



1995 ENGROSSED ASSEMBLY BILL 733

February 5, 1996 - Printed by direction of SENATE CHIEF CLERK.

1 **AN ACT** *to amend* 20.435 (1) (gm); and *to create* 252.23 and 252.24 of the
2 statutes; **relating to:** regulation of tattooing and tattoo establishments by the
3 department of health and family services or by local health departments,
4 regulation of body piercing and body-piercing establishments, granting
5 rule-making authority and making an appropriation.

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 1995 Assembly Bill 733 consists of the following documents adopted in the assembly on February 1, 1996: the bill as affected by Assembly Amendments 1, 2 and 3. The text also includes the February 2, 1996, chief clerk's corrections to the bill. In engrossing, any provision in an amendment that was identical to and duplicative of a provision in a 2nd amendment was not included in the text; and duplicate text in Assembly Amendment 3 was deleted by the chief clerk's correction dated February 7, 1996.

Content of Engrossed 1995 Assembly Bill 733:

Under current law, a person who tattoos a child is subject to a forfeiture of up to \$200, unless the person is a physician acting in the course of his or her professional practice.

This bill, on October 1, 1996, requires the department of health and family services (DHFS) (renamed from the department of health and social services under 1995 Wisconsin Act 27, the biennial budget act) to license and regulate tattooists and tattoo establishments and body piercers and body-piercing establishments. The bill prohibits a person from tattooing or attempting to tattoo another, from designating or representing himself or herself as a tattooist, from assuming the title "tattooist" and from operating a tattoo establishment unless the person and the tattoo

establishment are licensed by DHFS. Similar prohibitions apply, under the bill, to body piercers and body-piercing establishments. DHFS must inspect a tattoo establishment or body-piercing establishment once before issuing a license and is authorized to make additional necessary inspections. The bill requires DHFS to promulgate rules establishing standards for tattooing and body piercing and standards and procedures, including fee payments, for the annual issuance of licenses for tattooists, tattoo establishments, body piercers and body-piercing establishments. The bill exempts from DHFS regulation tattooing or body piercing that is performed by physicians or dentists in the course of their professional practice.

Under current law, DHFS may enter into written agreements with certain local health departments to designate the local health departments as DHFS' agents in issuing licenses or permits to and making investigations or inspections of lodging and food services establishments (such as hotels and restaurants) and recreational establishments (such as campgrounds and camping resorts).

This bill authorizes DHFS to designate local health departments as DHFS' agents for the issuance of licenses to and inspections and investigations of tattooists and tattoo establishments, under rules promulgated by DHFS. The bill permits a village, city or county to enact ordinances to regulate the licensees and premises for which a local health department is the designated agent that are stricter than the statutes or DHFS rules, but which may not conflict with statutes or rules. Agent local health departments must include state fees established by DHFS for costs in setting standards and monitoring and evaluating local health departments in the license fees that the local health departments may charge tattooists and tattoo establishments.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (1) (gm) of the statutes, as affected by 1995 Wisconsin Act
2 27, section 816m, is amended to read:

3 20.435 (1) (gm) *Licensing, review and certifying activities.* The amounts in the
4 schedule for the purposes specified in ss. 50.135, 50.49 (2) (b), 146.50 (8), 250.05 (6),
5 252.23, 252.24, 254.176, 254.178, 254.20 (5) and (8), 254.31 to 254.39, 254.47, 254.61
6 to 254.89 and 255.08 (2), subch. IV of ch. 50 and ch. 150. All moneys received under
7 ss. 50.135, 50.49 (2) (b), 50.93 (1) (c), 146.50 (8) (d), 150.13, 250.05 (6), 252.23 (4) (a)

1 and (am), 252.24 (4) (a), 254.176, 254.178, 254.20 (5) and (8), 254.31 to 254.39,
2 254.47, 254.61 to 254.89 and 255.08 (2) (b) shall be credited to this appropriation.

3 **SECTION 2.** 252.23 of the statutes is created to read:

4 **252.23 Regulation of tattooists. (1) DEFINITIONS.** In this section:

5 (a) "Tattoo" has the meaning given in s. 948.70 (1) (b).

6 (b) "Tattoo establishment" means the premises where a tattooist performs
7 tattoos.

8 (c) "Tattooist" means a person who tattoos another.

9 **(2) DEPARTMENT; DUTY.** The department shall provide uniform, statewide
10 licensing and regulation of tattooists and uniform, statewide licensing and
11 regulation of tattoo establishments under this section. The department shall inspect
12 a tattoo establishment once before issuing a license for the tattoo establishment
13 under this section and may make additional inspections that the department
14 determines are necessary.

15 **(3) LICENSE REQUIRED.** Except as provided in sub. (5), no person may tattoo or
16 attempt to tattoo another, designate or represent himself or herself as a tattooist or
17 use or assume the title "tattooist" and no tattoo establishment may be operated
18 unless the person and the establishment are licensed by the department under this
19 section or by a local health department that is designated as the department's agent
20 under sub. (3m).

21 **(3m) AGENT STATUS FOR LOCAL HEALTH DEPARTMENTS.** (a) In the administration
22 and enforcement of this section, the department may enter into a written agreement
23 with a local health department with a jurisdictional area that has a population
24 greater than 5,000, which designates the local health department as the
25 department's agent in issuing licenses to and making investigations or inspections

1 of tattooists and tattoo establishments. In a jurisdictional area of a local health
2 department without agent status, the department of health and family services may
3 issue licenses, collect license fees established by rule under sub. (4) (a) and make
4 investigations or inspections of tattooists and tattoo establishments. If the
5 department designates a local health department as its agent, the department or
6 local health department may require no license for the same operations other than
7 the license issued by the local health department under this paragraph. If the
8 designation is made and the services are furnished, the department shall reimburse
9 the local health department furnishing the service at the rate of 80% of the net
10 license fee per license per year issued in the jurisdictional area.

11 (b) A local health department designated as the department's agent under this
12 subsection shall meet standards promulgated under sub. (4) (a). The department
13 shall annually evaluate the licensing, investigation and inspection program of each
14 local health department granted agent status. If, at any time, a local health
15 department designated as the department's agent fails to meet the standards, the
16 department of health and family services may revoke its agent status.

17 (c) The department shall provide education and training to agents designated
18 under this subsection to ensure uniformity in the enforcement of this section and
19 rules promulgated under this section.

20 (d) Except as provided in par. (dm), a local health department designated as the
21 department's agent under this subsection shall establish and collect the license fee
22 for each tattooist or tattoo establishment. The local health department may
23 establish separate fees for preinspections of new tattoo establishments, for
24 preinspections of existing establishments for which a person intends to be the new
25 operator or for the issuance of duplicate licenses. No fee may exceed the local health

1 department's reasonable costs of issuing licenses to, making investigations and
2 inspections of, and providing education, training and technical assistance to the
3 tattooists and tattoo establishments, plus the state fee established under sub. (4)
4 (am).

5 (dm) A local health department designated as the department's agent under
6 this subsection may contract with the department of health and family services for
7 the department of health and family services to collect fees and issue licenses. The
8 department shall collect from the local health department the actual and reasonable
9 cost of providing the services.

10 (f) If, under this subsection, a local health department becomes an agent or its
11 agent status is discontinued during a licensee's license year, the department of
12 health and family services and the local health department shall divide any license
13 fee paid by the licensee for that license year according to the proportions of the license
14 year occurring before and after the local health department is designated as an agent
15 or the agent status is discontinued. No additional fee may be required during the
16 license year due to the change in agent status.

17 (g) A village, city or county may enact ordinances and a local board of health
18 may adopt regulations regarding the licensees and premises for which the local
19 health department is the designated agent under this subsection, which are stricter
20 than this section or rules promulgated by the department of health and family
21 services under this section. No such provision may conflict with this section or with
22 department rules.

23 (h) This subsection does not limit the authority of the department to inspect
24 establishments in jurisdictional areas of local health departments that are
25 designated as agents if it inspects in response to an emergency, for the purpose of

1 monitoring and evaluating the local health department's licensing, inspection and
2 enforcement program or at the request of the local health department.

3 (i) The department shall hold a hearing under ch. 227 if, in lieu of proceeding
4 under ch. 68, any interested person in the jurisdictional area of a local health
5 department that is designated as the department's agent under this subsection
6 appeals to the department of health and family services alleging that a license fee
7 for a tattooist or tattooist establishment exceeds the license issuer's reasonable costs
8 of issuing licenses to, making investigations and inspections of, and providing
9 education, training and technical assistance to the tattooist or tattooist
10 establishment.

11 **(4) RULE MAKING.** The department shall promulgate all of the following as rules:

12 (a) Standards and procedures, including fee payment to offset the cost of
13 licensing tattooists and tattoo establishments, for the annual issuance of licenses as
14 tattooists or as tattoo establishments to applicants under this section.

15 (am) Establishing state fees for its costs related to setting standards under this
16 section and monitoring and evaluating the activities of, and providing education and
17 training to, agent local health departments. Agent local health departments shall
18 include the state fees in the license fees established under sub. (3m) (d), collect the
19 state fees and reimburse the department for the state fees collected. For tattooists
20 or tattoo establishments, the state fee may not exceed 20% of the license fees
21 established under par. (a).

22 (b) Standards for the performance of tattoos by a licensed tattooist and for the
23 maintenance of a licensed tattoo establishment, which will promote safe and
24 adequate care and treatment for individuals who receive tattoos and eliminate or

1 greatly reduce the danger of exposure by these individuals to communicable disease
2 or infection.

3 (5) EXCEPTION. This section does not apply to a dentist who is licensed under
4 s. 447.03 (1) or to a physician who tattoos or offers to tattoo a person in the course
5 of the dentist's or physician's professional practice.

6 **SECTION 2m.** 252.24 of the statutes is created to read:

7 **252.24 Regulation of body piercing and body-piercing establishments.**

8 (1) DEFINITIONS. In this section:

9 (a) "Body piercer" means a person who performs body piercing on another.

10 (b) "Body piercing" means perforating any human body part or human tissue,
11 except an ear, and placing a foreign object in the perforation in order to prevent the
12 perforation from closing.

13 (c) "Body-piercing establishment" means the premises where a body piercer
14 performs body piercing.

15 (2) DEPARTMENT; DUTY. The department shall provide uniform, statewide
16 licensing and regulation of body piercers and uniform, statewide licensing and
17 regulation of body-piercing establishments under this section. The department
18 shall inspect a body-piercing establishment once before issuing a license for the
19 body-piercing establishment under this section and may make additional
20 inspections that the department determines are necessary.

21 (3) LICENSE REQUIRED. Except as provided in sub. (5), no person may pierce the
22 body of or attempt to pierce the body of another, designate or represent himself or
23 herself as a body piercer or use or assume the title "body piercer" unless the person
24 is licensed under this section.

25 (4) RULE MAKING. The department shall promulgate all of the following as rules:

1 (a) Standards and procedures, including fee payment to offset the cost of
2 licensing body piercers and body-piercing establishments, for the annual issuance
3 of licenses as body piercers or as body-piercing establishments to applicants under
4 this section.

5 (b) Standards for the performance of body piercing by a licensed body piercer
6 and for the maintenance of a licensed body-piercing establishment, which will
7 promote safe and adequate care and treatment for individuals who receive body
8 piercing and eliminate or greatly reduce the danger of exposure by these individuals
9 to communicable disease or infection.

10 **(5) EXCEPTION.** This section does not apply to a dentist who is licensed under
11 s. 447.03 (1) or to a physician who pierces the body of or offers to pierce the body of
12 a person in the course of the dentist's or physician's professional practice.

13 **SECTION 3. Effective dates.** This act takes effect on October 1, 1996, except
14 as follows:

15 (1) The treatment of sections 252.23 (4) and 252.24 (4) of the statutes takes
16 effect on the day after publication.

17 **(END)**