

Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

1 A BILL for an Act to amend and reenact section 23-01-35 of the North Dakota Century Code,
2 relating to tattooing, body piercing, branding, subdermal implants, and scarification; and to
3 provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 23-01-35 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23-01-35. Tattooing, body piercing, branding, subdermal implants, or scarification -**
8 **PermitLicense - Fee - Adoption of rules - Exemptions - Injury reports - Penalty.**

9 1. As used in this section:

10 a. "Body piercing" means any method of piercing the skin or mucosa to place
11 jewelry through the skin or mucosa.

12 b. "Branding" means the process in which a mark or marks are burned into human
13 skin tissue with the intention of leaving a permanent mark.

14 c. "Scarify" or "scarification" means the practice in which a mark or marks are cut
15 into human skin tissue with the intention of leaving a permanent mark.

16 d. "Subdermal implant" means to insert a foreign object beneath the skin to
17 decorate an individual's body.

18 e. "Tattoo" or "tattooing" means any method of placing ink or other pigment into or
19 under the skin or mucosa by the aid of needles or any other instrument used to
20 puncture the skin, resulting in permanent coloration of the skin or mucosa. This
21 term includes all forms of cosmetic tattooing.

22 2. A person may not operate a facility providing tattooing, body piercing, branding,
23 subdermal implant, or scarification services without a permitlicense issued by the
24 department under this section. ~~The holder of a permit shall display the permit in a~~

1 ~~conspicuous place at the facility for which the permit is issued. A permit issued under~~
2 ~~this section expires annually.~~

3 a. An applicant for a ~~permit~~license shall submit an application for a ~~permit~~license to
4 the department, on a form provided by the department, with a ~~permit~~license fee
5 established by the department. The application must include the name and
6 complete mailing address and street address of the facility and any other
7 information reasonably required by the department for the administration of this
8 section.

9 b. The department shall inspect each facility to ensure compliance with this section
10 and any rules adopted by the department prior to issuing a license. The operator
11 of a facility shall grant the department access to the premises of a facility during
12 normal hours of operation, including access to customer and personnel records.
13 The inspection must be conducted at a frequency determined by the department
14 and as often as necessary to ensure compliance with this section and any rules
15 adopted by the department.

16 c. The holder of a license shall display the license in a conspicuous place at the
17 facility for which the license is issued.

18 d. A license issued under this section expires annually. Within sixty days after
19 December thirty-first, an expired license may be renewed by submitting the
20 renewal application, renewal fee, and a late fee established by the department by
21 rule.

22 e. The license may not be transferable from one place or person to another.

23 ~~2.3.~~ The department of health and human services shall adopt rules to regulate any person
24 that receives compensation for engaging in the practice of tattooing, body piercing,
25 branding, subdermal implants, or scarification. The rules must establish health and
26 safety requirements and limitations with respect to the age of an individual who may
27 receive a tattoo, body piercing, ~~or scarification,~~ branding, or subdermal implants and
28 may prohibit any practice that the department of health and human services deems
29 unsafe or a threat to public health.

30 ~~3.4.~~ A facility is exempt from subsection 42 if the facility provides body piercing that is
31 limited to the piercing of the noncartilaginous perimeter or lobe of the ear and the

1 facility does not provide tattooing, branding, scarification, or subdermal implants. A
2 person is exempt from regulation under subsection 23 if the person's practice under
3 this section is limited to piercing of the noncartilaginous perimeter or lobe of the ear. A
4 licensed health care professional acting within that professional's scope of practice
5 and the associated medical facility are exempt from this section.

6 4-5. If a customer of a facility regulated under this section reports to the facility an injury the
7 customer or operator of the facility believes to have resulted from the tattooing, body
8 piercing, branding, subdermal implanting, or scarification provided at the facility, the
9 operator of the facility shall provide the customer with written information on how to
10 report the alleged injury to the department of health and human services. If a licensed
11 health care professional treats a patient for an injury the professional determines, in
12 the exercise of professional judgment, occurred as a result of a service regulated
13 under this section, the professional shall report the circumstances to the department of
14 health and human services. A licensed health care professional is immune from liability
15 for making or not making a report under this subsection.

16 5-6. The fees established by the department must be based on the cost of conducting plan
17 reviews, conducting routine and complaint inspections and enforcement actions, and
18 preparing and sending license renewals. Fees collected under this section must be
19 deposited in the department's operating fund in the state treasury and any expenditure
20 from the fund is subject to appropriation by the legislative assembly. The department
21 shall waive all or a portion of the fee for any facility that is subject to local jurisdiction.

22 7. A person operating a facility providing tattooing, body piercing, branding, subdermal
23 implant, or scarification services without first obtaining a license issued by the
24 department under this section is guilty of a class B misdemeanor.

25 8. An individual that receives compensation for engaging in the practice of tattooing,
26 body piercing, branding, subdermal implant, or scarification services who fails to
27 comply with this section or any of the rules adopted by the department is guilty of a
28 class B misdemeanor.

29 9. In addition to the criminal penalties provided in this section, the department may issue
30 a cease and desist order or obtain a court order or injunction to restrain and enjoin

1 violations of any provision of this section without proof of actual damages sustained by
2 an individual and without the department being required to file an undertaking.
3 10. The department may deny a license application or, after notice and a hearing in
4 accordance with chapter 28-32, suspend, revoke, or take other disciplinary action
5 against the license of an individual who fails to comply with this section or with any of
6 the rules adopted by the department.