

## CHAPTER 2010-220

### Committee Substitute for House Bill No. 729

An act relating to the practice of tattooing; creating s. 381.00771, F.S.; defining terms; creating s. 381.00773, F.S.; exempting certain personnel who perform tattooing for medical or dental purposes from regulation under specified provisions; creating s. 381.00775, F.S.; prohibiting the practice of tattooing except by a person licensed or registered by the Department of Health; requiring tattoo artists to complete a department-approved education course and pass an examination; providing for the licensure of tattoo artists and the registration of guest tattoo artists licensed in jurisdictions outside this state; creating s. 381.00777, F.S.; requiring the licensure of permanent tattoo establishments and temporary establishments; creating s. 381.00779, F.S.; providing practice requirements for tattoo artists, guest tattoo artists, tattoo establishments, and temporary establishments; requiring the department to inspect the establishments at specified intervals; creating s. 381.00781, F.S.; providing for fees for initial licensure or registration and the renewal or reactivation thereof; authorizing the adjustment of fees according to inflation or deflation; creating s. 381.00783, F.S.; specifying acts that constitute grounds for which the department may take disciplinary action; providing penalties; creating s. 381.00785, F.S.; providing penalties for certain violations involving the practice of tattooing; transferring, renumbering, and amending s. 877.04, F.S.; prohibiting the tattooing of a minor child except under certain circumstances; providing penalties; providing exceptions; creating s. 381.00789, F.S.; requiring the department to adopt rules to administer the act; creating s. 381.00791, F.S.; providing that specified provisions do not preempt certain local laws and ordinances; providing an effective date.

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

Section 1. Section 381.00771, Florida Statutes, is created to read:

381.00771 Definitions of terms used in ss. 381.00771-381.00791.—As used in ss. 381.00771-381.00791, the term:

(1) “Active license or registration” means a current license or registration issued by the department that is not suspended or revoked.

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

(3) “Guest tattoo artist” means a person who is licensed, registered, or certified to practice tattooing in a jurisdiction outside of this state who is registered with the department to practice tattooing in this state.

(4) “Operator” means a person designated by a tattoo establishment or temporary establishment to control the operation of the establishment.

(5) “Stop-use order” means a written notice from the department to a licensee or registrant requiring him or her to remove any tattooing equipment or supplies, or cease conducting any particular procedures, because the equipment or supplies are not being used or the procedures are not being conducted in accordance with ss. 381.00771-381.00791 or any rule adopted under those sections.

(6) “Tattoo” means a mark or design made on or under the skin of a human being by a process of piercing and ingraining a pigment, dye, or ink in the skin.

(7) “Tattoo artist” means a person licensed under ss. 381.00771-381.00791 to practice tattooing.

(8) “Tattoo establishment” means any permanent location, place, area, structure, or business where tattooing is performed.

(9) “Temporary establishment” means any location, place, area, or structure where tattooing is performed during, and in conjunction with, a convention or other similar event that does not exceed 14 consecutive days.

Section 2. Section 381.00773, Florida Statutes, is created to read:

381.00773 Application of ss. 381.00771-381.00791; exemption.—

(1) Except for s. 381.00787, which applies to all persons, ss. 381.00771-381.00791 do not apply to a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466 who performs tattooing exclusively for medical or dental purposes.

(2) Sections 381.00771-381.00791 apply exclusively to the tattooing of human beings and do not apply to the tattooing of any animal.

Section 3. Section 381.00775, Florida Statutes, is created to read:

381.00775 Tattoo artists; licensure; registration of guest tattoo artists.

(1) Except as provided in s. 381.00773, a person may not tattoo the body of any human being in this state unless the person is licensed as a tattoo artist or registered as a guest tattoo artist under this section.

(2)(a) A person seeking licensure as a tattoo artist must apply to the department in the format prescribed by the department. An application must include:

1. The name and residence address of the applicant.
2. The name and street address of each tattoo establishment and temporary establishment at which the applicant intends to practice tattooing in this state.

(b) The department shall issue a license to an applicant who:

1. Is 18 years of age or older.
2. Submits a completed application.
3. Pays the applicable license fee established in s. 381.00781.
4. Submits proof of successful completion of an education course approved by the department on blood-borne pathogens and communicable diseases.
5. Submits proof of passage of an examination approved by the department on the material presented in the education course.

(c) The department shall approve one or more education courses and examinations that allows a person to complete the requirements of subparagraphs (b)4. and 5. in person or through an Internet website.

(d) A tattoo artist must, within 30 days after a change, notify the department of any change in the following information disclosed in his or her most recent application for issuance or renewal of his or her tattoo artist license in the format prescribed by the department:

1. The name and residence address of the tattoo artist.
2. The name and street address of each tattoo establishment in this state at which the tattoo artist has practiced tattooing for more than 14 days since the most recent renewal of his or her tattoo artist license or, if the license has not been renewed, since the license was issued.

(3)(a) A person seeking registration as a guest tattoo artist must apply to the department in the format prescribed by the department. An application must include:

1. The name and residence address of the applicant.
2. The name and street address of each tattoo establishment and temporary establishment at which the applicant will practice under the guest tattoo artist registration.

(b) The department shall issue a guest tattoo artist registration to an applicant who:

1. Is 18 years of age or older.
2. Submits a completed application.
3. Pays the applicable registration fee established in s. 381.00781.
4. Holds an active license, registration, or certification issued by a jurisdiction outside this state, whether by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction, if:

a. The education and examination requirements of the license, registration, or certification substantially meet or exceed the requirements of subparagraphs (2)(b)4. and 5.; or

b. The applicant submits proof of successful completion of an education course approved by the department under subparagraph (2)(b)4. and proof of passage of an examination approved by the department under subparagraph (2)(b)5.

(4)(a) A tattoo artist license is valid for 1 year and must be renewed annually.

(b) A guest tattoo artist registration is valid for 14 days. A guest tattoo artist may apply for reregistration before or after expiration of his or her current registration.

(5) A license or registration issued by the department under this section is not transferable.

Section 4. Section 381.00777, Florida Statutes, is created to read:

381.00777 Tattoo establishments; licensure; temporary establishments.

(1)(a) Except as provided in s. 381.00773, a person may not tattoo the body of any human being in this state except at a tattoo establishment or temporary establishment licensed under this section.

(b) A person may not operate a tattoo establishment or temporary establishment in this state unless the establishment is licensed under this section.

(2) A person seeking licensure of a tattoo establishment must apply to the department in the format prescribed by the department. An application must include:

(a) The registered business name, including any fictitious names under which the tattoo establishment conducts business in the state.

(b) The street address and telephone number of the tattoo establishment.

(c) The name, mailing address, and telephone number of the tattoo establishment's operator.

(d) The name and address of the tattoo establishment's registered agent for service of process in the state.

(3) The department shall issue a tattoo establishment license to an applicant, if:

(a) The applicant submits a completed application.

(b) The applicant pays the applicable license fee established in s. 381.00781.

(c) The establishment complies with all applicable local building, occupational, zoning, and health codes.

(4) A temporary establishment must meet the same requirements for licensure as a permanent tattoo establishment.

(5)(a) A license is valid only for the location listed on the license. A tattoo establishment must notify the department in the format prescribed by the department before any change of the licensed location. A tattoo establishment with more than one location must obtain a separate license for each location.

(b) A tattoo establishment license is valid for 1 year and must be renewed annually.

(c) A temporary establishment license is valid for the duration of a convention or other similar event for which the license is issued not to exceed 14 consecutive days.

(6) A license issued by the department under this section is not transferable.

Section 5. Section 381.00779, Florida Statutes, is created to read:

381.00779 Practice requirements.—

(1) A tattoo establishment or temporary establishment must:

(a) Display an active license for the establishment in a manner that is easily visible to the public at all times while tattooing is performed at the establishment.

(b) Ensure that each tattoo artist and guest tattoo artist, while practicing tattooing at the establishment, meets all applicable requirements of ss. 381.00771-381.00791.

(c) Maintain sanitary conditions of the establishment at all times.

(d) Comply with all state and local health codes and ordinances.

(e) Allow the department to inspect the establishment pursuant to subsection (4).

(f) Comply with s. 381.0098 and rules adopted under that section.

(2) A tattoo artist or guest tattoo artist must:

(a) Display his or her active license in a manner that is easily visible to the public at all times while practicing tattooing.

(b) Practice tattooing exclusively at an establishment licensed under ss. 381.00771-381.00791.

(c) Maintain sanitary conditions of the establishment at all times.

(d) Comply with all state and local health codes and ordinances.

(3) A tattoo artist or guest tattoo artist may tattoo the body of a minor child only to the extent authorized in s. 381.00787. A tattoo establishment or temporary establishment must keep, for the period prescribed by the department, each written notarized consent submitted under s. 381.00787(2)(c) by the parent or legal guardian of a minor child who is tattooed at the establishment.

(4) The department may inspect and investigate each tattoo establishment and temporary establishment as necessary to ensure compliance with ss. 381.00771-381.00791. However, the department shall inspect each tattoo establishment at least annually and shall inspect each temporary establishment before and, as necessary, during a convention or similar event with which the establishment is connected.

Section 6. Section 381.00781, Florida Statutes, is created to read:

381.00781 Fees; disposition.—

(1) The department shall establish by rule the following fees:

(a) Fee for the initial licensure of a tattoo establishment and the renewal of such license, which, except as provided in subsection (2), may not exceed \$250 per year.

(b) Fee for licensure of a temporary establishment, which, except as provided in subsection (2), may not exceed \$250.

(c) Fee for the initial licensure of a tattoo artist and the renewal of such license, which, except as provided in subsection (2), may not exceed \$150 per year.

(d) Fee for registration or reregistration of a guest tattoo artist, which, except as provided in subsection (2), may not exceed \$45.

(e) Fee for reactivation of an inactive tattoo establishment license or tattoo artist license. A license becomes inactive if it is not renewed before the expiration of the current license.

(2) The department may annually adjust the maximum fees authorized under subsection (1) according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

Section 7. Section 381.00783, Florida Statutes, is created to read:

381.00783 Grounds for discipline; administrative penalties.—

(1) The following acts constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any tattoo establishment, temporary establishment, tattoo artist, guest tattoo artist, operator of a tattoo establishment, or unlicensed person engaged in activities regulated under ss. 381.00771-381.00791:

(a) Providing false information on an application for licensure or registration.

(b) Violating a state or local health code or ordinance.

(c) Violating any provision of ss. 381.00771-381.00791, rule adopted under those sections, or lawful order of the department.

(d) Being found guilty of or pleading nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of tattooing or the operation of a tattoo establishment or temporary establishment.

(e) Committing fraud, deceit, negligence, or misconduct in the practice of tattooing or the operation of a tattoo establishment or temporary establishment.

(f) Aiding, procuring, or assisting a person to unlawfully practice tattooing or unlawfully operate a tattoo establishment or temporary establishment.

(g) Failing to keep the written notarized consent of the parent or legal guardian of a minor child who is tattooed at a tattoo establishment or temporary establishment for the period specified pursuant to s. 381.00779(3) or knowingly making false entries in a parent's or legal guardian's written notarized consent.

(2) When the department determines that a person commits any of the acts set forth in subsection (1), the department may enter an order imposing one or more of the following penalties:

(a) Refusal to issue a license or registration or renew a license.

(b) Suspension or revocation of a license or registration.

(c) Imposition of an administrative fine not to exceed \$1,500 for each count or separate violation.

(d) Issuance of a reprimand.

(e) Placement of the licensee or registrant on probation for a specified period and subject to the conditions that the department may specify.

(f) Issuance of a stop-use order.

(g) Corrective action.

(3) The department shall impose stricter penalties for the repetition of violations and as the severity of violations escalate, distinguishing lesser violations from those that endanger the public health.

(4) Disciplinary proceedings shall be conducted as provided in chapter 120.

Section 8. Section 381.00785, Florida Statutes, is created to read:

381.00785 Criminal penalties.—

(1) A person may not:

(a) Operate a tattoo establishment or temporary establishment in this state without a license.

(b) Practice tattooing in this state without a tattoo artist license or guest tattoo artist registration, except as provided in s. 381.00773.

(c) Practice tattooing in this state at any place other than a tattoo establishment or temporary establishment, except as provided in s. 381.00773.

(d) Obtain or attempt to obtain a license or registration by means of fraud, misrepresentation, or concealment.

(2) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Section 877.04, Florida Statutes, is transferred, renumbered as section 381.00787, Florida Statutes, and amended to read:

381.00787 877.04 Tattooing prohibited; penalty.—

(1) ~~A~~ It is unlawful for any person ~~may not~~ to tattoo the body of a ~~minor child younger than 16 years of age unless the any human being;~~ except that tattooing ~~is~~ ~~may be~~ performed ~~for medical or dental purposes~~ by a person licensed to practice medicine or dentistry under ~~chapter~~ ~~chapters~~ 458, ~~chapter~~ and 459, or chapter 466, or by a person under his or her general supervision as defined by the Board of Medicine.

(2) ~~Any person who violates the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(2)(3) A person may not tattoo the ~~No~~ body of a minor child who is at least 16 years of age, but younger than 18 years of age, unless:

(a) The minor child is accompanied by his or her parent or legal guardian;



(b) The minor child and his or her parent or legal guardian each submit proof of his or her identity by producing a government-issued photo identification;

(c) The parent or legal guardian submits his or her ~~shall be tattooed~~ without the written notarized consent in the format prescribed by the department; of

(d) The parent or legal guardian submits proof that he or she is the parent or legal guardian of the minor child; and

(e) The tattooing is performed by a tattoo artist or guest tattoo artist licensed under ss. 381.00771-381.00791 or a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466.

(3) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, a person who tattoos the body of a minor child younger than 18 years of age does not violate this section, if:

(a) The person carefully inspects what appears to be a government-issued photo identification that represents that the minor child is 18 years of age or older.

(b) The minor child falsely represents himself or herself as being 18 years of age or older and presents a fraudulent identification.

(c) A reasonable person of average intelligence would believe that the minor child is 18 years of age or older and that the photo identification is genuine, was issued to the minor child, and truthfully represents the minor child's age.

Section 10. Section 381.00789, Florida Statutes, is created to read:

381.00789 Rulemaking.—The department shall adopt rules to administer ss. 381.00771-381.00791. Such rules may include, but are not limited to, rules defining terms; prescribing educational requirements for tattoo artists and guest tattoo artists, health and safety requirements, sanitation practices, and sterilization requirements and procedures; and providing requirements for tattoo equipment, customer notification, the contents of customer records, the retention of records, and physical plants. The department shall consult with representatives of the tattooing industry in this state during the development of such rules.

Section 11. Section 381.00791, Florida Statutes, is created to read:

381.00791 Local laws and ordinances.—Sections 381.00771-381.00791 do not preempt any local law or ordinance of a county or municipality that imposes regulations on tattoo establishments, temporary establishments, tattoo artists, or the practice of tattooing which are in addition to those sections.

Section 12. This act shall take effect January 1, 2012.

Approved by the Governor June 4, 2010.

Filed in Office Secretary of State June 4, 2010.