

Act No. 375
Public Acts of 2010
Approved by the Governor
December 22, 2010
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Senator Gleason

ENROLLED SENATE BILL No. 1486

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services; to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 13101, 13102, 13104, 13105, 13106, 13107, 13108, 13109, 13110, and 13111 (MCL 333.13101, 333.13102, 333.13104, 333.13105, 333.13106, 333.13107, 333.13108, 333.13109, 333.13110, and 333.13111), sections 13101 and 13102 as amended and sections 13104, 13105, 13106, 13107, 13108, 13109, 13110, and 13111 as added by 2007 PA 149, and by adding sections 13105a and 13112; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 13101. (1) As used in this part:

(a) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(b) "Applicant" means the person who submits an application for a body art facility license under this part and includes the owner or operator, an agent of the owner or operator, or any other person operating under the apparent authority of the owner or operator of a body art facility that is required to be licensed under this part.

(c) "Body art facility" means the location at which an individual does 1 or more of the following:

(i) Performs tattooing.

(ii) Performs branding.

(iii) Performs body piercing.

(d) "Body piercing" means the perforation of human tissue other than an ear for a nonmedical purpose.

(e) "Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument.

(f) "Controlled substance" means that term as defined in section 7104.

(g) "Critical violation" means a violation of this part that is determined by the department or a local health department to be more likely than other violations of this part to contribute to illness in humans.

(h) "Licensee" means the person who is the holder of a license under this part or the person who is legally responsible for the operation of a body art facility and includes the owner or operator, an agent of the owner or operator, or any other person operating under the apparent authority of the owner or operator of a body art facility that is required to be licensed under this part.

(i) "Local governing entity" means that term as defined in section 2406.

(j) "Minor" means an individual under 18 years of age who is not emancipated under section 4 of 1968 PA 293, MCL 722.4.

(k) "Smoking" means that term as defined in section 12601.

(l) "Tattoo" means 1 or more of the following:

(i) An indelible mark made upon the body of another individual by the insertion of a pigment under the skin.

(ii) An indelible design made upon the body of another individual by production of scars other than by branding.

(m) "Temporary body art facility" means a body art facility that operates at a fixed or temporary location in this state for a time period that does not exceed 14 consecutive days and includes out-of-state facilities operating within this state.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

Sec. 13102. An individual shall not tattoo, brand, or perform body piercing on a minor unless the individual obtains the prior written informed consent of the minor's parent or legal guardian and proof of that individual's authority to give the informed consent required under this section. The minor's parent or legal guardian shall execute the written, informed consent required under this section in the presence of the licensee or an employee or agent of the licensee. The minor's parent or legal guardian shall present to the licensee or employee or agent of the licensee the minor's birth certificate or legal proof of guardianship to establish the individual's authority to give the informed consent required under this section.

Sec. 13104. (1) An individual shall not tattoo, brand, or perform body piercing on another individual unless the tattooing, branding, or body piercing occurs at a body art facility licensed under this part. Any tattooing, branding, or body piercing occurring in this state other than at a facility licensed under this part is considered an imminent danger under section 2251 or 2451 and the department or a local health department shall order the immediate cessation of that activity in the manner prescribed in this act.

(2) The owner or operator of a body art facility shall apply to the department for a body art facility license under this part on a form provided by the department and at the time of application shall pay to the department the appropriate fee prescribed under subsection (4). The department shall issue a license on an annual basis to a body art facility that meets the requirements of this part or for a time period not to exceed 14 consecutive days to a temporary body art facility that meets the requirements of this part.

(3) If the department determines that the application is complete and the body art facility proposed or operated by the applicant meets the requirements of this part and any rules promulgated under this part, the department shall issue the appropriate license to the applicant for the operation of that body art facility. Except for a temporary license issued under this part, the license is effective for up to 1 year and expires at 12 midnight on December 31. A temporary license issued under this part is effective for not more than 14 consecutive days and expires at 12 midnight on the date prescribed on the temporary license.

(4) Except as otherwise provided in this part, the applicant shall pay 1 of the following fees at the time of application for a body art facility license:

(a) For an annual license..... \$ 500.00.

(b) For a temporary license to operate a body art facility at a fixed location for not more than 14 consecutive days..... \$ 150.00.

(5) An applicant for a new annual license that is filed on or after July 1 shall only pay 50% of the fee prescribed in subsection (4)(a). A licensee that fails to submit an application for a license renewal on or before December 1, in addition to the license fee under subsection (4)(a), shall pay an additional \$250.00 late fee.

(6) The department shall issue a duplicate license upon request of a licensee and the payment of a duplicate license fee of \$50.00.

(7) Unless a different distribution is provided for in a cost reimbursement program under sections 2471 to 2498, the department shall distribute a portion of a fee collected under this section from an applicant or licensee to a local health department authorized to enforce this part under section 13108 as follows:

(a) From the annual license fee under subsection (4)(a) or (5) and, if applicable, from the late fee under subsection (5), 50%.

(b) From the temporary license fee under subsection (4)(b), 75%.

(c) From the duplicate license fee under subsection (6), 50%.

(8) The department shall adjust the fees prescribed in this section annually by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit-Ann Arbor-Flint consumer price index, but not by an amount that exceeds 5%. As used in this subsection, "Detroit-Ann Arbor-Flint consumer price index" means the most comprehensive index of consumer prices available for the Detroit, Ann Arbor, and Flint areas from the bureau of labor statistics of the United States department of labor.

Sec. 13105. (1) Before issuing a license to an applicant under this part, the department shall receive the results of an inspection of the premises of the body art facility that is the subject of the application from the appropriate local health department. The local health department shall convey the results of the inspection of the premises of the body art facility that is the subject of the application to the department as soon as practical after the inspection occurs, along with its recommendation on whether the department should issue a license to that facility under this part.

(2) The appropriate local health department shall inspect each body art facility prior to being licensed under this part and shall at least annually inspect each body art facility licensed under this part to ensure compliance with this part. Subject to section 13108, the department shall authorize a local health department under section 2235 to perform the inspections required under this subsection.

(3) The department shall issue a license under this part to a specific person for a body art facility at a specific or temporary location.

(4) A license issued under this part is nontransferable.

Sec. 13105a. (1) An applicant or licensee shall give the local health department access to the body art facility and all of its books and records during all hours of operation and during other reasonable hours to allow the local health department to determine if the body art facility is in compliance with this part. An inspection of a body art facility under this part may be announced or unannounced. An applicant or licensee shall not do any of the following:

(a) Refuse to permit the local health department to enter or inspect a body art facility.

(b) Refuse to produce the body art facility's books and records for inspection.

(c) Any other activity that impedes the local health department's ability to carry out its duties prescribed in this part.

(2) As part of an inspection under this part, the local health department may examine, take photographs, or make copies of the books and records of the body art facility.

(3) Upon completion of an inspection under this part, the local health department shall reduce its findings to writing on a form prescribed by the department. The inspection report shall include a summary of all findings of the inspection with regard to items of compliance with this part. If any critical violations are found, the inspection report shall include a compliance schedule for the body art facility to follow, which schedule is consistent with the department's standards established under this part for body art facilities.

(4) An authorized representative of the local health department who participated in the conduct of the inspection shall sign and date the inspection report and obtain the signature of the licensee on the report. A copy of the signed and dated inspection report shall be delivered to the licensee.

(5) If the local health department determines that the continued operation of a body art facility is an imminent danger under section 2451, the local health department shall order the immediate cessation of the operation of that facility in the manner prescribed in this act. A body art facility ordered to cease operations under this subsection shall immediately cease operations and shall not resume operations until the local health department has conducted an inspection, has determined that the operation of the body art facility is no longer an imminent danger, and has issued an order allowing the body art facility to resume operations.

(6) At any time it determines appropriate, a local health department may place limitations on the license of a body art facility, which limitations include the imposition of restrictions or conditions, or both, on the operations of that body art facility. A body art facility shall comply with all license limitations imposed under this subsection until the local health department has conducted an inspection, has determined that the license limitations are no longer necessary, and has issued an order allowing the body art facility to resume operations without the license limitations.

Sec. 13106. The licensee shall apply to the department for renewal of the annual license on or before December 1 each year. A licensee that fails to file an application for renewal as prescribed in this section is subject to the late fee under section 13104.

Sec. 13107. A licensee shall do all of the following:

(a) Display the license issued under this part in a conspicuous place within the customer service area of the body art facility.

(b) Comply with and ensure that the body art facility is in compliance with this part and part 138 and with rules promulgated under those parts.

(c) Develop and maintain a bloodborne infectious disease exposure control plan that is specific to the location of that facility and that is in compliance with applicable Michigan occupational safety and health administration standards including the standards for bloodborne infectious diseases under R 325.70001 to R 325.70018 of the Michigan administrative code.

(d) Ensure that the body art facility as a whole, the owner or operator, an agent of the owner or operator, an employee, and any individual engaged in tattooing, cleaning tattooing instruments, performing branding or body piercing, or cleaning branding or body piercing instruments who has the potential for occupational exposure to blood or other potentially infectious materials receive training annually on bloodborne infectious diseases.

(e) Ensure that tattooing, branding, or body piercing is performed with sterile needles, sterile instruments, and only single-use ink.

(f) Maintain a confidential record of each individual who has been tattooed or branded or who has had body piercing performed at the body art facility and make the records available for inspection by a local health department. The record shall include, at a minimum, the individual's name, address, date of birth, and signature; the procedure date; the design and location of the tattooing, branding, or body piercing; the name of the individual performing the tattooing, branding, or body piercing; and any known complications the individual has with any previous tattooing, branding, or body piercing procedure. The licensee or employee of the licensee shall provide a copy of the record to the individual at the time he or she is tattooed, is branded, or has body piercing performed. The department shall develop guidelines for the confidential handling of this record, including, but not limited to, the maintenance, storage, inspection, and destruction of the record.

(g) Prohibit smoking within the body art facility.

(h) Provide each customer with a written information sheet that provides at least all of the following:

(i) Instructions on the care of a tattoo site, brand site, or body piercing site.

(ii) A recommendation that an individual seek medical attention if the tattoo site, brand site, or body piercing site becomes infected or painful or if the person develops a fever soon after being tattooed, branded, or having body piercing performed.

(iii) Notice that the individual may be allowed to donate blood within the standard deferral period if the individual presents a copy of the record required under subdivision (f) to the blood donor facility.

(i) Maintain on file on the premises of the body art facility and have available for inspection by a local health department all of the following:

(i) All of the following regarding each technician employed by or who performs tattooing, branding, or body piercing at the body art facility:

(A) His or her full legal name.

(B) His or her exact duties at the facility.

(C) His or her date of birth.

(D) His or her gender.

(E) His or her home address.

(F) His or her home and work telephone numbers.

(G) His or her prior or other current places of employment as a technician, if known.

(H) His or her training and experience.

(I) An identification photo.

(J) Documentation of compliance with the educational, training, or experience requirements of the department under this part.

(K) Documentation of HBV vaccination status or other vaccination status requirements of the department under this part.

(ii) Full legal name of the body art facility.

(iii) The hours of operation of the body art facility.

(iv) All of the following regarding each owner and operator of the body art facility:

(A) His or her full legal name.

(B) His or her home address.

(C) His or her home and work telephone numbers.

(v) A complete description of all tattooing, branding, or body piercing performed at the body art facility.

(vi) A record of all instruments, body jewelry, sharps, and inks used for the tattooing, branding, or body piercing performed at the body art facility. The record shall include the name of the item's manufacturer and serial or lot number, if applicable. The body art facility may provide invoices or orders to satisfy the requirement of this subparagraph.

(vii) A copy of this part and rules promulgated under this part.

(viii) A copy of the current bloodborne infectious disease exposure control plan developed and maintained under subdivision (e).

(ix) Documentation of the annual training required under subdivision (d).

Sec. 13108. (1) Pursuant to section 2235, the department shall authorize a local health department to enforce this part and any rules promulgated under this part. A local health department authorized to enforce this part and any rules promulgated under this part shall enforce this part and any rules promulgated under this part pursuant to sections 2461(2) and 2462. In addition to the penalties and remedies under this part, a local health department may enforce this part and any rules promulgated under this part through an action commenced pursuant to section 2465 or any other appropriate action authorized by law.

(2) If a local health department of a county or city under part 24 is unable or unwilling to perform the functions required in this section and the county or city is not part of a district that has created a district health department pursuant to section 2415, the county or city, through an intergovernmental agreement, may contract with another local governing entity to have that entity's local health department perform the functions required in this section. The contracting parties under this subsection shall obtain the department's approval before execution of the intergovernmental agreement.

(3) Pursuant to section 2444, a local governing entity of a local health department authorized to enforce this part under this section may fix and require the payment of fees by applicants and licensees for services required to be performed by the local health department under this part.

(4) A local health department shall use as guidance in enforcing this part any safety standards or other requirements issued by the department applicable to body art facilities.

(5) In addition to any other enforcement action authorized by law, a person alleging a violation of this part may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief.

Sec. 13109. (1) Except as otherwise provided in section 13110, a person who violates this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$2,500.00, or both, for each violation.

(2) A person who violates this part or a rule promulgated under this part is liable in a civil action for actual damages or \$1,000.00, whichever is greater, plus reasonable court costs, attorney fees, and any other fines, fees, or claims for reimbursement as determined by the court or the department.

Sec. 13110. A person shall not give or sell to a minor a tattooing, branding, or body piercing kit or other tattooing, branding, or body piercing device. A person who violates this section is responsible for a state civil infraction and is subject to a civil fine of not more than \$500.00. This section shall be enforced pursuant to chapter 88 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8801 to 600.8835.

Sec. 13111. (1) A local governing entity of a local health department authorized to enforce this part under section 13108 may adopt and enforce local codes, ordinances, or regulations that are more stringent than the minimum applicable standards set forth in this part, rules promulgated under this part, or any safety standards or other requirements issued by the department applicable to body art facilities. This part shall not relieve the applicant or a licensee from the responsibility for securing a local permit or complying with applicable local codes, regulations, or ordinances that are in addition to this part.

(2) A local health department may grant a variance to a body art facility from a requirement of this part if the local health department determines that the variance will not create or increase the potential for a health hazard or nuisance and that the activity or condition for which the variance is proposed will not violate any other provisions of this part. The applicant or licensee shall request the variance in writing, which writing shall include all of the following:

(a) A statement of the proposed variance and a citation to the requirement of this part for which the variance is requested.

(b) An analysis of the rationale for the variance.

(c) A description of the alternative methods the applicant or licensee will utilize to ensure that the variance will not create or increase the potential for any health hazard or nuisance.

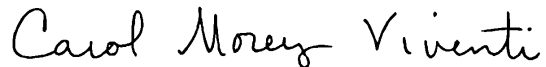
(3) A variance granted under subsection (2) shall be in writing and shall be maintained in the records of the local health department for that body art facility.

Sec. 13112. (1) An individual shall not tattoo, brand, or perform body piercing on another individual if the other individual is under the influence of alcoholic liquor or a controlled substance.

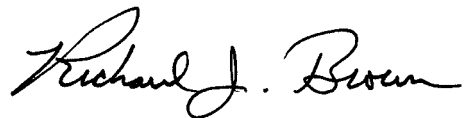
(2) An individual who is under the influence of alcoholic liquor or a controlled substance shall not tattoo, brand, or perform body piercing on another individual.

Enacting section 1. Section 13103 of the public health code, 1978 PA 368, MCL 333.13103, is repealed.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor