S T A T E O F N E W Y O R K

6216

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

Introduced by M. of A. BARRA, KOLB -- Multi-Sponsored by -- M. of A. TOWNSEND -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to providing for the regulation of body-piercing, ear-piercing and tattooing and providing for the licensing of persons engaged therein

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new article 14-A to read as follows:

ARTICLE 14-A
BODY-PIERCING, EAR-PIERCING AND TATTOOING

SECTION 1420. DECLARATION OF PUBLIC POLICY.
1421. DEFINITIONS.
1422. LICENSE REQUIRED.
1423. REGULATIONS.
1424. VIOLATIONS NOTICE; ADMINISTRATIVE PROCEDURE; TEMPORARY RESTRAINING ORDER.
1425. SEPARABILITY.

S 1420. DECLARATION OF PUBLIC POLICY. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT THE PRACTICE OF BODY-PIERCING, EAR-PIERCING AND TATTOOING POSES SUBSTANTIAL HAZARDS TO PUBLIC HEALTH AND WARRANTS THE IMPOSITION OF REGULATION AND LICENSURE TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF THE PUBLIC.

S 1421. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "BODY-PIERCING" - THE ACT OR PRACTICE OF PASSING AN INSTRUMENT THROUGH A PORTION OF THE HUMAN BODY SO AS TO CREATE A CANAL THROUGH WHICH AN ORNAMENT MAY BE APPENDED.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. "EAR-PIERCING" - THE ACT OR PRACTICE OF PASSING AN INSTRUMENT THROUGH A PORTION OF THE HUMAN EAR SO AS TO CREATE A CANAL THROUGH WHICH AN ORNAMENT MAY BE APPENDED.

3. "TATTOOING" - THE ACT OR PRACTICE OF INTRODUCING INKS OR DYES INTO OR UNDERNEATH THE SKIN OF A HUMAN BEING TO PRODUCE THEREIN AN INDELIBLE OR NEARLY INDELIBLE IMAGE.

S 1422. LICENSE REQUIRED. NO PERSON SHALL ENGAGE IN BODY-PIERCING, EAR-PIERCING OR TATTOOING UNLESS SUCH PERSON IS LICENSED TO DO THE SAME BY THE DEPARTMENT. SUCH LICENSE SHALL BE GRANTED ONLY TO A QUALIFYING INDIVIDUAL, AND SHALL BE FOR A TERM OF TWO YEARS.

S 1423. REGULATIONS. THE DEPARTMENT SHALL PROMULGATE REGULATIONS ESTABLISHING QUALIFICATIONS FOR LICENSURE TO ENGAGE IN BODY-PIERCING, EAR-PIERCING OR TATTOOING AND SANITARY STANDARDS FOR SUCH ACTS OR PRACTICES.

S 1424. VIOLATIONS NOTICE; ADMINISTRATIVE PROCEDURE; TEMPORARY RESTRAINING ORDER. 1. A VIOLATION OF THIS ARTICLE OR OF APPLICABLE REGULATIONS IN THE ACT OR PRACTICE OF BODY-PIERCING, EAR-PIERCING OR TATTOOING SHALL CONSTITUTE A PUBLIC NUISANCE WHICH MAY BE ENJOINED OR RESTRAINED.

2. WHEN AN OFFICER HAS CAUSE TO BELIEVE THAT THERE HAS BEEN A VIOLATION OF THIS ARTICLE OR APPLICABLE REGULATIONS, UPON NOTICE OF THE VIOLATION AND DEMAND FOR DISCONTINUANCE AND ABATEMENT THEREOF SERVED IN WRITING IN THE MANNER PRESCRIBED FOR THE SERVICE OF SUMMONS SET FORTH IN THE CIVIL PRACTICE LAW AND RULES, AN OFFICER MAY:

(A) CONDUCT A HEARING UPON AT LEAST THREE DAYS NOTICE SERVED IN THE MANNER PRESCRIBED FOR THE SERVICE OF SUMMONS AS SET FORTH IN THE CIVIL PRACTICE LAW AND RULES, AND

(B) MAKE A DETERMINATION AFTER SUCH HEARING WITH RESPECT TO THE ALLEGED VIOLATION OR VIOLATIONS AND HAVE THE POWER TO ASSESS A FINE ON THE VIOLATOR NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS FOR EACH VIOLATION FOR EACH DAY SUCCEEDING THE DAY ON WHICH THE NOTICE OF VIOLATION AND DEMAND FOR DISCONTINUANCE AND ABATEMENT THEREOF HAS BEEN GIVEN, AND

(C) WITH RESPECT TO THE HEARING SET FORTH HEREIN THE OFFICER, IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES, MAY: ISSUE SUBPOENA, COMPEL THE ATTENDANCE OF WITNESSES, AND ADMINISTER OATHS TO WITNESSES, AND

(D) MAKE AN EX PARTE APPLICATION TO THE SUPREME COURT OF THE STATE OF NEW YORK FOR A TEMPORARY RESTRAINING ORDER WHICH THE COURT MAY GRANT WHEN IT DETERMINES THAT THERE IS A VIOLATION WHICH REQUIRES IMMEDIATE RELIEF.

3. THE OFFICER MAY APPOINT ONE OR MORE HEARING OFFICERS AS SHALL BE NECESSARY TO DO OR PERFORM IN HIS PLACE OR STEAD THE ACTS AUTHORIZED BY PARAGRAPHS (A) AND (C) OF SUBDIVISION TWO OF THIS SECTION. THE HEARING OFFICER SHALL MAKE FINDINGS OF FACT AND SUBMIT RECOMMENDATIONS TO THE OFFICER.

4. AN OFFICER MAY INSTITUTE PROCEEDINGS TO ENJOIN THE CONTINUANCE OF SUCH VIOLATION OR TO REVOKE THE LICENSE OF THE VIOLATOR. NO BOND OR UNDERTAKING SHALL BE REQUIRED OF SUCH OFFICER IN SUCH PROCEEDINGS AND NO APPLICATION TO VACATE OR MODIFY ANY JUDGMENT OBTAINED SHALL BE ENTERTAINED BY ANY COURT WITHOUT PROOF TO SUCH COURT THAT TEN DAYS NOTICE OF SUCH APPLICATION, AND COPIES OF THE PAPERS UPON WHICH THE APPLICATION IS TO BE MADE, HAVE BEEN SERVED UPON SUCH OFFICER.

5. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE DUTY OR POWER OF AN OFFICER TO ACT WITH REGARD TO AN IMMEDIATE THREAT TO THE HEALTH OF THE PUBLIC, OR TO ALTER OR ABRIDGE ANY OF THE DUTIES AND POWERS NOW OR HEREAFTER EXISTING IN THE COMMISSIONER, STATE DISTRICT

HEALTH OFFICERS, COUNTY BOARDS OF HEALTH, COUNTY COMMISSIONERS OF HEALTH OR LOCAL BOARDS OF HEALTH.

S 1425. SEPARABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SUBDIVISION, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SUBDIVISION, SECTION OR PART THEREOF DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law. The commissioner of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.