

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 729 Practice of Tattooing
SPONSOR(S): Health Care Regulation Policy Committee; Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 942

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|-------------------------|----------------|-----------------------|
| 1) | <u>Health Care Regulation Policy Committee</u> | <u>12 Y, 0 N, As CS</u> | <u>Holt</u> | <u>Calamas</u> |
| 2) | <u>Health Care Appropriations Committee</u> | <u>13 Y, 0 N</u> | <u>Clark</u> | <u>Massengale</u> |
| 3) | <u>Health & Family Services Policy Council</u> | <u></u> | <u>Holt</u> | <u>Gormley</u> |
| 4) | <u></u> | <u></u> | <u></u> | <u></u> |
| 5) | <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

Committee Substitute for House Bill 729 creates a new regulation for licensure as a tattoo artist, registration as a guest tattoo artist, licensure for tattoo establishments, and licensure for temporary tattoo establishments. A person may not tattoo the body of a human being in this state except in a tattoo establishment and the person performing the tattooing must be licensed as a tattoo artist or registered as a guest tattoo artist.

Because the bill establishes regulation of a new profession, the Sunrise Act criteria apply. Section 11.62, Florida Statutes, states that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; and no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation.

The bill specifies that a person may not tattoo a child younger than 16 years of age unless it is performed for medical or dental purposes. A minor child over the age of 16 may receive a tattoo under certain circumstances.

The bill appears to have a significant fiscal impact; however, the expenditures incurred will be offset by the revenues collected (See fiscal analysis).

The bill has an effective date of January 1, 2012.

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

Tattooing

A tattoo is a permanent mark or design made on the skin by a process of pricking and ingraining an indelible ink pigment. Tattoos are made by using needles to inject colored ink below the skin's surface. Typically, a tattoo artist uses a hand-held machine with one or more needles piercing the skin repeatedly. With every puncture, the needles insert ink into the skin.

National Trends and Regulations

At least 38 states have implemented laws regarding tattooing and 28 states have laws that prohibit tattooing on minors without parental permission.¹ Parental permission requirements vary among states ranging from signed notarized documentation to explicit in-person consent of the child's parent or guardian. 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.

¹ Ala. Code § 420-3-23; Alaska Stat. § 08.13.217; Ariz. Rev. Stat. §13-3721; Cal. [Health & Safety] Code §119300; Col. Rev. Stat. Ann. §25-4-2103; Conn. Gen. Stat. §19a-92a; Del. Code Ann. Title 11, Ch 5 §1114(a); Ga. Code §16-12-71; Ga. Code §16-5-71; Haw. Rev. Stat. § 321-372 to 383; Idaho Code § 18-1523; Idaho Code § 39-2001; Idaho Code § 39-2003; Ill. Comp. Stat. 720§5/12-10; Ind. Code Ann. §35-42-2-7; Iowa Code §135.37; Kan. Admin. Regs. §69-15; Ky. Rev. Stat. §211.760; La. Admin. Code 29§2741-2744; Me. Rev. Stat. Ann. Title 32, Ch. 63 §4201-4301; Me. Rev. Stat. Ann. Title 32-A, Ch. 63 §4311-4317; Md. Code Regs. 09.22.02.01-03; Mich. Comp. Laws Ann. §333.131; Minn. Stat. §609.2246; Miss. Laws §73-61-1; Mo. Rev. Stat. §324.520; Mont. Code Ann. §45-5-623; Mont. Admin. R. 37.112.100; Neb. Rev. Stat. § Sec. 427 71-3; Neb. Rev. Stat. § Sec. 433 71-3; Nev. Admin. Code §29.17.080; N.H. Rev. Stat. Ann. §314-A:3; N.J. Admin. Code §8:27-8; N.Y. Codes R. & Regs. 160.7; N.C. Gen. Stat. §14-400; N.C. Gen. Stat. §130A-283; N.D. Cent. Code §12.1-31; Ohio Rev. Code Ann. §3730.02-.11; Okla. Stat. Title 21 §842.1-.2; Or. Admin. R. 331-550-0000-0020; Pa. Cons. Stat. Title 18 §4729; Pa. Cons. Stat. Title 18 §6311; RI General Laws §11-9-15; RI General Laws §23-1-39; S.C. Code Ann. §40-47-60; S.C. Code Ann. §44-34-60; S.D. Codified Laws Ann. §26-10-19; S.D. Admin. R. 44:12:01:01-35; Tenn. Code Ann. §62-38-207; Tenn. Code Ann. §39-15-403; Texas Health and Safety Code Ann. §146.012; Tex. Admin. Code §229.401; Utah Code Ann. §76-10-2201; Vt. Stat. Ann. Title 26 §4101-4108; Va. Code Ann. §18.2-371.3; Va. Code Ann. §15.2-912; Wash. Rev. Code §26.28.085; Wash. Admin. Code 246-145-010; W. Va. Code §16-38-1-7; Wis. Stat. §252.23; Wis. Stat. §948.70; Wyo. Stat. §14-3-107.

- 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 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.

The CDC notes that a risk of HIV transmission exists if instruments contaminated with blood are 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 discarded. In addition, reusable instruments or devices that penetrate the skin or contact a client's blood should be thoroughly 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.

Biomedical Waste Permitting

Section 381.0098(1), F.S., establishes legislative intent relating to protecting the public's health by establishing 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, human blood, blood products and body fluids." A biomedical waste generator is defined as "a facility, or person that produces or generates biomedical waste." The statute directs the Department of Health (DOH) and the Department of Environmental Protection to develop an interagency agreement to ensure maximum efficiency in coordinating, administering, and regulating biomedical waste. While DOH has no authority to issue a license to a tattooist or a tattoo studio, it does have authority to issue a biomedical waste-generator permit to a tattooist and a tattoo studio.

Rule 64E-16.011, F.A.C., DOH prescribes minimum sanitary practices relating to the management of biomedical waste and the regulation of biomedical waste generators. Tattoo studios are considered biomedical waste generators and as such are required to obtain an annual permit from DOH. These studios are inspected by DOH personnel at least once a year and re-inspections may be conducted when a facility is found to be noncompliant with sanitation practices. Current law does not provide authorization for DOH to inspect these establishments relating to other sanitation aspects of tattoo studios, or to license or register tattoo artists.

The Department of Health estimates that there are approximately 900 permanent make-up and tattoo establishments in Florida.² The American Tattooing Institute offers an on-line or mail order certification course that includes studies in skin anatomy and physiology, blood borne pathogens, Occupational Safety and Health Administration standards, food and drug administration information, and body art specialist's code of ethics training.³

Regulation of Tattooing in Florida

Section 877.04, F.S., governs the practice of tattooing. Generally, a tattoo may only be performed by:

- A physician licensed under chapters 458 and 459, F.S.;
- A dentist licensed under chapter 466, F.S.; or
- A person under the general supervision of a physician or dentist.

Any person who tattoos must either be licensed as, or work under the "general supervision," as defined in Rule 64B8-2.002, F.A.C., of a physician or dentist. 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

² Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 729 (February 8, 2010).

³ American Tattooing Institute, Body Art Specialist's Code of Ethics, available at: http://www.tatsmart.com/code_of_ethics (last viewed March 20, 2010).

violates this section is guilty of a misdemeanor of the second degree, punishable under ss. 775.082 and 775.083, F.S.

Professional Regulation and the Florida Sunrise Act

There are three different types or levels of regulation:⁴

1. Licensure is the most restrictive form of state regulation. Under licensure laws, it is illegal for a person to practice a profession without first meeting all of the standards imposed by the state.
2. Certification grants title protection to those who meet training and other standards. Those who do not meet certification standards cannot use the title, but can still perform the services.
3. Registration the least restrictive form of regulation, and usually only requires individuals to file their name, address and qualifications with a government agency before practicing the occupation.

Section 456.003, F.S., specifies that health care professions be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

- Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation;
- The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation; and
- Less restrictive means of regulation are not available.

Section 11.62, F.S., the Sunrise Act, provides legislative intent regarding the regulation of new professions and occupations:⁵

- No profession or occupation is subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
- No profession or occupation is regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, section 11.62(3), F.S., requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

⁴ Schmitt, K. & Shimberg, B. (1996). *Demystifying Occupational and Professional Regulation: Answers to Questions You May Have Been Afraid to Ask.* Council on Licensure, Enforcement, and Regulation.

⁵ s. 11.62(2), F.S.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The Sunrise Act requires proponents of regulation to submit information documenting the need for the proposed regulation. A sunrise questionnaire was submitted by the Florida Professional Tattoo Artist's Guild (guild). The guild represents approximately 1,800 tattooists. According to the guild, they have met very little resistance to the proposed regulation contained in Committee Substitute for House Bill 729 and estimate that 75 percent of the professional tattoo industry support this legislation.

Sunrise Act Criteria

Substantial Harm or Endangerment

Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote.⁶

The practice of tattooing has the potential of exposing clients and tattoo artists to blood borne pathogens if proper universal precautions⁷ are not practiced. According to the guild, there is a growth in underground tattooing (called "scratchers") where tattoo services are provided at homes, bars, flea markets, camp sites, and similar sites. Scratchers are most likely not practicing universal precautions, concerned with cross contamination, or properly disposing of biomedical waste.⁸

According to the guild, DOH has no database to document the number of complaints received. The following is a comment from an employee with the Department of Health, Division of Environmental Health, provided by the guild:

"I can say that seldom a day goes by when our staff here in Community Environmental Health do not receive a phone call or e-mail pertaining to tattoo regulations in Florida, both licensure inquiries and complaints about pertaining to unexpected outcomes." 2/2/10

Specialized Skill or Training, and Measurability

Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability.⁹

Tattooing is a specialized field that is based on peer review of a tattooist artistic ability. A tattoo artist may only work with specific colors or specialize in special designs (i.e., wild life or portraits). The bill does not require tattoo artists to possess formal institutional classroom training that provides them with

⁶ s. 11.62(3), F.S.

⁷ "Universal precautions," as defined by CDC, are a set of precautions designed to prevent transmission of human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens when providing first aid or health care. Under universal precautions, blood and certain body fluids of all patients are considered potentially infectious for HIV, HBV and other bloodborne pathogens. See Centers for Disease Control and Prevention, Universal Precautions for Prevention of Transmission of HIV

and Other Bloodborne Infections, available at: http://www.cdc.gov/ncidod/dhqp/bp_universal_precautions.html (last viewed March 19, 2010).

⁸ Rule 64E-16, F.A.C., requires facilities that generate biomedical waste to ensure proper management of that waste. Biomedical waste is any solid or liquid waste which may present a threat of infection to humans, including non-liquid tissue, body parts, blood, blood products, and body fluids from humans and other primates; laboratory and veterinary wastes which contain human disease-causing agents; and discarded sharps. The following are also included: (a) used, absorbent materials saturated with blood, blood products, body fluids, or excretions or secretions contaminated with visible blood; and absorbent materials saturated with blood or blood products that have dried. (b) non-absorbent, disposable devices that have been contaminated with blood, body fluids or, secretions or excretions visibly contaminated with blood, but have not been treated by an approved method.

⁹ s. 11.62(3), F.S.

a specialized skill that is measurable or quantifiable. According to the guild, “at this time it is left up to the individual tattoo establishment to set their standards.” About 90 percent of the beginner tattoo artists receive training through an apprenticeship.

The Alliance of Professional Tattooists (alliance) provides a blood borne pathogen course at the majority of the conventions in the United States. This course is a total of six hours for training and an examination. According to the guild, “this course is highly regarded in the tattoo industry as a must complete course and test.” According to the guild, “there is a great deal of knowledge passed from tattooist to tattooist at some of the conventions where training seminars are offered.” The guild and the alliance do have rules pertaining to codes of practice for their members; however, the only recourse for enforcement of the codes is to revoke a membership.

Unreasonable Effect on Job Creation or Job Retention

Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment.¹⁰

The guild is unaware of any other unregulated occupation that performs similar services. Establishments that offer body piercing services and operate as tattoo establishments will be required to have dual licensure. According to the guild, the training in blood borne pathogens and cross contamination is a necessary requirement.

Can the Public Be Effectively Protected by Other Means?

Whether the public is or can be effectively protected by other means.¹¹

Current law¹² requires tattoo artists to work under the general supervision of a licensed medical doctor or doctor of osteopathic medicine. According to the guild, supervising doctors develop their own procedures regarding the medical conditions of individuals receiving tattoos, treatment of problems resulting during or from tattooing, and procedures in the event an emergency situation developed during the performance or as a result of tattooing. Thus, these standards vary from doctor to doctor. If the supervising doctor is negligent in his or her duties, the Board of Medicine can review the license of the doctor and, if necessary, take disciplinary action on their license.¹³ If there is a complaint that a tattoo facility violated the terms of its biomedical waste permit, county health department staff has the authority to investigate and enforce compliance when necessary.¹⁴

Favorable Cost-effectiveness and Economic Impact

Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.¹⁵

According to the guild, there are approximately 900 tattoo establishments and approximately 1,800 tattoo artists in Florida.¹⁶ Usually there are two tattoo artists practicing in each tattoo establishment and on average each tattoo establishment will complete 25 to 30 tattoos in one week. The average minimum cost of a tattoo is \$30. If these values are applied statewide, there is a potential of approximately one million tattoos applied annually, which the guild believes will increase as a result of the “security the public will feel because of the enforcement provisions.” In addition, the guild believes the cost of regulation will cost tattoo establishments less than what they are paying to a doctor to provide his services of general supervision. Fees doctors charge for supervision vary. According to members of the guild, some doctors charge \$300 per tattoo artist.

¹⁰ *Id.*

¹¹ *Id.*

¹² s. 877.04, F.S.

¹³ ss. 458.331 and 459.015, F.S.

¹⁴ Rule 64E-16.013, F.A.C.

¹⁵ *Id.*

¹⁶ DOH supplied the Guild with a recent registration list of biomedical waste permittees to assist in calculating the number of tattoo establishments.

Effect of Proposed Changes

The bill creates definitions for active license or registration, department, guest tattoo artist, operator, stop use order, tattoo, tattoo artists, tattoo establishment, and temporary establishment.

The bill specifies that a person may not tattoo a child younger than 16 years of age unless it is performed for medical or dental purposes. A minor child over the age of 16 may receive a tattoo if the minor is accompanied by a parent or legal guardian; provides proof of identity in the form of a government issued photo identification; provides proof that he/she is the parent or legal guardian of the minor; the parent submits a written notarized consent; and the tattooing may only be performed by a tattoo artist, guest tattoo artist, medical doctor, doctor of osteopathic medicine, or dentist. The bill exempts a person from criminal prosecution if a minor falsely presents as being 18 years of age, the artist checks identification, and a person of reasonable average intelligence person would believe the minor is at least 18 years of age.

General Licensure Provisions

The bill specifies that a person may not tattoo the body of a human being in this state except in a tattoo establishment and the person performing the tattooing must be licensed as a tattoo artist or registered as a guest tattoo artist. The bill exclusively applies to the tattooing of human beings and does not apply to the tattooing of animals.

The bill exempts licensed medical doctors, doctors of osteopathic medicine, and dentists who perform tattooing exclusively for medical or dental purposes from having to be licensed as a tattoo artist. The bill specifies that these provisions do not preempt any local law or ordinance of a county or municipality that imposes regulations on tattoo establishments, temporary establishments, tattoo artists, or the practice of tattooing.

The bill authorizes DOH to enforce and discipline individuals who:

- provide false information on a DOH application;
- violate state or local health code or ordinances;
- practice tattooing without a valid license or registration issued by DOH;
- are found guilty or plead nolo contendere to a crime in any jurisdiction that relates to the practice of tattooing or operation of a tattoo establishment;
- commit fraud, deceit, negligence, or misconduct in the practice or operation of tattooing; or
- aid, procure, or assist a person in unlawfully practicing tattooing or operating a tattoo establishment.

The bill authorizes DOH to:

- refuse to issue a license or registration;
- suspend or revoke a license or registration;
- issue a reprimand;
- place an individual on probation;
- issue a stop-use order;
- order corrective action;
- impose stricter penalties for repeat violations; or
- consider the severity of the violation distinguishing lesser violations from those that endanger public health.

The bill requires DOH to establish fees and authorizes DOH to annually adjust the maximum fees authorized according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the U.S. Department of Labor.

The bill authorizes DOH to promulgate rules and consult with representatives of the tattooing industry during rule development. The bill specifies that the rules adopted may include, but are not limited to: defining terms; prescribing educational requirements for tattoo artists and guest tattoo artists; health and safety requirements; sanitation and sterilization practices; equipment requirements; customer notification, contents and retention of customer records; and physical plants.

The bill specifies requirements for the following:

1. licensure as a tattoo artist,
2. registration as a guest tattoo artist, and
3. licensure of tattoo establishments and temporary establishments.

Individuals who practice tattooing without a tattoo artist license, guest tattoo artist registration, tattoo establishment license, or temporary establishment license commit a misdemeanor of the second degree.¹⁷

1. Tattoo Artist Licensure

The bill specifies that a person seeking to practice as a licensed tattoo artist must apply to DOH for licensure. An applicant for licensure must:

- be at least 18 years of age;
- submit a completed application to DOH;
- pay a fee that may not exceed \$150;
- submit proof of successful completion of a DOH approved education course in blood borne pathogens and communicable disease; and
- submit proof of passage of a DOH approved examination that tests the materials contained in the education course.

The DOH application must capture the following information:

- name and address of residence of the applicant; and
- name and address of each tattoo establishment to include temporary establishments in which the person intends to practice.

The bill requires a licensed tattoo artist to notify DOH within 30 days of a name or address change and of practice as a tattoo artist for more than 14 days at a tattooing establishment that was not disclosed on the most recent application for licensure.

A licensed tattoo artist must display their registration in a manner that is easily visible to the public at all times while practicing tattooing, comply with all state and local health codes, and maintain sanitary conditions at all times. The bill requires DOH to approve one or more education courses and examinations that are to be made accessible through an Internet website. Licensure as a tattoo artist is valid for one year, is not transferable, and must be renewed annually.

2. Guest Tattoo Artist Registration

The bill requires DOH to issue a guest tattoo artist registration to an applicant who:

- is at least 18 years of age;
- submits a completed DOH application;
- pays the applicable registration fee that may not exceed \$45; and

¹⁷ Misdemeanors of the second degree are punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed \$500 (ss. 775.082 and 775.083, F.S.).

- holds an active license, registration, or certification issued by a jurisdiction outside of Florida that meets the education and examination requirements for licensure and submits proof of successful completion of an DOH approved education course and examination.

A guest tattoo artist must display the registration in a manner that is easily visible to the public at all times while practicing tattooing, comply with all state and local health codes, and maintain sanitary conditions at all times. Registration as a guest tattoo artist is valid for 14 days and is not transferable. A person seeking re-registration as a guest tattoo artist may re-register before or after their current registration expires.

3. Licensed Tattoo Establishments and Temporary Establishments

The bill specifies that a person may not operate a tattoo establishment or temporary establishment unless it is licensed by DOH. The Department of Health must issue a tattoo establishment license to applicants if they:

- submit a completed DOH application;
- pay the applicable licensure fee that may not exceed \$250; and
- comply with all applicable local building, occupational, zoning, and health codes.

The bill requires the DOH application to capture the following information:

- name under which the tattoo establishment will conduct business;
- physical address and phone number;
- name, mailing address, and telephone number of the tattoo establishment operator; and
- name and address of the tattoo establishment's registered agent for service of process.

The bill requires a licensed tattoo establishment or temporary establishment to:

- visibly display the establishment license to the public at all times when tattooing is being performed;
- ensure that all tattoo artists and guest tattoo artists practicing within the establishments meet registration or licensure requirements;
- maintain sanitary conditions at all times;
- comply with state and local health codes and ordinances;
- comply with the biomedical waste requirements in s. 381.0098, F.S.; and
- allow periodic inspections and enforcement by DOH.

A tattoo establishment license is only valid for the location listed on the license and the establishment must notify DOH prior to any change in location. Tattoo establishments with more than one location must obtain a separate license for each location. A tattoo establishment license is valid for one year, is not transferrable, and must be renewed annually. The bill specifies that temporary tattoo establishments must meet the same licensure requirements as permanent tattoo establishments; however, the license is only valid for 14 consecutive days.

The bill requires DOH to inspect each tattoo establishment at least annually and each temporary establishment before and, if necessary, during the event.

The bill has an effective date of January 1, 2012.

B. SECTION DIRECTORY:

Section 1. Creates s. 381.00771, F.S., relating to definitions and terms.

Section 2. Creates s. 381.00773, F.S., relating to applicability.

Section 3. Creates s. 381.00775, F.S., relating to tattoo artists; licensure; and registration of guest tattoo artists.

- Section 4.** Creates s. 381.00777, F.S., relating to tattoo establishments; licensure; and temporary establishments.
- Section 5.** Creates s. 381.00779, F.S., relating to practice requirements.
- Section 6.** Creates s. 381.00781, F.S., relating to fees and disposition.
- Section 7.** Creates s. 381.00783, F.S., relating to grounds for discipline and administrative penalties.
- Section 8.** Creates s. 381.00785, F.S., relating to criminal penalties.
- Section 9.** Transfers and renumbers s. 877.04, F.S., to s. 381.00787, F.S., relating to prohibited tattooing and penalties.
- Section 10.** Amends s. 381.00789, F.S., relating to rulemaking.
- Section 11.** Creates s. 381.00791, F.S., relating to local laws and ordinances.
- Section 12.** Provides an effective date of January 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Health, Division of Environmental Health, estimates that 900 permanent tattoo establishments and 150 temporary establishments would be required to pay an annual license fee not to exceed \$250. Assuming an estimated average of two artists per tattoo establishment, 1,800 artists will be required to pay a fee not to exceed \$150 annually. An estimated 250 guest tattoo artist will be required to pay registration fee not to exceed \$45.¹⁸ These revenue estimates presented in this fiscal analysis are calculated using the maximum allowable license fee amounts. DOH has the authority to set the fee lower than the cap.

| Estimated Revenue | 1st Year | 2nd Year |
|---|------------------|------------------|
| Licenses for 1050 establishments @ \$250 each | \$262,500 | \$262,500 |
| Licenses for 1800 artists @ \$150 each | \$ 270,000 | \$ 270,000 |
| Licenses for 250 guest artists @ \$45 | \$ 11,250 | \$ 11,250 |
| Total Estimated Revenue | \$543,750 | \$543,750 |

2. Expenditures:

The Department of Health, Division of Environmental Health, will incur the costs of rule promulgation, development, and presentation of training for DOH county health departments (CHDs) who will inspect the establishments. The Department of Health will also incur the costs of training and examination approval for the tattoo industry. County Health Departments will incur the costs associated with processing applications, issuing licenses, and conducting inspections, re-inspections, and enforcement. The estimated expenditures reflect the cost of performing the inspections. Hourly rate for salaries includes the fringe benefits.

| Estimated Expenditures | 1st Year | 2nd Year (Annualized/Recurr.) |
|---|------------|----------------------------------|
| Salaries | | |
| Inspection of 900 permanent and 150 temporary establishments @ \$130 per inspection | \$ 136,500 | \$ 136,500 |
| Reinspection of 25% of Establishments | \$ 34,125 | \$ 34,125 |
| Complaint investigation of 20% of establishments | \$ 27,300 | \$ 27,300 |

¹⁸ Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 729 (February 8, 2010).

| | | |
|--|------------------|------------------|
| Processing 1050 establishment applications, 2100 artists applications/registrations, issuing 3150 licenses | \$40,000 | \$ 40,000 |
| Training development for county health department staff | \$ 2,500 | \$ 1,500 |
| Rule Promulgation | \$ 10,000 | -0- |
| Expenses | | |
| Travel for staff to provide training at 10 sites | \$ 5,000 | -0- |
| Site visits from Central Office staff to perform site evaluations | -0- | \$ 5,000 |
| Data support and information distribution | \$5,000 | \$5,000 |
| Total Estimated Expenditures | \$260,425 | \$249,425 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable.

2. Expenditures:

The fiscal impact to county governments as a result of the second degree misdemeanor penalty is indeterminate. This is a likely low volume offense and is therefore anticipated to have an insignificant fiscal effect to the counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be an additional cost to tattoo artists for licensure and possibly training if they have not already taken a course.

D. FISCAL COMMENTS:

Section 216.0236, F.S., states that it is the intent of the Legislature that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation. It is also the intent of the Legislature that the fees charged for providing a regulatory service or regulating a profession or business is reasonable and takes into account the differences between the types of professions or businesses being regulated.

The bill does not include, nor does it require, a fiscal appropriation for DOH to meet the requirements of the bill. Approximately 10% of the estimated expenditures incurred by DOH will be incurred by the central office and are administrative in nature. The remaining expenditures will be incurred by the county health departments for regulatory purposes. These expenditures will be offset by the revenues earned in annual licensure and registration fees. These fees will be deposited into the County Health Department Trust Fund for use of regulatory functions of the county health departments. Approximately 10 percent of the revenues will be transferred to the Administrative Trust Fund to cover the functions of the DOH central office.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the department sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill places the provisions for regulation of tattoo artists and guest tattoo artists into Chapter 381, F.S., relating to public health. Most regulated professions and persons are governed under Chapter 456, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 22, 2010, the Health Care Regulation Policy Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- changes the effective date to January 1, 2012;
- reorganizes the bill by combining provisions and moving language around within the bill;
- requires licensed tattoo establishments to comply with state biomedical waste requirements;
- requires DOH to inspect tattoo establishments at least once annually;
- specifies that tattooing applies exclusively to humans, not animals;
- requires DOH to inspect temporary tattoo establishments prior to the event and, if necessary, during the event;
- decreases the penalty from a felony of the third degree to a misdemeanor of the second degree;
- authorizes specific rule making; and
- exempts artists from criminal prosecution if the minor falsely presents as being 18 years of age, the artist checks identification, and a person of reasonable average intelligence person would believe the minor is at least 18 years of age.

This analysis is drafted to the committee substitute.