

CHAPTER 580

H.B. No. 1217

AN ACT

relating to the regulation of tattoo parlors; providing an administrative and a criminal penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subtitle G, Title 2, Health and Safety Code, is amended by adding Chapter 146 to read as follows:

CHAPTER 146. TATTOO PARLORS

Sec. 146.001. *DEFINITIONS. In this chapter:*

(1) "Tattoo" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment.

(2) "Tattooist" means a person who performs tattooing.

(3) "Tattoo parlor" means an establishment or facility in which tattooing is performed.

Sec. 146.002. *LICENSE REQUIRED.* (a) A person may not conduct, operate, or maintain a tattoo parlor unless the person holds a license issued by the department to operate the parlor.

(b) The license shall be displayed in a prominent place in the tattoo parlor.

Sec. 146.003. *LICENSE APPLICATION.* (a) To receive a tattoo parlor license, a person must submit a license application to the department on a form prescribed by the department and must submit an application fee.

(b) On receipt of a license application, the department shall inspect the proposed tattoo parlor to determine compliance with this chapter and rules adopted by the board under this chapter. In addition, the department shall request confirmation from the appropriate building and zoning officials in the municipality or county in which the parlor is proposed to be located to determine compliance with existing building and zoning codes applicable to the parlor.

(c) The department may issue a license after determining that the parlor is in compliance with applicable statutes, rules, and building and zoning codes.

Sec. 146.004. *LICENSE RENEWAL.* A license is valid for one year from the date of issuance and may be renewed annually on payment of the required renewal fee.

Sec. 146.005. *FEES.* (a) The board shall set license fees and license renewal fees in amounts necessary to administer this chapter.

(b) Fees collected under this section may only be appropriated to the department to administer and enforce this chapter.

Sec. 146.006. *CHANGE OF LOCATION.* (a) A person holding a license under this chapter who intends to change the location of the tattoo parlor shall notify the department in writing of that intent not less than 30 days before the change is to occur. The notice shall include the street address of the new location and the name and residence address of the individual in charge of the business at the new location.

(b) Not later than the 10th day after the change of location is complete, a person holding a license under this chapter shall notify the department in writing and shall verify the information submitted under Subsection (a).

(c) Notice under this section must be sent to the department's central office by certified mail, return receipt requested.

Sec. 146.007. COMPLIANCE WITH CHAPTER AND RULES. A person who owns, operates, or maintains a tattoo parlor shall comply with this chapter and rules adopted under this chapter.

Sec. 146.008. ASEPTIC TECHNIQUES. A person who owns, operates, or maintains a tattoo parlor and each tattooist who works in the parlor shall take precautions to prevent the spread of infection, including:

- (1) using germicidal soap to clean the hands of the tattooist and the skin area of the client to be tattooed;
- (2) wearing clean apparel and rubber gloves;
- (3) using sterile tools and equipment as provided by Section 146.011; and
- (4) keeping the tattoo parlor in a sanitary condition.

Sec. 146.009. BUILDING AND LOCATION. A tattoo parlor must be in a permanent, nondwelling building located in an area in which the location is permissible under local zoning codes, if any.

Sec. 146.010. SANITATION REQUIREMENTS. (a) The board by rule shall establish sanitation requirements for tattoo parlors and any other necessary requirements relating to the building or part of the building in which a tattoo parlor is located.

(b) A person who owns, operates, or maintains a tattoo parlor shall comply with the rules adopted under this section.

Sec. 146.011. TOOLS AND EQUIPMENT. (a) A tattooist shall use tools and equipment for tattooing that have been properly sterilized and kept in a sterile condition.

(b) A tattooist shall sterilize tools and equipment used on one client before using them on another client.

(c) Tools and equipment shall be sterilized by:

- (1) dry heating in an oven at 320 degrees Fahrenheit for at least one hour; or
- (2) steam pressure treatment in an autoclave.

(d) All needles and instruments shall be kept in a clean, dust-tight container when not in use.

Sec. 146.012. TATTOOS PROHIBITED FOR CERTAIN PERSONS. A tattooist may not tattoo:

- (1) a person younger than 18 years of age; or
- (2) a person whom the tattooist suspects is under the influence of alcohol or drugs.

Sec. 146.013. MAINTENANCE OF RECORDS. (a) A tattooist shall maintain a permanent record of each person tattooed by the tattooist for a period established by the board.

(b) The record shall be available for inspection on the request of the department.

Sec. 146.014. REPORT OF INFECTION. A person who owns, operates, or maintains a tattoo parlor shall report to the department any infection resulting from tattooing as soon as it becomes known.

Sec. 146.015. RULES; ENFORCEMENT. (a) The board shall adopt rules to implement this chapter.

(b) The department shall enforce this chapter and the rules adopted under this chapter and may issue orders to compel compliance.

Sec. 146.016. INSPECTIONS. (a) The department shall inspect a tattoo parlor to determine if the parlor complies with this chapter and the rules adopted under this chapter.

(b) A person who owns, operates, or maintains a tattoo parlor shall allow inspection of the parlor by the department at any time the parlor is in operation.

(c) The department shall inform the person who owns, operates, or maintains a tattoo parlor of any violation discovered by the department under this section and shall give the person a reasonable period in which to take necessary corrective action.

Sec. 146.017. LICENSE DENIAL, SUSPENSION, OR REVOCATION. (a) The department may refuse to issue a license or suspend or revoke a license issued under this chapter

if an applicant or license holder does not comply with this chapter or a rule adopted or order issued under this chapter.

(b) *The refusal to issue a license, the suspension or revocation of a license, and any appeals are governed by the board's formal hearing procedures and the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). A person may appeal a final decision of the department as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

Sec. 146.018. **OFFENSE; CRIMINAL PENALTY.** (a) *A person commits an offense if the person violates this chapter or a rule adopted under this chapter.*

(b) *An offense under this section is a Class C misdemeanor.*

(c) *Each day of violation constitutes a separate offense.*

Sec. 146.019. **ADMINISTRATIVE PENALTY.** (a) *The commissioner may impose an administrative penalty against a person who violates a rule adopted under Section 146.007 or an order adopted or license issued under this chapter.*

(b) *The penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.*

(c) *The amount of the penalty shall be based on:*

(1) *the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;*

(2) *the economic harm to property or the environment caused by the violation;*

(3) *the history of previous violations;*

(4) *the amounts necessary to deter future violations;*

(5) *efforts to correct the violation; and*

(6) *any other matter that justice may require.*

(d) *The commissioner who determines that a violation has occurred shall issue an order that states the facts on which the determination is based, including an assessment of the penalty.*

(e) *Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.*

(f) *Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.*

(g) *If the person accepts the determination and recommended penalty of the commissioner, the commissioner by order shall approve the determination and impose the recommended penalty.*

(h) *If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.*

(i) *The notice of the commissioner's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its*

subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The commissioner who receives a copy of an affidavit under Subsection (k)(2) of this section may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commissioner:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

SECTION 2. A person is not required to obtain a tattoo parlor license under Chapter 146, Health and Safety Code, as added by this Act, until January 1, 1994.

SECTION 3. (a) Subchapter G, Chapter 161, Health and Safety Code, is repealed.

(b) The repeal by this Act of Subchapter G, Chapter 161, Health and Safety Code, does not apply to an offense committed under that subchapter before the effective date of the repeal. An offense committed before that date is covered by that subchapter as it existed on the date on which the offense was committed, and the former law is continued in effect for this purpose.

SECTION 4. This Act takes effect September 1, 1993, except that Section 3 of this Act and Section 146.018, Health and Safety Code, as added by this Act, take effect January 1, 1994.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 4, 1993, by a non-record vote; the House concurred in Senate amendments on May 26, 1993, by a non-record vote; passed by the Senate, with amendments, on May 24, 1993, by a viva-voce vote.

Approved June 11, 1993.

Effective Sept. 1, 1993, except § 3 effective Jan. 1, 1994, and Health & Safety Code § 146.018, as added by § 1, effective Jan. 1, 1994.