The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 129

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

SENATE BILL 275, as amended

Introduced by
CHAPTER 129

AN ACT

RELATING TO BODY ART; CREATING THE BOARD OF BODY ART
PRACTITIONEES; CREATING THE BODY ART PRACTITIONERS FUND;
PROVIDING POWERS AND DUTIES; REVISIGN POWERS AND DUTIES OF
THE BOARD OF BARBERS AND COSMETOLOGISTS; REPEALING SECTIONS
61-17B-12 AND 61-17B-14 NMSA 1978 (BEING LAWS 2007, CHAPTER
181, SECTIONS 12 AND 14); MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-17A-6 NMSA 1978 (being Laws 1993,
Chapter 171, Section 6, as amended) is amended to read:

"61-17A-6. BOARD CREATED--MEMBERSHIP.--

A. The "board of barbers and cosmetologists" is
created. The board is administratively attached to the
regulation and licensing department. The board consists of
seven members appointed by the governor. Members shall serve
three-year terms; provided that at the time of initial
appointment, the governor shall appoint members to
abbreviated terms to allow staggering of subsequent
appointments. Vacancies shall be filled in the manner of the
original appointment.

B. Of the seven members of the board, five shall
be licensed pursuant to the Barbers and Cosmetologists Act
and shall have at least five years' practical experience in
their respective occupations. Of those five, two members
shall be licensed barbers, two members shall be licensed
cosmetologists and one member shall represent school owners.
The remaining two members shall be public members. Neither
the public members nor their spouses shall have ever been
licensed pursuant to the provisions of the Barbers and
Cosmetologists Act or similar prior legislation or have a
financial interest in a school or establishment.

C. Members of the board shall be reimbursed
pursuant to the Per Diem and Mileage Act and shall receive no
other compensation, perquisite or allowance.

D. The board shall elect from among its members a
chair and such other officers as it deems necessary. The
board shall meet at the call of the chair, not less than four
times each year. A majority of members currently serving
shall constitute a quorum for the conduct of business.

E. No board member shall serve more than two full
consecutive terms and any member who fails to attend, after
proper notice, three meetings shall automatically be
recommended for removal unless excused for reasons set forth
by board rule."

SECTION 2. Section 61-17A-7 NMSA 1978 (being Laws 1993,
Chapter 171, Section 7, as amended) is amended to read:

"61-17A-7. BOARD POWERS AND DUTIES.--

A. The board shall:

(1) adopt and file, in accordance with the
State Rules Act, rules necessary to carry out the provisions
of the Barbers and Cosmetologists Act;
    (2) establish fees;
    (3) provide for the examination, licensure
and license renewal of applicants for licensure;
    (4) establish standards for and provide for
the examination, licensure and license renewal of
manicurists-pedicurists, estheticians and electrologists;
    (5) adopt a seal;
    (6) furnish copies of rules and sanitary
requirements adopted by the board to each owner or manager of
an establishment, enterprise or school;
    (7) keep a record of its proceedings and a
register of applicants for licensure;
    (8) provide for the licensure of barbers,
cosmetologists, manicurists-pedicurists, estheticians,
electrologists, instructors, schools, enterprises and
establishments;
    (9) establish administrative penalties and
fines;
    (10) create and establish standards and
fees for special licenses;
    (11) establish guidelines for schools to
calculate tuition refunds for withdrawing students; and
    (12) issue cease and desist orders to
persons violating the provisions of the Barbers and
Cosmetologists Act and rules promulgated in accordance with
that act.

E. The board may establish continuing education
requirements as requirements for licensure.

C. A member of the board, its employees or agents
may enter and inspect a school, enterprise or establishment
at any time during regular business hours for the purpose of
determining compliance with the Barbers and Cosmetologists
Act."

SECTION 3. Section 61-17B-1 NMSA 1978 (being Laws 2007,
Chapter 181, Section 1) is amended to read:

"61-17B-1. SHORT TITLE.--Chapter 61, Article 17B NMSA
1978 may be cited as the "Body Art Safe Practices Act"."

SECTION 4. Section 61-17B-3 NMSA 1978 (being Laws 2007,
Chapter 181, Section 3) is amended to read:

"61-17B-3. DEFINITIONS.--As used in the Body Art Safe
Practices Act:

A. "board" means the board of body art
practitioners;

B. "body art" means tattooing, body piercing or
scarification but does not include practices that are
considered medical procedures by the New Mexico medical
board;

C. "body art establishment" means a fixed or
mobile place where body art is administered on the premises;

D. "body artist" means a person who administers body piercing, tattooing or scarification;

E. "body piercing" means to cut, stab or penetrate the skin to create a permanent hole or opening;

F. "equipment" means machinery used in connection with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances;

G. "instruments used for body art" means hand pieces, needles, needle bars and other items that may come into contact with a person's body during the administration of body art;

H. "operator" means the owner in charge of a body art establishment;

I. "scarification" means cutting into the skin with a sharp instrument or branding the skin with a heated instrument to produce a permanent mark or design on the skin;

J. "sharps" means any sterilized object that is used for the purpose of penetrating the skin or mucosa, including needles, scalpel blades and razor blades;

K. "single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls,
tissues or paper products, paper or plastic cups, gauze and
sanitary coverings, razors, piercing needles, scalpel blades,
stencils, ink cups and protective gloves;

L. "sterilization" means destruction of all forms
of microbiotic life, including spores; and

M. "tattooing" means the practice of depositing
pigment, which is either permanent, semipermanent or
temporary, into the epidermis using needles by someone other
than a state-licensed physician or a person under the
supervision of a state-licensed physician and includes
permanent cosmetics, dermography, micropigmentation,
permanent color technology and micropigment implantation."

SECTION 5. Section 61-17B-5 NMSA 1978 (being Laws 2007,
Chapter 181, Section 5) is amended to read:

"61-17B-5. LICENSE--APPLICATION--REVOCATION--
SUSPENSION.--

A. A body artist shall obtain a body art license,
and an operator shall obtain a body art establishment
license, the requirements for which shall be defined by the
board and shall include the requirement that a body artist
applicant demonstrate that the body artist has the training
and experience necessary to perform body piercing, tattooing
or scarification and the requirement that a sanitary and
sterile body art establishment be maintained.

B. An operator or body artist shall possess and
post in a conspicuous place a valid and unsuspended license
issued by the board in accordance with the Body Art Safe
Practices Act and the rules promulgated pursuant to that act.
An operator or a body artist shall not display a license
unless it has been issued to that operator or body artist by
the board and has not been suspended or revoked.

C. An operator or body artist shall apply to the
board for the issuance or renewal of a license annually and
shall pay license fees established by the board. The board
shall set license fees, license renewal fees and late fees in
amounts necessary to administer the provisions of the Body
Art Safe Practices Act. If an operator or body artist fails
to renew a license for the next year, the license is void;
provided that the voided license may be restored at any time
during the year following the license's expiration upon the
payment of the appropriate license renewal fee and a late
charge not to exceed one hundred dollars ($100) as set forth
by board rules. If the operator or body artist fails to
restore a license within one year following the license's
expiration, the operator or body artist may request
restoration of the license pursuant to rules promulgated by
the board.

D. The board shall promulgate rules for the
revocation or suspension of a license for a body art
establishment or a body artist who fails to comply with a
provision of the Body Art Safe Practices Act or rules
promulgated pursuant to that act. A license shall not be
suspended or revoked pursuant to the Body Art Safe Practices
Act without providing the operator or the body artist with an
opportunity for an administrative hearing unless conditions
in the body art establishment warrant immediate suspension
pursuant to Section 61-17B-9 NMSA 1978. The hearing officer
shall not be a person previously involved in the suspension
or revocation action. An inspection made more than
twenty-four months prior to the most recent inspection shall
not be used as a basis for suspension or revocation.

E. The board shall charge a fee not to exceed
three hundred dollars ($300) for the application to issue a
new or renewed license. The applicant shall provide proof of
current immunization as required by the board and proof of
the applicant's attendance at a blood-borne pathogen training
program and other training as required by the board before a
license is issued or renewed.

F. A current body art license or body art
establishment license shall not be transferable from one
person to another.

G. The following information shall be kept on the
premises of a body art establishment and shall be available
for inspection by the board:

(1) the full names of all employees in the
establishment and their exact duties;

(2) the board-issued license with
identification photograph for the operator and any body
artists;

(3) the body art establishment name and
hours of operation;

(4) the name and address of the operator;

(5) a complete description of all body art
performed at the body art establishment;

(6) a list of all instruments, body jewelry,
sharps and inks used at the body art establishment, including
names of manufacturers and serial or lot numbers or invoices
or other documentation sufficient to identify and locate the
manufacturer of those items; and

(7) a current copy of the Body Art Safe
Practices Act.

H. An operator shall notify the board in writing
not less than thirty days before changing the location of a
body art establishment. The notice shall include the street
address of the body art establishment's new location."

SECTION 6. A new section of the Body Art Safe Practices
Act is enacted to read:

"BOARD CREATED--MEMBERSHIP.--

A. The "board of body art practitioners" is
created. The board is administratively attached to the
regulation and licensing department and consists of five members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow for the terms of subsequent appointments to be staggered. Vacancies shall be filled in the manner of the original appointment.

B. Of the five members of the board, four shall be licensed pursuant to the Body Art Safe Practices Act and shall have at least five years' practical experience in their occupations. Of those four, two members shall be operators and two members shall be body artists. The remaining one member shall be a public member. The public member shall not have ever been licensed pursuant to the provisions of the Body Art Safe Practices Act or similar prior legislation or have a financial interest in a body art establishment.

C. Members of the board shall be reimbursed pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

D. The board shall elect from among its members a chair and such other officers as it deems necessary. The board shall meet at the call of the chair, not less than two times each year. A majority of members currently serving constitutes a quorum for the conduct of business.

E. A board member shall not serve more than two
full consecutive terms, and a member who fails to attend
three meetings shall automatically be recommended for removal
unless the member's absence is excused for reasons set forth
by board rule."

SECTION 7. A new section of the Body Art Safe Practices
Act is enacted to read:

"BODY ART PRACTITIONERS FUND CREATED.--The "body art
practitioners fund" is created in the state treasury. The
fund consists of appropriations; license fees, charges and
fines that are imposed by the board and that shall be
deposited into the fund; and money otherwise accruing to the
fund. Money in the fund is appropriated to the board for the
purpose of carrying out the provisions of the Body Art Safe
Practices Act. Money in the fund shall be disbursed on
warrants signed by the secretary of finance and
administration pursuant to vouchers signed by the chair of
the board or the chair's authorized representative. Any
balance remaining in the fund at the end of a fiscal year
shall not revert to the general fund."

SECTION 8. A new section of the Body Art Safe Practices
Act is enacted to read:

"BOARD POWERS AND DUTIES.--

A. The board shall:

(1) in conjunction with the department of
health, promulgate rules necessary to implement the
provisions of the Body Art Safe Practices Act;

(2) establish fees;

(3) establish standards and provide for the issuance of new and renewal operator and body artist licenses to applicants;

(4) adopt a seal;

(5) furnish copies of rules and sanitation and sterilization requirements adopted by the board to each operator of a body art establishment;

(6) keep a record of its proceedings, a register of applicants for licensure and a register of licensed operators and body artists; and

(7) issue cease and desist orders to persons who violate the provisions of the Body Art Safe Practices Act or rules promulgated pursuant to that act.

B. The board may establish continuing education or other requirements for licensure.

C. A member of the board, its employees or agents may enter and inspect a body art establishment at any time during regular business hours for the purpose of determining compliance with the Body Art Safe Practices Act."

SECTION 9. A new section of the Body Art Safe Practices Act is enacted to read:

"TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of body art practitioners is terminated on July 1, 2021"
pursuant to the Sunset Act. The board shall continue to
operate according to the provisions of the Body Art Safe
Practices Act until July 1, 2022. Effective July 1, 2022,
the Body Art Safe Practices Act is repealed."

SECTION 10. TEMPORARY PROVISION--TRANSFER OF
APPROPRIATIONS, PROPERTY, EQUIPMENT, SUPPLIES, PERSONNEL,
MONEY, CONTRACTS AND LEGAL AND ADMINISTRATIVE PROCEEDINGS--
EXISTING LICENSES--STATUTORY REFERENCES.--

A. On the effective date of this act:

(1) all personnel and all money,
appropriations, records, furniture, equipment, supplies and
other property that belonged or were allocated to the board
of barbers and cosmetologists for use in connection with the
implementation of the Body Art Safe Practices Act are
transferred to the board of body art practitioners;

(2) all money that is in the barbers and
cosmetologists fund that was paid into the fund pursuant to
the Body Art Safe Practices Act or regulations promulgated
pursuant to that act shall be transferred to the body art
practitioners fund;

(3) all existing contracts, agreements and
other obligations that relate to the Body Art Safe Practices
Act or the board of barbers and cosmetologists work pursuant
to that act shall be binding on the board of body art
practitioners;
(4) all pending court cases, legal actions, appeals and other legal proceedings and all pending administrative proceedings that involve the board of barbers and cosmetologists that relate solely to the implementation of the Body Art Safe Practices Act shall be unaffected and shall continue in the name of the board of body art practitioners. Pending legal or administrative proceedings described in this paragraph that relate to the board of barbers and cosmetologists and to the implementation of the Body Art Safe Practices Act shall be unaffected, but the board of body art practitioners shall be joined as a party;

(5) all rules, orders and other official acts of the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall continue in effect until amended, replaced or repealed by the board of body art practitioners; and

(6) references in the law, rules and orders to the board of barbers and cosmetologists in connection with the Body Art Safe Practices Act shall be deemed references to the board of body art practitioners.

B. Licenses that were issued before the effective date of this act by the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall remain in effect until the license expires or is renewed or reissued by the board of body art practitioners.
SECTION 11. REPEAL.--Sections 61-17B-12 and 61-17B-14 NMSA 1978 (being Laws 2007, Chapter 181, Sections 12 and 14) are repealed.

SECTION 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 10th day of April, 2015

Governor Susana Martinez
State of New Mexico