
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 15, 1997 Revised: _____

Subject: Body-piercing

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/4 amendments</u>
2.	<u>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill requires the Department of Health to license body-piercing salons, and to adopt rules to regulate such facilities. The bill establishes licensing procedures and fees, in addition to provisions imposing penalties, rulemaking authority, and enforcement.

The bill creates section 381.0075, Florida Statutes.

II. Present Situation:

According to the National Conference of State Legislatures, nine states require registration or certification for body-piercing establishments, and one additional state requires the consent of a parent or guardian before a minor's body may be pierced. New Hampshire and Oregon regulate the practice of body-piercing. New Hampshire law provides standards for hygiene and sanitary operation for the practice of tattooing and the practice of body-piercing taking place in tattoo establishments. Oregon licenses body-piercing technicians and body-piercing facilities and prescribes standards for electrologists, permanent color technicians and tattoo artists.

Body-piercing salons are not subject to regulation in Florida. The Department of Health indicates that there is no official estimate of the number of locations where body-piercing occurs in Florida. According to officials at the Department of Health, a potential exists for the transmission of HIV and other blood-borne diseases such as hepatitis through the practice of body piercing. Department of Health officials indicated, however, that the department has not documented any cases of transmission of HIV or other blood-borne diseases directly linked to the practice of body-piercing.

III. Effect of Proposed Changes:

The bill requires body-piercing establishments to be subject to licensure regulation and requires the Department of Health to adopt administrative rules to regulate body-piercing establishments. The bill provides that the regulation of body-piercing establishments shall not be construed to alter the scope of practice authorized for any licensed medical physician, osteopathic physician, podiatrist, chiropractor, dentist, veterinarian, or physical therapist. The bill authorizes criminal penalties to be imposed on persons who operate an establishment without a license or who obtain a license by means of fraud, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to \$5,000.

“Body-piercing salon” is defined as any place where body-piercing occurs and “establishment” is defined as a body-piercing salon. “Body piercing” is defined to explicitly exclude ear piercing.

The bill requires body-piercing establishments to: properly sterilize all instruments that pierce or come into contact with the skin; sanitize all equipment indirectly used in body-piercing; use protective infection barriers; thoroughly cleanse the area to be pierced; use only jewelry that is made of implant grade high-quality stainless steel, solid gold of at least 14K weight, niobium, titanium, platinum, a dense, low-porosity plastic, or silver and which is free of nicks, scratches, or irregular surfaces; provide customers with written instructions on the proper care of the pierced area; maintain a record of each customer’s visit for a period of not less than 2 years; report any injury or any complaint of injury to the Department of Health; and, maintain compliance with statutes relating to biomedical waste.

The bill prohibits any person from piercing any body part of a minor without the written notarized consent of the minor’s parent or legal guardian, and an establishment may not perform body-piercing on a minor under the age of 16 unless the minor is accompanied by a parent or legal guardian, the violation of which is subject to a second degree misdemeanor, punishable by imprisonment for up to 60 days and a fine up to \$500.

The Department of Health is required to inspect body-piercing establishments at least annually and may adopt rules to implement and administer this act. The bill requires the Department of Health to assess each body piercing salon an annual license fee of \$150 and a late fee of \$100. The bill provides that fees assessed by the department must be reasonably calculated to cover the cost of regulation and may be used only to meet the costs of carrying out the requirements of the bill. Fees are nonrefundable.

The bill authorizes the Department of Health or any state attorney to bring actions to enjoin persons performing body-piercing without being licensed. The department is authorized to impose an administrative fine no greater than \$1,000 per violation per day, for any violation under the bill. The bill grants authority to the department to issue stop-use orders, citations, and other legal remedies to enforce the regulation of body-piercing.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Section 24(a) of Article 1 of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

It is unclear whether the criminal prohibitions for the piercing of any body part of a minor apply to all persons, regardless of their status as an unlicensed person or licensed body-piercing establishment or whether the such prohibitions may only be enforced by the Department of Health over licensed body-piercing establishments. It is unclear whether the criminal prohibitions for the piercing of any body part of a minor apply to licensed professions such as barbers, cosmetologists, electrologists, acupuncturists, and clinical laboratory personnel, in Florida performing comparable acts as part of their business or profession.

To the extent the bill makes owning, operating, or soliciting business as a body-piercing establishment without holding a license criminal offenses, the violation of which subjects a person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to \$5,000, such provisions may be susceptible to a legal challenge under the due process clause under the state and Federal constitutions as being void for vagueness. The due process clauses of the state and federal constitutions prohibit a statute from forbidding or requiring the doing of an act in terms so vague that persons of common understanding must necessarily guess at its meaning and differ as to its application. The test applied by the Florida Supreme Court is whether the words of a statute are sufficiently explicit to inform persons subject to its provisions what conduct will render them liable to its penalties. *Brock v. Hardie*, 154 So.690 (Fla. 1934)

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill requires body-piercing establishments to obtain an annual license at a cost of \$150 per establishment.

B. Private Sector Impact:

Body-piercing establishments may experience additional operational costs due to increased requirements, imposed by this bill, relating to bookkeeping, sterilization, equipment maintenance and supplies.

C. Government Sector Impact:

The Department of Health estimates it will assess a \$150 annual license fee from each body-piercing establishment for a total of \$30,000 annually (200 establishments @ \$150). The monies collected will be used to cover costs associated with licensure and facility inspections estimated at \$31,540 for fiscal year 1997-98 and \$30,140 for fiscal year 1998-99. The department would like legislative authority to assess a \$75 fee from temporary body-piercing establishments which would generate additional revenue to cover the anticipated deficit of \$1,680 at the end of the 1997-1999 biennial period.

VII. Related Issues:

The bill defines a body-piercing salon to include any place where body-piercing occurs which could prove to be difficult to enforce since piercing kits are available for persons who may privately pierce their own body or that of another without seeking licensure. The bill appears to have an underlying assumption that its provisions are limited to persons performing body-piercing for compensation. The bill's definition of body-piercing may include some acts currently legally performed by licensed persons such as barbers, cosmetologists, electrologists, acupuncturists, and clinical laboratory personnel without providing an exemption to the bill's requirements.

Enforcement of the bill's provisions that prohibit any person from piercing any body part of a minor without the written notarized consent of the minor's parent or legal guardian, and the bill's provisions prohibiting an establishment from performing body-piercing on a minor under the age of 16 unless the minor is accompanied by a parent or legal guardian appear to be problematic to the extent it is unclear whether the prohibition applies to any person who pierces a body part, such as an ear lobe that is expressly excluded from the bill's definition of "body-piercing".

Although the bill provides that it does not alter the scope of practice of licensed medical physicians, osteopathic physicians, podiatrists, chiropractors, dentists, veterinarians, or physical therapists, it does not expressly exempt such practitioners from its requirements.

The bill creates a felony offense for any person to commit various prohibited acts relating to owning, operating, or soliciting business as a body-piercing establishment in the state without being licensed or unless specifically exempted from the bill's requirements, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to \$5,000. Section 921.001, F.S., provides that any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for certain acts relating to owning, operating, or soliciting business as a body-piercing establishment in the state without being licensed or unless specifically exempted from the bill's requirements, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

#1 by Health Care:

Revises the definition of the term "body piercing" to limit its application to acts performed for commercial purposes.

#2 by Health Care:

Revises exemptions to the bill's requirements for body-piercing establishments, to exclude any licensed health professional under the regulatory jurisdiction of the Department of Health as long as the person does not hold himself out as a body-piercing establishment.

#3 by Health Care:

Clarifies that the requirements to obtain written notarized consent from a minor's parents before piercing any body part of a minor only applies to persons who engage in body-piercing as defined under the bill.

#4 by Health Care:

Provides, in effect, that the Department of Health may adopt an administrative rule to impose additional record-keeping requirements on body-piercing establishments.