

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and
COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

ORR 2014-048 HS

ORR rule set title:

Body Art Facilities

Department:

Health and Human Services

Agency or Bureau/Division

Body Art Facility Licensing -HIV/STD, Body Art and Viral Hepatitis Section

Name and title of person completing this form; telephone number:

Michael Kucab, Body Art Program Coordinator, 517- 335-8165

Reviewed by Department Regulatory Affairs Officer:

Mary E. Brennan

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

There are no federal laws or mandates on body art facilities. Many other state laws as well as Michigan's were based and created on standards set by the National Environmental Health Association (N.E.H.A.)'s Body Art: A Comprehensive Guidebook and Model Code of 1999. National industry organizations such as the Association of Professional Piercers also follow and promote this N.E.H.A. code to ensure safety to the public receiving body art procedures.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

The rules are similar to other states. Initial recommendations entitled the National Environmental Health Association's Comprehensive Guidebook and Model Code of 1999 were adopted and applied by states nationwide. The rules do not exceed these standards.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

No known conflicts exist. The rules cross-reference several areas in state law that may apply to body art procedures. Redundancies were removed in the current rule set. Those rules that remain provide the specific citation to an existing law and have been incorporated by reference. Major referral to authority can be found in the State Public Health Code. The rules have gone through several initial reviews with the Office of Regulatory Reinvention (ORR) and the Legislative Service Bureau (LSB).

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

The desired outcome is for assurance that body art facilities are following daily their yearly bloodborne pathogen training. Yearly Bloodborne Pathogen Training certificates are required for licensure that promotes prevention of spreading communicable diseases such as Hepatitis, HIV, Staph and other infectious diseases. Body artists are now required to pass an inspection report by the local health department that has jurisdiction. In the past they were not inspected unless there was a local ordinance in place. Local ordinances were not passed in all 83 counties of the state of Michigan. Artists need to show they know how to set up and break down their equipment in a safe, sanitary manner. The desired outcomes include: avoiding cross contamination issues by following the states minimum operating standards; properly sterilizing equipment; and ensuring there is proper documentation in the event of a contamination infection to be able to track and possibly notify infected customers.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

There are no current body art administrative rules. This administrative rule set is new. In absence of these rules, the spread of disease by improper or illegal procedures performed by body art owners, operators and technicians is likely. At home “scratchers” do not follow proper infection control and most at home procedures are at times linked to substance abuse situations that also hamper proper infection control and leads to the spread of infectious disease. As public health is of paramount concern, the rules will provide the necessary minimum requirements to hold accountable those owners, operators and technicians who wish to perform body art. The rules promote quality control and prevent the spread of infections and diseases, e.g. Hepatitis C, from occurring in this state. The rules also serve as enforcement to the major threat to the public by illegal tattooists offering at home services in unsanitary conditions. These illegal artists advertise on the internet through social media sites such as Craigslist, Facebook and Instagram to name a few.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

While the intent of the rules is to protect the health, safety and welfare of Michigan citizens, the rules provide minimum standards that comply with OSHA’s Bloodborne Pathogen Standards.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

All of the proposed rules are new and based on current trends and technology in the body art industry.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

The Department estimated the first year cost at \$180,000 and annual costs thereafter of approximately \$70,000 and one FTE position. Enactment may have a beneficial impact on state costs for medical care, if increased regulation reduces medical events, including injuries, infections, and bloodborne disease transmission.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

Program funding will come to the Department through yearly license fees and 14 day temporary license fees. Estimated funds from licensure is approximately \$123,600 per year.

(10) Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. So despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The rules are still needed for local units of government enforcement of the law. The burden will depend on the sanctions levied for violations which can include jail time for both civil and criminal violations.

Impact on Other State or Local Governmental Units:

(11) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

Several counties have had body art regulation and licensure in place before the passage of state law. The law increased number of misdemeanor violations and convictions but does strain local resources for ongoing monitoring and follow up. Local agencies have added additional local body art inspection fees to cover cost of monitoring and enforcement. Can recoup losses by civil and criminal penalties.

(12) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

Local agencies currently inspect and approve facilities for state licensure. This is the only reporting requirement required by law. Enforcing the public act is authorized to the local health departments that have jurisdiction.

(13) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

There is a cost reimbursement program in place from the body art licensure program to authorized entities who inspect. Enforcement costs is an unknown since local health departments are not required by the memorandum of understanding to report these costs.

Rural Impact:

(14) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The rules will have the same impact for all licensed body art facilities statewide, including rural areas. The law was enacted to assure that body art minimum standards are met in all counties in Michigan regardless if they have their own local ordinances.

Environmental Impact:

(15) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

There is a positive impact to environment with these proposed rules. By reference, the rules enforce the medical waste requirements and administrative rules of the Michigan Department of Environmental Quality ensuring proper disposal of otherwise harmful medical waste in the state.

Small Business Impact Statement:

[Please refer to the discussion of “small business” on page 2 of this form.]

(16) Describe whether and how the agency considered exempting small businesses from the proposed rules.

No exemptions were considered. The rules are intended to prevent the spread of communicable disease for all defined body art businesses, small or large. Currently all body art facilities can be considered small businesses since most don't have more than (a) 0-9 employees.

(17) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

Reduction to minimum standards to operate is not feasible. The risk of infection and disease cannot be minimized despite possible economic impact to small business. All businesses are expected to comply with the requirements set by the rules for the health, welfare and safety of Michigan citizens. However, license fees was set on the basis of one yearly required licensure inspection and the local resources needed to do that inspection. Nationally it is known that the average price for a tattoo is approximately \$150 an hour based on the independent survey agency PEW.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

All body art businesses are considered “small business”. Businesses vary only in number of artists at each location. Current yearly licensure is 471 body art facilities.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

There is no differing compliance defined in the law or in the standards for small businesses. The rules are consistent for all body art facilities. Body Art Facilities are required yearly to apply to renew their licenses during a two month window of October 1st to December 1st.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

Businesses are not required to report to the state program but are required to apply each year to renew their licensure and allow one inspection a year by local agencies.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

Performance standards were designed by the Michigan Association for Local Environmental Health body art workgroup members based on prior experiences by their counties that had body art regulations in place. Critical and non-critical inspection topics were chosen for the state’s body art inspection report.

(18) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

Rules have no impact based on size or geographic location. Rules were standardized on communicable disease prevention for all body art businesses statewide regardless of the number of customers they service.

(19) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

The only reports needed per location is to maintain records of procedures done on clients for local health department inspections.

(20) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

There aren’t any anticipated additional costs required by rules for those businesses following national industry standards. This is not to say that additional costs may result in the event of a critical violation determination made and requiring the business to correct the violation in the given timeframe. All businesses have the same investment in equipment, supplies, labor and administrative costs and all are considered small businesses

(21) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

There are no additional costs implied in rules for body art businesses.

(22) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Body art facilities operate under normal market forces. The only harm to body art facilities is the unlawful and illegal competition found on social media that undercuts their profit margins. The businesses that suffer or fail to thrive are those that are more artisan than business entrepreneur.

(23) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There are no exemptions to the rule set. The rules are consistent across all body art facilities.

(24) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Lesser standards will promote harm and morbidity to the public. Health and safety requirements are expected from any state body art facility which performs services to the public. Allowing small at home businesses on social media avoid state taxes and proper infection control standards adds to the disease burden of local county morbidity statistics.

(25) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

Body art facilities welcome licensure as a promotional statement to the industry by setting minimum safety standards and following inspection compliance that is openly shared with the public. Licensure can promote body art professional organizations to form in Michigan. The MDHHS Body Art Program periodically convened a body art workgroup which contained members of the body art industry from across the state that helped in formulating the MDHHS Requirements for Body Art Facilities.

Cost-Benefit Analysis of Rules (independent of statutory impact):

(26) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The businesses affected are those artists who do tattoo, piercing or branding procedures legally who will benefit. Those businesses that are illegal will bear the cost of law enforcement. Currently there are 471 licensed body art facilities and 21 Pending licensure approval from their local health department jurisdictions. These licensed facilities are staffed by tattoo artists, piercers, branders and permanent makeup artists who are required to follow minimum standards established by the body art program.

(27) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

Currently the fee for a yearly licensure for body art facility is \$510.65. MIOSHA requires a Bloodborne Pathogen Training that costs \$20 to \$30 and the MDEQ requires a three year medical waste certificate of \$35. The body art facility license fee is comparable to most licenses issued by DLARA.

(28) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

A cost reduction was placed in the public act. Any new facility that opens after July 1st is only required to pay a 6-month licensure fee for that year of application. For facilities they may have a reduction in their Liability or Malpractice insurances by local health department monitoring.

(29) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

Primary and direct benefits would be protecting the safety and health of the people of the state of Michigan. Secondary and indirect benefit would be an education process to those newly entering the profession of body art. Further, it can reduce medical costs to Medicaid patients by preventing unwanted infections.

(30) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

The rules will stimulate growth and create jobs. PA 375 is for a facility license owner who may hire as many artists as needed to satisfy the need for safe and sanitary body art procedures. It will allow for elimination of illegal and unsafe at home tattooists.

(31) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Typical market forces are in play. The businesses that can expand through multiple locations has the advantage for better marketing. However, it is quality of work that brings in repeat business and referrals. Geographic location may play a part in available customer base.

(32) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

The sources used were from a body art workgroup created at the start of initial licensing program by MDHHS. This workgroup was composed of artists, shop owners, local public health inspectors, local public health administrators, medical professions and other state agencies with industry specific regulatory rules.

Alternatives to Regulation:

(33) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

There are no known alternatives to the proposed rules. While local health departments attempt to ensure that current body art facilities conform to ordinary standards for the health, safety and welfare of Michigan citizens, an all-encompassing rule set will provide consistency and expectations of how the body art facility and industry is anticipated to perform their procedures with the least amount of disruption and cost.

(34) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

It is unclear how a similar regulatory program would operate through a private market-based mechanism. The requirement of oversight for protection of the public health should not be delegated. Further, there are no known private market-base mechanisms in place in other states. The private market-based approach would be operating under a stringent for-profit motivation which could raise costs or fees to the body art facilities in order to satisfy regulatory reporting.

(35) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

No other alternatives would be acceptable to promote disease prevention.

Additional Information

(36) As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The body art program uses a database of email and physical addresses for both LHDs and body art facilities to communicate issues as well as a state body art website.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

6-2-2016

Date RIS approved:	
ORR assigned rule set number:	2014-148 HS

Date of disapproval:	Explain:
More information needed:	Explain:

(ORR-RIS March 2014)