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A Bill to be Submitted to the Pennsylvania Legislature, Concerning Central Registration of Body Art Facilities and Licensure of Body Artists

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To: Professor Jan Levine
From: Genevieve Pecharka
Date: April 29, 2013
RE: Final Project – Background research to accompany statute

I. PROJECT

A bill to be submitted to the Pennsylvania legislature, concerning central registration of body art facilities and licensure of body artists.

II. PRELIMINARY RESEARCH

A. Existing Pennsylvania law, or the lack thereof.

Forty-one out of fifty states have statutes or regulations providing for mandatory registration and inspection of tattoo parlors, piercing parlors, and cosmetic surgery clinics.¹ Some states also require individual licensure of body artists.² Pennsylvania is in the minority; the Commonwealth has exactly one statute concerning tattoos/piercings, which criminalizes the tattooing of a minor absent parental consent.³

The Pennsylvania Department of Health does not inspect body art facilities, although their operations sometimes involve highly invasive medical-type procedures. There is no requirement for body artists in Pennsylvania to be formally trained in bloodborne pathogens, sterilization, or sanitation. Meanwhile many professionals, including nurses, beauticians, chiropractors, massage therapists, and acupuncturists, must be licensed with the Commonwealth Department of State in order to practice.⁴

¹ See Appendix A, fifty-state survey of body art statutes and regulations in the United States.

² See e.g. Cal. Health & Safety Code Ann. § 119306, “Practitioner registration” (2011); Fla. Stat. Ann. § 381.00775(2)(a), “A person seeking licensure as a tattoo artist must apply to the department...” (2012); Tex. Health Code Ann. § 146.0021, “Employment of Tattooist and Body Piercists, Registration Required” (2003).

³ 18 Pa. C.S.A. § 6311 (West, current through 2012).

⁴ 63 P.S. §§ 191 *et seq.*, 507 *et seq.*, 625.101 *et seq.*, 627.1 *et seq.*, and 1801 *et seq.*

Body artists are some of the only professionals in the world who still learn their trade essentially by apprenticeships to an experienced body artist.⁵

There is no licensure for tattoo artists, nor any central registry of body art facilities in Pennsylvania, so at any given time the Commonwealth has no idea how many body art facilities are being operated, or how many body artists are practicing. For example, there are fifteen to twenty tattoo parlors on the South Side of Pittsburgh alone, but none are registered with the State or the City.⁶ Although some body artists claim to put their employees through a bloodborne pathogen training,⁷ there is no statewide program to ensure that all artists are so trained.

One particular bill which was recently submitted to the House of Representatives apparently serves as a place-holder for tattoo legislation in the state. Referred to as “H.B. 2617,” it will be described at greater length later in this memorandum.

B. The practice of body art.

“Body art” is a broad term used to encompass not only piercing and tattooing, but also corrective cosmetic surgery and branding. But in general all the forms of body art have one thing in common: the piercing of the skin or mucous membrane with needles (also known as parenteral contact).⁸ Because of this, most of the health concerns associated with tattooing are also seen in piercing and corrective cosmetic surgery.

⁵ See e.g. Hudson, Karen L., *How to Get a Tattooing or Piercing Apprenticeship*, <http://tattoo.about.com/cs/articles/a/apprenticeship.htm>; Mrosko, Terri, *Apprenticeship training is available for tattoo artists*, http://www.cleveland.com/employment/plaindealer/index.ssf/2012/08/apprenticeship_training_is_available_for_tattoo_artists.html (August 19, 2012).

⁶ An online search revealed thirteen advertised body art parlors on Carson Street, although at least four more small tattoo or piercing shops exist between Station Square and South Side Works.

⁷ Keene, Alison, *A cleaner inkimage: Pennsylvania ponders tattoo regulations*, *The Duquesne Duke*, October 18, 2012 (<http://www.theduquesneduke.com/a-cleaner-inkimage-pennsylvania-ponders-tattoo-regulations-1.2930481#.UWs0mbXviSp>).

⁸ See OSHA guidelines on Bloodborne pathogens; definition of “parenteral,” 29 C.F.R. 1910.1030(b).

Branding, more properly known as scarification when performed on humans, is a less common form of body art in the United States, and the health concerns associated with that form of body art vary depending on the method. Professional branding artists in the U.S. often use an electrocautery device, similar to that used for medical cauterizations, and leaves only a scar; others use hot irons, which is similar to cattle branding and is called “strike” branding when used on humans; others use “moxtabustion,” which involves the burning of incense on the skin.⁹ But generally parenteral dyes or needles are not used, so the health risks of branding are commonplace concerns about surface skin burns, particularly surface infections. Insofar as a body art statute would be concerned, body artists performing branding would have to follow the same sterilization and safe practice plans as those performing tattooing or piercing.

Corrective cosmetic surgery is also a less common form of body art, and is often a euphemism used to explain “medical tattooing.” For example, H.B. 2617 describes corrective cosmetic surgery as “the application of tattoos on a live human being for medical or cosmetic situations which could not be otherwise corrected or improved, including but not limited to burn scars, acne scars, age spots, and skin discoloration due to loss of pigmentation.”¹⁰

Piercing and tattooing are the most ubiquitously known forms of body art. At independent body art facilities piercers and tattooists are usually one and the same, i.e.,

⁹ See e.g. the Wisegeek.com article about branding (<http://www.wisegeek.com/what-is-branding.htm>), which mirrors the information provided on dozens of tattoo/branding artist websites. African-style scarification, on the other hand, often includes the rubbing of ink or other colored substances into a brand or cut, essentially forming a simple tattoo and causing a greater risk of infection. See Guynup, Sharon, “Scarification: Ancient Body Art Leaving New Marks,” National Geographic News, July 28, 2004. (http://news.nationalgeographic.com/news/2004/07/0728_040728_tvtabooscars.html)

¹⁰ Pennsylvania H.B. 2617 § 3, 196th Legis., Session of 2012 (Sept. 12, 2012).

each employee performs both tattooing and piercing. Both professional tattooists and piercists wear disposable gloves, sterilize all instruments before and after procedures using an autoclave, and use single-use disposable needles for most procedures.¹¹

Many mall shops (for example, Claire's or Piercing Pagoda) still perform ear piercings with a spring-loaded piercing gun, which simply forces a stud earring into the ear.¹² The body art industry reviles piercing guns, because they can transmit bodily fluid from one patient to the next, and often cannot be sterilized in an autoclave.¹³ Because the studs are not as sharp as surgical steel needles, the guns also cause blunt trauma to the soft tissues of the ear.¹⁴ Like many states, Kansas has partially outlawed the use of piercing guns which do not have removable, disposable, single-use needles.¹⁵ At an independent body art facility, piercers almost always use a sterile, single-use, straight piercing needle to make the actual piercing, then separately insert a sterilized stud or hoop, usually made of high-grade stainless steel.¹⁶

Earlobe-only piercing or the use of a piercing gun is sometimes exempt from body art laws, including H.B. 2617.¹⁷ I have been unable to find a single articulated reason for this trend, which is surprising considering (as mentioned) the health dangers inherent in using the guns, and the fact that at least two states have outlawed their use.

¹¹ Assn. of Prof. Piercers, *Procedure Manual*, pp.22-23 (Elayne Angel et al., 3d ed., APP 2005.) Much of my information on the practical aspects of piercing and tattooing also stems from first-hand observation and questions asked of the tattooist/piercist presently performing the procedure.

¹² See e.g. Assn. of Prof. Piercers website, "Choosing a Piercer" <http://www.safepiercing.org/piercing/choosing-a-piercer/> (and associated brochure).

¹³ Association of Professional Piercers, "What is the APP's Position on Piercing Guns?", <http://www.safepiercing.org/piercing/faq/#guns>.

¹⁴ The Studio at Painful Pleasures, <http://thestudio.painfulpleasures.com/node/158>.

¹⁵ Kan. Admin. Regs. r. 69-15-1 - 69-15-30 (1997) (may be used only on lobe of ear).

¹⁶ Association of Professional Piercers, *Procedure Manual* at 19-22.

¹⁷ H.B. 2617 § 3. Definitions: "The term [body piercing] does not include ear piercing." See also e.g. Cal. Health & Safety Code Ann. § 119301(e) (2011) (earlobe-only piercing with piercing gun exempt from definition of "body piercing"); Tex. Admin. Code tit. 25 § 229.409(a) (earlobe-only piercing with piercing guns exempt from sterilization requirements); Ohio Rev. Code Ann. § 3730.01(B) (West 2012) (" 'Body piercing' includes ear piercing except when the ear piercing procedure is performed with an ear piercing gun.").

Personally, I would draft my bill to entirely *ban* the use of piercing guns, as proposed by most body artists, and would be interested to speak with the Representatives who proposed H.B. 2617, to ascertain whether they had a purpose for including the exemption.

There are several different kinds of tools used for tattooing, but the most common is the “coil machine,” which is a descendant of the electric pen.¹⁸ There are four main parts to a coil machine: the body or barrel of the machine; the coils themselves, mounted like a little motor atop the barrel; the needle bar, located inside the barrel; and the contact bar between the needle bar and the coils.¹⁹ A foot pedal controls the flow of electricity to the coils, so that the contact bar repeatedly vibrates against the coils; because the contact bar is mounted onto the barrel horizontally and is attached to the needle bar, the contact bar acts as a fulcrum, and the vibration rapidly drives the needle bar up and down inside the barrel.²⁰ The tip of the needle is hollow, and is dipped into an ink reservoir: the movement of the needle drives ink into the skin approximately fifty times per second, optimally at a depth of about an eighth of an inch.²¹

When the tattoo is completed, the needle bar is entirely removed and thrown away.²² The barrel is detached from the coils, as is the contact bar, and those two parts

¹⁸ See e.g. Wilson, Tracy, *How Tattoos Work*, <http://health.howstuffworks.com/skin-care/beauty/skin-and-lifestyle/tattoo.htm> (Discovery Fit & Health, 2011). I have never seen a professional tattoo artist use any other kind of tattoo machine.

¹⁹ Jones, Scott, *Tattoo Equipment*, Tattoo Info Online, <http://www.tattooinfo.net/scripts/prodview.asp?idproduct=43> (2009).

²⁰ *Id.* See also Wilson, Tracy, *How Tattoos Work*.

²¹ *Id.*

²² Fairfax, Richard, *Applicability of the Bloodborne Pathogens Standard to the tattoo and body piercing industries*, www.osha.gov/pls/oshaweb/owadis.show_document?p_table=INTERPRETATIONS&p_id=24453 (July 29, 2002).

are placed in an autoclave for pressure sterilization.²³ When the machine is in use, the coils are usually covered in a small baggie, and are thoroughly sterilized afterwards using an alcohol-based solution.²⁴

C. Health concerns of body art.

There are several ways in which body art can result in harm to a client. If the artist does not follow proper sterilization techniques, he can transmit diseases from client to client. If he does not follow proper sanitation standards, he himself can also transmit a number of diseases or infections to the client. If the artist is not careful with his inks and equipment, harmful or infectious materials can end up in the client's body art. Finally, a client can simply have a dermatological or immunological reaction to the body art. After-care of the body art is also extremely important.

Two of the more serious health concerns, HIV and hepatitis, are a result of improper sterilization, and the transfer of blood from one client to the next.²⁵ Although the CDC states that there are no documented cases of piercing- or tattoo-related HIV transmission, a reused or improperly sterilized tattoo or piercing needle could transmit the disease.²⁶ During tattooing or piercing, the liver diseases hepatitis B, C, and D can be transferred from an infected client to another client if the needle used by the artist is reused without being sterilized.²⁷

One of the most dangerous—and terrifyingly common—mistakes a body artist can make is to practice body art without washing his hands and/or wearing protective

²³ *Id.*

²⁴ *Id.*

²⁵ Mayo Clinic, *Tattoos: Understand the Risks and Precautions*, <http://www.mayoclinic.com/health/tattoos-and-piercings/MC00020>, May 20, 2012.

²⁶ Centers for Disease Control and Prevention (CDC), *Basic Information about HIV/AIDS*, <http://www.cdc.gov/hiv/topics/basic/index.htm> (April 11, 2012).

²⁷ CDC, *Hepatitis B Information for the Public*, <http://www.cdc.gov/hepatitis/b/> and individual links on page (March 1, 2013).

gloves. Such an easy process prevents an extraordinary number of dangers, most notably bacterial or viral infection.²⁸ Staphylococcus, streptococcus, and pseudomonias are the most common bacterial infections observed in piercings, particularly those made with a piercing gun.²⁹ Tattoos carry similar infection risks, but because ink, a foreign substance, is being forced into the skin, the safety of the procedure also depends on the quality of the ink. Moldy or improperly sealed inks can result in MRSA or mycobacteria infections, which have serious complications.³⁰ Clients can also often have spontaneous reactions to ink, either immunological or dermatological.

Sometimes a client can have an adverse reaction to a tattoo or piercing despite a body artist having performed the art as safely as possible. For example, clients with sensitive immune systems can experience granulomas (small nodules that form on the skin in response to foreign bodies) at the site of the tattoo or piercing.³¹ With piercing, especially, a client with sensitive skin can also experience keloids, or large scars that expand beyond the boundaries of the original injury.³²

Preexisting health problems can become a major issue if the body artist does not thoroughly question the client prior to the procedure or if the client does not disclose important health information. For example, someone with a suppressed immune system or hemophilia may experience bleeding problems, or will have a higher risk of surface

²⁸ Koenig, Laura M., and Carnes, Molly, MD, *Body Piercing: Medical Concerns with Cutting-Edge Fashion*, *Journal of Gen. Intern. Med.* 14(6), 379-385 (June 1999).

²⁹ *Id.*

³⁰ Wollina, Uwe, *Severe Adverse Events Related to Tattooing: An Retrospective Analysis of 11 Years*, *Indian Journal of Dermatol.*, 439-443 (Nov.-Dec. 2012); see also U.S. Food and Drug Administration, *For Consumers: Tattoo Inks Pose Health Risks*, <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm316357.htm> (updated April 12, 2013).

³¹ Wollina, Uwe, *Severe Adverse Events Related to Tattooing: An Retrospective Analysis of 11 Years*.

³² Koenig, Laura M., and Carnes, Molly, MD, *Body Piercing: Medical Concerns with Cutting-Edge Fashion*. A friend of mine who had an “industrial bar” piercing in the cartilage of her ear experienced the growth of large keloid nodules on the upper flange; they remained even after she removed the bar.

infection from the tattoo or piercing.³³ Some clients may be naturally allergic to tattoo dyes or certain types of metal.³⁴ A client with genital herpes should also never get a tattoo or piercing on skin where outbreaks have occurred, and even if the tattoo or piercing is located somewhere else on the body, must be extremely careful not to cross-contaminate the site, because it is essentially an open wound.³⁵ A study in the UK found that clients with congenital heart conditions who receive tattoos or piercings may have an increased risk of endocarditis.³⁶

Surface infections can also occur as a result of poor after-care. Even body artists who pride themselves on running an extremely hygienic practice often do not provide after-care instructions for tattoos and piercings, and clients can hardly be expected to know precisely how to care for their body art, especially if it is their first inking or piercing. Moreover, artists often give contradictory advice about aftercare: for example, although it is common sense to put a medicated ointment onto a tattoo to help the healing process,³⁷ petroleum-based products such as Neosporin can draw ink out of the tattoo and block airflow to the scab, which is less than optimal for clients who wish to retain brightly colored tattoos, and artists often recommend the use of non-medicated moisturizers.³⁸

C. Other repercussions

³³ National Hemophilia Foundation, *Body Art*, http://www.stepsforliving.hemophilia.org/section3_5_3 (2011).

³⁴ Mayo Clinic, *Tattoos: Understand the Risks and Precautions*; Koenig, Laura M., and Carnes, Molly, MD, *Body Piercing: Medical Concerns with Cutting-Edge Fashion*.

³⁵ CDC, *Genital Herpes Fact Sheet*, <http://www.cdc.gov/std/herpes/STDFact-Herpes.htm> (updated Feb. 11, 2013).

³⁶ Shebani, Suhair, et al., *Awareness of the risk of endocarditis associated with tattooing and body piercing among patients with congenital heart disease and paediatric cardiologists in the United Kingdom*, *Archives of Disease in Childhood*, (Nov. 2007)

³⁷ Mayo Clinic, *Tattoos: Understand the Risks and Precautions* (recommends the use of antibiotic ointment).

³⁸ See e.g. Asgard Ink, *Basic Aftercare*, <http://www.asgardinktattoo.com/aftercare.html> (2009).

As mentioned, because the unlicensed practice of body art is permitted in the state, Pennsylvanians often purchase equipment from the internet or go to a friend's basement to get their tattoo or piercing, and end up with either health complications or poorly performed body art.³⁹ Although the point of body art legislation is to preserve health and safety, not to promote better-looking tattoos or piercings, Pennsylvania's lack of licensure and registration, as with other states that do not register body art facilities, means that the American Red Cross and Central Blood Bank do not allow blood donations from a person who received a tattoo or piercing in Pennsylvania less than 12 months before donation.⁴⁰ This rule does not apply to West Virginia and Ohio, because their body art facilities are registered and inspected, and would presumably be lifted if Pennsylvania begins regulating its tattoo industry.

The practice of "basement tattooing" is still alarmingly legal in Pennsylvania, as are (obviously) jail tattoos, and the resulting stigma upon tattooed or pierced persons is quite real. Aside from the persistent inability of professionals to obtain promotions or management positions if they have visible tattoos,⁴¹ especially women,⁴² at least one court has arguably established questionable First Amendment law in regard to the right to display tattoos in the workplace.⁴³ It is a common view that tattooed, pierced, or branded persons are less responsible, unhealthier, and more rebellious than persons

³⁹ Brown, Stacy, *Pennsylvania tattoo parlors welcome proposed health regulations*, The Sentinel (Carlisle, PA October 10, 2012).

⁴⁰ American Red Cross, *Eligibility Requirements*, www.redcrossblood.org/donating-blood/eligibility-requirements/eligibility-criteria-topic#lifestyle (2013).

⁴¹ See e.g. Burleson Consulting, *Professional dress code and tattoos*, http://www.dba-oracle.com/dress_code_tattoos.htm (obviously biased editorial concerning dress code.)

⁴² Roan, Shari, *Social stigma drives some women to remove tattoos*, Los Angeles Times, http://latimesblogs.latimes.com/booster_shots/2008/07/social-stigma-d.html (July 21, 2008).

⁴³ *Roberts v. Ward*, 468 F.3d 963 (6th Cir. 2006). Numerous corporate-owned workplaces, as far understated by the Burleson Consulting article, do not allow employees to display any form of tattoos, including "liberal" employers such as Starbucks.

without any visible form of body art – in fact, such a view is so ubiquitous as to become subconscious in some cases.⁴⁴

One final issue with tattooing and piercing is liability insurance. Malpractice liability insurance is ubiquitous at medical facilities such as hospitals and doctors' offices, but Pennsylvania law did not even require dentists to carry malpractice insurance until 2012, when Act 65 was signed by Governor Corbett.⁴⁵ However, neither Pennsylvania nor any other state that I have found requires body art facilities to have any kind of liability insurance.⁴⁶

As one insurance carrier's website points out, a public tattoo or piercing establishment should have not only premises liability insurance, but also products liability insurance for jewelry or ink, and completed operations insurance to cover the actual procedures performed by artists.⁴⁷ At present, a client who receives any form of body art and ends up with health complications can certainly sue the artist and the facility, but if the complications have extreme financial consequences, the client will not be able to seek out the deep pockets of an insurance company.

One particular insurance company, Tribal Ink-Surance, advertises itself as the "forerunner in providing a national insurance program in all fifty states for the tattoo,

⁴⁴ See e.g. Yamrus, Carly, *Tattoos: Breaking the stereotype starting with Barbie dolls*, The Beacon, <http://www.thewilkesbeacon.com/opinion/2011/11/15/tattoos-breaking-the-stereotype-starting-with-barbie-dolls/> (Nov. 15, 2011); Associated Press, *Body Art and Tattoos in the Workplace*, Fox News, <http://www.foxnews.com/story/0,2933,223178,00.html> (October 21, 2006).

⁴⁵ 63 P.S. § 122.2 (effective August 21, 2012); see also *Under New Law, Penn. Dentists Now Required to Buy Liability Insurance*, Insurance Journal, <http://www.insurancejournal.com/news/east/2012/07/13/255607.htm> (July 13, 2012).

⁴⁶ I was not able to do a comprehensive search of every single state statute and regulation, but a cross-referenced Westlaw/Lexis-Nexis search of "professional liability insurance," yielding tens of thousands of state statutes/regulations concerning professional licensing, did not reveal a single statute or regulation which required that professional licensed tattoo parlors carry liability insurance.

⁴⁷ Business Insurance USA, <http://businessinsuranceusa.com/tattoo-piercing-parlor-business-insurance> (accessed Apr. 18, 2013).

cosmetic tattoo, permanent make-up, and piercing industry.”⁴⁸The actual insurance agency behind Tribal Ink-Surance is Mourer-Foster Insurance, which also supplies insurance for the taxi and dog kennel industries.⁴⁹ Tribal Ink-Surance offers predominantly liability insurance coverage, but also property and worker’s compensation.⁵⁰ Considering that insurance on tattoo and piercing parlors appears to be readily available, it does not seem unreasonable to require Pennsylvania body art facilities to possess at least liability coverage.

III. EXISTING LAW

A. OSHA and other federal guidelines.

The Occupational Safety and Health Administration (OSHA) provides health and safety guidelines for all employers and employees in the nation, including those who are susceptible to “occupational exposure” to blood or other potentially infectious materials.⁵¹ Occupational exposure is defined in Section 1910.1030(b) as “reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.”⁵² Therefore every body art facility in the country that qualifies as an employer is subject to the guidelines, because tattooing, body piercing, and arguably even branding involve parenteral contact with bodily fluids.⁵³

⁴⁸ TribalInkSure website, <http://www.tribalinksurance.com/> (accessed April 20, 2013).

⁴⁹ Mourer-Foster website, <http://www.mourerfoster.com/> (accessed April 20, 2013).

⁵⁰ Tribal Ink-Surance website, <http://www.tribalinksurance.com/> (accessed April 20, 2013).

⁵¹ 29 C.F.R. § 1910.1030 (2012).

⁵² *Id.* at 1910.1030(b).

⁵³ 29 C.F.R. § 1910.2, Definitions, defines “employer” as “a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.”

As mentioned, body artists hold themselves to a high level of safety, and may already follow many of the mandatory provisions in Section 1910.1030(d).⁵⁴ However, every body art facility in the country should also have a written, annually updated Exposure Control plan which specifically evaluates and classifies occupational exposure.⁵⁵ Each facility's operator should provide employees with a Hepatitis B vaccination,⁵⁶ a "biohazard" sign should be posted on every garbage can or disposal container,⁵⁷ and each facility must keep meticulous records concerning exposure, employee vaccinations, and employee training.⁵⁸

Needless to say, because the body art industry is self-regulated in states without any formal inspection process, it is doubtful that most body art facilities scrupulously follow *all* OSHA guidelines. For example, as recently as 2002, some tattoo artists were re-using portions of needle bars rather than disposing of the entire bar; in response to this practice, OSHA specifically stated that this was a violation of federal bloodborne pathogen guidelines, and that such a practice was not only dangerous, but illegal.⁵⁹

Most other federal regulation is either advisory rather than mandatory, or creates public awareness or information dissemination initiatives. For instance, the Centers for Disease Control (CDC), an administrative agency organized under the United States Department of Health and Human Services (DHHS), mainly focuses on the creation of "expertise, information, and tools that people and communities need to protect their health – through health promotion, prevention of disease, injury and disability, and

⁵⁴ 29 C.F.R. § 1910.1030. Mandatory provisions include the use and disposal of gloves, sanitary hand-washing, immediate needle disposal, equipment sterilization, and various other health and safety measures.

⁵⁵ 29 C.F.R. § 1910.1030(c).

⁵⁶ *Id.* at 1910.1030(f).

⁵⁷ *Id.* at 1910.1030(g).

⁵⁸ *Id.* at 1910.1030(h).

⁵⁹ Fairfax, Richard E., Dir., *Applicability of the Bloodborne Pathogens standard to the tattoo and body piercing industries*, OSHA Interpr. Ltr. (July 29, 2002), www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=24453 (.).

preparedness for new health threats.”⁶⁰ So although the CDC has published materials about the health concerns of body art, none contain mandatory provisions that actually govern the industry.

The federal Food and Drug Administration (FDA), on the other hand, directly regulates the manufacturing, marketing, and distribution of millions of products.⁶¹ Technically tattoo ink is a cosmetic, and although the FDA does not regulate cosmetics, ink would fall under its one exception: color additives.⁶² Although few state laws require the use of FDA-approved tattoo ink, the universal usage of FDA-approved ink would make the tattoo industry much safer.

Similarly, the National Sanitation Foundation (NSF), an independent third-party certification organization, inspects and certifies various types of equipment.⁶³ I have not found a state statute which requires all body art facility autoclaves or sanitation equipment to be NSF-certified, but in another industry, most large restaurants use NSF-certified freezers, refrigerators, etc.⁶⁴ The Pennsylvania code also requires that all public water suppliers use ANSI/NSF-certified chemicals.⁶⁵ So although many body art facilities may choose to use entirely pre-packaged, pre-sterilized jewelry and equipment,

⁶⁰ CDC website, *About the CDC*, <http://www.cdc.gov/about/organization/cio.htm> (updated Dec. 14, 2012).

⁶¹ FDA website, *What Does the FDA Regulate?*, <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194879.htm> (updated Apr. 12, 2013).

⁶² FDA website, *Is It Really FDA Approved?*, <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm047470.htm> (updated Apr. 12, 2013).

⁶³ Natl. Sanitation Fdn. (NSF), *About the NSF*, http://www.nsf.org/business/about_NSF/ (accessed Apr. 19, 2013).

⁶⁴ Restaurants do this primarily because of local or municipal laws and state regulations: when my parents started an in-home catering business, our municipality required that they purchase NSF-certified refrigerators, sinks, tables, ovens, and freezers.

⁶⁵ 25 Pa. Code 109.606, Chemical materials and equipment (Oct. 8, 1994). ANSI is the American National Standards Institute. Forty-three other states have also adopted this requirement in either regulation or policy: see DX Group website, *What does NSF certification mean?* <http://www.dxgroup.com/nsf.html> (updated 2013).

NSF-certified autoclaves would ensure a statewide standard of sterilization for those that wish to re-use equipment.

B. Pennsylvania and body art facilities.

The Pennsylvania legislature adopted OSHA's bloodborne pathogen standards in 2001, and although far more limited than the federal guidelines, the adopted rules were codified into Title 35 (Health & Safety) of the Pennsylvania Consolidated Statutes and were titled the Bloodborne Pathogen Standards Act.⁶⁶ Unfortunately, Section 3 states that "within six months of the effective date of this Act," the Department of Health shall adopt regulations in conformity with OSHA's guidelines.⁶⁷ Naturally, nearly 12 years have passed and the Department of Health has yet to promulgate any such regulations, so the Commonwealth has no statewide guidelines for bloodborne pathogen standards.

In September 2012, House Bill 2617 (H.B. 2617) was introduced in the House of Representatives by Rep. DeLuca, Kotik, Gingrich, Hess, Milne, Quinn, Schmotzer, and Josephs.⁶⁸ The bill does not have a short title, and is currently titled "An Act regulating tattoo, body-piercing and corrective cosmetic artists; limiting tongue splitting; providing for powers and duties of the Department of Health; and imposing penalties."⁶⁹ At approximately 2,800 words, the bill is a third the length of the comparable California statute (8,000 words), and also requires that the Department of Health later promulgate regulations to supplement almost every section of the statute.⁷⁰ The Health Committee of the House was given the bill for the 2012 and 2013-2014 sessions, but it has not yet

⁶⁶ 35 P.S. § 635.1 *et seq.*

⁶⁷ *Id.* at 635.3.

⁶⁸ Pennsylvania H.B. 2617, 196th Legis., Session of 2012 (Sept. 12, 2012).

⁶⁹ *Id.*

⁷⁰ *Id.* at Section 4. This is actually the more common practice in the U.S.; *see* Appendix A.

been reviewed.⁷¹ It is publicly supported by many tattoo artists, who agree that only artists who follow basic sanitation and sterilization standards should be permitted to practice body art.⁷²

In response to the ever-growing popularity of the body art industry, municipalities have enacted body art laws to increase safe practices, and the bill has a section which allows municipalities to establish individual guidelines for tattoo artists within their jurisdiction.⁷³ For example, it would not interfere with the set of ordinances which the City of Philadelphia's Department of Public Health, Law Department, and Records Department established in 2002 to set up a tattoo and piercing certification program.⁷⁴

Under the Philadelphia regulations, any body artist who wishes to operate within city limits must first obtain a certificate from the Department of Public Health;⁷⁵ this is similar to H.B. 2617's requirement for body artists.⁷⁶ The qualifications are (a) proof of at least three years' apprenticeship to a body artist, prior certification, or full-time employment as a body artist for 18+ months; (b) proof that the body artist attended a bloodborne pathogens training at the Department or somewhere similar; and (c) a certification fee.⁷⁷

⁷¹ *Id.*; House website indicates that it was "Referred to Committee on Health, September 18, 2012," (<http://www.legis.state.pa.us/cfdocs/legis/home/bills/>, search "HB2617"), but Committee's website does not indicate that the bill is under review.

⁷² See e.g. Fuoco, Michael, *Pa. auditor urges licensing of tattoo parlors*, Pittsburgh Post-Gazette, October 10, 2012 (<http://www.post-gazette.com/stories/local/state/pa-auditor-urges-licensing-of-tattoo-parlors-656898/>); Keene, Alison, *A cleaner inkimage: Pennsylvania ponders tattoo regulations*.

⁷³ H.B. 2617 § 8, Powers of Municipalities.

⁷⁴ Philadelphia, Penn., *Regulations Governing Operation and Conduct of Tattoo and Body Piercing Establishments* (February 26, 2002). Administered by Philadelphia Dept. of Public Health, Environmental Engineering Division; http://www.phila.gov/health/pdfs/Body_art_regs.pdf.

⁷⁵ *Id.* at Section 2(B)(1).

⁷⁶ H.B. 2617 §§ 5(c)(1), 6.

⁷⁷ Philadelphia, Penn., *Regulations Governing Operation and Conduct etc.* at Section 2(B)(3).

Every body art facility must also obtain an operator's certificate from the Philadelphia Department of Public Health.⁷⁸ For these facilities, the Philadelphia ordinance provides dozens of facility and artist hygiene & safe practice guidelines, operating environment regulations, and record-keeping requirements.⁷⁹

C. Other States.

As mentioned, forty-one of the fifty states currently require body art facilities and body artists to register with either the state's Department of Health or with another state administrative agency that oversees professional licensing. Four states have particularly detailed and overarching body art legislation and regulation: Texas, Ohio, Vermont, and California. The vast majority of states control the body art industry via statutes which are later supplemented by administrative regulations, with the notable exception of California (entirely statutory) and Colorado (entirely regulatory).⁸⁰

The first three require mandatory registration of tattoo parlors with Department of Health or Office of Professional Regulation, and inspection thereby. In 1993, Texas first enacted the "Tattoo and Certain Body Piercing Studio Act," a statute which requires registration of body art facilities and body artists, and sets up an administrative structure for the Department of Health to inspect and register body art facilities.⁸¹ The statute is accompanied by comprehensive regulations, primarily for facility health, safety, and operator (i.e., body artist) standards.⁸² The licensing and registration system is funneled through the Texas Department of State Health Services, so a body artist

⁷⁸ *Id.* at Section 2(A).

⁷⁹ *See Id.* generally, Sections 3 through 8.

⁸⁰ *See* Appendix A, fifty-state survey of body art statutes and regulations in the United States. California: Cal. Health & Safety Code Ann. § 119300 *et seq.* (Jan. 1, 2012); Colorado: 6 Colo. Code Regs. 1010-22:1 *et seq.* (current through March 25, 2013).

⁸¹ Tex. Health Code Ann. § 146.001 *et seq.* (1993).

⁸² 25 Tex. Admin. Code § 229.401 *et seq.* (enacted 2000).

would have to consult both the statute and regulations to make sure they are meeting both the procedural (licensing/registration) and substantive (health/safety) standards under the system.

Vermont is almost a photo negative of Texas. Although the first step to body art regulation in that state is also enabling legislation, known as the “Tattooists and Body Piercists Act,” basically all the statute does is authorize a regulatory agency under the Secretary of State (the Office of Professional Regulation) to accept applications and inspect body art facilities.⁸³ All non-procedural requirements are contained in regulations later promulgated by the Office of Professional Regulation: the regulations discuss artist qualifications, facility operational standards, and safe medical practices.⁸⁴

Ohio is unique in that its laws do not technically require a statewide standard of health inspection: the Board of Health in each individual city or district is in charge of not only licensing and registering body artists and body art facilities, but also determining what standards are necessary for that licensure or registration.⁸⁵ That having been said, in 2008 the Ohio Health Department’s Public Health Council promulgated a series of detailed regulations which described what the city and district boards of health should be considering when approving licensing and registration, i.e., all the usual health and safety requirements.⁸⁶

California’s “Safe Body Art Act,” a comprehensive statutory system of regulation, inspection, and registration of body art facilities,⁸⁷ is potentially the most efficient system in the nation. Although the California legislature chose all health and safety

⁸³ Vt. Stat. Ann. tit. 26 § 4101 *et seq.* (1995).

⁸⁴ Vt. Admin. Code 20-004-018:1 *et seq.* (current through March 2013).

⁸⁵ Ohio Rev. Code Ann. § 3730.01 - 3730.99 (West 2012).

⁸⁶ Ohio Admin. Code 3701:9-01 - 3701:9-38 (2003).

⁸⁷ Cal. Health & Safety Code Ann. § 119300 *et seq.* (Jan. 1, 2012).

standards, so there is technically a minimum statewide standard, all administrative aspects of body art are regulated at the county or city level.⁸⁸ The “local enforcement agency,” defined in Section 119.301 as the health agency of whatever county, city, or municipality in which the body artist or body art facility is located, takes applications for body artist registration and for body art facility health permits.⁸⁹ After consulting the Safe Body Art Act, each individual local enforcement agency then issues health permits to body art facilities, and registers body artists.

California’s approach is the neatest: the statute technically supersedes any municipal ordinances, but an agency which already has local ordinances that regulate the body art industry (and are either more stringent or not in contradiction with the Safe Body Art) may continue to license and permit facilities and artists as it has in the past. So while registration and permit costs may vary from city to city, or county to county, there are no concerns about communicating with a statewide agency, and far less concerns about a due process challenge to the statute (because technically the municipalities have all the power.)

D. My project

The bill I wrote after researching and drafting this project is essentially a more extensive, comprehensive version of H.B. 2617: a statute which not only sets up the administrative structure for registration and licensure of body art facilities and body artists, but also provides the absolute minimum industry health and safety standards. The bill would create statutory sets in two Titles of the Pennsylvania Consolidated

⁸⁸ See Cal. Health & Safety Code Ann. §§ 119301.306, 29 C.F.R. § 119.312 (body artist and body art facility may not engage in body art without registering or obtaining health permit from “local enforcement agency”).

⁸⁹ *Id.*

Statutes: Title 35 (Health and Safety) and Title 63 (Professions and Occupations, State-Licensed).

The comprehensiveness of the statute will be similar to the Safe Body Art Act in California, in that the statute will provide all guidelines for the practice of body art, and the Department of Health may promulgate separate regulations if necessary to carry out the purposes of the Act. However, unlike California, another purpose of the statute will be to provide a state-wide registry of body art facilities, and municipalities will not be left in charge of licensing and registration. The Department of Health and the Department of State, both cabinet-level agencies run by governor-appointed Secretaries, would be the two main governmental agencies involved in the administration of body art standards.

H.B. 2617 invokes only powers and duties of the Department of Health in both inspection *and* registration of body artists and body art facilities.⁹⁰ This is rather disingenuous, considering that the Bureau of Professional and Occupational Affairs, an administrative agency organized under the Department of State, already oversees professional licensing within the state.⁹¹ Therefore in my proposed bill, the Department of State, rather than the Department of Health, would establish the Registry of Body Artists as a subset of the DOS. Then the Registry would work coterminously with the Department of Health to vet body art facilities prior to registration, and with the Bureau to license body artists.

Section I of the statute (Chapter 40 of Title 63), among other things: establishes the Registry; enumerates the powers and duties of both the Registry and the

⁹⁰ H.B. 2617 § 3 (definition of “Department” is DOH only), and generally.

⁹¹ Bureau of Occupational and Professional Affairs website, www.dos.state.pa.us/bpoa/.

Department of Health; sets up the procedures and licensure/registration application process for body artists and body art facilities; requires record-keeping and proper client screening/instruction; preserves existing municipal ordinances; and lays out the process of penalties, fines, and procedure.

More generally speaking, this section is a better-drafted, better-organized, more powerful version of H.B. 2617. In my statute, although both body artists and body art facilities must “register” with the Registry in order to preserve a central compendium of all Commonwealth artists and facilities, there is a difference between the terms “license” and “registration.” A license is issued to body artists, and registration certificates are issued to body art facilities. Part 2505 places the Bureau in charge of creating a licensure application for body artists, and the Department of Health must provide body art training for body artists who have not yet learned the basics of bloodborne pathogens. While the same section places the Registry in charge of registering body art facilities, the Department of Health must first enter the facility and ensure that it passes a health inspection.

Artists are considered qualified if they are over eighteen, have done or passed some kind of bloodborne pathogen training, and have the necessary experience in their field; generally, this experience is either an apprenticeship to another artist which has lasted 18 or more months, or full-time employment in their art for a year or more, or before the enactment of the Act. The Registry’s acceptance of applications is moderately discretionary, and if the artist doesn’t prove his or her qualifications to the Registry’s satisfaction, the Registry can require the artist to at least take a bloodborne pathogen training seminar so the artist knows state health and safety requirements. Information on body artist training is in Section II of the statute.

Although the Registry is in charge of accepting and organizing applications, all the professional licenses will still be funneled through the Bureau. However, several reasons exist for leaving the Registry predominantly in charge of body artist licensure. Many persons with whom I have spoken concerning this project have suggested that an independent body should take charge of the onerous task of setting up an entirely new administrative structure. Second, the Registry would hopefully have at least one body artist reviewing applications and determining whether body artists were as qualified as they claimed: I would suggest that a licensed body artist from Philadelphia, with ten or more years' experience in the field, be elected head of the Registry. Finally, even H.B. 2617 did not address the Bureau when discussing "registration" of body artists—and although this may have been a simple oversight, it would also be easier to keep licensure in the hands of the same administrative body that also oversees facility registration.

That having been said, a body art facility has to "prove" little to nothing to the Registry upon submitting an application for a registration certificate. The only notable requirement is that a facility must obtain business insurance before it can be registered. Upon receiving the application, the Registry will then contact the Department, and the Department will inspect the facility. If all the strictures of Section II, particularly Part 10230.105 through 107, are met, the Department will provide the Registry with a positive recommendation for the facility, and the Registry will issue a registration certificate to the facility. Presumably most facilities which apply for registration certificates will get them, because although the health and safety requirements are numerous, they are also basic and more or less common-sense.

Under Parts 2509 and 2511 the Registry has extremely broad powers to ensure that all health and safety requirements are met, and that all violations of the Act are

penalized. Generally the penalties are the same as those in H.B. 2617 (a third-degree misdemeanor for the first offense, possible revocation of registration/licensure for other violations, and injunctive relief for repeated offenses) but all provisions are discretionary. If the body artist or facility can prove a mistake or oversight, the Registry can agree not to take action.

I did not include a fee schedule in the statute. The Registry might choose to enact moderate fees, such as the Philadelphia ordinance (\$40 per artist and \$100 per facility) or more severe fees, such as that of Maine (\$250 to \$400, depending on what kind of body art would be performed at the facility). Moreover, the “municipal ordinances preserved” part of the statute lays out in plain language that if a body artist or facility’s municipality has an existing set of body art laws, that the body artist or facility is required to abide by those laws, and the Act does not interfere. However, all artists and facilities must still be licensed or registered with the Commonwealth’s Registry, and must adhere to its minimum standards.

Section II of the statute (Chapter 60 of Title 35) comprises what would be Department of Health regulations in most other states, and the section headings plainly describe themselves. This section provides the baseline requirements for body artist training by the Department of Health; delineates health & safety rules for the actual practice of body art; lays the foundation for basic physical sanitation and sterilization of body art facilities and equipment; describes proper body art aftercare; and requires that each body art facility keep a Safe Practice Plan.

This section contains a separate set of definitions from the previous section, which includes less administrative language (“registration” and “licensure” are not defined terms) but defines a slew of health- and safety-related terms such as

“disinfectant,” “sterilization,” and “decontaminate.” These terms are heavily peppered throughout Parts 10230.105 (Medical and safety rules for the practice of body art), 10230.106 (Body art facility and inspection standards), and 10230.107 (body art equipment and jewelry). Most of the language in this half of the Act is taken from either the California statutes or the Texas regulations; however, I did not like the organization of either set of laws. Ergo, I have organized the sections so that an artist or facility could easily find what laws they are seeking: Part 10230.105 provides specific rules for the actual *practice* of body art (e.g. what an artist should do while tattooing, and sterilization of instruments/jewelry); Part 10230.106 tells an owner exactly how a body art facility should be set up, and what the Department will be looking for when it performs an inspection; and Part 10230.107, in addition to what Part 10230.105 already provided, instructs body artists how to take care of their equipment, and what kind of equipment and jewelry is allowed.

Section II also gives specific guidelines for body artist training and after-care of body art. Under Part 10230.104, the Registry must offer Body Artist Trainings at least once per year; the trainings will ideally be led by a trained and licensed body artist, and will last approximately two hours. The instructor will hand out a copy of the Body Art Act itself, the Pennsylvania Bloodborne Pathogen Standards Act, any regulations enacted by the Department which have to do with body art, and a copy of any municipal ordinances or laws which might apply. Then the instructor will discuss bloodborne pathogens, the use of gloves, sterilization, hand hygiene, disinfectants and sanitation, and the application of all that information to the actual practice of body art. Each body art facility must keep records of individual artist training.

I confess that much of Part 10230.108 (Body art after-care) is written with a bias towards the advice of tattoo and piercing artists, instructions on the American Piercing Association and Association of Professional Tattooists websites, and my personal experiences with receiving and taking care of body art. Body artists very rarely give comprehensive after-care instructions to clients, and this section of the statute not only provides what the instructions should be, but mandates that the body artist give those instructions immediately after the body art is performed.

The final substantive section of the statute is Part 10230.109, Safe Practice Plan. To body art facilities, this section may appear to be a hindrance, because it requires that each facility draw up a comprehensive plan for how the facility is to be sanitized, schedules for when instruments and jewelry must be sterilized, etc. However, a Safe Practice Plan will ideally make it *easier* for the body art facility to be in compliance with the Act and with state or federal guidelines on bloodborne pathogens. For instance, if the facility keeps a rotating schedule so that the artists know when they are responsible for re-sterilizing all the jewelry or reusable instruments, there is no chance that when the Department comes for an unexpected inspection, the facility will get in trouble for unsterilized equipment.

IV. CONCLUSION

I have contacted Representative DeLuca, one of H.B. 2617's original proponents, and intend to discuss the bill when I meet with him. Although Rep. DeLuca was unfortunately not available until after the session ends, I do intend to ask whether my version of the bill could be provided to staffers of the Representatives who submitted the bill, so that it can be either substituted for that bill or its provisions can be *added* to that

bill. I will also provide the staffers with a copy of Maine's body art facility registration form and the Health Inspection Program's fee schedule,⁹² because the two documents provide an excellent example of how the Bureau and Registry could set up licensing and registration in Pennsylvania.

If I do get a green light from the representatives and their staffers, I would also like to approach several well-respected Pittsburgh body artists and ask for their opinions and suggestions. Basically the only major complaint about H.B. 2617 was that the legislature failed to consult any body artists in regard to licensure and registration. If they could provide reasonable insights on how to properly qualify body artists, and how to make sure all body artists are bringing their practices up to the minimum health and safety standards, I would see that their suggestions were communicated to the Representatives.

Genevieve Pecharka

⁹² Maine Dept. of Health & Human Serv., Ctr. for Disease Control & Preventn., Body art facility application and Health inspection registration (Rev. Aug. 20, 2012); Maine Dept. of Health & Human Serv., "Health Inspection Fee Schedule FY 2013: July 1, 2012 – June 30, 2013" (rev. Mar. 19, 2013).

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

?????? Session of
No. 2013

INTRODUCED BY.....

AN ACT

Comment [1]: Source: H.B. 2617

Adding to TITLES 63 (PROFESSIONS AND OCCUPATIONS, STATE LICENSED) and TITLE 35 (HEALTH AND SAFETY) of the Pennsylvania Consolidated Statutes, requiring the training and licensure of body artists; requiring the registration and inspection of body art facilities with the Bureau of Professional and Occupational Affairs; providing for powers and duties of the Department of Health; providing minimum health- and safety-related standards for the operation of body art facilities; AND imposing related penalties.

Comment [2]: Source: H.B. 2617

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Comment [3]: Source: H.B. 2617

Section I. Creating CHAPTER 40: BODY ART ACT in Title 63 (Professions and Occupations) of the Pennsylvania Consolidated Statutes (63 P.S. §§ 2501-2513).

§ 2501: Short title and cross-references.

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§ 2508: Exemptions from licensure and registration requirements.

§ 2509: Restrictions on the practice of body art.

§ 2510: Reports and maintenance of records.

§ 2511: Penalties, fines, and procedures.

§ 2512: Municipal ordinances preserved.

Comment [4]: Source: H.B. 2617 (different section numbers and slightly different titles.)

Comment [5]: Source: H.B. 2617 (different section numbers and slightly different titles.)

Section II. Creating CHAPTER 60: BODY ART ACT in Title 35 (Health and Safety) of

the Pennsylvania Consolidated Statutes (35 P.S. §§ 10230.101-10230.113)

- § 10230.101: Short title and cross-references.
- § 10230.102: Legislative purpose.
- § 10230.103: Definitions.
- § 10230.104: Body artist training.
- § 10230.105: Medical and safety rules for the practice of body art.
- § 10230.106: Body art facility environment and inspection standards.
- § 10230.107: Body art equipment and jewelry.
- § 10230.108: Body art after-care.
- § 10230.109: Safe Practice Plan.
- § 10230.110: Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Comment [6]: Source: H.B. 2617

Section I. CHAPTER 40: BODY ART ACT in Title 63 (Professions and Occupations) of the Pennsylvania Consolidated Statutes (63 P.S. §§ 2501-2513).

§ 2501. Short title and cross-references.

This act shall be known and may be cited as the Body Art Act. Sections in this title are co-extensive with Chapter 60 of Title 35 of the Pennsylvania Consolidated Statutes (Sections 10230.101-10230.113.)

Comment [7]: "Body art" being a handy term to encompass piercing, tattooing, and corrective cosmetics, I cribbed it from the California and Vermont codes, and from the Philadelphia ordinance

§ 2502. Legislative intent.

Comment [8]: Source: H.B. 2617 § 2

It is the intent of the General Assembly to establish health standards for the practice of tattooing, body piercing, branding, and corrective cosmetics within this Commonwealth, and to establish a central registry of body artists and body art facilities across the Commonwealth. This will be achieved through the imposition of this act, the registration and licensure of all body artists who practice their art within the Commonwealth, and the registration and inspection of all body art facilities within the Commonwealth.

§ 2503. Definitions.

When used in this act, the following words and phrases shall have the meanings

given to them in this section unless the context clearly indicates otherwise. Any definition phrased in the singular or masculine form shall also apply to situations involving the plural or feminine form.

Comment [9]: Source: H.B. 2617 § 3

“Act” means the Body Art Act, 63 P.S. §§ 2501–2512 and 35 P.S. §§ 10230.101-10230.113.

Comment [10]: H.B. 2617 § 3

“Body art” means piercing, corrective cosmetics, tattooing, or branding.

Comment [11]: Source: Cal. Health & Safety Code Ann. § 119301(c).

“Body art facility” means any building, including a parlor, booth, kiosk, or shop, where a body artist practices body art. The term includes but is not limited to reception areas, restrooms, foyers, areas where body art is performed, and decontamination/sterilization areas.

Comment [12]: Cal. Health & Safety Code Ann. § 119301(d).

“Body artist” means a person who performs one or more of the four forms of body art (piercing, corrective cosmetics, tattooing, or branding).

“Branding” means the process by which a mark or marks are burned into or otherwise produced on human skin tissue with a hot iron, electrocautery gun, or other instrument with the intention of leaving a permanent scar.

Comment [13]: Source: Cal. Health & Safety Code Ann. § 119301(f).

“Branding artist” means a person who physically performs or supervises the performance of branding on another person.

Comment [14]: Source: Cal. Health & Safety Code Ann. § 119301(f).

“Bureau” means the Pennsylvania Bureau of Professional and Occupational Affairs, an administrative agency organized under the Pennsylvania Department of State that oversees and administrates professional licensing in the Commonwealth.

“Client” means a person requesting the application of a tattoo, piercing, brand, or corrective cosmetics.

“Corrective cosmetic artist” means any person who physically performs or supervises the performance of corrective cosmetics on another person.

Comment [15]: Source: H.B. 2617 § 3

“Corrective cosmetics” means the application of tattoos on a live human being for medical or cosmetic situations that could not be otherwise corrected or improved, including but not limited to burn scars, acne scars, age spots, and skin discoloration due to loss of pigmentation. The term includes the permanent cosmetics, or the permanent application of pigments to human skin tissue for the purposes of coloring, and includes but is not limited to permanent eyeliner, eyebrow, or lip color.

Comment [16]: Source: H.B. 2617 § 3.

“Department” refers to the Pennsylvania Department of Health.

Comment [17]: Source: H.B. 2617 § 3.

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

Comment [18]: Source: Cal. Health & Safety Code Ann. § 119301(l).

“Facial tattoo” means a tattoo that is applied above the neck, including but not limited to tattoos on the eyelids, eyebrows, lips, the scalp, or cheeks.

Comment [19]: Source: H.B. 2617 § 3.

“Full-time” means that a person’s primary occupation for income tax purposes is the practice of body art, or that the person practices body art for thirty-five (35) or more hours per week.

“Identification” means a document issued by a state, federal, or foreign government containing the photo and birth date of the person it is identifying.

“License” refers to physical documentation that, pursuant to a body artist’s application for licensure with the Bureau, is issued after approval by the Registry and/or Department.

Comment [20]: It’s an easy differentiation between a body art facility and a body artist: the former is issued a “registration” and the latter is issued a “license.”

“Licensed” means that a body artist has applied for and been issued a body artist license by the Registry and the Bureau pursuant to this Act.

“Licensed medical professional” means a practicing physician, surgeon, nurse, dentist, or midwife who currently holds a professional license issued by the Bureau

under Title 63 of the Pennsylvania Statutes.

“Local enforcement agency” means the local health agency of the county, city, or municipality in which the body art facility is situated, or any combination thereof. 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.

Comment [21]: Source: Cal. Health & Safety Code Ann. § 119301(o).

“Owner” means a person whose name appears on the health permit, business license, property deed, or rental agreement of a body art facility. The term includes any person who acts as principal of a corporation or partnership and who employs body artists.

Comment [22]: Source: Cal. Health & Safety Code Ann. § 119301(g).

“Piercing” or “body piercing” means the process of breaching the skin or mucous membrane for the purpose of insertion of any object, including but not limited to jewelry for cosmetic purposes. The term includes but is not limited to piercing of the lip, tragus, ear cartilage, tongue, nose, cheek, eyebrow, genitals, nipples, or other skin of the body.

Comment [23]: Source: H.B. 2617 § 3

“Piercing artist” means any person who physically performs or supervises body piercing on another person.

Comment [24]: Source: H.B. 2617 § 3

“Registered” means a body art facility that has applied for a registration certificate with the Registry, has been inspected and approved by the Department, and has been issued a registration certificate by the Registry.

“Registrant” means either a person who has been issued a body artist license and has been registered with the Registry, or a body art facility that has been issued a registration certificate.

Comment [25]: This term was used in H.B. 2617 (the section concerning municipal ordinances) but was not defined.

“Registration” or “registration certificate” means physical documentation that is

issued after application for registration by a body art facility, inspection of the facility, and approval by the Registry.

“Registry” means the Registry of Body Artists and Body Art Facilities.

Comment [26]: H.B. 2617 § 3

“Sharps injury log” means a written or electronic record of sharps injuries, kept pursuant to 35 P.S. § 631.1 *et seq.* and Section 2510 of this Act (63 P.S. § 2510, Reports and maintenance of records).

“Tattoo” means an indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin using needles, scalpels, or other related devices. The term does not include branding.

Comment [27]: Sources: H.B. 2617 § 3, Cal. Health & Safety Code Ann. § 119301(z), 25 Tex. Admin. Code § 229.401(31).

“Tattoo artist” means any person who physically performs or supervises tattooing on another person.

Comment [28]: Source: H.B. 2617 § 3.

“Temporary body art facility” means any establishment that performs body art and is not in a fixed location for more than seven days, or is operated in conjunction with an event or celebration.

Comment [29]: Source: H.B. 2617 § 3.

§ 2504. Establishment of the Registry of Body Artists and Body Art Facilities.

Comment [30]: Source: H.B. 2617 § 4.

The Pennsylvania Department of State shall establish by regulation the Registry of Body Artists and Body Art Facilities, an administrative agency that shall be empowered to license and register body artists and body art facilities that operate within the Commonwealth, to co-extensively inspect body art facilities with the Department, and to issue fines or penalties to body artists and body art facilities not in compliance with the Act. All persons who perform body art within the Commonwealth must meet the requirements of this Act and be licensed by the Registry; all body art facilities in operation within the Commonwealth must meet the requirements of this Act and be

registered by the Registry.

§ 2505. Powers and duties.

(a) In the exercise of its duties under the Act, the Department shall have the power to adopt such regulations as are reasonably necessary to supplement this Act. Such regulations shall be adopted in conformity with the provisions of the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act.

Comment [31]: Source: H.B. 2617 § 5.

Comment [32]: Source: H.B. 2617 § 5(a).

(b) The Registry shall work with the Bureau to create and maintain standard forms for a professional body artist licensure application, and shall make these forms available for applicants. The Registry shall also ensure that the forms are publicly posted on the Bureau and Department websites.

(c) The Registry shall work with the Department to create and maintain standard forms for registration of body art facilities, and shall make these forms available for applicants. The Registry shall also ensure that the forms are publicly posted on the Bureau and Department websites.

(d) The Registry shall maintain a fee schedule for body artist licenses and body art facility registration certificates according to the following criteria:

(i) Any fee for a license or registration shall not exceed the cost necessary to actually file and/or process the license or registration through the Bureau, the Registry, and the Department;

Comment [33]: The Philadelphia ordinance assesses a flat \$100 per facility and \$40 per artist, in Maine, the applicant must pay \$200-275, depending on what type of body art is practiced.

(ii) The schedule shall include renewal fees for licensees or registrants wishing to renew expired licenses and registration certificates, and the renewal fees shall not exceed one-half (1/2) of the initial registration fees; and

(iii) The fee schedule shall be available through the Registry, and the Registry shall ensure that the fee schedule is publicly posted on the Bureau and

Department websites alongside registration and license applications.

(e) The Registry shall accept license applications from all body artists, and may grant licenses to those body artists whose qualifications fulfill the requirements of 63 P.S. § 2506 (Body Artist Qualifications and Body Artist Licensure), but shall deny license applications that indicate the body artist does not possess the requisite qualifications.

(f) The Registry may investigate any reportedly unregistered but operational body art facility and may levy appropriate fines and/or penalties according to Section 251s of this Act (63 P.S. § 2511) if the body art facility does not comply with this Act. The Registry may also investigate any reportedly unlicensed but practicing body artist and may levy appropriate fines and penalties according to Section 2512 of this Act (63 P.S. § 2511).

Comment [34]: Adapted from H.B. 2617 § 5(d).

(g) Prior to issuing a registration certificate, the Department shall inspect any body art facility, regardless of whether the facility is presently operational. See Section 2507 of this Act (63 P.S. § 2507, Body art facility inspection and registration.) The Department may also conduct discretionary inspections of registered body art facilities as necessary to carry out this Act. (h) The Registry may grant a facility registration to any body art facility that has been inspected by the Department and meets facility requirements. See Section 2507 of this Act (63 P.S. § 2507, Body art facility inspection and registration).

(i) The Registry shall provide Body Artist Training for body artists who wish to be licensed within the Commonwealth, but who do not meet the qualifications of 63 P.S. § 2506 (Body Artist Qualifications and Licensure). Body Artist Training shall include: training in bloodborne pathogens; other medical risks of body art; safe practice of body

art; after-care of body art; and all content described in 35 P.S. § 10230.104 (Body artist training).

(k) The Registry is empowered to enforce any provision of either the Pennsylvania Bloodborne Pathogen Standards Act (35 P.S. § 631.1 *et seq.*) or the Occupational Health and Safety Administration guidelines on bloodborne pathogens (29 CFR § 1910.30 *et seq.*) that is not specifically enumerated under this Act, but which applies to either a body art facility or a body artist, as defined by this Act.

(l) The Registry may run a criminal background check on any applicant, and a body artist's license may be revoked under Section 2511 of this Act (63 P.S. § 2511, Penalties, fines, & procedures) for certain convictions related to controlled substances, and if the body artist fails to disclose a prior conviction. However, if the body artist discloses a prior conviction at the time of application for a license, or even if the Registry later discovers that the body artist did not disclose a prior conviction, the Registry may not deny or revoke the body artist's application for licensure solely on the basis of the prior conviction, but must make an independent determination that the nature of the crime of which the body artist was convicted would prevent the body artist from safely and responsibly practicing body art.

(m) The Registry and the Department have the discretion to collaborate and create additional regulations to deal with the inspection, registration, and operation of temporary body art facilities.

(n) The Registry shall create and maintain a central registration database of all Commonwealth-licensed body artists and Commonwealth-registered body art facilities. This database shall include but not be limited to the following:

(i) The artist's licensure date, or the facility's registration date;

Comment [35]: This is not in H.B. 2617 or any other law I'm consulting, but I want it in here. There's no reason an old felony, especially one of sheer stupidity, should prevent a body artist from getting a license.

Comment [36]: H.B. 2617 did not deal with temporary facilities, and I did not like the way other states dealt with temporary facilities. Moreover, I think temporary tattoo and piercing parlors (i.e. the ones you see at county fairs) are dangerous and unsafe, so in my draft of the bill, it is up to the Department's discretion to allow temporary facilities more leeway than permanent facilities.

- (ii) The expiration date of the artist's license or the facility's registration;
- (iii) The entity's contact information (name, verifiable telephone number, address, and email); and
- (iv) Dates upon which the artist received Registry training, or when the facility was inspected by the Department.

§ 2506. Body artist qualifications and licensure.

(a) A body artist may not practice body art within the Commonwealth of Pennsylvania unless he or she has applied for and been granted a license from the Registry; nor may any person hold himself or herself out as a body artist of any kind unless the person has applied for and been granted a license from the Registry.

Comment [37]: Source: H.B. 2617§ 9(a)

(b) To qualify for a license, an applicant must provide documentation showing one or more of the following:

(i) That the applicant has previously held a license;

Comment [38]: Source: Philadelphia, Penn., Regulations Governing Operation and Conduct of Tattoo and Body Piercing Establishments, § 2(B) (February 26, 2002).

(ii) That the applicant attended and obtained a specialization in body art at a vocational school or university at which the applicable form of body art was taught by a body artist licensed under this Act and where the applicant received body artist training equivalent to that offered by the Registry;

(iii) That the applicant was employed as a full-time body artist at a body art facility, either before the effective date of this act or for a period of one (1) or more years prior to application, and that during the course of that employment the applicant received body artist training equivalent to that offered by the Registry;

Comment [39]: Partially based on Philadelphia, Penn., Regulations Governing Operation and Conduct of Tattoo and Body Piercing Establishments, § 2(B) (February 26, 2002).

(iv) That the applicant has been apprenticed to a full-time licensed body artist for a period of eighteen (18) months or more, and has either received on-the-job or formal body artist training equivalent to that offered by the Registry; or

(v) That the applicant is currently apprenticed to a full-time licensed body artist, and has attended a Body Artist Training (see 35 P.S. § 10230.104, Body Artist Training) provided by the Registry.

Comment [40]: Subtle difference from the latter section: if the applicant has already been on the job for 18-plus months, the licensed body artist might already have provided training.

(c) An applicant must also provide ALL the following:

(i) Documentation from a licensed medical professional showing that the applicant has a current hepatitis B vaccination, including applicable boosters, unless the applicant can demonstrate hepatitis B immunity, or has complied with current federal OSHA hepatitis B vaccination declination requirements;

Comment [41]: Source: Cal. Health & Safety Code Ann. § 119306(b)(1)

(ii) Documentation from licensed medical professional showing that the artist is free from easily communicable diseases; or documentation of a recent (within the past three [3] years) physical examination;

(iii) Identification showing that the applicant is 18 years of age or older;

Comment [42]: This is ubiquitous to almost every body art statute or regulation.

(iv) Documentation of the applicant's business address and any address at which the applicant will perform any activity regulated under this Act; and

Comment [43]: Source: Cal. Health & Safety Code Ann. § 119306(b)(6).

(v) A licensure fee, paid to the Registry.

(d) Once obtained, a body artist license is valid for a period of three (3) years subsequent to the date of its issuance, subject to revocation for the body artist's failure to comply with this Act. When the license expires, the body artist shall submit a renewal for license application, or must cease performing body art.

Comment [44]: H.B. 2617 did not indicate how long a license would last; the Philadelphia ordinance suggested 3 years.

(e) The license (or a copy of the license) shall be posted in a prominent and conspicuous place in the body artist's place of employment, where the license may be readily observed by clients.

Comment [45]: Based on Philadelphia, Penn., *Regulations Governing Operation and Conduct of Tattoo and Body Piercing Establishments*, § 2(B)(7).

§ 2507. Body art facility inspection and registration.

Comment [46]: Partly based on California Safe Body Art Act § 119312.

(a) No person may operate a body art facility unless the facility has been

inspected and approved by the Department, and has applied for and been granted a registration certificate from the Registry.

(b) All body art facilities within the Commonwealth shall submit an application for registration with the Registry, whether presently operating or setting up for future operations. This application shall include:

(i) A registration or renewal fee, paid to the Registry according to the fee schedule established by the Registry;

(ii) A copy of the body art facility's Safe Practices Plan, in compliance with 35 P.S. 10230.109(Safe Practice Plan);

(iii) A copy of the registration application form; and

(iv) Documentation showing that the body art facility has obtained business insurance for the practice of body art in the facility, including but not limited to liability insurance, property insurance, and worker's compensation insurance.

(c) Upon receiving a complete application, the Registry contact the Department to ensure that the body art facility undergoes a health inspection. The Department's inspection shall ensure that the facility meets the requirements of Sections 10230.105 through 10230.107 of this Act (35 P.S. § 10230.105-10230.107) and the statutory health and safety requirements set forth therein, as well as the Pennsylvania Bloodborne Pathogen Standards Act (35 P.S. § 631.1 *et seq.*) and the Occupational Safety & Health Administration guidelines on bloodborne pathogens (29 CFR § 1910.30 *et seq.*).

(d) Upon inspection, if the Department determines that the body art facility is not in compliance with this Act and the above laws, it shall immediately inform the Registry that the application should be denied, and shall issue a report to the applicant which details the Department's decision. The applicant shall have six (6) months in which to

Comment [47]: Based on Philadelphia, Penn., Regulations Governing Operation and Conduct of Tattoo and Body Piercing Establishments, and upon H.B. 2617. However, I basically rewrote and reorganized everything I used, to the point where I can't even identify which sections belong to which sources.

renew its application, and to ensure that the facility is in compliance with subsection (c) of this section.

(e) Upon inspection, if the Department determines that the body art facility is being operated or will be operated in compliance with this Act, the Department shall submit an affirmative report to the Registry indicating that the facility is qualified for registration. Upon receipt of an affirmative report from the Department, the Registry shall then issue a registration certificate to the body art facility if the facility is otherwise qualified for registration.

(f) A registration certificate shall be valid for a period of three (3) years subsequent to the date of its issuance, subject to revocation for the body art facility's failure to comply with this Act. A body art facility that wishes to renew an expired registration certificate must be re-inspected by the Department and must pay a renewal fee to the Registry before continuing to operate as a body art facility.

(h) Temporary body art facilities shall be assessed for health and safety standards by the Department in the same manner as permanent body art facilities and are subject to the same registration and fee requirements as permanent body art facilities, unless the Registry and Department collaborate to establish separate standards.

§ 2508. Exemptions from licensure and registration requirements.

(a) Nothing in this Act shall be construed to regulate the strictly aesthetic aspects of body art, if unrelated to health, sanitization, sterilization, or safety standards.

Comment [48]: Source: H.B. 2617 § 5(f).

(b) Licensed medical professionals are exempt from this Act when utilizing body art as a specific part of patient treatment or rehabilitation.

(c) Funeral directors licensed in this Commonwealth are exempt from this Act when utilizing body art as a part of their profession.

(d) Nothing in this Act shall require the registration of corrective cosmetics facilities physically located in a licensed medical professional's office, hospital, or clinic. The aforementioned facilities themselves are also exempt from facility registration requirements.

Comment [49]: Source: H.B. 2617 § 14.

§ 2509. Restrictions on the practice of body art.

(a) Prohibitions — It shall be unlawful for a body artist to:

(i) Perform body art on a minor person without the physical presence and written consent of the person's parent or legal guardian, pursuant to 18 Pa. C.S.A. § 6311;

Comment [50]: Source: H.B. 2617 § 7(a).

(ii) Administer anaesthetic injections, medications, or prescription drugs;

Comment [51]: Source: H.B. 2617 § 9(c).

(iii) Perform facial tattoo services on any person, unless the body artist is a licensed medical professional;

Comment [52]: Source: H.B. 2617 § 9(d). I don't know the purpose behind this section.

(iv) Perform tongue-splitting, defined as the cutting of a human tongue into two or more parts, on any person, unless the tongue splitting is performed by a licensed medical professional and is deemed medically necessary;

Comment [53]: Source: H.B. 2617 § 10(a). I can't imagine how often would this occur, tongue-splitting is a form of body art I simply don't understand.

(v) Perform body art on the nipples or genitals of a minor person, unless the body artist is a licensed medical professional, and the person's parent or legal guardian provides written consent;

Comment [54]: Source: Cal. Health & Safety Code Ann. § 119302(d).

(vi) Perform body art in a body art facility that has not been lawfully registered with the Registry and inspected by the Department; or

(vi) Perform body art upon a person who is visibly under the influence of alcohol or another drug;

Comment [55]: 25 T.A.C. § 229.406(f).

(b) Tattooing of minors without parental presence and written parental consent is permitted when the minor is requesting cover-up art of an existing tattoo, and the

tattoo is one or more of the following:

- (i) Offensive or hate-based language;
- (ii) An obscene graphic; or
- (iii) A verifiable gang symbol.

Comment [56]: This is based on a similar section in 25 Tex. Admin. Code § 229.406(d).

(c) A body artist or body art facility may refuse to perform body art on a minor, regardless of parental or guardian consent, and a client must be at least 18 years of age to be offered or to receive a branding, regardless of parental consent.

Comment [57]: Source: Cal. Health & Safety Code Ann. § 119302(e), (c).

(d) 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 the following information:

- (i) A description of the procedure;
- (ii) 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, in accordance with Section 10230.108 of this Act (35 P.S. §10230.108);

(iii) A statement regarding the permanent nature of body art; and

Comment [58]: Source: Cal. Health & Safety Code Ann. § 119303(a).

(iv) Any other information the body artist or body art facility believes is necessary for the client's informed consent.

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

(i) Whether the client may be pregnant;

(ii) 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 disorders, or cardiac valve disease;

(iii) Whether the client has a history of medication use or is currently

using medication, including being prescribed antibiotics prior to dental or surgical procedures;

(iv) Other risk factors for bloodborne pathogen exposure; and

(v) The client's contact information, including but not limited to a verifiable telephone number and email address.

(e) Subsequent to the performance of body art, the body artist or another employee of the body art facility must provide the client with instructions for body art after-care. These instructions should be given orally and in writing; the writing may take any form (pamphlet, booklet, handout, folder, etc.) as long as it includes:

(i) Information on care of the procedure site;

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

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

(iv) Signs and symptoms that indicate the need to seek medical care; and

(v) All information contained in 35 P.S. § 10230.108 (After-care of body art), and any additional information the body artist or body art facility believes the client would find helpful.

(f) A body art facility which cannot afford to keep a sterilization unit such as that described in Section 10230.105 of this Act (35 P.S. § 10230.105) shall purchase and use only pre-sterilized, packaged, sealed, single-use instruments and jewelry.

§ 2510. Reports and maintenance of records.

Comment [59]: Source: Cal. Health & Safety Code Ann. § 119303(b).

Comment [60]: Source: Cal. Health & Safety Code Ann. § 119303(a).

Comment [61]: Partly based on 25 Tex. Admin. Code § 229.407.

Comment [62]: Partly based on 25 Tex. Admin. Code § 229.406.

(a) A body art facility must keep a record of each client transaction. This record shall include:

(i) The client's name, contact information, the type of body art that was performed upon the client, the name of the body artist who performed body art upon the client, and the date on which the body art was performed upon the client;

(ii) A copy of the informed consent form required by Section 2509 of this Act (63 P.S. § 2509, Restrictions on the practice of body art) that has been signed and dated by the client;

(iii) A copy of the client questionnaire required by Section 2509 of this Act (63 P.S. § 2509, Restrictions on the practice of body art) that has been signed and dated by the client;

(iv) A notation indicating that the client has been given after-care information, as required by Section 2509 of this Act (63 P.S. § 2509, Restrictions on the practice of body art); and

(v) Any information that a client later communicates to the body artist or to the body art facility concerning an infection or reaction, allergic or other, to the client's body art.

(b) A body art facility must keep a copy of its Safe Practice Plan available on-site for inspection by the Department and Registry. See Section 10230.109 of this Act (35P.S. § 10230.109) for Safe Practice Plan requirements.

(c) A body art facility must keep a record of each body artist currently employed by the facility. If a body artist leaves or is fired from the facility, the facility shall maintain his or her record for three (3) years subsequent to the body artist's departure. This record shall include:

Comment [63]: Partly based on Philadelphia ordinance.

- (i) The name and contact information of the body artist;
- (ii) A copy of the body artist's Commonwealth-issued license;
- (iii) Documentation showing that the body artist has completed Body Artist Training under Section 10230.104 of this Act (35 P.S. § 10230.104, Body artist training) or equivalent training;
- (iv) A list of all clients upon whom the body artist has performed body art, including the type of body art performed;
- (v) A signed consent form verifying that, to the best of his or her knowledge, a body artist is free of easily communicable diseases and is generally healthy enough to safely perform body art; and
- (vi) Any other information the body art facility deems useful, relevant, or pertinent to the practice of body art.

(d) If, under the Pennsylvania Bloodborne Pathogen Standards Act (35 P.S. § 631.1 *et seq.* and associated guidelines) or the Occupational Safety & Health Administration guidelines on bloodborne pathogens (29 C.F.R. § 1910.1030 *et seq.*) the body art facility would be required to make an entry in its Sharps Injury Log, such record shall be kept for three (3) years subsequent to the date of the incident.

§ 2511. Penalties, fines, and procedures.

(a) Body art prohibited upon minor persons:

Comment [64]: Adapted from H.B. 2617 § 7(a), (c)-(d).

(i) Any person who performs body art on any body part of a minor person without proper consent, as established in Section 2509 of this Act (63 P.S. § 2509(a)(1), Restrictions on the practice of body art), will face the following penalty:

(1) If not yet licensed by the Registry, the person will not be able to apply for a body artist license for two years subsequent to the violation; or

(2) If already licensed by the Registry, the person's license will be revoked for a period of two years subsequent to the violation.

(ii) Any body art facility where a violation of subsection (a) occurs shall have its registration revoked for two years subsequent to the violation, or, if applying for its first registration, shall not be eligible for registration for two years subsequent to the incident.

(iii) The performance of body art upon a minor person shall be a third-degree misdemeanor, pursuant to 18 Pa. C.S.A. § 6311.

(b) The Registry may suspend or revoke any registration or license issued under this Act for any of the following reasons:

(i) Failing to demonstrate the qualifications or standards for a registration or licensure contained in this Act, or regulations of the Department;

(ii) Making misleading, deceptive, untrue, or fraudulent representations in obtaining a registration certificate or license;

(iii) Being unable to practice with reasonable skill and safety to the public by reason of: illness; substance addiction; having been convicted of a felonious act prohibited by the act of April 14, 1975 (P.L. 233, No. 64), known as the Controlled Substance, Drug, Device, and Cosmetic Act; having been convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory, possession, or country; or having been declared mentally incompetent by any court of law in the United States or any other state, territory, possession, or country;

(iv) Violating any mandatory provision of this Act, any lawful regulation promulgated by the Department, or violating a lawful order of the Registry previously entered by the Registry in a disciplinary proceeding;

(v) Knowingly maintaining a professional connection or association with any person who is in violation of this Act or in violation of any regulation of the Department, or knowingly aiding, assisting, procuring, or advising any unregistered person to practice a profession contrary to this Act or associated regulations promulgated by the Department; or

(vi) Acting in such manner as to present an immediate and clear danger to public health or safety.

(vii) Falsely or deceptively renewing a body art facility or body artist license with the Registry.

Comment [65]: Source: H.B. 2617 § 11(a)

(c) If an applicant makes a statement on a licensure application declaring the absence of a conviction, that statement shall be deemed satisfactory evidence of the absence of a conviction. However, pursuant to Section 2504 of this Act, the Registry may perform a background check on any applicant.

Comment [66]: This seems obvious, doesn't it?

(d) Any person who violates Section 2509(a)(iv) of this Act (63 P.S. § 2509(a)(iv), Restrictions on the practice of body art) and its restrictions on tongue-splitting commits a misdemeanor of the first degree for a first offense, and a felony of the third degree for a second or subsequent offense.

Comment [67]: Source: H.B. 2617 § 10(b)

(e) Any person who violates any provision of this Act, except Section 2509(a)(iv) (63 P.S. § 2509(a)(iv), Restrictions on the practice of body art), commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than three months, or both.

Comment [68]: Source: H.B. 2617 § 12

(f) In addition to taking disciplinary or corrective action against a registrant or licensee under this Act, or pursuant to other regulatory or statutory authority, the Registry may:

(i) Deny the application for registration or licensure, or any other privilege granted by the Registry;

(ii) Revoke, suspend, limit, or otherwise restrict a license or registration;

(iii) Stay enforcement of any suspension and place a registrant or licensee on probation, with the right to vacate the probationary order for noncompliance.

(g) Failure of a registrant or licensee to comply with the conditions required by the Registry shall be grounds for a reconsideration of the matter and institution of formal charges against the registrant or licensee.

(h) Unless ordered to do so by the Commonwealth Court of Pennsylvania, or on appeal therefrom, the Registry may not reinstate any registration or licensure that has been revoked until two years after the date of violation or revocation, whichever is later.

Comment [69]: Source: H.B. 2617 § 11.

Any body artist or body art facility whose license or registration has been revoked due to a violation of this Act may apply for reinstatement after a period of at least two years, but must meet all of the registration or licensure requirements of this Act (including the training requirement) if the person or facility wishes to continue the practice of body art.

(i) A revoked license or registration shall be physically returned to the Registry as it so directs.

(j) Injunctive relief.

(i) It shall be unlawful for any person to practice or attempt to offer body art unless the person is currently licensed under this Act, and license is valid, unexpired, unrevoked, and unsuspended.

(ii) The unlawful practice of body art may be enjoined by a court of competent jurisdiction on petition by the Registry.

(iii) In any such proceeding, it shall not be necessary to show that any

person is individually injured by the actions complained of.

(iv) If it is found that the respondent has engaged in the unlawful practice of body art, the court shall enjoin the respondent from so practicing unless and until the respondent registers or applies for a license with the Registry. The procedure in such cases shall be the same as in any other injunction suit.

(v) The remedy by injunction authorized by this section shall be in addition to any other civil or criminal prosecution and/or punishment authorized by the Act or by law.

Comment [70]: Source: H.B. 2617 § 13, but better drafted.

§ 2512. Municipal ordinances preserved.

(a) Nothing in this Act shall supersede the power of a municipality to inspect body art facilities, to regulate the manner in which body art may be performed, to levy lawful taxes and fees, or to require the purchase of a business privilege license unrelated to competence in the practice of body art.

(b) Nothing in this Act shall preclude a municipality from denying or revoking a local permit for failure to comply with a local ordinance not inconsistent with this Act, or regulations of the Department promulgated under this Act.

(c) A registrant under this Act who fails to comply with a municipal ordinance concerning the inspection of body art facilities, the manner in which the municipality requires body art to be performed, the levying of lawful taxes and fees, or the purchase of a business privilege license unrelated to competence in the practice of body art, may still be subject to disciplinary proceedings within that municipality.

Comment [71]: Source: H.B. 2617 § 8.

(d) However, this Act represents the minimum standards required for the practice of body art, and the operation of a body art facility; if a municipality's standards are less than that required by this Act, the body artist or body art facility which violates

any provision of this Act shall be subject to discipline under this Act, even if not in violation of the municipality's standards.

(e) All body artists and body art facilities must be licensed and registered under this Act, regardless of any additional license or registration required by a municipality.

Comment [72]: This section was in H.B. 2617 but contradicted the rest of the section, and as such has been altered.

Part II. CHAPTER 40: BODY ART ACT in Title 35 (Health and Safety) of the Pennsylvania Consolidated Statutes (35 P.S. §§ 10230.101-10230.113).

§ 10230.101. Short title and cross-references.

This act shall be known and may be cited as the Body Art Act. Sections in this title are co-extensive with Chapter 40 of Title 63 of the Pennsylvania Consolidated Statutes (63 P.S. §§ 2501-2513).

§ 10230.102. Legislative purpose.

Comment [73]: Source: H.B. 2617 § 2.

It is the intent of the General Assembly to establish health standards for the practice of tattooing, body piercing, branding, and corrective cosmetics within this Commonwealth. This will be achieved through the imposition of this act, and the registration and licensure of all tattoo artists, body-piercing artists, and corrective cosmetic artists who practice their art within the Commonwealth.

§ 10230.103. Definitions.

When used in this Act, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise. Any definition phrased in the singular or masculine form shall also apply to situations involving the plural or feminine form.

Comment [74]: Source: H.B. 2617 § 3.

“Act” means the Body Art Act, 63 P.S. §§ 2501—2513 and 35 P.S. §§ 10230.101-10230.113.

Comment [75]: H.B. 2617 § 3.

“Antiseptic solution” means a liquid or semi-liquid 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.

Comment [76]: Source: Cal. Health & Safety Code Ann. § 119301(a)

“Bloodborne pathogen” means a pathogenic microorganism which is present in human blood, is spread by the transmission of blood or sexual fluid, and can cause disease in humans. The term includes but is not limited to the hepatitis B virus (HBV), the hepatitis C virus (HCV), and the human immunodeficiency virus (HIV).

Comment [77]: Source: 35 P.S. § 635.2

“Body art” means piercing, corrective cosmetics, tattooing, or branding.

Comment [78]: Source: Cal. Health & Safety Code Ann. § 119301(c)

“Body art facility” means any building, including a parlor, booth, kiosk, or shop, where a body artist practices body art. The term includes but is not limited to reception areas, restrooms, foyers, areas where body art is performed, and decontamination/sterilization areas.

Comment [79]: Cal. Health & Safety Code Ann. § 119301(d)

“Body artist” means a person who performs one or more of the four forms of body art (piercing, corrective cosmetics, tattooing, or branding).

“Branding” means the process by which a mark or marks are burned into or otherwise produced on human skin tissue with a hot iron, electrocautery gun, or other instrument with the intention of leaving a permanent scar.

Comment [80]: Source: Cal. Health & Safety Code Ann. § 119301(e)

“Branding artist” means a person who physically performs or supervises the performance of branding on another person.

Comment [81]: Source: Cal. Health & Safety Code Ann. § 119301(f)

“Department” means the Department of Health of the Commonwealth of Pennsylvania.

Comment [82]: Source: HB 2617 § 3

“Client” means a person requesting the application of a tattoo, body piercing, brand, or corrective cosmetics.

“Corrective cosmetic artist” means any person who physically performs or

supervises the performance of corrective cosmetics on another person.

Comment [83]: Source: H.B. 2617 § 3

“Corrective cosmetics” means the application of tattoos on a live human being for medical or cosmetic situations that could not be otherwise corrected or improved, including but not limited to burn scars, acne scars, age spots, and skin discoloration due to loss of pigmentation. The term includes the permanent application of pigments to human skin tissue for the purposes of coloring, including but not limited to permanent eyeliner, eyebrow, or lip color.

Comment [84]: Source: H.B. 2617 § 3

“Contaminated waste” means any liquid or semi-liquid blood or other potentially infectious materials, contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed, items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling, sharps waste and pathological and microbiological wastes containing blood and other potentially infectious materials as defined in 29 C.F.R. § 1910.1030 (“Occupational Exposure to Bloodborne Pathogens.”)

Comment [85]: Source: 25 Tex. Admin. Code § 229.402(11)

“Decontaminate” means to use a physical or chemical process 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.

Comment [86]: Source: California Safe Body Art Act, § 119301(j)

“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 the human immunodeficiency virus (HIV) and hepatitis B virus (HBV) for use in decontaminating work surfaces.

Comment [87]: Source: California Safe Body Art Act, § 119301(k)

“Ear piercing gun” means a device that pierces an individual’s ear using a single-

use stud and clasp ear piercing system.

Comment [88]: Source: 25 T.A.C. § 229.402(16)

“Facial tattoo” means a tattoo that is applied above the neck, including but not limited to tattoos on the eyelids, eyebrows, lips, the scalp, or cheeks.

Comment [89]: Source: H.B. 2617 § 3

“Hand hygiene” means thoroughly washing all surfaces of the hands and under the fingernails with soap and warm water.

Comment [90]: Source: Cal. Health & Safety Code § 119301(m)(1)

“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, razor blades, calipers, hand mirrors, gauge wheels, and tattoo-machine barrels.

Comment [91]: Source: 25 T.A.C. § 229.409

Comment [92]: Source: Cal. Health & Safety Code § 119301(n)

“Jewelry” means any kind of metal, stone, glass, or other material inserted into the skin or mucous membranes for the purpose of decoration.

“Owner” means a person whose name appears on the health permit, business license, property deed, or rental agreement of a body art facility. The term includes any person who acts as principal of a corporation or partnership and who employs body artists.

Comment [93]: Source: Cal. Health & Safety Code Ann. § 119301(q)

“Piercing” or “body piercing” means the process of breaching the skin or mucous membrane for the purpose of insertion of any object, including but not limited to jewelry for cosmetic purposes. The term includes but is not limited to piercing of the lip, tragus, ear cartilage, tongue, nose, cheek, eyebrow, genitals, nipples, or other skin of the body.

Comment [94]: Source: H.B. 2617 § 3

“Piercing artist” means any person who physically performs or supervises body piercing on another person.

Comment [95]: Source: H.B. 2617 § 3

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

Comment [96]: Source: Cal. Health & Safety Code § 119301(v)

“Registry” means the Registry of Body Artists and Body Art Facilities.

“Sanitize” means to clean a surface using chemicals approved by the federal Food and Drug Administration or the federal Environmental Protection Agency in order to reduce or remove the presence of microbial organisms, including spores.

“Sharp” means an object used to penetrate the skin or other part of the body. The term includes but is not limited to piercing needles, scalpels, tattoo-machine needle bars, broken glass, and lancets.

“Sharps injury” means an injury caused by a sharp and resulting in exposure to bodily fluid. The term includes any cut, abrasion, or needlestick.

“Sharps injury log” means a written or electronic record of sharps injuries.

Comment [97]: Source: 35 P.S. § 635.2

“Sharps waste” means any sharp contaminated with blood, bodily fluids or trauma scene waste.

Comment [98]: Simplified from California Health & Safety Code § 117755

“Single use” means an instrument or article which is intended for one-time, one-person use and which must be discarded after such use.

Comment [99]: Source: 25 Tex. Admin. Code § 229.401(29)

“Sterilization unit” means an autoclave, dry-heat pressure unit, or other machine which has been licensed and approved by the federal Food and Drug Administration or the National Sanitation Foundation for sterilization and sanitation.

“Sterilize” means to destroy all microbial forms of life by physical or chemical means.

Comment [100]: Source: H.B. 2617 § 3

“Tattoo” means an indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin using needles, scalpels, or other related devices. The term does not include branding.

Comment [101]: Sources: H.B. 2617 § 3; California Safe Body Art Act § 119301(z); 25 Tex. Admin. Code § 229.401(31)

“Tattoo artist” means any person who physically performs or supervises tattooing

on another person.

Comment [102]: Source: H.B. 2617 § 3.

§ 10230.104. Body artist training.

(a) Prior to registering with the Registry or a local enforcement officer, a body artist shall complete a Bloodborne Pathogen Exposure Control Training program.

(b) The owner of a body art facility must require all employees, contractors, and volunteers who perform body art within the facility to complete a Bloodborne Pathogens Exposure Control Training which explains the Occupational Safety & Health

Comment [103]: Source: Cal. Health & Safety Code Ann. § 119307.

Administration guidelines concerning bloodborne pathogens, located at 29 C.F.R. 1910.1030(c)(1).

Comment [104]: California has regulations based on this OSHA standard, whereas Pennsylvania does not.

(c) The Department shall offer a Bloodborne Pathogen Exposure Control Training for all interested body artists either annually or as often as the Department deems necessary to ensure proper training of body artists.

Comment [105]: In California, each individual body art facility is required to conduct this training, which doesn't go far towards ensuring a minimum state standard of training.

(d) The Bloodborne Pathogen Exposure Control Training shall meet all of the following criteria:

(1) Training shall be conducted by a person who is knowledgeable in exposure control and infection prevention in the body art setting and who is approved by the Department in accordance with the provisions of this section;

(2) Training and training materials shall, whenever possible, be specific to each form of body art, and trainings shall be supervised or conducted by a licensed, experienced body artist;

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

(i) Copies and explanations of this Act, the Pennsylvania Bloodborne Pathogen Standards Act (35 P.S. § 635.1 *et seq.*) or its successor, and any

regulations that the Department has enacted in conformity therewith;

(ii) A copy and explanation of any applicable county, city, township, or borough ordinances which pertain to bloodborne pathogen transmission control in body art;

(iii) Discussion of transmission, control, and symptoms of the diseases caused by bloodborne pathogens;

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

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

(vi) 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;

(vii) Discussion of the importance of hand hygiene and a demonstration of proper hand hygiene technique;

(viii) Discussion of choice, use, and storage of disinfectants and antiseptics;

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

(x) Information on the hepatitis B vaccine, including safety and accessibility;

(xi) Discussion of what constitutes a bloodborne pathogen incident, including: examples of bloodborne pathogen exposure, how the exposure

occurred, what actions to take to prevent or minimize future exposures, and the risk of infection following a bloodborne pathogen exposure incident and procedures to be followed after an exposure incident, including medical follow-up.

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

(e) 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 which includes all of the information contained in subdivision (d) of this section.

(f) Records of training required pursuant to this section shall be maintained by the body artist who undergoes the training and by the body art facility where the artist works for three years pursuant to the training, and shall be available for inspection upon request of a local enforcement officer, the Department, or the Registry. See Section 2510 of this Act (63 P.S. § 2510) for record-keeping requirements.

Comment [106]: Source: Cal. Health & Safety Code Ann. § 119307.

§ 10230.105. Medical and safety rules for the practice of body art.

(a) Body artist responsibilities:

(1) In the course of performing body art or when supervising another artist in the performance of body art, a body artist shall wear clean, dry outer garments, maintain a high degree of personal cleanliness, and conform to hand hygienic practices while on duty.

(2) A body artist shall wash his hands thoroughly using hot or tempered water with a liquid antiseptic soap before and after performing body art and as often as necessary to properly sanitize his hands. In the absence of contamination with blood or other bodily fluids or obvious soiling, the body artist may apply an antiseptic solution to

Comment [107]: Source: 25 Tex. Admin. Code § 229.405.

all surfaces of the hands and underneath the fingernails.

Comment [108]: Source: Cal Health & Safety Code Ann. § 119.208(4)

(3) A body artist shall wear clean, single-use, previously unused examination gloves while assembling instruments, and at all times during the performance of body art.

Comment [109]: California Safe Body Art Act § 119208(4)

(4) If the body artist removes the gloves for any reason, or if the gloves are torn or perforated, he shall remove and discard the gloves, wash his hands, and put on a fresh pair of single-use gloves.

(5) Body artists shall use universal health precautions when performing body art, such as standing up and moving away from the patient to sneeze or cough, or replacing gloves whenever the gloves are touched by a substance other than sterile water.

(6) A body artist diagnosed with a communicable disease may not practice body art unless the body artist provides the body art facility and the Registry with a written statement from a health care practitioner which states that the artist's condition will not pose a threat to public health if the body artist continues to practice body art.

(7) The area of a client's skin upon which body art is to be performed shall be cleaned with an approved antiseptic soap according to label directions.

(8) If the client is receiving an oral piercing such as a lip, labret, or cheek piercing, the body artist shall provide the client with antiseptic mouthwash in a single-use cup and ensure that the client utilizes the mouthwash to sanitize the inner area of the mouth that is to be pierced.

(9) If shaving of the client's skin is required in the performance of body art, razors or razor blades shall be single-use, and the body artist must place the razor or razor blade into a biohazard container after use. The body artist shall sterilize non-

disposable razor blade handles in a sterilization unit.

Comment [110]: Source: 25 T.A.C. § 229.405

(10) A body artist may not perform body art without prior training in bloodborne pathogens, as mandated by Section 10230.104 of this Act (35 P.S. § 10230.104).

(11) At the completion of the procedure, the body artist shall do all of the following:

(i) Answer questions regarding the procedure site;

(ii) Provide after-care instructions, in accordance with Section 10230.110 of this Act (35 P.S. § 10230.108);

(iii) Place all used or discarded sharps waste into a sharps waste container;

(iv) Wash and disinfect reusable instruments as provided in subsection (b) of this section;

(v) package and sterilize reusable instruments that may have come into contact with non-intact skin or mucosal surfaces, as provided in subsection (b) of this section; and

(vi) Decontaminate the workstation and the area where the body art was performed.

Comment [111]: Source: Cal. Health & Safety Code Ann. § 119.308(b)

(b) Sterilization of instruments and facility:

(1) A body art facility which utilize reusable instruments shall have on the premises sterilization equipment, such as an autoclave or a dry heat sterilization unit, that is approved by the federal Food and Drug Administration (FDA) or National Sanitation Foundation (NSF) for the purpose of sterilization and sanitation and is adequate in size to accommodate any instrument used by the facility. A copy of the

manufacturer's recommended procedures must be available for all body artists who work in the facility, and must be available for inspection upon request of the Department or Registry.

(2) Each body artist responsible for the sterilization of instruments and jewelry shall be able to demonstrate to the Department that body artist uses the correct sterilization procedures and properly operates the equipment.

(3) After each use, reusable instruments and jewelry shall be thoroughly cleansed to remove blood and tissue residue before sterilization, as described in Section 10230.107 of this Act (35 P.S. § 10230.107, Body art equipment and jewelry).

(4) Instruments and jewelry requiring sterilization shall be packed in packages approved for the sterilization unit. Instruments and jewelry shall be packed individually or as a set, provided such set is intended to be used for a single procedure. Each package shall be labeled with the date of sterilization and the initials of the person sterilizing the instruments. Packaged sterilized instruments shall be kept in a sterile condition and stored in a clean, dust-tight container when not in use. Instruments and jewelry may be sterilized immediately before the performance of body art without the use of sterilization packages, but only as provided by the sterilization unit's manual. The body art facility must keep records of this sterilization in accordance with subsection (7) of this section.

(5) Each package of instruments or jewelry sterilized shall be monitored for sterilization by the use of chemical or heat-sensitive indicators.

(6) Each sterilization unit used by the facility to sterilize instruments and jewelry must have a spore test performed each calendar month by an approved laboratory, and the test results be made available for inspection by the Department and

Registry.

(7) Each facility shall maintain sterilization records. The information shall be permanently recorded and made available for examination by an authorized agent in the studio for at least two years from the date of the last entry. These permanent records shall be maintained at the studio and shall include the following:

(i) the date of sterilization;

(ii) the quantity and type of instruments sterilized; and

(iii) the name or initials of the individual sterilizing the instruments.

(8) Sterilization packets:

(i) Sterilized instruments and jewelry stored in accordance with the sterilization unit owner's manual and stored in accordance with the sterilization packet manufacturer's labeling or letter provided by the manufacturer of the sterilization packets will be considered sterile for the length of time set out in the sterilization unit owner's manual or packet labeling or supporting documentation.

(ii) If the studio personnel cannot provide a manual for the sterilization at the time of inspection or if no length of time is set out by the sterilization unit's manual, the equipment must be stored in a manner approved by the Department, and the instruments and jewelry not used within 60 days of sterilization shall no longer be considered sterile.

(iii) If presterilized instruments are used, the artist shall obtain documentation from the manufacturer that describes the method of sterilization utilized by the manufacturer and the manufacturer's recommendations for storage and maintenance of sterility. This documentation shall be available for inspection by an

Comment [112]: Adapted.

authorized agent. The artist shall follow the manufacturer's instructions for storage and maintenance of sterility.

Comment [113]: Source: 25 Tex. Admin. Code § 229.407.

(iv) 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.

Comment [114]: Source: Cal. Health & Safety Code Ann. § 119309(h).

(9) One of the following methods of sterilization shall be used for all instruments and jewelry:

(i) Autoclave, or steam under pressure:

(A) 121 degrees Celsius (250 degrees Fahrenheit) and a pressure of at least 15 pounds per square inch for not less than 30 minutes after the chamber of the autoclave has reached the required temperature and pressure; or

(B) as specified in the manufacturer's operator's manual.

(ii) Dry heat sterilization:

(A) 160 degrees Celsius (320 degrees Fahrenheit) for not less than one hour under atmospheric pressure after the sterilizer has reached the required temperature; or

(B) as specified in the manufacturer's operator's manual.

Comment [115]: 25 Tex. Admin. Code § 229.407.

(iii) Another sterilization method which has been licensed and approved by the federal Food and Drug Administration or the National Sanitation Foundation, and which has been specifically approved by the Department.

(10) All solid surfaces and objections 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 the manufacturer's directions. The surfaces and objects in the area where the body art was performed shall be disinfected again before use if the area has been used for any activity following its previous disinfection.

Comment [116]: Source: Cal. Health & Safety Code Ann. § 119309(b)-(c).

§ 10230.106. Body art facility environment and inspection standards.

(a) When inspecting a body art facility, the Department shall assess the facility's compliance with the standards laid out in this section and in Section 10230.105 of this Act (35 P.S. § 10230.105).

(b) A body art facility must be in a permanent, non-dwelling building or portion of a building which has been approved under any applicable zoning code for body art use. The facility shall be separated from living quarters by complete floor-to-ceiling partitioning and shall contain no access to living quarters.

(c) A body art facility shall be maintained in a sanitary condition according but not limited to the following:

(1) Work surfaces shall be cleaned and sanitized with a antiseptic solution every day, or as necessary to sanitize the surfaces; and

Comment [117]: Source: 25 T.A.C. § 229.404.

(2) Other environmental surfaces shall be cleaned with soap and hot water or an all-purpose detergent disinfectant which has been approved by the federal Food and Drug Administration or the federal Environmental Protection Agency for sanitation purposes.

(d) The walls, ceilings, and floors of a body art facility shall be kept in good repair. The floor area, walls, and ceilings where body art is performed shall be constructed of smooth, hard surfaces that are non-porous, free of open holes or cracks, and can be cleaned easily.

(e) The body art facility shall have adequate lighting of at least 50 foot candles of illumination in the area where body art is performed.

(f) The body art facility shall have adequate mechanical ventilation which ensures that the area where body art is performed is reasonably free of airborne contaminants.

(g) A body art facility shall be equipped with hand-washing facilities that have unobstructed access to the area where body art is performed, so that body artists can move freely from the hand-washing area to the procedure area without having to touch anything with their hands. Hand-washing facilities shall be equipped with hot and cold or tempered running water under pressure; liquid antiseptic soap in a wall-mounted dispenser; single-use towels or other approved hand-drying devices; and a covered refuse container. Such facilities shall be kept clean and in good repair.

Comment [118]: California Safe Body Art Act § 119314(c)(2)

Comment [119]: Heavily reworded from 25 T.A.C. §229.404(f)

(h) Animals are not permitted in a body art facility, except for guide or service animals accompanying persons with disabilities, or non-mammalian animals in enclosed glass containers such as fish aquaria or reptile terrariums, which shall be outside the area where body art is performed.

(i) No food, drink, tobacco products, or personal effects except drinking water are permitted inside the area where body art is performed, and the owner of the body art facility shall post signs indicating such. A body artist may not eat, drink anything other than water, or smoke while performing a procedure. If a client requests to eat, drink, or smoke, the body art procedure shall be stopped and the procedure site shall be protected from possible contamination using gauze or another sterile covering while the client leaves the area.

Comment [120]: California Safe Body Art Act § 119309(i)

(j) The body art facility shall be kept free of rodents and vermin and protected from infestation by insects. If such an infestation occurs, the body art facility shall

Comment [121]: Source: 25 Tex. Admin. Code § 229.404

immediately cease the performance of body art until the infestation is remedied, and shall keep record of the fact that the infestation occurred. If the infestation is serious enough that a new health inspection is required, the body art facility shall be responsible for requesting such inspection.

(k) Persons other than clients may enter the area where body art is performed at the discretion of the body artist and the owner of the body art facility, but a body artist may not perform branding with another client in the procedure area. During a branding procedure, the practitioner and the client shall wear appropriate protective face filter masks.

Comment [122]: Source: Cal. Health & Safety Code Ann., § 119309(j).

§ 10230.107. Body art equipment and jewelry.

Comment [123]: Primarily based on 25 T.A.C. § 229.401.

(a) A body artist shall sterilize instruments and jewelry that may have come into contact with blood or other bodily fluids or which came into contact with broken skin. If such an instrument or piece of jewelry is not constructed to allow sterilization, the body artist shall dispose of it after use. A body artist may re-use only instruments that can be easily cleaned and sterilized.

Comment [124]: Source: 25 Tex. Admin. Code § 229.401.

(b) All instruments and jewelry that come into contact with mucous membranes and oral tissue shall be sterilized after each use, or shall be thoroughly rinsed in an antiseptic solution. If the instrument or jewelry came into contact only with intact skin (e.g. a hand mirror held by the client) the body artist shall treat it with an antiseptic solution before the next use.

(c) Needles, razors, and razor blades/razor heads used in the performance of body art shall be single-use and shall be immediately disposed of in a sharps container at the end of the procedure. The body art facility shall ensure that other single-use supplies such as cotton balls, cups, corks, rubber bands, and toothpicks are maintained

in a clean condition and are dispensed in a manner that prevents contamination to the unused instruments.

(d) A body artist shall not use styptic pens or alum solids to control blood flow.

Comment [125]: Source: Tex. Admin. Code § 229.401.

(e) Inks, dyes, and pigments:

(i) All inks, dyes, and pigments used in tattooing, branding, or corrective cosmetics shall be commercially manufactured and approved by the federal Food and Drug Administration for use in body art. Inks, dyes, and pigments must also be non-toxic and free from adulteration or contamination.

Comment [126]: California Safe Body Art Act, § 119311.

(ii) Prior to performing body art which involves the use of inks, dyes, or pigments, the body artist shall dispense such inks, dyes, or pigments into single-use containers, and shall discard the containers at the end of the procedure.

Comment [127]: 25 Tex. Admin. Code § 229.401.

(f) Marking instruments such as alcohol-based ink pens shall be single-use or sanitized by design, and a body artist shall use the instrument only on intact skin that has been treated with an antiseptic soap. If a marking instrument comes into contact with mucous membranes or broken skin, the body artist must dispose of it.

(g) All stencils and stencil applicators shall be single-use. In applying the stencil, a body artist must wear clean, single-use, disposable, previously unused gloves to dispense petroleum jellies, soaps, or other products, and shall use aseptic technique to avoid contaminating containers and their remaining contents.

(h) Spray bottles, the coils of tattoo machines, and other reusable instruments used between clients and handled by the body artist shall be covered in single-use plastic covers that are replaced between each client.

(i) Contaminated reusable instruments that are not in use may be placed in a labeled, covered jar of disinfectant solution until such time as they can be sterilized.

Comment [128]: Source: 25 Tex. Admin. Code § 229.401.

(j) Prior to placing jewelry in newly pierced skin, a body artist shall sterilize the jewelry as specified in Section 10230.105 of this Act, or shall use pre-sterilized jewelry that has been packaged and sealed. Sterile jewelry packs shall be evaluated before use and, if the integrity of a pack is compromised by tearing, moisture, or puncturing, the body artist shall discard the pack or shall sterilize the jewelry before use.

Comment [129]: Source: Cal. Health & Safety Code Ann. § 119310.

(k) For placement in newly pierced skin, a body artist may use only jewelry made of: ASTM F138, ISO 5832-1, 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 approved by the federal Food and Drug Administration or the Department as biocompatible.

Comment [130]: Source: California Safe Body Art Act § 119310. All of these are FDA-approved metals; the FDA may approve other materials such as stone or glass for use in stretching piercings, and the Department could independently approve any materials they thought were safe.

(l) Only single-use needle bars and needles shall be used in tattooing and corrective cosmetics. If needles or needle bars are not pre-sterilized, prior to using them in tattooing or corrective cosmetics, a body artist shall sterilize them pursuant to the process described in Section 10230.105 of this Act (35 P.S. § 10230.105).

§ 10230.108. Body art after-care.

(a) Pursuant to Sections 2509 and 10230.105 of this Act (63 P.S. § 2509, 35 P.S. § 10230.105), a body artist must provide the client with oral and written after-care instructions for the tattoo, branding, piercing, or corrective cosmetics. The written instructions may taken any form (pamphlet, booklet, handout, folder, etc.) as long as all information required by this section is contained in the writing.

(b) The client must acknowledge that after-care instructions were given, read, and understood by way of signing the client record. See Section 2510 of this Act (63 P.S. § 2510) for information about client records.

Comment [131]: Source: 25 Tex. Admin. Code § 229.408.

(c) Instructions concerning a tattoo and corrective cosmetics (referred to here as

“tattoo”) shall inform the client of the following:

- (i) The tattoo should not be uncovered or touched until the scab has formed;
- (ii) The tattoo should be exposed to as little sunlight as possible for at least two weeks;
- (iii) The client should not go swimming, fully immerse the tattoo, or allow a shower to pound on the tattoo for at least two weeks;
- (iv) The client should gently clean the tattoo every day for at least a week, by the application of warm soap and water, and should be patted dry rather than rubbed;
- (v) The client should apply a light moisturizer to the tattoo once or twice a day for at least two weeks;
- (vi) The client should avoid using antibiotic or antiseptic ointments or creams on the tattoo;
- (vii) The client should seek medical assistance at the first sign of infection or an allergic reaction, and afterwards should report the infection or reaction to the artist who performed the tattoo, or to the body art facility;
- (viii) Information concerning potential side effects, risks, allergic reactions, infections, etc.; and
- (ix) Any other information the body artist or body art facility considers necessary.

(d) Instructions concerning a piercing shall inform the client of the following:

- (i) The client should wash his or her hands before touching the piercing;
- (ii) The piercing should not be removed for at least six weeks;

Comment [132]: Source: 25 Tex. Admin. Code § 229.408

Comment [133]: 25 T.A.C. § 229.408

(iii) The jewelry should be moved slightly or rotated each day to prevent the scab from adhering to the jewelry;

(iv) The piercing should be cleansed daily using warm water and soap or a mild saline solution if an external piercing, or an antiseptic mouthwash or saline solution if an oral piercing;

(v) The client should seek medical assistance at the first sign of infection or an allergic reaction, and afterwards should report the infection or reaction to the artist who performed the piercing, or to the body art facility;

Comment [134]: 25 T.A.C. § 229.408

(vi) Information concerning potential side effects, risks, allergic reactions, infections, etc.; and

(vii) Any other information the body artist or body art facility considers necessary.

(e) Instructions concerning a branding shall inform the client of the following:

(i) The brand should not be uncovered or touched until the scab has formed;

(ii) The client should not go swimming, fully immerse the brand, or allow a shower to pound on the brand for at least two weeks;

(iii) The client should gently clean the brand every day for at least a week, by the application of warm soap and water or antiseptic liquid, and the brand should be patted dry rather than rubbed;

(iv) The client should seek medical assistance at the first sign of infection or an allergic reaction, and afterwards should report the infection or reaction to the artist who performed the brand, or to the body art facility;

Comment [135]: 25 T.A.C. § 229.408

(v) Information concerning potential side effects, risks, allergic reactions,

infections, etc.; and

(vi) Any other information the body artist or body art facility considers necessary.

§ 10230.109. Safe Practice Plan.

Comment [136]: Primarily based on California Safe Body Art Act

(a) A body art facility shall maintain and follow a written Safe Practice Plan, provided by the owner or based upon a plan promulgated by the Department, specifying the procedures to achieve compliance with each applicable requirement of this chapter.

(b) The Safe Practice Plan shall include all of the following:

(1) Procedures and schedules for decontaminating and disinfecting environmental surfaces;

(2) Procedures and schedules 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; and

(7) Any other information which ensures that the body art facility is in compliance with this Act, the Pennsylvania Bloodborne Pathogen Standards Act (35 P.S. § 635.1 *et seq.*) and the federal Occupational Safety and Health Administration guidelines on bloodborne pathogens (29 C.F.R. § 1910.1030).

(c) The Safe Practice Plan shall be revised at least once each year, or when

changes are made in infection prevention practices, procedures, or tasks.

(d) Onsite training on the facility's Safe Practice 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 at least 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.

§ 10230.110. Effective date.

This act shall take effect on January 1, 2014.

Comment [137]: Source: Cal. Health & Safety Code Ann. § 119313

Comment [138]: If it makes it through this session, why not?