is issued to the transferee.

3. The license granted to the transferee shall be subject to any plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no approved plan of correction has been implemented, the Department may issue a conditional license and plan of correction.

4. The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership.

D. A person holding a tattoo studio license who intends to change the location of the tattoo studio shall notify the State Department of Health in writing of that intent not less than thirty (30) days before the change is to occur. The notice shall include the street address of the new location and the name and residence address of the individual in charge of the business at the new location.

1. Not later than ten (10) days after the change of location is complete, the person holding a tattoo studio license pursuant to the Tattoo Studio and Tattoo Artist Licensing Act shall notify the Department in writing and shall verify the information submitted pursuant to this section.

2. Notice under this subsection must be sent to the Department's Oklahoma City office by certified mail, return receipt requested.

E. On receipt of a tattoo studio license application, the Department shall inspect the proposed tattoo studio to determine compliance with the Tattoo Studio and Tattoo Artist Licensing Act and rules promulgated pursuant thereto.

F. The Department may issue a license for a tattoo studio after determining that the studio is in compliance with applicable statutes, rules, and building and zoning codes.

G. A person who owns, operates, or maintains a tattoo studio shall allow inspection of the studio by the Department at any time the studio is in operation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3107 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. An application for a license, or renewal thereof, to practice tattooing shall be accompanied by a fee and shall be on a form prescribed by the State Department of Health. The tattooing license shall:

1. Not be transferable or assignable; and
2. Be posted in a conspicuous place on the licensed premises in which the tattooist practices.

B. Upon receipt of an initial application to practice tattooing the Department shall determine whether the applicant is in compliance with the education, training or experience standards and other requirements for licensure.

C. If the applicant meets licensure requirements, the Department may issue a license to practice tattooing.

1. A tattoo license is valid for one (1) year from the date of issuance; and

2. Except as provided in the Tattoo Studio and Tattoo Artist Licensing Act, a license to practice tattooing may be renewed annually on payment of the required renewal fee.

D. The issuance or renewal of a tattooing license after notice of a violation has been sent shall not constitute a waiver by the State Department of Health of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action under this act arising out of the notice of violation.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3108 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any holder of a license or applicant for a license pursuant to the Tattoo Studio and Tattoo Artist Licensing Act shall be deemed to have given consent to any authorized officer, employee, or agent of the State Department of Health to enter and inspect the tattoo studio in accordance with the provisions of the Tattoo Studio and Tattoo Artist Licensing Act. Refusal to permit said entry or inspection, except for good cause, shall constitute grounds for remedial action or administrative penalty or both such action and penalty as provided in the Tattoo Studio and Tattoo Artist Licensing Act.

B. The Department shall make regular, unannounced inspections of licensees to determine compliance with the provisions of the Tattoo Studio and Tattoo Artist Licensing Act and the rules promulgated pursuant thereto.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3109 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. If upon inspection or investigation, or whenever the State Department of Health determines that there are reasonable grounds to believe that any person is in violation of the Tattoo Studio and Tattoo Artist Licensing Act or any rule promulgated thereunder or of any order or license issued pursuant thereto, the Department may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct such violation immediately or within a set time period or both and that the failure to do so will result in the issuance of a compliance order.

B. In addition to any other remedies provided by law, the Department may, after service of the notice of violation, issue a proposed compliance order to such person. A proposed compliance order shall become a final order unless, no later than fifteen (15) days after the order is served, any respondent named therein requests an administrative enforcement hearing.

1. The proposed compliance order may:

- a. assess an administrative penalty for past violations of the Tattoo Studio and Tattoo Artist Licensing Act, rules promulgated thereunder, or the terms and conditions of licenses issued pursuant thereto, and
- b. propose the assessment of an administrative penalty for each day the respondent fails to comply with the compliance order.

2. Such proposed order may specify compliance requirements and schedules, or mandate corrective action, or both.

C. Failure to comply with a final compliance order, in part or in whole, may result in the issuance of an assessment order assessing an administrative penalty as authorized by the Tattoo Studio and Tattoo Artist Licensing Act, or a supplementary order imposing additional requirements, or both. Any proposed order issued pursuant to this subsection shall become final unless, no

later than seven (7) days after its service, any respondent named therein requests an administrative enforcement hearing.

D. The Department, after notice and opportunity for an administrative hearing, may revoke, modify or suspend the holder's license in part or in whole for cause, including but not limited to the holder's:

1. Flagrant or consistent violations of the Tattoo Studio and Tattoo Artist Licensing Act, of rules promulgated thereunder or of final orders or licenses issued pursuant thereto; or

2. Reckless disregard for the protection of the public as demonstrated by noncompliance with the Tattoo Studio and Tattoo Artist Licensing Act and rules promulgated thereto resulting in endangerment of human health.

E. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or welfare, the Department may without notice or hearing issue an order, effective upon issuance, reciting the existence of such an emergency and requiring that such action be taken as deemed necessary to meet the emergency. Any person to whom such an order is directed shall comply therewith immediately but may request an administrative enforcement hearing thereon within fifteen (15) days after the order is served. Such hearing shall be held by the Department within ten (10) days after receipt of the request. On the basis of the hearing record, the Department shall sustain or modify such order.

F. Except as otherwise expressly provided by law, any notice of violation, order, or other instrument issued by or pursuant to authority of the Department may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail return receipt requested directed to such person at his or her last-known post office address as shown by the files or records of the Department. Proof of service shall be made as in the case of service of a

summons or by publication in a civil action. Such proof of service shall be maintained by the Department.

G. Every certificate or affidavit of service made and filed shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

H. 1. The administrative hearings provided for in this section shall be conducted as individual proceedings in accordance with, and a record thereof maintained pursuant to, Article II of the Administrative Procedures Act. When a hearing is timely requested by a respondent pursuant to this section, the Department shall promptly conduct such hearing.

2. Any order issued by the Department shall become final upon service.

I. Any party aggrieved by a final order may petition the Department for rehearing, reopening or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order, including the Attorney General on behalf of the state, may, pursuant to the Administrative Procedures Act, petition for a judicial review thereof.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3110 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A person who owns, operates, or maintains a tattoo studio and each tattooist who works in the studio shall take precautions to prevent infection and the spread of infection, including, but not limited to:

1. Using germicidal soap to clean the hands of the tattooist and the skin area of the client to be tattooed;
2. Wearing clean apparel and rubber gloves;
3. Using sterile tools and equipment; and
4. Keeping the tattoo studio in a sanitary condition.

B. 1. Tools, equipment, and instruments for tattooing which can be sterilized shall be:

- a. properly sterilized and kept in a sterile location by the tattooist,
- b. sterilized prior to use on each client, and
- c. sterilized by steam pressure treatment in an autoclave.

2. Tools, equipment, and instruments which cannot be sterilized shall be cleansed and used according to standards promulgated by the State Board of Health.

3. All needles used in tattooing shall be single-use needles.

4. All tools, equipment, instruments, and needles shall be kept in a clean, dust-tight container or dust-free area when not in use.

C. A person who owns, operates, or maintains a tattoo studio and a tattooist shall report to the State Department of Health any infection resulting from tattooing performed by the tattooist or at the studio as soon as it becomes known to the tattooist or the tattoo studio.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3111 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A tattooist shall not tattoo:

1. The face, head, neck, hands, or genitalia of any person;
2. A person younger than eighteen (18) years of age; or
3. A person whom the tattooist suspects is under the influence of alcohol or drugs at the time the person presents himself or herself and requests a tattoo.

B. A tattooist who tattoos a person under eighteen (18) years of age shall, upon conviction, be guilty of a felony.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3112 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A tattooist shall maintain a permanent record of each person tattooed by the tattooist for a period established by rule of the State Board of Health.

B. The record shall be available for inspection on the request of the State Department of Health.

SECTION 13. REPEALER 21 O.S. 1991, Sections 841 and 842, are hereby repealed.

SECTION 14. Section 13 of this act shall become effective January 1, 2002.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

48-1-6069 KSM 6/12/15