

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4161

BY DELEGATES WORRELL, SUMMERS AND ATKINSON

[Passed March 7, 2020; in effect ninety days from passage.]

1 AN ACT to amend and reenact §16-38-1 and §16-38-3 of the Code of West Virginia, 1931, as
2 amended, all relating to tattoos; making it illegal to scleral tattoo a person; defining the
3 term “scleral tattoo;” and reordering definitions so they will be in alphabetical order.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. TATTOO STUDIO BUSINESS.

§16-38-1. Definitions.

1 For purposes of this article:

2 “Adequate ventilation” means a free and unrestricted circulation of fresh air throughout the
3 tattoo studio and the expulsion of foul or stagnant air.

4 “Antibacterial solution” means any solution used to retard the growth of bacteria approved
5 for application to human skin and includes all products so labeled.

6 “Germicidal solution” means any solution which destroys germs and is so labeled.

7 “Minor” means any person under the age of 18 years.

8 “Scleral tattooing” means the practice of producing an indelible mark or figure on the
9 human eye by scarring or inserting a pigment on, in, or under the fornix conjunctiva, bulbar
10 conjunctiva, ocular conjunctiva, or other ocular surface using needles, scalpels or other related
11 equipment.

12 “Sterilization” means holding in an autoclave for 25 minutes at 15 pounds pressure at a
13 temperature of 250 degrees Fahrenheit or 121 degrees Celsius.

14 “Tattoo” means to mark or color the skin by pricking in coloring matter so as to form
15 indelible marks or figures or by the production of scars.

16 “Tattoo studio” means any room or space where tattooing is practiced or where the
17 business of tattooing or any part thereof is conducted.

§16-38-3. Operation standards.

1 (a) *Records.* —

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

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

8 (3) Record entries shall be in ink or indelible pencil and shall be available for examination
9 by the inspecting authorities provided in §16-38-6 of this code;

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

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

21 (b) *Consent.* —

22 (1) Prior written consent for tattooing of minors shall be obtained from one parent or
23 guardian;

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

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

28 (c) *Tattooing procedures.* —

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

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

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

34 (4) Tattoo artists who are experiencing diarrhea, vomiting, fever, rash, productive cough,
35 jaundice, draining or open skin infections such as boils which could be indicative of more serious
36 conditions such as, but not limited to, impetigo, scabies, hepatitis-b, HIV or AIDS shall refrain from
37 tattooing activities until such time as they are no longer experiencing or exhibiting the
38 aforementioned symptoms;

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

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

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

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

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

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

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

57 (d) *Dyes or pigments.* —

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

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

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

64 (e) *Sterilization of needles.* —

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

66 (2) No less than 24 sets of sterilized needles and tubes shall be on hand for the entire day
67 or night operation. Unused sterilized instruments shall be re-sterilized at intervals of no more than
68 six months from the date of the last sterilization;

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

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

74 (5) The ultrasonic unit shall be sanitized daily with a germicidal solution;

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

78 (7) All nondisposable instruments, including the needle tubes, shall be sterilized and shall
79 be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized
80 shall be sealed in bags made specifically for the purpose of autoclave sterilization and shall
81 include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also
82 list the contents;

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

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

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

88 (f) *Aftercare of tattoo.* —

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

91 (g) It is unlawful for any person to perform or offer to perform scleral tattooing upon a
92 person.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2020.

.....
Governor