

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.)

BILL: CS/CS/SB 980

SPONSOR: Committees on Governmental Oversight & Productivity and Health, Aging & Long-Term Care and Senator Lee

SUBJECT: Body-piercing

DATE: March 23, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 980 requires the Department of Health to license permanent and temporary body-piercing salons, and to adopt rules to regulate such facilities. The CS/CS/SB 980 establishes licensing procedures, inspections, fees, rulemaking authority, and enforcement mechanisms. Written, notarized parental consent for body piercing of minors is required. Additionally, minors under the age of 16 must be accompanied by their parents during body-piercing. Further, the committee substitute establishes requirements for piercing procedures and equipment sterilization, establishes alternative enforcement provisions, and establishes criminal penalties for certain violations.

The bill creates section 381.0075, Florida Statutes.

II. Present Situation:

Body-piercing salons are not subject to licensure in Florida. Body-piercers may operate in tattoo parlors, in cosmetology facilities, or elsewhere. While there is no official count of the number of body-piercing salons in Florida, body-piercing salons are permitted and inspected as biomedical waste generators and, as such, are inspected once every three years to ensure that biomedical waste is packaged and disposed of properly. Based upon the number of biomedical waste facilities in the department's databases that are listed as "tattoo/body-piercing facilities," the department estimates that there are 260 locations where body-piercing occurs for commercial purposes in Florida.

According to officials at the department and the Centers for Disease Control and Prevention (CDC), a risk exists for the transmission of HIV and other blood-borne diseases such as hepatitis through the practice of body piercing, if instruments contaminated with blood are not sterilized or disinfected, or are used inappropriately between clients. The CDC recommends that instruments

that are intended to penetrate the skin be used once, then disposed of or thoroughly cleaned and sterilized.

According to the National Conference of State Legislatures, as of August 31, 1996, nine states require registration or certification for body-piercing establishments, and one additional state requires the consent of a parent or guardian prior to the piercing of a minor's body.

III. Effect of Proposed Changes:

The committee substitute provides a statement of legislative intent to regulate body-piercing salons in order to protect the health, safety, and welfare of the public from the spread of infectious diseases from body-piercing.

“Body piercing” is defined as penetrating the skin to make a hole, mark, or scar for commercial purposes, but excludes use of a mechanized, pre-sterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear, or both. “Body-piercing salon” is defined as any place where body piercing occurs and “establishment” is defined as a body-piercing salon.

The committee substitute requires body-piercing establishments to be licensed and requires the department to adopt administrative rules to regulate body-piercing establishments. The committee substitute does not apply to the practice of any licensed health care professional under the regulatory jurisdiction of the department as long as the person does not hold himself or herself out as a body-piercing salon. The committee substitute makes operation of an establishment without a license or obtaining a license by means of fraud a third degree felony.

The committee substitute prohibits an establishment from piercing any body part of a minor without the written notarized consent of the minor's parent or legal guardian. 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. A violation of these requirements for minors constitutes a second degree misdemeanor.

The committee substitute requires body-piercing establishments to: properly sterilize all instruments that pierce, aid in piercing, or come into contact with instruments that pierce the skin; sanitize all equipment indirectly used in body piercing; use protective infection barriers; to the degree possible, 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, including documentation of parental presence or consent in the case of minors.

The department 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 to assess each body-piercing salon an annual license fee of \$150 and a late fee of \$100, and provides time frames for the inspection of temporary establishments. 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 non-refundable.

The committee substitute authorizes the department or any state attorney to bring actions to enjoin persons operating a body-piercing establishment 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 committee substitute. The bill grants authority to the department to issue stop-use orders, citations, and other legal remedies to enforce the regulation of body piercing. The bill requires the department to investigate consumer complaints within 14 days.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 for a permanent establishment or \$75 for a temporary establishment. Failure to timely pay the licensure fee results in a \$100 late fee.

B. Private Sector Impact:

Body-piercing establishments may experience additional operational costs due to increased requirements imposed by this bill relating to annual fees, bookkeeping, sterilization, equipment maintenance, and supplies. Further, body-piercing establishments that fail to comply with the requirements of the act could be subjected to assessments of \$1,000 per violation per day. Body-piercing customers may experience an increase in cost for services received as result of the additional operational costs.

C. Government Sector Impact:

The department estimates it will assess a \$150 annual license fee from each body-piercing establishment for a total of \$34,875. Additionally, administrative fines may be collected for violations of the act. The department advises that the amounts collected will be sufficient to cover costs associated with licensure and facility inspections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates a third degree felony offense for 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 or for obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment. Violations subject the person to imprisonment for up to 5 years and a fine up to \$5,000. The bill also creates a misdemeanor of the second degree for failing to maintain records or falsifying records and for failing to comply with the requirements regarding minors. The penalties for most operational violations are higher (third degree felony) than for violations of requirements relating to performing body-piercing on a minor.

The department, however, advises that citation authority has been used effectively in field sanitation facilities¹ and for onsite sewage treatment and disposal systems.² According to the department, immediate issuance of a citation at the inspection, instead of at a later time in an administrative charging document, is more effective in correcting violations.

There are, however, other "alternative" processes provided in the APA. In the 1996 amendments to the APA, a "Notice of Noncompliance" process was adopted which provides that it is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with legislative policies. Fines and other penalties may be provided in order to assure compliance, but the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. Section 120.695, F.S., states:

It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

Each agency is required to issue a notice of noncompliance as a first response to a minor violation of a rule. A notice may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule.

Additionally, in 1996, the Legislature adopted a summary hearing process which shortened the times in which hearings under the APA can be conducted. This process, which requires agreement of the all parties, provides for limited discovery and expedited time sequences.

The Sunrise Act - Section 11.62, F.S., provides that:

¹Section 381.0087(1), F.S.

²Section 381.0065(5), F.S.

. . . no profession or occupation is to be subjected to regulation 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.

The act provides that the Legislature is to consider four factors in determining whether to regulate a profession or occupation: (1) 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; (2) 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; (3) 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.

Proponents of legislation that provides for the regulation of a profession or occupation not already expressly subject to state regulation must provide upon request the following information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred: (1) the number of individuals or businesses that would be subject to the regulation; (2) the name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct; (3) documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in Florida during the preceding 3 years; (4) a list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law; (5) a list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public; (6) a description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public; (7) a copy of any federal legislation mandating regulation; (8) an explanation of the reasons why other types of less restrictive regulation would not effectively protect the public; (9) the cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation; (10) the details of any previous efforts in this state to implement regulation of the profession or occupation; and (11) any information the agency or the committee considers relevant in the analysis of the proposed legislation.

Section 11.62(5), F.S., also requires the agency to provide the Legislature with certain information: (1) the department resources necessary to implement and enforce the proposed regulation; (2) the technical sufficiency of the proposal for regulation, including its consistency with the regulation of other professions and occupations under existing law; (3) if applicable, any alternatives to the proposed regulation which may result in a less restrictive or more cost-effective regulatory scheme.

Finally, s. 11.62(6), F.S., provides that when a legislative committee is making a recommendation concerning legislation providing for new regulation of a profession or occupation, the committee must determine: (1) whether the regulation is justified based on the criteria specified above; (2) the least restrictive and most cost-effective regulatory scheme that will adequately protect the

public; and (3) the technical sufficiency of the proposed legislation, including its consistency with the regulation of other professions and occupations under existing law.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
