

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 490**

4 (By Senators Green, Stollings, Hall, D. Facemire, Minard and
5 Sypolt)

6 _____
7 [Originating in the Committee on Health and Human Resources;
8 reported February 18, 2011.]
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13 A BILL to amend and reenact §16-38-3 and §16-38-7 of the Code of
14 West Virginia, 1931, as amended, all relating to prohibiting
15 minors under the age of sixteen from obtaining a tattoo;
16 requiring a parent or legal guardian be present at the tattoo
17 studio, provide photo identification and written consent for
18 minors sixteen years of age or older; and providing for
19 penalties.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §16-38-3 and §16-38-7 of the Code of West Virginia, 1931,
22 as amended, be amended and reenacted, all to read as follows:

23 **ARTICLE 38. TATTOO STUDIO BUSINESS.**

24 **§16-38-3. Operation standards.**

25 (a) *Records.* --

1 (1) Proper records of tattoos administered shall be maintained
2 for each patron by the holder of the studio registration;

3 (2) A record shall be prepared for each patron prior to any
4 procedure being performed and shall include the patron's name and
5 signature, address, age, date tattooed, design of the tattoo,
6 location of the tattoo on the patron's body and the name of the
7 tattoo artist who performed the work;

8 (3) Record entries shall be in ink or indelible pencil and
9 shall be available for examination by the inspecting authorities
10 provided in section six of this article;

11 (4) Before tattoo administration, the owner or tattoo artist
12 shall discuss with the patron the risks involved in the tattoo
13 requested, including the potential that a tattoo may interfere with
14 the clinical reading of a magnetic resonance imaging study should
15 the patron intending to be tattooed ever encounter a medical need
16 for such a study. The owner shall provide the patron with written
17 information regarding the possible complications that may arise
18 from receiving a tattoo. The written information shall be prepared
19 by the Department of Health and Human Resources. Receipt of the
20 information shall be acknowledged in writing by the patron. The
21 owner or tattoo artist shall also keep and maintain the
22 acknowledgment as part of the patron's record pursuant to the
23 provisions of subdivision (5) of this subsection.

24 (5) All records required by this section shall be kept on file
25 for five years by the holder of the studio registration for the
26 studio in which the tattoo was performed.

1 (b) *Consent.* --

2 (1) No person under the age of sixteen may be tattooed. Prior
3 written consent for tattooing of minors shall be obtained from one
4 parent or guardian. It is prohibited to tattoo a minor 16 years of
5 age or older, without the written consent of the parent or legal
6 guardian. This consent is to be given in person to the tattoo
7 artist or responsible person at the studio by the parent or legal
8 guardian at the time the tattooing is to commence. Photographic
9 identification of the parent or legal guardian is required;

10 (2) All written consents shall be kept on file for five years
11 by the holder of the studio registration for the tattoo studio in
12 which the tattoo was performed;

13 (3) The person receiving the tattoo shall attest to the fact
14 that he or she is not intoxicated or under the influence of drugs
15 or alcohol.

16 (c) *Tattooing procedures.* --

17 (1) Printed instructions on the care of the skin after
18 tattooing shall be given to each patron as a precaution to prevent
19 infection;

20 (2) A copy of the printed instructions shall be posted in a
21 conspicuous place, clearly visible to the person being tattooed;

22 (3) Each tattoo artist shall wear a clean outer garment, i.e.,
23 apron, smock, T-shirt, etc.;

24 (4) Tattoo artists who are experiencing diarrhea, vomiting,
25 fever, rash, productive cough, jaundice, draining or open skin
26 infections such as boils which could be indicative of more serious

1 conditions such as, but not limited to, impetigo, scabies,
2 hepatitis-b, HIV or AIDS shall refrain from tattooing activities
3 until such time as they are no longer experiencing or exhibiting
4 the aforementioned symptoms;

5 (5) Before working on each patron, the fingernails and hands
6 of the tattoo artist shall be thoroughly washed and scrubbed with
7 hot running water, antibacterial soap and an individual hand brush
8 that is clean and in good repair;

9 (6) The tattoo artist's hands shall be air blown dried or
10 dried by a single-use towel. In addition, disposable latex
11 examination gloves shall be worn during the tattoo process. The
12 gloves shall be changed each time there is an interruption in the
13 tattoo application, the gloves become torn or punctured or whenever
14 their ability to function as a barrier is compromised;

15 (7) Only sterilized or single-use, disposable razors shall be
16 used to shave the area to be tattooed;

17 (8) Immediately prior to beginning the tattoo procedure, the
18 affected skin area shall be treated with an antibacterial solution;

19 (9) If an acetate stencil is used by a tattoo artist for
20 transferring the design to the skin, the acetate stencil shall be
21 thoroughly cleaned and rinsed in a germicidal solution for at least
22 20 minutes and then dried with sterile gauze or dried in the air on
23 a sanitized surface after each use;

24 (10) If a paper stencil is used by a tattoo artist for
25 transferring the design to the skin, the paper stencil shall be
26 single-use and disposable;

1 (11) If the design is drawn directly onto the skin, the design
2 shall be applied with a single-use article only.

3 (d) *Dyes or pigments.* --

4 (1) Only nontoxic sterile dyes or pigments shall be used and
5 shall be prepared in sterilized or disposable single-use containers
6 for each patron;

7 (2) After tattooing, the unused dye or pigment in the single-
8 use containers shall be discarded along with the container;

9 (3) All dyes or pigments used in tattooing shall be from
10 professional suppliers specifically providing dyes or pigments for
11 the tattooing of human skin.

12 (e) *Sterilization of needles.* --

13 (1) A set of individual, sterilized needles shall be used for
14 each patron;

15 (2) No less than twenty-four sets of sterilized needles and
16 tubes shall be on hand for the entire day or night operation.
17 Unused sterilized instruments shall be resterilized at intervals of
18 no more than six months from the date of the last sterilization;

19 (3) Used, nondisposable instruments shall be kept in a
20 separate, puncture resistant container until brush scrubbed in hot
21 water and soap and then sterilized by autoclaving;

22 (4) If used instruments are ultrasonically cleaned prior to
23 being placed in the used instrument container, they shall be
24 ultrasonically cleaned and then rinsed under running hot water
25 prior to being placed in the used instrument container;

26 (5) The ultrasonic unit shall be sanitized daily with a

1 germicidal solution;

2 (6) If used instruments are not ultrasonically cleaned prior
3 to being placed in the used instrument container, they shall be
4 kept in a germicidal or soap solution until brush scrubbed in hot
5 water and soap and then sterilized by autoclaving;

6 (7) All nondisposable instruments, including the needle tubes,
7 shall be sterilized and ~~shall be~~ handled and stored in such a
8 manner as to prevent contamination. Instruments to be sterilized
9 shall be sealed in bags made specifically for the purpose of
10 autoclave sterilization and ~~shall~~ include the date of
11 sterilization. If nontransparent sterilization bags are utilized,
12 the bag shall also list the contents;

13 (8) Autoclave sterilization bags, with a color code indicator
14 which changes color upon proper steam sterilization, shall be
15 utilized during the autoclave sterilization process;

16 (9) Instruments shall be placed in the autoclave in such a
17 manner as to allow live steam to circulate around them;

18 (10) No rusty, defective or faulty instruments shall be kept
19 in the studio.

20 (f) *Aftercare of tattoo.* --

21 The completed tattoo shall be washed with a single-use towel
22 saturated with an antibacterial solution.

23 **§16-38-7. Violations and penalties.**

24 Any owner of a tattoo studio who does not obtain a West Virginia
25 business registration certificate, who does not register with
26 their local or regional board of health ~~or who~~ , fails to request

1 an inspection pursuant to section six of this article,
2 administers a tattoo to a minor under 16 years of age, or
3 administers a tattoo to a minor 16 years of age or older without
4 proper parental consent set forth in this article shall be guilty
5 of a misdemeanor and, upon conviction thereof, for a first
6 offense, may have all of the tattoo equipment and paraphernalia
7 confiscated and shall be fined one hundred dollars. For a second
8 offense, which is a misdemeanor, the owner may have all of the
9 tattoo equipment and paraphernalia confiscated and shall be fined
10 not less than five hundred dollars nor more than one thousand
11 dollars or confined in a county or regional jail not less than
12 ten days nor more than one year, or both fined and imprisoned.
13 For a third offense, which is a misdemeanor, the owner shall have
14 all the tattoo equipment and paraphernalia confiscated, shall be
15 fined not less than one thousand dollars nor more than five
16 thousand dollars, or confined in a county or regional jail not
17 less than thirty days nor more than one year, or both fined and
18 imprisoned.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.