

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:

1 Section 1. The public health law is amended by adding a new article  
2 14-A to read as follows:

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

5 SECTION 1420. DECLARATION OF PUBLIC POLICY.

6 1421. DEFINITIONS.

7 1422. LICENSE REQUIRED.

8 1423. REGULATIONS.

9 1424. VIOLATIONS NOTICE; ADMINISTRATIVE PROCEDURE; TEMPORARY  
10 RESTRAINING ORDER.

11 1425. SEPARABILITY.

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

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

19 1. "BODY-PIERCING" - THE ACT OR PRACTICE OF PASSING AN INSTRUMENT  
20 THROUGH A PORTION OF THE HUMAN BODY SO AS TO CREATE A CANAL THROUGH  
21 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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1 2. "EAR-PIERCING" - THE ACT OR PRACTICE OF PASSING AN INSTRUMENT  
2 THROUGH A PORTION OF THE HUMAN EAR SO AS TO CREATE A CANAL THROUGH WHICH  
3 AN ORNAMENT MAY BE APPENDED.

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

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

11 S 1423. REGULATIONS. THE DEPARTMENT SHALL PROMULGATE REGULATIONS  
12 ESTABLISHING QUALIFICATIONS FOR LICENSURE TO ENGAGE IN BODY-PIERCING,  
13 EAR-PIERCING OR TATTOOING AND SANITARY STANDARDS FOR SUCH ACTS OR PRAC-  
14 TICES.

15 S 1424. VIOLATIONS NOTICE; ADMINISTRATIVE PROCEDURE; TEMPORARY  
16 RESTRAINING ORDER. 1. A VIOLATION OF THIS ARTICLE OR OF APPLICABLE REGU-  
17 LATIONS IN THE ACT OR PRACTICE OF BODY-PIERCING, EAR-PIERCING OR TATTOO-  
18 ING SHALL CONSTITUTE A PUBLIC NUISANCE WHICH MAY BE ENJOINED OR  
19 RESTRAINED.

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

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

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

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

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

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

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

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

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

3 S 1425. SEPARABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SUBDIVISION,  
4 SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPE-  
5 TENT JURISDICTION TO BE INVALID, THE JUDGMENT SHALL NOT AFFECT, IMPAIR  
6 OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERA-  
7 TION TO THE CLAUSE, SENTENCE, PARAGRAPH, SUBDIVISION, SECTION OR PART  
8 THEREOF DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL  
9 HAVE BEEN RENDERED.

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