

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 942

INTRODUCER: Health Regulation Committee and Senator Sobel

SUBJECT: Practice of Tattooing

DATE: April 9, 2010 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Harper | Wilson | HR | Fav/CS |
| 2. | McKay | Wilson | GO | Favorable |
| 3. | _____ | _____ | FT | _____ |
| 4. | _____ | _____ | HA | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill requires tattoo artists and tattoo establishments to be licensed and guest tattoo artists to be registered with the Department of Health (DOH). The bill provides specific licensure criteria for tattoo artists and tattoo establishments, as well as registration criteria for guest tattoo artists. The bill provides grounds for discipline, administrative and criminal penalties, licensure fees, and rulemaking authority to the DOH to implement the tattoo artist and tattoo establishment regulation. The bill repeals the requirement for “general supervision” of tattoo establishments and tattoo artists by a physician or dentist.

This bill also prohibits tattooing a minor child younger than 16 years of age, unless the tattooing is performed for medical or dental purposes by a person licensed to practice medicine or dentistry in the state of Florida. Tattooing a minor older than 16 years of age, but younger than 18 years of age, may not be performed unless:

- The minor is accompanied by his or her parent or legal guardian;
 - The minor and parent or legal guardian each submit proof of identification;
 - The parent or legal guardian submits written notarized consent;
 - The parent or legal guardian submits proof of being the parent or legal guardian to the minor;
- and

- The tattooing is done by a licensed tattoo artist or guest tattoo artist, or a person licensed to practice medicine or dentistry.

The bill establishes that persons who violate the provisions relating to tattooing minors will be guilty of a second degree misdemeanor (imprisonment of up to 60 days or a fine of \$500). The bill provides an exemption from guilt for tattooing a minor under certain circumstances.

This bill has an effective date of January 1, 2012.

This bill amends, transfers, and renumbers s. 877.04, F.S., to s. 381.00787, F.S.

This bill creates the following sections of the Florida Statutes: 381.00771, 381.00773, 381.00775, 381.00777, 381.00779, 381.00781, 381.00783, 381.00785, 381.00789, and 381.00791.

II. Present Situation:

Tattooing

A tattoo is a permanent mark or design made on the skin by a process of pricking and ingraining an indelible ink pigment.¹ For the purposes of this bill, the practice of tattooing will refer to “Modern Professional tattoos” or “Cosmetic tattoos²,” which are deliberate decorative markings on human beings performed by tattoo artists or permanent makeup professionals who are paid for their work. Permanent makeup is considered a permanent tattoo that mimics the results of cosmetic products such as an eyebrow pencil, lip liner, eyeliner, or blush.³

Permanent tattoos are made by using needles to inject colored ink below the skin’s surface. Typically, a tattoo artist uses a hand-held machine with one or more needles piercing the skin repeatedly. With every puncture, the needles insert ink into the skin.⁴

Many individuals choose to undergo tattooing in its various forms. For some, it is an aesthetic choice or an initiation rite.⁵ Several recent surveys to determine the prevalence of tattoos in the United States indicate that there is a growing acceptance for tattoos and that having a tattoo has become a popular trend.⁶ A study published in 2006 by the Journal of the American Academy of

¹ The American Heritage Dictionary. 2nd Ed., Houghton Mifflin Company, Boston, MA. 1985.

² The American Academy of Dermatology distinguishes 5 types of tattoos, which include Professional and Cosmetic tattoos. See: Tattoos, body piercings, and other skin adornments. Available at:

<http://www.aad.org/public/Publications/pamphlets/cosmetic_tattoos.html> (Last visited February 26, 2010).

³ United States Food and Drug Administration (FDA), Think Before You Ink: Are Tattoos Safe? Found at: <<http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM143401.pdf>> (Last visited February 26, 2010).

⁴ MayoClinic.com, Tattoos: Understand risks and procedures. Found at: <<http://www.mayoclinic.com/print/tattoos-and-piercings/MC00020/METHOD=print>> (Last visited February 26, 2010).

⁵ FDA, Tattoos & Permanent Makeup.

Found at: <<http://www.fda.gov/Cosmetics/ProductandIngredientSafety/ProductInformation/ucm108530.htm>> (Last visited February 26, 2010).

⁶ Betz, C. “To Tattoo or Not: that is the question” Editorial. *Journal of Pediatric Nursing*, Volume 24, Issue 4, August 2009, Pages 241-243.

Dermatology indicated a national tattoo prevalence rate of 24 percent among people 18 to 50 years old.⁷

National Oversight of Tattooing

The United States Food and Drug Administration (FDA) considers the inks used in intradermal tattoos, including permanent make-up, to be cosmetics and considers the pigments used in the inks to be color additives requiring premarket approval under the Federal Food, Drug, and Cosmetics Act. However, because of other public health priorities and previous lack of evidence of safety concerns, the FDA traditionally has not exercised its regulatory authority over tattoo inks or the pigments used in them. The FDA notes that potential risks in acquiring a tattoo include: infection from dirty needles, allergies from pigments used with tattoos, scarring, and in rare cases complications in the tattoo area during a magnetic resonance imaging.⁸ The U.S. Centers for Disease Control and Prevention (CDC) recommends that tattoo artists follow health and safety practices to protect themselves as well as their clients from blood borne pathogens such as hepatitis B, hepatitis C, and/or human immunodeficiency virus (HIV).⁹

As of January 2010, at least 39 states have enacted laws prohibiting minors from getting tattoos. Many of the laws across the country establish financial penalties, prison time, or both for violators.¹⁰

Current Regulation of Tattooing in Florida

Section 877.04, F.S., makes it unlawful for any person to tattoo the body of any human being, except that tattooing may be performed by a person licensed to practice medicine under ch. 458 or ch. 459, F.S., or dentistry under ch. 466, F.S., or by a person under the general supervision, as defined by the Board of Medicine, of one of these licensed persons. Additionally, it is unlawful for the body of a minor to be tattooed without the written notarized consent of the parent or legal guardian. Any person who violates this section is guilty of a misdemeanor of the second degree, punishable under s. 775.082 or s. 775.083, F.S. (imprisonment not to exceed 60 days or a fine not to exceed \$500).

The Board of Medicine has adopted Rule 64B8-2.002, Florida Administrative Code, which defines “general supervision,” as applied to tattooing under s. 877.04(1), F.S. General supervision means the supervision of the tattooist by a supervising physician, osteopathic physician, or dentist, which supervision shall not require the physical presence of the supervisor when procedures are performed, but shall require the following items:

- The supervising physician, osteopathic physician, or dentist, initially upon assuming duties as the supervisor and semiannually thereafter, must review and inspect the techniques, procedures, and equipment utilized by the tattooist in the performance of tattooing.

⁷ Laumann, A. and A. Derick. “Tattoos and body piercings in the United States: A national data set” *Journal of the American Academy of Dermatology*, Volume 55, Issue 3, September 2006, Pages 413-421.

⁸ FDA, Tattoos & Permanent Make-Up. Found at: <http://www.fda.gov/Cosmetics/ProductandIngredientSafety/ProductInformation/ucm108530.htm> (Last visited February 26, 2010).

⁹ CDC, Health and Safety of Tattoo Artists, Body Piercers, and Their Clients. Found at: <http://www.cdc.gov/Features/BodyArt/> (Last visited on February 26, 2010).

¹⁰ National Conference of State Legislatures, Tattoos and Body Piercing for Minors. Found at: <http://www.ncsl.org/default.aspx?tabid=14393> (Last visited February 26, 2010).

- The supervising physician, osteopathic physician, or dentist shall provide semi-annual training for the tattooist in the areas of infection control, sterilization, and emergency procedures.
- The supervising physician, osteopathic physician, or dentist and the tattooist must develop jointly written procedures regarding the medical condition for individuals to receive tattoos, treatment of routine minor problems resulting during or from tattooing, and detailed procedures to be followed in the event of emergency situations developing during the performance of or as a result of tattooing. These written procedures must be maintained in a readily available location on the premises of the tattooist and a copy must be maintained by the supervising physician, osteopathic physician, or dentist. Such written procedures must be readily available for inspection and review by agents of any or all of the following: the DOH, the Board of Medicine, the Board of Osteopathic Medicine, and the Board of Dentistry.

The fees charged for general supervision vary by supervisor because each tattoo establishment and tattoo artist is individually contracted with a supervisor. The Florida Professional Tattoo Artist's Guild reported that their board members pay annually, on average, \$600 for the tattoo establishment inspection and \$300 per artist.

Currently, the DOH does not have authority to issue a license to either tattoo or permanent make-up artists or their places of business. The DOH does have authority to issue a biomedical waste generator¹¹ permit to tattoo and permanent make-up artists at the locations of their business.¹² In accordance with ch. 64E-16.011(1), Florida Administrative Code, tattoo establishments are considered biomedical waste generators and as such are required to obtain an annual permit from the DOH. The DOH reports that there are 912 tattoo-performing establishments that are registered as biomedical waste generators that may be regulated under this bill.¹³

Application of Permanent Makeup

In addition to tattooing, persons in Florida are engaged in the application of permanent makeup, which may be characterized as tattooing or as a subset to the practice of tattooing. The Commission for Independent Education with the Florida Department of Education licenses 21 permanent makeup programs in Florida that offer diplomas for permanent makeup.¹⁴ Diplomas are offered in programs such as "Body Tattooing," "Permanent Make-up Tattooing," and "Permanent Cosmetic Make-up."

¹¹ See s. 381.0098, F.S. – Biomedical waste is defined as any solid or liquid waste which may present a threat of infection to humans, including waste products that include discarded disposable sharps, human blood, blood products and body fluids. A biomedical waste generator is defined as a facility or person that produces or generates biomedical waste.

¹² FL DOH, Division of Environmental Health, Tattooing & Permanent Make-up. Found at: <http://www.doh.state.fl.us/Environment/community/Tattoo/index.html> (Last visited February 26, 2010).

¹³ 388 are stand-alone tattoo establishments; 314 are co-located with body piercing establishments; and 210 are permanent make-up only establishments. Information provided in a meeting with the DOH, Division of Environmental Health officials, Jan. 28, 2010. Email from the DOH on file with the Senate Committee on Health Regulation staff.

¹⁴ List of permanent make-up programs provided by the FL Department of Education, Commission for Independent Education. Document and email on file with the Senate Committee on Health Regulation staff.

Sunrise Act

The Sunrise Act, codified in s. 11.62, F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following: (1) that substantial risk of harm to the public is a risk of no regulation, which is recognizable and not remote; (2) that the skill and training the profession requires are specialized and readily measurable; (3) that other forms of regulation do not or cannot adequately protect the public; and (4) that the overall cost-effectiveness and economic impact of the proposed regulation is favorable. The act requires proponents of regulation of a previously unregulated profession to provide the agency that is proposed to have jurisdiction over the regulation and the legislative committees of reference information concerning the effect of proposed legislation to initially regulate a previously unregulated profession on the agency's resources to implement and enforce the regulation.

The Florida Professional Tattoo Artist's Guild, which is a proponent seeking regulation, completed a sunrise questionnaire and provided the required information. The proponents were not able to provide any documented record of harm to the general public because there is not a database available for tracking complaints or issues involving tattoo artists in Florida. However, the proponents did respond by providing examples from their own personal experiences witnessing "harm" done to consumers. The proponents also cite a study by the National Institute of Occupational Safety and Health (NIOSH) that indicated that tattoo artists are exposed to blood-borne pathogens and other potentially infectious hazards at a significantly higher rate than the general public.

There are no nationally recognized training standards for tattooing, but training seminars occur during tattoo conventions that cover various aspects of owning and operating a tattoo studio. The proponents indicated that tattoo artists typically train through an apprenticeship, and there is no testing method to define the requisite knowledge, skills, and abilities of tattoo artists.

Regulation of Body Piercing

Body-piercing is a form a body art that may be considered similar to tattooing. Body-piercing salons in Florida are currently regulated by the DOH under chapter 381, F.S., Public Health: General Provisions. Section 381.0075, F.S., provides a requirement for persons operating body-piercing salons to obtain a license for an establishment from the DOH, and the section provides specific requirements for body-piercing salons. The DOH county health departments currently conduct an annual licensure inspection in body piercing salons, many of which are collocated with tattoo establishments.

The Florida Professional Tattoo Artist's Guild indicated in their completed Sunrise questionnaire that they wish to be regulated separately from body-piercing salons. The proposed regulation would require separate licenses for tattoo establishments and body-piercing salons that are collocated.

III. Effect of Proposed Changes:

Section 1. Creates s. 381.00771, F.S., to define the following terms, as used in ss. 381.00771-381.00791, F.S.:

“Active license or registration” means a current license or registration issued by the DOH that is not suspended or revoked.

“Department” means the DOH.

“Guest tattoo artist” means a person who is licensed, registered, or certified to practice tattooing in a jurisdiction outside of this state who is registered with the DOH to practice tattooing in this state.

“Operator” means a person designated by a tattoo establishment or temporary establishment to control the operation of the establishment.

“Stop-use order” means a written notice from the DOH to a licensee or registrant requiring him or her to remove any tattooing equipment or supplies, or cease conducting any particular procedures, because the equipment or supplies are not being used or the procedures are not being conducted in accordance with ss. 381.00771-381.00791, F.S., or any rule adopted under those sections.

“Tattoo” means a mark or design made on or under the skin of a human being by a process of piercing and ingraining a pigment, dye, or ink in the skin.

“Tattoo artist” means a person licensed under ss. 381.00771-381.00791, F.S., to practice tattooing.

“Tattoo establishment” means any permanent location, place, area, structure, or business where tattooing is performed.

“Temporary establishment” means any location, place, area, or structure where tattooing is performed during, and in conjunction with, a convention or other similar event that does not exceed 14 consecutive days.

Section 2. Creates s. 381.00773, F.S., to exempt a person licensed to practice medicine or dentistry in Florida who performs tattooing exclusively for medical or dental purposes from the provisions of ss. 381.00771-381.00791, F.S., except for s. 381.00787, F.S., which relates to tattooing minors and applies to all persons.

The bill also specifies that ss. 381.00771-381.00791, F.S., apply exclusively to the tattooing of human beings and do not apply to the tattooing of any animal.

Section 3. Creates s. 381.00775, F.S., to establish requirements for licensure as a tattoo artist and registration as a guest tattoo artist in Florida. This bill prohibits a person from tattooing the body of any human being in Florida unless the person is licensed as a tattoo artist or registered as a

guest tattoo artist under s. 381.00775, F.S., or the person is licensed to practice medicine or dentistry in Florida and performs tattooing exclusively for medical or dental purposes.

A person seeking licensure as a tattoo artist must apply to the DOH in the format prescribed by the DOH. A tattoo artist application must include the name and residence address of the applicant and the name and street address of each tattoo establishment and temporary establishment at which the applicant intends to practice tattooing in Florida. The DOH shall issue a license to an applicant who:

- Is 18 years of age or older;
- Submits a completed application;
- Pays the applicable license fee;
- Submits proof of successful completion of an education course, approved by the DOH, on blood-borne pathogens and communicable diseases; and
- Submits proof of passage of an examination approved by the DOH on the material presented in the education course.

The bill instructs the DOH to approve one or more education courses and examinations so that applicants can meet the license application requirements. The courses and examinations may be available in person or through an Internet website.

The bill requires tattoo artists to notify the DOH within 30 days after any change in the name and residence address of the tattoo artist, or the name and street address of each tattoo establishment at which the tattoo artist practiced tattooing for more than 14 days from the most recent application for licensure issuance or renewal.

A person seeking registration as a guest tattoo artist must apply to the DOH in the format prescribed by the DOH. A guest tattoo artist application must include the name and residence address of the applicant and the name and street address of each tattoo establishment and temporary establishment at which the applicant will practice under the guest tattoo artist registration. The DOH shall issue a guest tattoo artist registration to an applicant who:

- Is 18 years of age or older;
- Submits a completed application;
- Pays the applicable registration fee; and
- Holds an active license, registration, or certification issued by a jurisdiction outside of this state if the education and examination requirements of the license, registration, or certificate substantially meet or exceed the requirements of this bill; or the applicant submits proof of successful completion of an education course approved by the DOH and proof of passage of an examination approved by the DOH.

A tattoo artist license is valid for 1 year and must be renewed annually. A guest tattoo artist registration is valid for 14 days, and a guest tattoo artist may reregister before or after expiration of his or her current registration. A tattoo artist license or guest tattoo registration issued by the DOH is not transferable.

Section 4. Creates s. 381.00777, F.S., to require licensure for tattoo establishments and temporary establishments. The bill prohibits a person from tattooing the body of any human

being in Florida except in a tattoo establishment or temporary establishment licensed under s. 381.00777, F.S., or the person is licensed to practice medicine or dentistry in Florida and performs tattooing exclusively for medical or dental purposes. A person may not operate a tattoo establishment or temporary establishment in Florida unless the establishment is licensed under s. 381.00777, F.S.

A person seeking licensure of a tattoo establishment must apply to the DOH. A tattoo establishment application must include:

- The registered business name, including any fictitious names under which the tattoo establishment conducts business in Florida;
- The street address and telephone number of the tattoo establishment;
- The name, mailing address, and telephone number of the tattoo establishment's operator; and
- The name and address of the tattoo establishment's registered agent for service of process in the Florida.

The DOH shall issue a tattoo establishment license to an applicant if the applicant submits a completed application, the applicant pays the applicable license fee, and the establishment complies with all applicable local building, occupational, zoning, and health codes. The bill requires temporary establishments to meet the same requirements for licensure as a permanent tattoo establishment.

A license is valid only for the location listed in the license. A tattoo establishment must notify the DOH before any change of the licensed location. A tattoo establishment with more than one location is required to obtain a separate license for each location.

A tattoo establishment license is valid for 1 year and must be renewed annually. A temporary establishment license is valid for the duration of the event for which the license is issued, not to exceed 14 consecutive days.

A tattoo establishment license or temporary establishment license issued by the DOH is not transferable.

Section 5. Creates s. 381.00779, F.S., to set practice requirements for the profession of tattooing. A tattoo establishment or temporary establishment must:

- Display an active license for the establishment in a manner that is easily visible to the public at all times while tattooing is performed in the establishment;
- Ensure that each tattoo artist and guest tattoo artist, while practicing tattooing in the establishment, meets all applicable requirements of ss. 381.00771-381.00791, F.S.;
- Maintain sanitary conditions at all times in the establishment;
- Comply with all state and local health codes and ordinances;
- Allow periodic inspections and enforcement by authorized agents of the DOH; and
- Comply with s. 381.0098, F.S., relating to biomedical waste, and the rules adopted under that section.

A tattoo artist or guest tattoo artist must:

- Display his or her active license in a manner that is easily visible to the public at all times while practicing tattooing;
- Practice tattooing exclusively in an establishment licensed under ss. 381.00771-381.00791, F.S.;
- Maintain sanitary conditions at all times in an establishment; and
- Comply with all state and local health codes and ordinances.

A tattoo artist or guest tattoo artist may not tattoo the body of a minor child younger than 16 years of age unless the tattoo artist or guest tattoo artist is licensed to practice medicine or dentistry in the state of Florida and the tattooing is performed for medical or dental purposes.

A tattoo artist or guest tattoo artist may tattoo the body of minor child who is at least 16 years of age, but younger than 18 years of age, only if:

- The minor child is accompanied by his or her parent or legal guardian;
- The minor child and his or her parent or legal guardian each submit proof of his or her identity by producing a government-issued photo identification;
- The parent or legal guardian submits his or her written notarized consent in the format prescribed by the DOH;
- The parent or legal guardian submits proof that he or she is the parent or legal guardian of the minor child; and
- The tattooing is performed by a licensed tattoo artist or guest tattoo artist or a person licensed to practice medicine or dentistry in Florida.

A tattoo establishment or temporary tattoo establishment must keep, for the period prescribed by the DOH, each written notarized consent submitted by the parent or legal guardian of a minor child who is tattooed in the establishment.

The DOH may inspect and investigate each tattoo establishment and temporary establishment as necessary to ensure compliance with ss. 381.00771-381.00791, F.S. The DOH is required to inspect each tattoo establishment at least annually and must inspect each temporary establishment before, and as necessary, during a convention or similar event with which the establishment is connected.

Section 6. Creates s. 381.00781, F.S., to authorize the DOH to establish by rule the following fees:

- Fee for the initial licensure of a tattoo establishment and the renewal of such license, which may not exceed \$250 per year, except as provided in s. 381.00781(2), F.S.;
- Fee for licensure of a temporary establishment, which may not exceed \$250 per year, except as provided in s. 381.00781(2), F.S.;
- Fee for the initial licensure of a tattoo artist and the renewal of such license, which may not exceed \$150 per year, except as provided in s. 381.00781(2), F.S.;
- Fee for registration or re-registration of a guest tattoo artist, which may not exceed \$45, except as provided in s. 381.00781(2), F.S.; and
- Fee for reactivation of an inactive tattoo establishment license or tattoo artist license.

A license becomes inactive if it is not renewed before the expiration of the current license.

Section 381.0078(2), F.S., authorizes the DOH to annually adjust the maximum fees for initial licensure, renewal, registration, re-registration, and reactivation according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

Section 7. Creates s. 381.00783, F.S., to establish the grounds for which disciplinary action may be taken by the DOH against any tattoo establishment, temporary establishment, tattoo artist, guest tattoo artist, operator of a tattoo establishment, or unlicensed person engaged in activities regulated under ss. 381.00771-381.00791, F.S. The following acts constitute grounds for which disciplinary action may be taken:

- Providing false information on an application for licensure or registration;
- Violating a state or local health code or ordinance;
- Violating any provisions of ss. 381.00771-381.00791, F.S., rule adopted under ss. 381.00771-381.00791, F.S., or lawful order of the DOH;
- Being found guilty of or pleading nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of tattooing or the operation of a tattoo establishment or temporary establishment;
- Committing fraud, deceit, negligence, or misconduct in the practice of tattooing or the operation of a tattoo establishment or temporary establishment;
- Aiding, procuring, or assisting a person to unlawfully practice tattooing or unlawfully operate a tattoo establishment or temporary establishment; or
- Failing to keep the written notarized consent of the parent or legal guardian of a minor child who is tattooed in a tattoo establishment or temporary establishment for the period specified pursuant to s. 381.00779, F.S., or knowingly making false entries in a parent's or legal guardian's written notarized consent.

When the DOH determines that a person commits any of the acts that constitute grounds for disciplinary action, the DOH may enter an order imposing one or more of the following penalties:

- Refusal to issue a license or registration or renew a license;
- Suspension or revocation of a license or registration;
- Imposition of an administrative fine not to exceed \$1,500 for each count or separate violation;
- Issuance of a reprimand;
- Placement of the licensee or registrant on probation for a specified period and subject to the conditions that the DOH may specify;
- Issuance of a stop-use order; or
- Corrective action.

The department is authorized to impose stricter penalties for the repetition of violations and, as the severity of violations escalate, to distinguish lesser violations from those that endanger the public health. Disciplinary proceedings shall be conducted as provided in chapter 120 of the Florida Statutes, the Administrative Procedure Act.

Section 8. Creates s. 381.00785, F.S., to establish criminal penalties. A person may not:

- Operate a tattoo establishment or temporary establishment in Florida without a license;
- Practice tattooing in Florida without a tattoo artist license or guest tattoo artist registration, or being licensed to practice medicine or dentistry in Florida and performing tattooing exclusively for medical or dental purposes;
- Practice tattooing in Florida at any place other than a tattoo establishment or temporary establishment, except if the tattooing is performed by a person licensed to practice medicine or dentistry on Florida and the tattooing is done exclusively for medical or dental purposes; or
- Obtain or attempt to obtain a license or registration by means of fraud, misrepresentation, or concealment.

The bill provides that a person who commits an act prohibited under s. 381.00785, F.S., commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (imprisonment up to 60 days or a fine up to \$500).

Section 9. Amends, transfers, and renumbers s. 877.04, F.S., to s. 381.00787, F.S., to replace the existing prohibition against tattooing of any human being by someone other than a physician or dentist, or a person under the general supervision of a physician or dentist, with a prohibition against tattooing a minor younger than 16 years of age unless the tattooing is performed for medical or dental purposes by a person licensed to practice medicine or dentistry under chapters 458, 459, or 466, of the Florida Statutes. Any person who violates the provisions of s. 381.00787, F.S., is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (imprisonment up to 60 days or a fine up to \$500).

A person may not tattoo the body of a minor child who is at least 16 years of age, but younger than 18 years of age, unless:

- The minor is accompanied by his or her parent or legal guardian;
- The minor and his or her parent or legal guardian each submit proof of identity by producing a government-issued photo identification;¹⁵
- The parent or legal guardian submits written notarized consent in the format prescribed by the DOH;
- The parent or legal guardian submits proof that he or she is the parent or legal guardian of the minor; and
- The tattooing is performed by a tattoo artist or guest tattoo artist licensed under ss. 381.00771-381.00791, F.S., or performed by a person licensed to practice medicine or dentistry.

The effect of these changes, in addition to the restriction on the tattooing of minors, is that a licensed tattoo artist or registered guest tattoo artist can tattoo an adult without being under the general supervision of a physician or dentist.

A person who violates the provisions of s. 381.00787, F.S., commits a misdemeanor of the second degree. However, a person who tattoos the body of a minor child younger than 18 years of age does not violate this section if:

¹⁵ Identification cards are issued by the Department of Highway Safety and Motor Vehicles for \$25. See <http://www.flhsmv.gov/DHSMVfees.htm>, last visited on April 9, 2010.

- The person carefully inspects what appears to be a government-issued photo identification that represents that the minor child is 18 years of age or older;
- The minor child falsely represents himself or herself as being 18 years of age or older and presents a fraudulent identification; and
- A reasonable person of average intelligence would believe that the minor child is 18 years of age or older and that the photo identification is genuine, was issued to the minor child, and truthfully represents the minor child's age.

Section 10. Creates s. 381.00789, F.S. to authorize the DOH to adopt rules to administer ss. 381.00771-381.00791, F.S. Rules may include, but are not limited to, rules defining terms; prescribing educational requirements for tattoo artists and guest tattoo artists, health and safety requirements, sanitation practices, and sterilization requirements and procedures; and providing requirements for tattoo equipment, customer notification, the contents of customer records, the retention of records, and physical plants.

The bill instructs the DOH to consult with representatives of the tattooing industry in Florida during the development of such rules.

Section 11. Creates s. 381.00791, F.S., to clarify that ss. 381.00771-381.00791, F.S., do not preempt any local law or ordinance of a county or municipality that imposes regulations on tattoo establishments, temporary establishments, tattoo artists, or the practice of tattooing which are in addition to ss. 381.00771-381.00791, F.S.

Section 12. Provides an effective date of January 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill specifies fees that may be imposed on applicants for tattoo artist licenses, guest tattoo artist registrations, and tattoo establishment licenses. These fees include:

- A fee for the initial licensure of a tattoo establishment and the renewal of such license, which may not exceed \$250 per year;

- A fee for licensure of a temporary establishment, which may not exceed \$250 per year;
- A fee for the initial licensure of a tattoo artist and the renewal of such license, which may not exceed \$150 per year;
- A fee for registration or re-registration of a guest tattoo artist, which may not exceed \$45; and
- A fee for reactivation of an inactive tattoo establishment license or tattoo artist license (unspecified).

B. Private Sector Impact:

In addition to the expenses incurred to pay licensure fees, persons who perform tattooing or who own establishments where tattooing is performed may incur costs associated with compliance with the regulations specified in the bill. However, fees currently paid for general supervision by a physician or dentist will no longer be necessary for tattoo artists and tattoo establishments. The Florida Professional Tattoo Artist's Guild reported in the Sunrise questionnaire that they believe being regulated by the DOH will cost less than what they currently must pay to general supervisors.

C. Government Sector Impact:

The DOH indicated that it will incur costs due to rule promulgation, development, and presentation of training for county health departments who will inspect the establishments. County health departments will incur the costs associated with processing applications, issuing licenses, and conducting inspections, re-inspections, and enforcement. The DOH also indicated that it will incur the costs of training and examination approval. The costs will be offset, at least partially, by fees.

VI. Technical Deficiencies:

In section 9 of the bill, the provisions of subsection (2) are duplicated in subsection (4). However, subsection (4) also clarifies an exemption from criminal penalties for certain reasons. Subsection (2) may not be necessary.

VII. Related Issues:

The rulemaking authority granted in section 10 of the bill contains unclear requirements. The rulemaking provisions of s. 120.54, F.S., specify standard procedures concerning the input of interested parties in agency rulemaking. It is unclear whether requiring DOH to "consult with representatives" of the tattooing industry is intended to impose additional requirements on DOH in the rulemaking process, beyond those already specified in the Administrative Procedure Act.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on March 18, 2010:

The Committee Substitute substantially changes the section numbers and section order from the original bill. The CS provides licensure and licensure application requirements for tattoo artists and tattoo establishments, and registration and registration application requirements for guest tattoo artists. The CS exempts certain persons licensed in medicine and dentistry in Florida from the provisions of the bill.

The CS provides that violation of provisions set forth in the bill will be a misdemeanor of the second degree. The CS provides rule-making authority to the DOH. The CS establishes fees for persons in the tattoo profession. The CS specifies that the provisions of the bill apply only to human beings and not to any animal. The CS provides an exemption from violation of tattooing a minor for certain reasons. The CS changes the effective date from the original bill.

- B. **Amendments:**

None.