

Assembly Bill No. 223

Passed the Assembly August 26, 2010

Chief Clerk of the Assembly

Passed the Senate August 24, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to repeal and add Chapter 7 (commencing with Section 119300) of Part 15 of Division 104 of the Health and Safety Code, relating to body art.

LEGISLATIVE COUNSEL'S DIGEST

AB 223, Ma. Safe Body Art Act.

Under existing law, every person engaged in the business of tattooing, body piercing, or permanent cosmetics is required to register with the county in which that business is conducted, obtain a copy of the county's sterilization, sanitation, and safety standards, as established by the California Conference of Local Health Officers and distributed by the State Department of Public Health, as specified, and pay a one-time registration fee of \$25. Existing law allows the county to charge an additional fee, if necessary to cover the cost of registration and inspection, and allows a county to adopt regulations that do not conflict with, or are more comprehensive than, standards adopted by the department.

Under existing law, a person who fails to register or who violates the sterilization, sanitation, and safety standards is liable for a civil penalty of up to \$500, to be collected in an action brought by the prosecuting attorney of the county or city and county in which the violation occurred.

This bill would, as of July 1, 2011, repeal these provisions and, instead, enact the Safe Body Art Act. The act would prohibit a person from performing body art, as defined, without registering annually with the local enforcement agency. The bill would require practitioners to comply with specified requirements, including, among other things, client information and questionnaires, vaccination, bloodborne pathogen training, and sanitation. The bill would also require the owner of a body art facility, as defined, to obtain and annually renew a health permit from the local enforcement agency, as specified, and to maintain the body art facility in a specified manner.

This bill would exempt from the definition of body art the piercing of an ear with a disposable, single-use, presterilized stud or solid needle that is applied using a mechanical device to force

the needle or stud through the ear but would impose specified requirements on that practice. The bill would allow a local enforcement agency to require facilities performing ear piercing in that jurisdiction to submit a notification form, as provided, with the local enforcement agency.

The bill would allow the local enforcement agency to charge a one-time facility notification fee in an amount between \$25 and \$45, but not in excess of the amount required to cover the actual costs of administering and enforcing the program. The bill would allow a county, after December 31, 2014, to charge a different fee, established by local ordinance, so long as an increased fee amount is necessary to cover the actual costs of administering and enforcing the provisions.

This bill would regulate the performance of body art in vehicles, temporary booths, and at body art events and would require a person sponsoring a body art event to obtain a permit and fulfill specified requirements.

The bill would allow inspection by an enforcement officer, and would provide for the suspension or revocation of a certificate of registration or a health permit in specified circumstances. The bill would make performing body art without being registered, operation of a body art facility without a health permit, or operation of a temporary body art event without a permit a misdemeanor and would allow the local enforcement agency to assess an administrative penalty, in an amount not less than \$25 and not more than \$1,000 for violating a provision of the chapter.

This bill would allow the State Department of Public Health to adopt regulations relating to specific provisions of the act that would, upon adoption, preempt the specified provision.

This bill would allow a city, county, or city and county to adopt regulations or ordinances that do not conflict with, or are more stringent than, the provisions of the act as those provisions relate to body art. Because this bill would place the inspection and enforcement requirements on local governments and because it creates a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Chapter 7 (commencing with Section 119300) of Part 15 of Division 104 of the Health and Safety Code is repealed.

SEC. 2. Chapter 7 (commencing with Section 119300) is added to Part 15 of Division 104 of the Health and Safety Code, to read:

CHAPTER 7. BODY ART

Article 1. General Provisions

119300. (a) This chapter shall be known, and may be cited, as the Safe Body Art Act.

(b) The purpose of this chapter is to provide minimum statewide standards for the regulation of persons engaged in the business of tattooing, body piercing, and the application of permanent cosmetics in California. These requirements are intended to protect both the practitioner and the client from transmission of infectious diseases through the application of proper body art procedures and the control of cross-contamination of instruments and supplies.

119301. For purposes of this chapter, the following definitions shall apply:

(a) “Antiseptic solution” means a liquid or semiliquid substance that is approved by the federal Food and Drug Administration to reduce the number of microorganisms present on the skin and on mucosal surfaces.

(b) “Bloodborne pathogen” means a disease-causing microorganism that, when present in the blood, can be transmitted to humans, including, but not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

(c) “Body art” means body piercing, tattooing, branding, or application of permanent cosmetics.

(d) “Body art facility” means the specified building, section of a building, or vehicle in which a practitioner performs body art, including reception areas, the procedure area, and the

decontamination and sterilization area. “Body art facility” does not include a facility that only pierces the ear with a disposable, single-use, presterilized clasp and stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

(e) “Body piercing” means the creation of an opening in a human body for the purpose of inserting jewelry or other decoration. “Body piercing” includes, but is not limited to, the piercing of an ear, including the tragus, lip, tongue, nose, or eyebrow. “Body piercing” does not include the piercing of an ear, except for the tragus, with a disposable, single-use, presterilized stud and clasp or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

(f) “Branding” means the process in which a mark or marks are burned into human skin tissue with a hot iron or other instrument, with the intention of leaving a permanent scar.

(g) “Client” means an individual upon whom a practitioner performs body art.

(h) “Decontamination and sterilization area” means a room, or specific section of a room, that is set apart and used only to decontaminate and sterilize instruments.

(i) “Department” means the State Department of Public Health.

(j) “Decontamination” means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where the pathogens are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

(k) “Disinfectant” means a product that is registered by the federal Environmental Protection Agency and the Department of Pesticide Regulation, as indicated on the label, to reduce or eliminate the presence of disease-causing microorganisms, including human immunodeficiency virus (HIV) and hepatitis B virus (HBV) for use in decontaminating work surfaces.

(l) “Enforcement officer” means all local health officers, directors of environmental health, and duly authorized environmental health specialists and environmental health specialist trainees.

(m) “Hand hygiene” means either of the following:

(1) Thoroughly washing all surfaces of the hands and under the fingernails with soap and warm water.

(2) In the absence of contamination with blood or other bodily fluids, or obvious soiling, applying an antiseptic solution to all the surfaces of the hands and underneath the fingernails.

(n) “Instrument” means a nonmedical application device used in performing body art, including, but not limited to, needles, needle bars, needle tubes, forceps, hemostats, tweezers, razors, or razor blades.

(o) “Local enforcement agency” means the local health agency of the county, city, or city and county. In jurisdictions where the local health agency and the environmental health agency are separate departments, the jurisdiction shall specify which entity will be the local enforcement agency for purposes of this chapter.

(p) “Mucosal surface” means the moisture-secreting membrane lining of all body cavities or passages that communicates with the exterior, including, but not limited to, the nose, mouth, vagina, and urethra.

(q) “Owner” means either of the following:

(1) The person or persons whose name or names appear on the health permit, business license, property deed, or rental agreement of the body art facility.

(2) A person, acting as a principal of a corporation or partnership, who employs practitioners to perform body art or other activity regulated by this chapter.

(r) “Permanent cosmetics” means the application of pigments in human skin tissue for the purpose of permanently changing the color or other appearance of the skin. This includes, but is not limited to, permanent eyeliner, eyebrow, or lip color.

(s) “Potable water” means water that complies with the standards for transient noncommunity water systems pursuant to the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116275) of Part 12).

(t) “Practitioner” means a person who performs body art on a client.

(u) “Procedure area” means a room, or designated portion of a room, that is set apart and only used to perform body art.

(v) “Procedure site” means the area or location on the human body selected for the placement of body art.

(w) “Sharps waste” has the same meaning as that term is defined in Section 117755.

(x) “Sterilization” means the complete destruction of all microbial life forms, including spores.

(y) “Tattooing” means the insertion of pigment in human skin tissue by piercing with a needle.

(z) “Vehicle” means a vehicle that has been fitted or designed to perform body art.

(aa) “Workstation” means the area within a procedure area where a practitioner performs body art. The workstation includes, but is not limited to, the client chair or table, counter, mayo stand, instrument tray, storage drawer, and practitioner’s chair.

Article 2. Restrictions on the Performance of Body Art

119302. (a) Pursuant to Section 653 of the Penal Code, a client shall be at least 18 years of age to be offered or to receive a tattoo or permanent cosmetics application, regardless of parental consent.

(b) Pursuant to Section 652 of the Penal Code, persons under 18 years of age shall not be offered or receive a body piercing unless the piercing is performed in the presence of his or her parent or guardian.

(c) A client shall be at least 18 years of age to be offered or to receive a branding, regardless of parental consent.

(d) The piercing or application of permanent cosmetics to the nipples or genitals of a minor is prohibited. The application of permanent cosmetics to the nipples of a minor is authorized when applied by a registered permanent cosmetic technician with the consent of the minor’s parent or guardian and as directed by a physician.

(e) A body art facility may refuse to perform body piercing on a minor, regardless of parental or guardian consent.

119303. (a) Prior to the performance of body art, the client shall read, complete, and sign an informed consent form that shall include, but not be limited to, all of the following information:

(1) A description of the procedure.

(2) A description of what the client should expect following the procedure, including suggested care and any medical complications that may occur as a result of the procedure.

(3) A statement regarding the permanent nature of body art.

(4) Postprocedure instructions that include all of the following:

(A) Information on the care of the procedure site.

(B) Restrictions on physical activities such as bathing, recreational water activities, gardening, or contact with animals, and the duration of the restrictions.

(C) Signs and symptoms of infection, including, but not limited to, redness, swelling, tenderness of the procedure site, red streaks going from the procedure site towards the heart, elevated body temperature, or purulent drainage from the procedure site.

(D) Signs and symptoms that indicate the need to seek medical care.

(b) Prior to the performance of body art, the client shall receive, complete, and sign a questionnaire that includes all of the following information:

(1) Whether the client may be pregnant.

(2) Whether the client has a history of herpes infection at the proposed procedure site, diabetes, allergic reactions to latex or antibiotics, hemophilia or other bleeding disorder, or cardiac valve disease.

(3) Whether the client has a history of medication use or is currently using medication, including being prescribed antibiotics prior to dental or surgical procedures.

(4) Other risk factors for bloodborne pathogen exposure.

(c) The questionnaire and all responses shall be considered confidential information. The body art facility shall maintain the privacy of the information and shall not sell, share, or transfer the information. A body art facility shall comply with all state and federal laws with respect to the protection of a client's personally identifiable information, including, but not limited to, medical information, and shall be subject to existing penalties for violation of applicable laws. The body art facility shall shred any confidential medical information after two years from performing the body art procedure on the client.

119305. This chapter does not restrict the activities of a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. Nothing in this chapter authorizes a practitioner to perform activities that are restricted under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

Article 3. Practitioner Registration

119306. (a) A person shall not perform body art if he or she is not registered with the local enforcement agency.

(b) As a condition of registration, the applicant shall provide all of the following:

(1) Evidence of current hepatitis B vaccination, including applicable boosters, unless the practitioner can demonstrate hepatitis B immunity or has complied with current federal OSHA hepatitis B vaccination declination requirements.

(2) Evidence of completion of OSHA Bloodborne Pathogen Training consistent with Section 119307 and pursuant to paragraph (2) of subdivision (g) of Section 5193 of Title 8 of the California Code of Regulations or its successor.

(3) Proof that he or she is 18 years of age or older.

(4) Self-certification of, knowledge of, and commitment to meet state law and relevant local regulations pertaining to body art safety.

(5) His or her business address and the address at which he or she will perform any activity regulated by this chapter.

(6) Payment of a registration fee directly to the local enforcement agency. The local enforcement agency shall set the fee at an amount not to exceed the amount necessary but that is sufficient to cover the actual costs of administering the program.

(c) A practitioner shall display, in a place readily visible to the public at the body art facility where the practitioner is performing body art, the certificate confirming registration with the local enforcement agency in the jurisdiction in which that practice is conducted.

(d) A valid and current registration issued by a local enforcement agency shall be valid in any other jurisdiction for no more than five consecutive days, or 15 days total, in any one calendar year.

(e) Practitioner registration shall be renewed annually by a process to be determined by the local enforcement agency.

119307. (a) Prior to registering with the local enforcement agency, a practitioner shall complete a Bloodborne Pathogens Exposure Control Training program that is specific to his or her practice.

(b) An owner shall provide Bloodborne Pathogens Exposure Control Training pursuant to the requirements of paragraph (2) of

subdivision (g) of Section 5193 of Title 8 of the California Code of Regulations, or its successor, for all employees, contractors, and volunteers who perform duties within the decontamination and sterilization area or procedure area.

(c) The Bloodborne Pathogens Exposure Control Training shall meet all of the following criteria:

(1) Training shall be conducted by a person or persons who are knowledgeable in exposure control and infection prevention in the body art setting and who are approved by the local enforcement agency in accordance with the provisions of this section.

(2) Training and training materials shall be specific to performing body art.

(3) Training shall consist of not less than two hours of instruction that includes all of the following:

(A) A copy and explanation of the California Occupational Safety and Health Administration Bloodborne Pathogens Standard contained in Section 5193 of Title 8 of the California Code of Regulations, or its successor.

(B) A copy and explanation of applicable county, city, or city and county ordinances that pertain to bloodborne pathogen transmission control in body art.

(C) Discussion of transmission, control, and symptoms of the diseases caused by bloodborne pathogens.

(D) Discussion of tasks involved in performing body art and how those tasks may lead to exposure to bloodborne pathogens for the client or practitioner.

(E) Discussion of the types and uses of personal protective equipment, such as disposable gloves, including an explanation of the limitations of the equipment.

(F) Discussion of the types of tasks, proper task technique, and order of tasks before and after putting on and removing personal protective equipment, to avoid contamination.

(G) Discussion of the importance of hand hygiene and a demonstration of proper hand hygiene techniques.

(H) Discussion of choice, use, and storage of disinfectants and antiseptics.

(I) Information on the signage required for biohazard materials and the importance of properly labeling chemicals and supplies.

(J) Information on hepatitis B vaccine, including safety and accessibility.

(K) Discussion of what constitutes a bloodborne pathogen exposure incident, including all of the following:

(i) Examples of bloodborne pathogen exposure, how the exposure occurred, and what actions to take to prevent or minimize future exposures.

(ii) Risk of infection following a bloodborne pathogen exposure incident.

(iii) Procedures to be followed after an exposure incident, including medical followup.

(L) Opportunities for interactive questions and answers with the instructor.

(d) Each person required to complete a Bloodborne Pathogens Exposure Control Training program pursuant to this section shall annually complete a minimum of two hours of Bloodborne Pathogens Exposure Control Training update presented by a trainer eligible pursuant to paragraph (1) of subdivision (c).

(e) Records of training required pursuant to this section shall be maintained for three years and shall be available for inspection upon request of the enforcement officer.

119308. (a) Before performing body art, the practitioner shall do all of the following:

(1) Wash his or her hands as follows:

(A) Rinse his or her hands under running water.

(B) Lather his or her hands with soap and use friction to clean all surfaces of the hands and fingers for at least 15 seconds and re-rinse his or her hands under running water to completely remove soap.

(C) Dry his or her hands thoroughly with a single-use towel.

(D) Turn off the tap by using a towel or by elbow- or foot-operated taps.

(2) Put on a clean apron, bib, or lap pad over clean, dry clothing.

(3) Put on personal protective equipment that is appropriate for the task.

(4) Don clean, previously unused, disposable examination gloves on both hands just prior to the procedure. Gloves shall be worn throughout the procedure. If gloves come into contact with any object or surface other than the client's prepared skin or material to be used for the procedure, or if a glove is torn or punctured, both gloves shall be removed, hand hygiene performed, and new, clean, previously unused, disposable examination gloves shall be

donned. If gloves are removed for any reason during a procedure, hand hygiene shall be performed prior to donning new, clean, previously unused, disposable examination gloves.

(5) If the skin at the procedure site is to be shaved, the skin shall be first washed with soap and water. A single-use, disposable razor shall be used to shave the procedure site and then discarded into a sharps container.

(6) Immediately prior to performing the body art, the client's skin shall be prepared with an antiseptic solution, antimicrobial, or microbicide, according to manufacturer's instructions, or with 70 percent isopropyl alcohol applied with a folded paper towel, cotton ball, gauze, or swab using a circular motion, gradually increasing the size of the circle until the entire procedure site is cleaned. The item used for application shall be discarded after use.

(b) At the completion of the procedure, the practitioner shall do all of the following:

(1) Answer questions regarding the procedure site.

(2) Provide postprocedure instructions.

(3) Place all used or discarded sharps waste in a sharps waste container.

(4) Wash and disinfect reusable instruments as provided in subdivisions (d) and (e) of Section 119309.

(5) Package and sterilize reusable instruments that may have come in contact with nonintact skin or mucosal surfaces.

(6) Decontaminate the workstation and procedure area.

119309. (a) The practitioner shall maintain a clean and sanitary environment.

(b) All solid surfaces and objects in the procedure area and the decontamination and sterilization area that have come into contact with the client or the materials used in performing the body art, including, but not limited to, chairs, armrests, tables, countertops, and trays, shall be immediately decontaminated after each use and then disinfected by application of a disinfectant, used according to manufacturer's directions.

(c) The surfaces and objects in the procedure area shall be disinfected again before use if the area has been used for any activity following its previous disinfection.

(d) The practitioner shall wear disposable gloves on both hands when touching, decontaminating, or handling a surface, object,

instrument, or jewelry that is soiled or that is potentially soiled with human blood.

(e) An instrument or other reusable item that comes into contact with nonintact skin or mucosal surfaces shall either be single use or be washed, disinfected, packaged, and sterilized after each procedure. Sterilization shall be accomplished pursuant to the procedures established in Section 119315 by steam autoclave.

(f) An instrument or reusable item that does not come into contact with nonintact skin or mucosal surfaces shall be washed with a solution of soap and water, using a brush that is small enough to clean the interior surfaces, and decontaminated after each procedure.

(g) A reusable item that cannot be immediately washed, disinfected, and sterilized following completion of the body art procedure shall be placed in a basin of water with or without detergent.

(h) Sterile instrument packs shall be evaluated before use, and if the integrity of a pack is compromised in any way, including, but not limited to, being torn, punctured, wet, or having evidence of potential moisture contamination, the instrument pack shall be discarded or reprocessed before use.

(i) No food, drink, tobacco product, or personal effects are permitted in the procedure area. The practitioner shall not eat, drink, or smoke while performing a procedure. If a client requests to eat, drink, or smoke, the procedure shall be stopped and the procedure site shall be protected from possible contamination while the client leaves the procedure area to eat, drink, or smoke.

(j) Branding shall not be done with another client in the procedure area. During the procedure, the practitioner and the client shall wear appropriate protective face filter masks.

119310. (a) Jewelry placed in newly pierced skin shall be sterilized prior to piercing as specified in Section 119315 or shall be purchased presterilized. Sterile jewelry packs shall be evaluated before use and, if the integrity of a pack is compromised, including, but not limited to, being torn, wet, or punctured, the pack shall be discarded or reprocessed before use.

(b) Only jewelry made of ASTM F138, ISO 5832-1, and AISI 316L or AISI 316LVM implant grade stainless steel, solid 14-karat through 18-karat yellow or white gold, niobium, ASTM F 136

6A4V titanium, platinum, or other materials found to be equally biocompatible shall be placed in newly pierced skin.

(c) Ear piercing equipment with a disposable, single-use, presterilized stud and clasp may be used only for piercing the ear pursuant to Section 119304.

(d) If measuring the body piercing site is necessary, clean calipers shall be used and the skin marked using clean toothpicks and ink.

119311. (a) A product applied to the skin prior to tattooing or application of permanent cosmetics, including, but not limited to, stencils and marking and transfer agents, including pens, shall be single use and discarded into a waste container at the end of the procedure unless the product can be disinfected for reuse.

(b) Only commercially manufactured inks, dyes, and pigments shall be used.

(c) Inks, pigments, soaps, and other products in multiple-use containers shall be dispensed in a manner to prevent contamination of the storage container and its remaining contents through the use of a single-use receptacle.

(d) Inks and pigments shall be placed into a clean, single-use receptacle. The inks and pigments remaining in the receptacle shall be discarded immediately upon completion of the procedure.

(e) If a tray is used for inks or pigments, it shall be decontaminated after each procedure.

(f) Only single-use needles and needle bars shall be used in tattooing and the application of permanent cosmetics. Needles and needle bars that are purchased in a nonsterilized state, shall be sterilized, pursuant to the process required by Section 119315.

(g) Needles, needle bars, grommets, and razors shall be discarded into a sharps waste container immediately upon completion of the procedure.

(h) Any part of a tattooing machine that may be touched by the practitioner during the procedure shall be covered with a disposable plastic sheath that is discarded upon completion of the procedure, and the machine shall be decontaminated upon completion of the procedure.

(i) A machine used to insert pigments shall be designed with removable tip parts between the tip and motor housing, and in a manner that will prevent backflow into enclosed parts of the motor housing.

(j) A hand tool used to insert pigment shall be disposed of in a sharps container, with the sharps intact, unless the needle can be mechanically ejected from the hand tool.

Article 4. Permanent Body Art Facilities

119312. (a) A body art facility shall not conduct business without a valid health permit.

(b) The application for a health permit for a body art facility shall include all of the following:

(1) A copy of the facility's infection prevention control plan, as required by Section 119313.

(2) A fee, as set by the local enforcement agency at an amount not to exceed the amount necessary but that is sufficient to cover the actual costs of administration of the program. Fees established by this section shall be used exclusively in support of activities pursuant to this chapter.

(c) The local enforcement agency shall issue a health permit after an investigation has determined that the proposed body art facility and its method of operation meets the specifications of the approved plans or conforms to the requirements of this article.

(d) A health permit is valid only for the location of the facility and the time period indicated on the permit and may not be transferred to another owner or facility.

(e) The health permit shall be posted in a conspicuous place at the body art facility. Certificates of registration for all practitioners performing body art in that facility shall also be prominently displayed either near the health permit or at the individual practitioner's procedure area if each practitioner has a designated area.

(f) A person proposing to construct a practice site or mobile practice site, other than a temporary body art event booth, shall submit plans to the Plan Review Unit of the local enforcement agency. The plans shall be approved in advance of the issuance of a building, plumbing, or electrical permit. All required corrections must be made and the body art facility approved to open before body art can be performed in the facility.

(g) Health permits shall be renewed annually through a process to be determined by the local enforcement agency.

119313. (a) A body art facility shall maintain and follow a written Infection Prevention and Control Plan, provided by the owner or established by the practitioners, specifying the procedures to achieve compliance with each applicable requirement of this chapter.

(b) The Infection Prevention and Control Plan shall include all of the following:

(1) Procedures for decontaminating and disinfecting environmental surfaces.

(2) Procedures for decontaminating, packaging, sterilizing, and storing reusable instruments.

(3) Procedures for protecting clean instruments and sterile instrument packs from exposure to dust and moisture during storage.

(4) A set up and tear down procedure for any form of body art performed at the body art facility.

(5) Techniques to prevent the contamination of instruments or the procedure site during the performance of body art.

(6) Procedures for safe handling and disposal of sharps waste.

(c) The Infection Prevention and Control Plan shall be revised when changes are made in infection prevention practices, procedures, or tasks.

(d) Onsite training on the facility's Infection Prevention and Control Plan shall take place when tasks where occupational exposure may occur are initially assigned, any time there are changes in the procedures or tasks, and when new technology is adopted for use in the facility, but not less than once each year.

(e) Records of training required pursuant to this section shall be maintained for three years and shall be available for inspection upon request of the enforcement officer.

119314. (a) With the exception of a temporary demonstration booth and a mobile site, as specified in Sections 119317 and 119318, a body art facility shall comply with all of the following:

(1) Have floors, walls, and ceilings that are smooth, free of open holes, and washable.

(2) Be free of insect and rodent infestation.

(3) Be separate from any residential areas used for sleeping, bathing, or meal preparation. A body art facility associated with a residential dwelling shall have a separate entrance and toilet

facility, and shall not have a door allowing direct access between the body art facility and the residential dwelling.

(b) Procedure areas in a body art facility shall meet all of the following standards:

(1) Be equipped with a light source of least 150 foot-candles of light at the procedure area.

(2) Be separated, by a wall or ceiling-to-floor partition, from nail and hair activities.

(3) Be equipped with a sink supplied with hot and cold running water, containerized liquid soap, and single-use paper towels that are dispensed from a wall-mounted, touchless dispenser that is accessible to the practitioner.

(c) Decontamination and sanitation areas within a body art facility shall meet all of the following requirements:

(1) Be separated from procedure areas by a space of at least five feet or by a cleanable barrier.

(2) Be equipped with a sink, hot and cold running water, liquid soap in a wall-mounted dispenser, and single-use paper towels dispensed from a wall-mounted, touchless dispenser that is readily accessible to the practitioner.

(d) Each procedure area and decontamination and sterilization area shall have waste containers lined with plastic bags specifically manufactured for use in waste containers and large enough to fold over the top rim of the waste container by a minimum of one inch.

(e) Each procedure area and decontamination and sterilization area shall have a container for the disposal of sharps waste that meets the following requirements:

(1) The sharps waste container shall be portable, if portability is necessary to ensure that the sharps waste container is within arm's reach of the practitioner.

(2) The sharps waste container shall be labeled with the words "sharps waste" or with the international biohazard symbol and the word "BIOHAZARD."

(3) All sharps waste produced during the process of tattooing, body piercing, or the application of permanent cosmetics shall be disposed by either of the following methods:

(A) Removal and disposal by a company, or removal and transportation through a mail-back system approved by the department pursuant to subdivision (b) of Section 118245.

(B) As solid waste, after being disinfected by a method approved by the department pursuant to paragraph (3) of subdivision (a) of Section 118215.

(f) No animals shall be allowed in the procedure area or the decontamination and sterilization area.

119315. A body art facility shall conform to the following sterilization procedures:

(a) Clean instruments to be sterilized shall first be sealed in peel-packs that contain either a sterilizer indicator or internal temperature indicator. The outside of the pack shall be labeled with the name of the instrument, the date sterilized, and the initials of the person operating the sterilizing equipment.

(b) Sterilizers shall be loaded, operated, decontaminated, and maintained according to manufacturer's directions, and shall meet all of the following standards:

(1) Only equipment manufactured for the sterilization of medical instruments shall be used.

(2) Sterilization equipment shall be tested using a commercial biological indicator monitoring system after the initial installation, after any major repair, and at least once per month. The expiration date of the monitor shall be checked prior to each use.

(3) Each sterilization load shall be monitored with mechanical indicators for time, temperature, pressure, and, at a minimum, Class V integrators. Each individual sterilization pack shall have an indicator.

(4) Biological indicator monitoring test results shall be recorded in a log that shall be kept on site for two years after the date of the results.

(5) A written log of each sterilization cycle shall be retained on site for two years and shall include all of the following information:

(A) The date of the load.

(B) A list of the contents of the load.

(C) The exposure time and temperature.

(D) The results of the Class V integrator.

(E) For cycles where the results of the biological indicator monitoring test are positive, how the items were cleaned, and proof of a negative test before reuse.

(c) Clean instruments and sterilized instrument packs shall be placed in clean, dry, labeled containers, or stored in a labeled cabinet that is protected from dust and moisture.

(d) Sterilized instruments shall be stored in the intact peel-packs or in the sterilization equipment cartridge until time of use.

(e) Sterile instrument packs shall be evaluated at the time of storage and before use. If the integrity of a pack is compromised, including, but not limited to, cases where the pack is torn, punctured, wet, or displaying any evidence of moisture contamination, the pack shall be discarded or reprocessed before use.

(f) A body art facility that does not afford access to a decontamination and sterilization area that meets the standards of subdivision (c) of Section 119314 or that does not have sterilization equipment shall use only purchased disposable, single-use, presterilized instruments. In place of the requirements for maintaining sterilization records, the following records shall be kept and maintained for a minimum of 90 days following the use of the instruments at the site of practice for the purpose of verifying the use of disposable, single-use, presterilized instruments:

(1) A record of purchase and use of all single-use instruments.

(2) A log of all procedures, including the names of the practitioner and client and the date of the procedure.

119316. (a) If a practitioner performs body art in a vehicle, a health permit is required if the practitioner will practice in the vehicle in the jurisdiction for more than seven days in a 90-day period. To obtain a health permit, the vehicle shall meet the requirements set forth in subdivisions (b) to (g), inclusive, of Section 119317.

(b) If the vehicle will be operating in the jurisdiction for less than seven days in a consecutive 90-day period, the vehicle shall be treated as a temporary booth and will be subject to Section 119317.

Article 5. Temporary Body Art Facilities

119317. A practitioner may, in the local jurisdiction of registration, practice in a temporary demonstration booth for no more than seven days in a 90-day period. The demonstration booth shall meet all of the following requirements:

(a) Be located within a building that has hand washing facilities with hot and cold running water, soap, and single-use paper towels to which practitioners have direct access.

(b) Constructed with a partition of at least three feet in height separating the procedure area from the public.

(c) Be free of insect or rodent infestation.

(d) Used exclusively for performing body art.

(e) Equipped with at least 150 foot-candles of light available at the level where the practitioner is performing body art.

(f) Equipped with hand washing equipment that, at a minimum, consists of containerized liquid soap, single-use paper towels, a five-gallon or larger container of potable water accessible via spigot, and a wastewater collection and holding tank of corresponding size. Potable water shall be refilled and the holding tank evacuated at least every four procedures or every four hours, whichever occurs first.

(g) Not allow animals within the confines of the demonstration booth.

119318. (a) The sponsor of a temporary body art event shall apply for and obtain a sponsor's permit from the local enforcement agency in the jurisdiction where the event will be held.

(b) The sponsor of a temporary body art event shall be responsible for ensuring the availability of support facilities and supplies for practitioners and vendors, including, but not limited to:

(1) Access to a potable water supply.

(2) Restrooms that have flush toilets supplied with toilet paper, and hand wash sinks supplied with hot and cold potable running water, soap, and single-use paper towels to which practitioners have direct access.

(3) Sharps waste containers for each demonstration booth.

(4) The use of a licensed medical waste disposal company for removal of all sharps waste containers used during the body art event.

(5) Frequent trash pickup from demonstration booths.

(6) An eye wash station.

(7) A decontamination and sterilization area that is separated from a procedure area by at least five feet or by a cleanable barrier.

(8) Adequate backup supplies that have been stored in compliance with subdivision (d) of Section 119315 and that can be purchased by practitioners, including, but not limited to:

(A) Presterilized tattoo needles.

(B) Presterilized needle tubes.

- (C) Presterilized piercing instruments, including, but not limited to, needles, receiving tubes, corks, marking tools, and forceps.
- (D) Plastic bags, barrier film, clip cord covers, and plastic wrap.
- (E) Ink cups.
- (F) Nitrile and latex gloves.
- (G) Single-use tubes of water-based and petroleum-based lubricants.
- (H) Absorbent dressing materials.
- (c) The name, telephone number, and directions to an emergency room near the temporary body art event shall be posted in a conspicuous location.
- (d) Each practitioner working in a booth at a temporary body art event shall display his or her certificate of registration, or keep the certificate in a folder that is available for inspection upon request of the enforcement officer or a client.

Article 6. Enforcement

119319. (a) An enforcement officer may enter a body art facility during the facility's hours of operation and other reasonable times to do any of the following:

- (1) Conduct inspections, issue citations, and secure samples, photographs, or other evidence from a body art facility, or any facility suspected of being a body art facility.
 - (2) Check the Infection Prevention and Control Plan, required pursuant to Section 119313, to determine if persons working in the facility are following the plan, and to determine if the plan is in compliance with this chapter.
 - (3) Secure as evidence documents, or copies of documents, including the Infection Prevention and Control Plan, or any record, file, paper, process, invoice, or receipt for the purpose of determining compliance with this chapter.
- (b) A written report shall be made and a copy shall be supplied or mailed to the owner or practitioner at the completion of an inspection or investigation.

(c) Based upon inspection findings or other evidence, an enforcement officer may impound instruments that are found to be unsafe to use. Within 30 days, the local enforcement agency that has impounded the equipment shall commence proceedings

to release the instrument or to seek administrative or legal remedy for its disposal.

(d) It is a violation of this chapter for the owner or a person working in a body art facility to do any of the following:

(1) Conceal records or evidence, or to withhold evidence.

(2) Interfere with the performance of the duties of an enforcement officer.

(3) Make a false statement, representation, certification, record, report, or otherwise falsify information required to be submitted or maintained pursuant to this chapter.

119320. (a) A certificate of registration or a health permit may be suspended by a local enforcement agency for a violation of this chapter.

(b) A body art facility or practitioner whose certificate of registration or health permit has been suspended shall cease doing business until the certificate or permit has been reinstated. Suspension of the registration of one practitioner in a body art facility does not affect the status of other practitioners in the facility unless the violation or violations are for conditions or equipment that affects the ability of all the practitioners in the facility to comply with the provisions of this chapter.

(c) A body art facility for which the health permit has been revoked shall close and remain closed until a new health permit has been issued.

(d) Whenever an enforcement officer finds that a practitioner or body art facility is not in compliance with the requirements of this chapter, the enforcement officer shall issue a notice to comply or a notice of violation to the registrant or permitholder setting forth the acts or omissions with which the registrant or permitholder is charged, and informing him or her of a right to a hearing, if requested, to show cause why the registration or permit should not be suspended or revoked.

(e) (1) A written request for a hearing shall be made by the registrant or permitholder within 15 calendar days after receipt of the notice.

(2) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the registrant or permitholder, the hearing officer may postpone a hearing date, if circumstances warrant the action.

(f) A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing.

(g) The hearing officer shall issue a written notice of decision to the registrant or permitholder within five working days following the hearing. In the event of a suspension or revocation, the notice shall specify the acts or omissions with which the registrant or permitholder is charged, and shall state the terms of the suspension or that the registration or health permit has been revoked.

(h) A certificate of registration or health permit may be reinstated or a new certificate of registration or health permit issued if the local enforcement agency determines that the conditions that prompted the suspension or revocation no longer exist.

119321. If an imminent health hazard is found, the enforcement officer may suspend a registration temporarily and order the practitioner to cease operation if the hazard is not corrected. If the hazard affects the entire body art facility, then the entire facility may be closed immediately. Whenever a registration or health permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the registrant or permitholder a notice setting forth the acts or omissions being charged, specifying the pertinent code section, and informing the registrant or permitholder of the right to a hearing.

119322. The local enforcement agency may, after providing opportunity for a hearing, modify, suspend, or revoke a certificate of registration or a health permit for serious or repeated violations of any requirement of this chapter or for interference in the performance of the duty of the enforcement officer.

119323. Performing body art without being registered, operating a body art facility without a health permit, or operating a temporary body art event without a permit shall be a misdemeanor. The local enforcement agency may also assess an administrative penalty in an amount not less than twenty-five dollars (\$25) and not more than one thousand dollars (\$1,000) for violation of a provision of this chapter. All fines are to be retained by the local enforcement agency for enforcement of the provisions of this chapter.

119324. A city, county, or city and county may adopt regulations or ordinances that do not conflict with, or are more

stringent than, the provisions of this chapter as they relate to body art.

Article 7. Regulations

119324.5. (a) The State Department of Public Health may promulgate regulations that regulate the subject matter covered by any or all of the following:

- (1) Subdivisions (b) and (c) of Section 119307.
- (2) Sections 119308 to 119311, inclusive.
- (3) Subdivisions (b), (c), and (d) of Section 119313.
- (4) Section 119314.
- (5) Subdivisions (a), (b), and (c) of Section 119315.
- (6) Subdivisions (a) to (g), inclusive, of Section 119317.
- (7) Subdivisions (b), (c), and (d) of Section 119318.

(b) If the department chooses to promulgate regulations pursuant to subdivision (a), those regulations shall, upon adoption, preempt the statutes listed in subdivision (a).

Article 8. Mechanical Stud and Clasp Ear Piercing

119325. (a) The piercing of the ear with a mechanical stud and clasp device does not constitute body art as defined in this chapter. It is the intent of the Legislature, in enacting this article, to provide uniform and statewide requirements for the performance of ear piercing with a mechanical stud and clasp device. The piercing of an ear with a mechanical stud and clasp device shall only be subject to the requirements in this article.

(b) The area within a facility where mechanical stud and clasp ear piercing is conducted shall be safe and sanitary and shall not constitute a threat to the public health and safety, as reasonably determined by the local enforcement agency.

(c) The mechanical stud and clasp device that is used to pierce an ear pursuant to this article shall be single-use, presterilized, stud and clasp only.

(d) The single-use mechanical stud and clasp device used to pierce an ear pursuant to this article shall meet all of the jewelry requirements in subdivisions (a) and (b) of Section 119310.

119326. (a) The local enforcement agency may require a facility that provides mechanical stud and clasp ear piercing

services to submit a notification form, which shall be provided by the local enforcement agency in the jurisdiction in which the facility is located. If the local enforcement agency requires this notification form, the form shall include all of the following information:

(1) The address of all facilities within the jurisdiction where mechanical stud and clasp ear piercing will be performed.

(2) A statement that the mechanical stud and clasp ear piercing will be conducted in compliance with the requirements of this article.

(3) The contact information for the person responsible for compliance with this article and who the local enforcement agency should contact regarding complaints from the public regarding mechanical stud and clasp ear piercing at a facility listed in paragraph (1).

(b) Information for more than one location within a single jurisdiction with the same owner or operator may be included on a single notification form. If the local enforcement agency requires notification, it shall provide a notification form that allows the owner or operator of more than one facility in the jurisdiction to provide the required notification for all of its facilities in a single form designed for that purpose.

(c) No person shall be required to provide notification until and unless the local enforcement agency makes a form for this purpose available. Facilities performing mechanical stud and clasp ear piercing on the date the local enforcement agency makes the form available shall have five months from that date in which to complete and submit the form. Facilities that begin performing mechanical stud and clasp ear piercing after the form is made available shall be required to submit the form prior to offering services.

119327. (a) A person piercing an ear with a mechanical stud and clasp piercing device shall meet the following requirements before providing mechanical stud and clasp ear piercing services:

(1) Is at least 18 years of age.

(2) Received one hour of training that covers all of the following topics:

(A) Proper use of the mechanical stud and clasp ear piercing device.

(B) Types of bloodborne pathogens and the prevention of the transmission of bloodborne communicable diseases.

(C) Proper hand hygiene.

(D) The safe and sanitary use of single-use equipment, including, but not limited to, gloves, towels, and disinfectant wipes.

(3) If the person will also be piercing the cartilage of the upper ear, that person shall also receive training on proper techniques for this type of piercing.

(b) The training requirements of subdivision (a) shall not apply to an individual who was employed to perform mechanical stud and clasp ear piercing prior to the effective date of this article.

119328. (a) A local enforcement agency may charge a one-time facility notification fee in an amount between twenty-five dollars (\$25) and forty-five dollars (\$45) for each facility operating pursuant to this article. The fee charged shall not exceed the amount reasonably necessary to cover the actual costs of administering and enforcing the provisions of this article.

(b) After December 31, 2014, a county may charge a different fee, set by local ordinance, provided that the increased fee is necessary to cover the actual costs of administering and enforcing the provisions of this article.

(c) The local enforcement agency may not charge a different fee for facilities based on what part of the ear is being pierced.

SEC. 3. This act shall become operative on July 1, 2011.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred under this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs that may be incurred by a local agency or school district because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor