

LATE

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Committee on Health

S. B. 1263, S.D. 2, RELATING TO TATTOO ARTISTS

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

March 17, 2009

8:30 a.m.

1 **Department's Position:** The department does not support the bill as written. The department is
2 opposed to rule-making in statutes; we feel that this should be done by amending existing administrative
3 rules.

4 **Fiscal Implications:** Approval of additional positions and training funds will be needed in order
5 for the Department of Health to administer this bill.

6 **Purpose and Justification:** The bill seeks to provide licenses to unlicensed tattoo artists
7 participating in tattoo conventions or events outside of tattoo establishments and proposes to allow
8 temporary tattoo establishment permits to be issued to these conventions and events. The bill also seeks
9 to rectify deficiencies in statutes that regulate tattoo artists.

10 As requested by the legislature, the department collaborated with the tattoo industry in
11 developing and establishing the changes in this measure; however, many of our suggested changes were
12 not incorporated in the current amendments. Therefore, the department cannot support this bill as
13 written.

14 Furthermore, in light of proposed cuts to the department's budget, we question whether any
15 regulation of tattoo artists could be implemented by the department.

1 Should the bill be allowed to move forward, we would propose amendments to the bill
2 (attached). In summary, we are recommending the following:

3 (1) Clarify the requirements for the participation and permit fees.

4 (2) Delete 321-B Temporary licenses section. This section is not needed as the requirements would
5 be addressed in 321-374 License required; exemptions.

6 (3) Delete the definition of “facial tattoo” since all tattooing, regardless of where on the body and
7 regardless of method, should be subject to the same requirements and regulations.

8 (4) Amend 321-373 to remove the reference to facial tattoos [see (3) above].

9 (5) Amend 321-374 to clarify who can practice the occupation of tattoo artist and specify that only
10 those with an unrevoked license from the department may practice. As to tuberculin (TB) testing
11 hepatitis B vaccination, and similar types of requirements, we think these are better left to rule making.
12 Infection control training and practice to protect the public should be primary concerns.

13 (6) Amend to include provisions for temporary licenses to include limitations, restrictions and fees.

14 (7) Amend 321-379 to adjust violations and fines in accordance with other pertinent chapters within
15 the department. Amend the listed violations to be reasonable and enforceable. An example of what
16 could be viewed as an unreasonable requirement is arbitrarily prohibiting tattooing anyone under the age
17 of sixteen regardless of parental or legal consent (there already are existing rules that prohibit tattooing
18 anyone under the age of eighteen without the written consent of the parents or legal guardian).

19 Requirements that we consider “unenforceable” due to the Sanitation Branch's lack of resources and
20 expertise include those relating to the character of the artist, such as “Unfitness or incompetence by
21 reason of negligence, habits,” “Habitual intemperance, addiction, or dependency on alcohol or other
22 habit-forming substances,” “Mental incompetence resulting in an inability to practice as a tattoo artist,”
23 and “Engaging in dishonorable, unethical, or unprofessional conduct of character.”

- 1 (8) Delete 321-380 Penalties. This section is not needed as the requirement would be addressed in
- 2 321-379 Enforcement; penalties.
- 3 Thank you for the opportunity to testify.

Report Title:

Tattoo Artists; Regulation

Description:

Strengthens the regulation of tattoo artists in the State.

A BILL FOR AN ACT

RELATING TO TATTOO ARTISTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended
2 by adding [~~two~~] one new section[s] to be appropriately
3 designated and to read as follows:

4 "§321-A Permit; required for tattoo shop[-] and temporary
5 locations. (a) No person, partnership, firm, corporation, or
6 other legal entity shall operate a tattoo shop or temporary
7 location without [~~registering the shop with the department and~~
8 obtaining] a permit pursuant to department rules.

9 (b) Each initial permit application under this section
10 shall be accompanied by a fee of \$125 for a permit valid for one
11 year. For renewal of a permit, each applicant shall pay a fee
12 of \$75 per year. Initial permit application and renewal fees
13 may be increased by not more than \$10 per year.

14 (c) All permits shall expire on [~~January~~] December 31 of
15 each year. The application for a permit renewal shall be
16 submitted to the department in writing on or before [~~January~~]
17 December [~~10~~] 31 of each year.

S.B. NO.

1 (d) [Temporary permits may be issued] The department may
2 issue a temporary permit valid for a maximum of seven
3 consecutive days per calendar year for locations other than a
4 permitted tattoo shop for the purpose of a trade show, product
5 demonstration, or educational demonstration; provided that the
6 show or demonstration shall meet all safety and hygiene
7 standards [set by professional tattoo associations for
8 convention safety pursuant to Occupational Safety and Health
9 Administration standards under 29 Code of Federal Regulations
10 1910.1030 or chapter 396.] as specified by the director and in
11 this chapter. The temporary permit application shall be made in
12 writing to the department at least sixty days prior to the
13 scheduled event and shall include specific measures to meet
14 specified health and safety standards, and may be subject to a
15 site inspection. Temporary permit applicants shall pay a [\$25]
16 \$50 non-refundable application fee in addition to:

17 (1) A [\$50 participation fee if an event features less
18 than three tattoo artists demonstrating for
19 educational, non-monetary purposes only;] \$500 non-
20 refundable permit fee for an event featuring not more
21 than forty participating tattoo artists; or

S.B. NO.

1 (2) A [\$500 participation fee, if an event features at
2 least three but not more than forty tattoo artists,]
3 \$50 non-refundable permit fee for an event featuring
4 less than three participating tattoo artists
5 demonstrating for educational purposes only, without
6 compensation, consideration, or donation by the
7 public;

8 provided that the department may annually increase the
9 participation fees in paragraphs (1) and (2) by not more than
10 [\$10 and] \$100 and \$10 per year, respectively.

11 [\$321-B Temporary licenses. (a) The department may issue
12 temporary licenses valid for fourteen calendar days to tattoo
13 artists not licensed in the State for educational, trade show,
14 or product demonstration purposes. Temporary licensees shall be
15 subject to this part and applicable rules.

16 (b) Applications for temporary licenses shall be made in
17 writing to the department at least sixty days prior to the
18 proposed events and accompanied by an application fee of \$25 and
19 written proof satisfying the requirements under subsection (c).
20 An applicant shall be notified by mail of the disposition of the
21 application in a timely manner. If an application is approved,
22 the applicant shall present the notification, a photo

S.B. NO.

1 ~~identification, and a temporary license fee of \$100 before the~~
2 ~~issuance of a temporary license.~~

3 ~~(c) An applicant for a temporary license shall comply with~~
4 ~~section 321-374(c) and shall have:~~

5 ~~(1) Passed a blood borne pathogen course developed~~
6 ~~specifically for the tattoo industry, approved by the~~
7 ~~director, within two years of taking the course;~~

8 ~~(2) Passed the State tattoo artist written examination~~
9 ~~within two years of the application.~~

10 ~~(d) This section shall apply to tattoo artists who:~~

11 ~~(1) Are appropriately licensed in jurisdictions without~~
12 ~~the State; and~~

13 ~~(2) Intend to participate in educational, trade, or~~
14 ~~product demonstrating tattoo artistry in the State.~~

15 ~~(e) Temporary license fees may be increased annually by~~
16 ~~not more than \$10.]~~

17 SECTION 2. Section 321-372, Hawaii Revised Statutes, is
18 amended [~~by amending the definition of "tattoo artist"~~] to read
19 as follows:

20 [~~"Facial tattoo" means any tattoo applied above the~~
21 ~~jawline, anterior to the ear and frontal hairline including the~~
22 ~~eyelids, eyebrows, or lips."~~]

S.B. NO.

1 "Tattoo artist" means any person who creates indelible
2 marks or decorative designs by introducing pigments beneath the
3 surface of the skin, resulting in permanent or semi-permanent
4 markings with the aid of needles, electric machines, hand tools,
5 or other devices[-] or means."

6 SECTION 3. Section 321-373, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§321-373 Regulation of tattoo artists. [~~a~~] The
9 department shall adopt rules under chapter 91 to implement this
10 part. The rules shall include but not be limited to:

- 11 (1) Prohibiting the use of injections, unless administered
12 by a physician licensed under chapter 453 [~~or 460,~~] or
13 by a registered nurse licensed under chapter 457;
- 14 (2) Appropriate restrictions on topical anesthetics;
- 15 (3) Prescribing procedures and conditions for
16 sterilization, storage of sterilized equipment,
17 resterilization, and disposal of discarded needles and
18 other equipment;
- 19 (4) Creating examination standards; and
- 20 (5) Fixing penalties and fines for violations of this part
21 or any of the rules adopted by the department.

S.B. NO.

1 ~~[(b) The rules may provide for separate standards for~~
2 ~~facial tattoos.]~~

3 SECTION [3]4. Section 321-374, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§321-374 License required; exemptions. (a) Except as
6 otherwise provided by law, no person shall practice the
7 occupation of tattoo artist in this State ~~[either gratuitously~~
8 ~~or for pay,]~~ with or without compensation, consideration or
9 donation, or shall announce oneself either publicly or privately
10 as prepared or qualified to practice that occupation without
11 having a valid unrevoked license from the department to do so.

12 (b) ~~[The applicant shall be required to show by~~
13 ~~examination the knowledge of the provisions of this chapter~~
14 ~~including knowledge of virology, bacteriology, and aseptic~~
15 ~~techniques to ensure that infection and contagious disease will~~
16 ~~not be transmitted by the application of tattoos.~~

17 ~~(c) No license shall be issued or renewed unless the~~
18 ~~applicant.~~

19 ~~(1) Has taken and passed a tuberculin skin test or chest~~
20 ~~x-ray examination within six months of the~~

S.B. NO.

1 application, using report forms prescribed and
2 provided by the department;

3 ~~(2) Has completed the hepatitis B vaccination series or~~
4 ~~antibody testing showing immunity, unless the vaccine~~
5 ~~is contraindicated for medical reason, as specified in~~
6 ~~Occupational Safety Bloodborne Pathogens Standard and~~
7 ~~Exposure Control (29 Code of Federal Regulations~~
8 ~~1910.1030(f)); and~~

9 ~~(3) Has signed appropriate waivers.]~~

10 ~~[(b)] [(d)]~~ Physicians holding a valid unrevoked license
11 under chapter 453 ~~[or 460]~~ are exempt from the requirements of
12 this part. ~~[(a)]~~

13 (c) The department may issue temporary licenses valid for
14 a maximum of fourteen consecutive days per calendar year to
15 tattoo artists not licensed in the State for educational, trade
16 show, or product demonstration purposes. Temporary licensees
17 shall be subject to this part and applicable rules.

18 (d) Applications for temporary licenses shall be made in
19 writing to the department at least sixty days prior to the
20 proposed events and accompanied by a non-refundable application
21 fee of \$100 and written proof satisfying the requirements under
22 subsection (e). An applicant shall be notified of the

S.B. NO.

1 disposition of the application within twenty business days of
2 the receipt of application.

3 (e) An applicant for a temporary license shall have
4 either:

5 (1) Passed a blood borne pathogen course developed
6 specifically for the tattoo industry, approved by the
7 director, within two years of the date of application;
8 or

9 (2) Passed the State tattoo artist written examination
10 within two years of the date of application.

11 (f) Temporary license fees may be increased annually by
12 not more than \$10.

13 (g) Licensed tattoo artists shall tattoo only in a shop or
14 temporary location that has a valid unrevoked permit issued by
15 the director."

16 Section [4]5. 321-375, Hawaii Revised Statutes, is amended
17 to read as follows:

18 "§321-375 Examination, fees required. (a) No license
19 shall be issued unless the applicant takes an examination as
20 prescribed by the director and receives a passing score, or
21 meets the criteria specified in 321-374(e)(1). No license shall

S.B. NO.

1 be issued unless all fees required by the director have been
2 paid.

3 (b) The department may contract with a professional
4 testing service to prepare, administer, and grade the
5 examination for licensure as a tattoo artist. For these
6 purposes, the department may require applicants to pay the
7 examination fee directly to the testing service."

8 SECTION [5]6. Section 321-376, Hawaii Revised Statutes, is
9 repealed:

10 ["§321-376 Facial tattoos. Application of facial tattoos
11 shall be prohibited except by a physician licensed under chapter
12 453 or 460, or by a tattoo artist who is under the general
13 supervision of such a physician."]

14 SECTION [6]7. Section 321-377 is amended to read as
15 follows:

16 "§321-377 Suspension~~[,]~~ or revocation~~[, or denial of the~~
17 renewal] of permit or license. The director may revoke~~[,]~~ or
18 suspend~~[, or deny the renewal of]~~ the permit or license of any
19 person ~~[applying to be]~~ permitted or licensed under this part
20 who:

21 (1) Is found guilty of any fraud, deceit, or misconduct in
22 the practice of the occupation of tattoo artist; or

S.B. NO.

1 (2) Violates this part or any of the rules adopted by the
2 department.

3 In every case where it is proposed to revoke[7] or
4 suspend[, or deny the renewal of] a license, the director shall
5 give the permittee or licensee [or applicant] concerned notice
6 and a hearing. The notice shall be given in writing by
7 registered or certified mail with return receipt requested at
8 least fifteen days before the hearing. All hearings shall be
9 conducted pursuant to chapter 91.

10 SECTION [7]8. Section 321-378, Hawaii Revised Statutes, is
11 repealed:

12 ~~[§321-378 Denial of licensure; hearing. (a) No~~
13 ~~applicant shall be licensed as a tattoo artist if:~~

14 ~~(1) The applicant has been convicted of a crime and the~~
15 ~~basis of denial of licensure falls within the exceptions~~
16 ~~provided in section 831-3.1;~~

17 ~~(2) The applicant has been declared mentally incompetent~~
18 ~~by any court and the decree has not since been dismissed; or~~

19 ~~(3) Proceedings brought against the applicant pursuant to~~
20 ~~this section resulted in findings of any of the causes listed in~~
21 ~~subsection 321-379(b).~~

S.B. NO.

1 ~~(b) Any person whose application for licensure has been~~
2 ~~denied shall be given notice and the opportunity for a~~
3 ~~hearing."~~]

4 SECTION ~~[8]~~9. Section 321-379, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§321-379 ~~[Discipline;] [Violations, discipline,~~
7 ~~complaints, grounds, proceedings, hearings.] Enforcement;~~
8 ~~penalties.~~ (a) ~~[The director shall have the power to revoke,~~
9 ~~limit, condition, or suspend a permit or license [as a tattoo~~
10 ~~artist] issued under this part and to fine or otherwise~~
11 ~~discipline an owner of a tattoo shop or a licensed tattoo artist~~
12 ~~for any violation of [subsection (b)-.] this part.] If the~~
13 ~~department determines that any person has violated or is~~
14 ~~violating any provisions of this part, any rule adopted pursuant~~
15 ~~to this part, or any term or condition of a permit or license~~
16 ~~issued pursuant to this part, the department may take~~
17 ~~enforcement action and impose penalties as provided in §321-20~~
18 ~~of this chapter except that the department may impose a penalty~~
19 ~~not to exceed \$10,000 per offense.~~

20 ~~[(b)] The department shall have the power to accept,~~
21 ~~investigate, prosecute, and hear complaints regarding any~~
22 ~~[person, who is a licensed] owner of a tattoo shop or tattoo~~

S.B. NO.

1 ~~artist regarding [the following] allegations[:]~~ of any violation
2 ~~of this part.]~~

3 (b) ~~[The following are violations of this part:]~~

4 Violations of this part include but are not limited to:

5 (1) ~~[Unfitness or incompetence by reason of negligence,~~
6 ~~habits, or other causes regardless of whether actual~~
7 ~~damage or damage to the public is established;~~

8 ~~(2) Habitual intemperance, addiction, or dependency on~~
9 ~~alcohol or other habit-forming substances;~~

10 ~~(3) Mental incompetence resulting in an inability to~~
11 ~~practice as a tattoo artist;~~

12 ~~(4)]~~ Submitting to or filing with the department any
13 application, notice, statement, or other document in
14 procuring or attempting to procure licensure as a
15 tattoo artist [~~which~~] that is false or untrue or
16 contains any material misstatement of fact [~~;~~], or
17 assisting another party in doing so;

18 ~~(5)]~~ (2) Using the title, licensed tattoo artist, or any
19 designation tending to imply that the person is a
20 licensed tattoo artist when the person is not in fact
21 licensed or the person's license has been suspended or
22 revoked;

S.B. NO.

1 ~~[(6)]~~ (3) Violating the conditions or limitations ~~[upon~~
2 ~~which licensure occurs,]~~ of either a permit or license
3 or assisting another party in violating such
4 conditions;

5 ~~[(7)]~~ (4) Engaging in ~~[dishonorable, unethical, or~~
6 ~~unprofessional]~~ conduct ~~[of a character likely to~~
7 ~~deceive, defraud, or harm]~~ resulting in physical
8 injury to an individual or the public in the course of
9 professional services or activities;

10 ~~[(8)] Having disciplinary action taken against the tattoo~~
11 ~~artist in another state;~~

12 ~~+(9)]~~ (5) Aiding or abetting an unlicensed person, knowingly
13 combining or conspiring with an unlicensed person,
14 allowing one's license to be used by an unlicensed
15 person, or acting as agent or associate of an
16 unlicensed person to evade the use of title
17 restrictions of this part;

18 ~~[(10)] Engaging in false or misleading advertising,]~~ ~~[or]~~

19 ~~[(11)] Engaging in sexual conduct in connection with~~
20 ~~professional services or activities[.];~~

21 ~~+(12)]~~ (6) Tattooing any person under the age of eighteen
22 without the written consent of the person's parent or

S.B. NO.

1 legal guardian or not maintaining the consent forms at
2 the tattoo shop for not less than two years in a
3 confidential manner;

4 ~~[(13) Tattooing anyone under the age of sixteen regardless~~
5 ~~of parental or legal consent; or~~

6 ~~(14) Practicing tattooing while having a communicable~~
7 ~~disease; provided that the director may allow this~~
8 ~~practice if the tattoo artist obtains a certificate~~
9 ~~signed by a physician licensed in the State that the~~
10 ~~tattoo artist is not a risk to customers or other~~
11 ~~employees of the tattoo shop.]~~

12 (7) Making a false or misleading statement to the
13 Department relating to any matter under this part.

14 (c) An enforcement action under this section may be
15 combined with a permit or license revocation or suspension
16 under section 321-374 and may be brought together as one
17 administrative action.

18 ~~[(e)]~~ (d) In any proceeding under this section the person
19 subject to the proceeding shall be given notice and the
20 opportunity for a hearing in conformity with chapter 91."

21 SECTION [9]10. Section 321-380, Hawaii Revised Statutes,
22 is repealed:

S.B. NO.

1 ~~["§321-380 Penalties. (a) Any person against whom~~
2 ~~proceedings have been brought pursuant to section 321-379 which~~
3 ~~resulted in findings of any of the causes listed in subsection~~
4 ~~321-379(b) may be assessed a fine of not less than \$100 nor more~~
5 ~~than \$5,000 for each offense. Any action taken to impose or~~
6 ~~collect the penalty provided for in this subsection shall be~~
7 ~~considered a civil action.~~

8 ~~(b) Any person in violation of sections 321-393, 321-A(a),~~
9 ~~or 321-B shall be fined not less than \$500 nor more than \$5,000.~~

10 ~~(c) Any person that practices as a tattoo artist at a~~
11 ~~location without a permit shall be fined not less than \$500 nor~~
12 ~~more than \$5,000.~~

13 ~~(d) In addition to any other penalties prescribed by law,~~
14 ~~any person who knowingly or willfully makes a false statement to~~
15 ~~the department relating to any matter under this part shall be~~
16 ~~guilty of a misdemeanor and fined not less than \$500 nor more~~
17 ~~than \$5,000 for each offense.~~

18 ~~[(b)] (e) The director may bring a civil action to enjoin~~
19 ~~any person for violation of section 321-379(b)."]~~

20 ~~SECTION [8]9. Section 321-383, Hawaii Revised Statutes, is~~
21 ~~repealed:~~

S.B. NO.

1 ~~["§321-383 License without necessity of examination. All~~
2 ~~persons holding valid licenses as tattoo artists from the~~
3 ~~department of health and practicing on the day prior to January~~
4 ~~1, 1991 shall be considered licensed under this part on January~~
5 ~~1, 1991 without necessity of examination."]~~

6 SECTION 10. In codifying the new sections added by section
7 2 of this Act, the reviser of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

10 SECTION 11. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 12. This Act shall take effect upon its approval.

13

INTRODUCED BY: DAVID Y. IGE