

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1343 Practice of Tattooing
SPONSOR(S): Health Care Regulation Policy Committee, Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:** SB 1130

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee	7 Y, 0 N, As CS	Cicccone	Calamas
2)	Health & Family Services Policy Council			
3)	Human Services Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

CS/HB 1343 increases criminal penalties from a second degree misdemeanor to a third degree felony relating to violators for tattooing a minor without notarized consent from the parent, or tattooing without supervision by a licensed physician or dentist.

The bill appears to have no direct fiscal impact on state funds.

The bill provides an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida:

Current state law addresses the subject of human tattooing in three primary areas: who may perform tattooing, restrictions with regard to minors, and penalties due to non-compliance. Specifically, s. 877.04, F.S., provides that it is unlawful for any person to tattoo the body of any human being, except if the tattoo is performed by:

- A person licensed to practice medicine under ch. 458 and ch. 459, F.S.;¹
- A person licensed to practice dentistry under ch. 466, F.S.;² or,
- A person under his or her general supervision as defined by the Board of Medicine.

Any person who tattoos or applies permanent make-up must either be licensed as, or work under the "general supervision" as defined in ch. 64B8-2.002, Florida Administrative Code of a medical Doctor, a Doctor of Osteopathy, a Doctor of Dental Surgery, or a doctor of Medical Dentistry. Additionally, it is unlawful for the body of a minor to be tattooed without the written notarized consent of the parent or legal guardian. Any person who violates this section is guilty of a misdemeanor of the second degree and punishable under s. 775.082 and s. 775.083, F.S.

Oversight of Tattoo Studios

Section 381.0098(1), F.S., establishes legislative intent relating to protecting the public's health and provides safety standards for the packaging, transport, storage, treatment and disposal of biomedical waste. Biomedical waste is defined as any solid or liquid waste which may present a threat of infection to humans, including waste products that include discarded disposable sharps,³ human blood, blood products and body fluids...⁴ A biomedical waste generator is defined as "...a facility, or person that produces or generates biomedical waste...."⁵ The statute directs the Department of Health and the

¹ Chapters 459 and 459, F.S., provide for licensure of medical doctors and osteopathic doctors, respectively.

² Chapter 466, F.S., provides for licensure of dentists.

³ Section 381.0098(2)(d), F.S., defines "sharps" as those biomedical wastes which as a result of their physical characteristics are capable of puncturing, lacerating, or otherwise breaking the skin when handled.

⁴ Section 381.0098(2)(a), F.S.

⁵ Section 381.0098(2)(b), F.S.

Department of Environmental Protection to develop an interagency agreement to ensure maximum efficiency in coordinating, administering, and regulating biomedical waste. The DOH has no authority to issue a license to a tattooist or a tattoo studio. However, the department does have authority to issue a biomedical waste-generator permit to a tattooist or a tattoo studio.

In accordance with Ch.64E-16.011, Florida Administrative Code, the department prescribes minimum sanitary practices relating to the management of biomedical waste and the regulation of biomedical waste generators. In accordance with ch. 64E-16.011(1), Florida Administrative Code, tattoo studios are considered biomedical waste generators and as such are required to obtain an annual permit from the department. These studios are inspected by department personnel at least once a year and re-inspections may be conducted when a facility is found to be in non-compliance with sanitation practices. Current law does not provide authorization for the department to inspect these establishments relating to other sanitation aspects of tattoo studios, or the licensure or registration of tattoo artists.

As a result of the department's oversight of tattoo studios as biomedical waste generators, it is estimated that there are approximately 800 permanent make-up and tattoo establishments in Florida. While the department believes that the majority of tattooists and tattoo studios function well in terms of protecting the public, procedures vary from studio to studio and there is no central location of records or core training curricula for the industry or the individual.⁶ The American Tattooing Institute offers an on-line or mail order certification course that includes studies in skin anatomy and physiology, blood borne pathogens, OSHA standards, food and drug administration information, and body art specialist's code of ethics training.⁷ At least one tattoo studio in Florida provides on-site training.⁸

National:

At least 38 states have implemented laws regarding tattooing and body piercing. Twenty-eight states have laws that prohibit both body piercing and tattooing on minors without parental permission.⁹ Parental permission requirements vary among states ranging from signed notarized documentation¹⁰ to explicit in-person consent of the child's parent or guardian.¹¹ The majority of states laws establish financial penalties, incarceration time, or both for violators.

The U.S. Food and Drug Administration (USFDA) and the Department of Health and Human Services, Centers for Disease Control and Prevention's (CDC) literature speak to a variety of potential risks in acquiring a tattoo on the body. Such risks include:

- Infection – Dirty needles can pass infections, such as hepatitis and HIV.
- Allergies – Allergies to different ink pigments can cause problems.
- Scarring – Unwanted scar tissue may form on an initial or removed tattoo.
- MRI complications – Though rare, swelling or burning in the tattoo area when having a magnetic resonance image can occur.

The USFDA has not approved any tattoo pigments for injection into the skin. This applies to all tattoo pigments, including those used for ultraviolet (UV) and glow-in-the dark tattoos. Many pigments used in tattoo inks are industrial-grade colors suitable for printers' ink or automobile paint. In addition, the use of henna in temporary tattoos has also not been approved by the USFDA.¹²

The CDC establishes that a risk of HIV transmission exists if instruments contaminated with blood are either not sterilized or disinfected or are used inappropriately between clients. The CDC recommends that single-use instruments intended to penetrate the skin be used once, then disposed of. In addition, reusable instruments or devices that penetrate the skin or contact a client's blood should be thorough

⁶ Department of Children and Family Services Staff Analysis, March 2009, on file with the Committee.

⁷ <http://www.tatsmart.com>, last researched March 21, 2009

⁸ <http://www.addicted2tattoos.com/tattootraining>, last researched March 24, 2009

⁹ <http://www.ncsl.org/programs/health>, National Conference of State Legislatures, last viewed March 21, 2009.

¹⁰ California penal code s.652

¹¹ Montana Code Annotated s. 45-5-623

¹² <http://www.fda.gov/consumerupdate>, last viewed March 21, 2009

cleaned and sterilized between clients. The CDC stresses that tattooists should be educated regarding HIV transmission and take precautions to prevent this transmission in their setting.¹³

Effect of the Bill

CS/HB 1343 revises s. 877.04(2), F.S., and provides a third degree misdemeanor penalty for failure to comply with current law which prohibits tattooing unless the tattoo is performed by:

- A person licensed to practice medicine under ch. 458 and ch. 459, F.S.;¹⁴
- A person licensed to practice dentistry under ch. 466, F.S.;¹⁵ or,
- A person under his or her general supervision as defined by the Board of Medicine.

Any person who tattoos or applies permanent make-up must either be licensed as, or work under the “general supervision” as defined in ch. 64B8-2.002, Florida Administrative Code, of a Medical Doctor, a Doctor of Osteopathy, a Doctor of Dental Surgery, or a Doctor of Medical Dentistry. Additionally, it is unlawful for the body of a minor to be tattooed without the written notarized consent of the parent or legal guardian.

The effect of the bill increases criminal penalties from a second degree misdemeanor to a third degree felony.

The bill provides an effective date of July 1, 2009.

B. SECTION DIRECTORY:

Section 1. Amends s. 877.04(2), F.S., relating to tattooing prohibited activities and penalties.

Section 2. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

¹³ <http://www.cdc.gov/hiv>, last viewed March 21, 2009

¹⁴ Chapters 459 and 459, F.S., provide for licensure of medical doctors and osteopathic doctors, respectively.

¹⁵ Chapter 466, F.S, provides for licensure of dentists.

On February 25, 2009 the Criminal Justice Impact Conference determined that Senate Bill 1130 (companion bill) would have an insignificant prison bed impact on the Department of Corrections. The House Bill as amended has fewer criminal penalties than Senate Bill 1130.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rule making authority for the department.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the Health Regulation Policy Committee adopted a strike-all amendment to the original bill. The strike-all amendment increases criminal penalties from a second degree misdemeanor to a third degree felony relating to violations for tattooing a minor without notarized consent from the parent, or tattooing without supervision by a licensed physician or dentist.

The bill was reported favorably as a Committee Substitute. The analysis reflects the Committee Substitute.