

CHAPTER 99-176

House Bill No. 489

An act relating to public health; creating s. 381.0075, F.S.; providing for regulation of body-piercing salons by the Department of Health; providing definitions; providing exemptions; requiring a license to operate a body-piercing salon and a temporary license to operate a temporary establishment; providing licensing procedures and fees; providing requirements with respect to body piercing of minors; prohibiting certain acts; providing penalties; providing for injunction; providing for enforcement; providing rulemaking authority; providing specific requirements for operation of body-piercing salons; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 381.0075, Florida Statutes, is created to read:

381.0075 Regulation of body-piercing salons.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to protect the health, safety, and welfare of the public from the spread of infectious diseases from practices that prick, pierce, or scar the skin and therefore, to that end, to regulate body-piercing salons.

(2) DEFINITIONS.—As used in this section:

(a) “Body piercing” means for commercial purposes the act of penetrating the skin to make, generally permanent in nature, a hole, mark, or scar. “Body piercing” does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

(b) “Body-piercing salon” means a place where body piercing occurs.

(c) “Department” means the Department of Health.

(d) “Establishment” means a body-piercing salon as defined in this section.

(e) “Jewelry” means any personal ornament inserted into a pierced area other than the outer perimeter or lobe of the ear.

(f) “Licensee” means any person licensed under this section who is responsible for compliance with this section and the rules adopted under this section.

(g) “Operator” means an individual designated by a licensee to control the operation of an establishment.

(h) “Person” means any individual, partnership, corporation, or association.

(i) "Safe level" means not more than 50 colonies of microorganisms per 4 square inches of equipment or device surface.

(j) "Sanitization" means the effective bactericidal treatment of surfaces of equipment and devices by a product registered by the United States Environmental Protection Agency which provides a sufficient concentration of chemicals and enough time to reduce the bacterial count, including pathogens, to a safe level.

(k) "Sterilization" means the use of procedures that destroy all microbial life, including viruses, on the equipment or device.

(l) "Stop-use order" means a written notice from the department to a licensee requiring the licensee to remove a piece of equipment or cease conducting a particular procedure because the equipment is not being operated or the procedure conducted in accordance with the requirements of this section or any rule adopted pursuant thereto.

(m) "Temporary establishment" means a body-piercing establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

(3) EXEMPTIONS.—This section does not apply to the practice of any licensed health care professional under the regulatory jurisdiction of the department as long as the person does not hold himself or herself out as a body-piercing establishment.

(4) LICENSE REQUIRED.—

(a) A person may not operate an establishment unless it is licensed under this section.

(b) Any person operating an establishment must obtain a license from the department annually.

(c) A license for an establishment is not transferable from one place or person to another.

(d) A license automatically expires on September 30 of each year unless renewed by the department upon the request of the licensee.

(e) A current license must be displayed in a public area of the establishment.

(f) A person operating a temporary establishment must receive a temporary license from the department prior to operation. The department must be contacted at least 7 days prior to commencement of operation of the establishment and must conduct an inspection of the establishment to ensure compliance with licensing requirements prior to issuing the temporary license.

(5) LICENSE APPLICATION.—

(a) A person must apply to the department for an establishment license prior to commencement of operation and must apply for annual renewal of the license in order to continue operation.

(b) Application for an initial license or the renewal of a license must be on a form provided by the department and must be accompanied by the annual or prorated fee required in this section.

(c) The licensee must report any change in the application information to the department before the change may be put into operation.

(6) FEES.—

(a) Fees assessed under this section shall be reasonably calculated to cover the cost of regulation under this section, may be used only to meet the costs of carrying out the requirements of this section, and are nonrefundable.

(b) A person applying for initial licensure or reactivation of an expired license at the beginning of the licensing period or for renewal of a license shall pay the full fee. All other applicants, whether for initial licensure or reactivation of an expired license, shall pay a prorated fee based on the number of quarters left until September 30.

(c) Fees must be received by the department within 30 days after receipt of written notification from the department that a fee is due. Failure to pay timely will result in the assessment of a late fee. Fees are payable to the county health department in the county where the establishment is located.

(d) The fees assessed under this section are, unless prorated, as follows:

1. The annual license fee, or license renewal fee, for a body-piercing salon is \$150.

2. Each late fee is \$100.

3. The fee for a temporary establishment license is \$75.

(7) MINORS.—A person may not perform body piercing on a minor without the written notarized consent of the minor's parent or legal guardian, and an establishment may not perform body piercing on a minor under the age of 16 unless the minor is accompanied by a parent or legal guardian.

(8) PROHIBITED ACTS; PENALTIES; INJUNCTION.—

(a) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

1. Owning, operating, or soliciting business as an establishment in this state without first procuring a license from the department, unless specifically exempted by this section.

2. Obtaining or attempting to obtain a license to operate an establishment by means of fraud, misrepresentation, or concealment.

(b) Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

1. Failing to maintain the records required by this section or knowingly making false entries in such records.

2. Failing to comply with the requirements regarding minors set forth in subsection (7).

(c) In addition to any other punishment provided for, the court may suspend or revoke the license of any licensee under this section who has been found guilty of any violation of paragraph (a) or paragraph (b).

(d) If the department or any state attorney has probable cause to believe that an establishment or person has violated any provision of paragraph (a), an action may be brought by the department or the state attorney to enjoin such establishment or person from continuing such violation, or engaging therein or doing any acts in furtherance thereof, and the court may provide any other relief it deems appropriate.

(9) ENFORCEMENT.—

(a) The department shall inspect or investigate an establishment as necessary, but at least annually, to ensure compliance with this section. Department personnel may, at any reasonable time, enter any establishment licensed under this section or any premises the department has reason to believe is being operated or maintained in violation of this section, to determine compliance with this section or any rule adopted under this section.

(b) The department may impose an administrative fine, not to exceed \$1,000 per violation per day, for the violation of any provision of this section, any rule adopted under this section, or any term or condition of any license issued under this section by the department.

(c) In determining the amount of fine to be levied for a violation, as provided in paragraph (b), the following factors shall be considered:

1. The severity of the violation and the extent to which the provisions of this section, the rules adopted under this section, or any terms or conditions of any license issued under this section were violated.

2. Actions taken by the licensee to correct the violation.

3. Any previous violations by the licensee.

(d) The department may issue a stop-use order, or institute legal action for injunctive or other relief, to enforce any provision of this section.

(e) The department may cancel, revoke, or suspend a license to operate an establishment if the licensee:

1. Fails to pay any fee required by this section;

2. Obtains or attempts to obtain a license under this section by fraud, misrepresentation, or concealment; or

3. Violates any provision of this section or any rule adopted under this section.

(f)1. The department may issue a citation that contains an order of correction or an order to pay a fine, or both, for any violation of this section or the rules adopted under this section, when the violation of the section or rule is enforceable by an administrative or civil remedy or when the violation of the section or rule is a misdemeanor of the second degree. A citation constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provision of law or rule allegedly violated.

3. The fines imposed by a citation may not exceed \$1,000 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient of a citation, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay any fine levied against the recipient within the time allowed or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay the maximum fine.

5. The department may reduce or waive any fine imposed by a citation. In determining whether to reduce or waive a fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations for which enforcement actions were taken under this section.

6. Any person who willingly refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. This paragraph provides an alternative means of enforcing this section, but does not prohibit the department from enforcing this section or the rules adopted under this section by any other means. However, the department may use only a single method of enforcement for each violation.

(g) The department shall deposit all fines it collects under this section in the County Health Department Trust Fund for use in providing services specified in this section.

(10) RULES.—The department has authority to adopt rules to implement this section. Such rules may include sanitation practices, sterilization requirements and procedures, patient record content requirements, personnel record retention requirements, patient notification requirements and procedures, physical plant requirements, light requirements, and enforcement procedures.

(11) BODY-PIERCING SALONS; SPECIFIC REQUIREMENTS.—(a) A body-piercing salon must:

1. Properly sterilize all instruments that pierce the skin, directly aid in piercing the skin, or may come in contact with instruments that pierce the skin, through such means as storage in trays with other instruments or contact with forceps, in accordance with the sterilization procedures in this section.

2. Sanitize all equipment indirectly used in body piercing, including any beds, tables, headrests, armrests, legrests, or handrails.

3. Use protective infection barriers such as gloves and masks when serving a customer. If the protective barriers are contaminated, they must be properly disposed of immediately. Protective barriers may only be used once and only for one customer.

4. To the degree possible, thoroughly cleanse the area to be pierced with an antiseptic solution before and after the piercing.

5. Use only jewelry that is made of implant grade high-quality stainless steel, solid gold of at least 14K weight, niobium, titanium, platinum, a dense, low-porosity plastic, or silver and that is free of nicks, scratches, or irregular surfaces.

6. Provide each customer with written instructions on the proper care of the pierced area so as to prevent infection.

7. Maintain a record of each customer's visit for a period of not less than 2 years, including, but not limited to, the customer's name, date of visit, and area pierced and the name of the person performing the piercing.

8. Report any injury or any complaint of injury to the department on forms prescribed by the department and provide a copy of the report to the complainant.

(b) Sterilization procedures must include the following:

1. Proper autoclaving must be done according to the autoclave manufacturer's instructions.

2. There must be a sterilization indicator in each autoclaving to monitor the sterilization procedure. The indicator must indicate exposure to steam and 250° Fahrenheit.

3. Contaminated instruments must be sterilized in the following manner:

a. The contaminated instruments must be thoroughly cleansed with an antiseptic solution, according to the instructions for the antiseptic solution, and hot water.

b. The contaminated instruments and all other instruments, must be packaged properly and loaded correctly into the autoclave.

- c. The contaminated instruments must be sterilized by autoclave.
4. All sterilized instruments must be stored and handled in a manner that maintains sterility.
5. Autoclaves must be cleaned regularly and serviced at least once a year.
6. Each body-piercing salon utilizing autoclave sterilization techniques must post the sterilization procedures and ensure that personnel responsible for performing the sterilization procedures are adequately trained.
7. All staff must be trained in proper infection-control procedures.
8. Presterilized, prewrapped, disposable instruments may be used, but must be used in accordance with the manufacturer's instructions.
- (c) The body-piercing salon must be in compliance with s. 381.0098.

Section 2. This act shall take effect October 1, 1999.

Approved by the Governor May 14, 1999.

Filed in Office Secretary of State May 14, 1999.