



GOV. MSG. NO 747

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

June 17, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 17, 2009, the following bill was signed into law:

SB1263 SD2 HD3 CD1

A BILL FOR AN ACT  
RELATING TO TATTOO ARTISTS.  
**ACT 130 (09)**

Sincerely,



LINDA LINGLE

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# A BILL FOR AN ACT

RELATING TO TATTOO ARTISTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is  
2 amended by adding a new section to part XXX to be appropriately  
3 designated and to read as follows:

4 "§321- Permit; required for tattoo shop and temporary  
5 locations. (a) No person, partnership, firm, corporation, or  
6 other legal entity shall operate a tattoo shop or temporary  
7 location without a permit pursuant to department rules.

8 (b) Each initial permit application under this section  
9 shall be accompanied by a fee of \$125 for a permit valid for one  
10 year. For renewal of a permit, each applicant shall pay a fee  
11 of \$75 per year. Initial permit application and renewal fees  
12 may be increased by not more than \$10 per year.

13 (c) All permits shall expire on December 31 of each year.  
14 The application for a permit renewal shall be submitted to the  
15 department in writing on or before December 31 annually.

16 (d) The department may issue a temporary permit valid for  
17 a maximum of seven consecutive days per calendar year for  
18 locations other than a permitted tattoo shop for the purpose of



1 a trade show, product demonstration, or educational  
2 demonstration; provided that the show or demonstration shall  
3 meet all safety and hygiene standards as specified by the  
4 director and in this chapter. The temporary permit application  
5 shall be made in writing to the department at least sixty days  
6 prior to the scheduled event, shall include specific measures to  
7 meet specified health and safety standards, and may be subject  
8 to a site inspection. Temporary permit applicants shall pay a  
9 \$50 nonrefundable application fee in addition to:

- 10 (1) A \$500 nonrefundable permit fee for an event featuring  
11 not more than forty participating tattoo artists; or  
12 (2) A \$50 nonrefundable permit fee for an event featuring  
13 less than three participating tattoo artists  
14 demonstrating for educational purposes only, without  
15 compensation, consideration, or donation by the  
16 public;  
17 provided that the department may annually increase the fees  
18 specified in paragraphs (1) and (2) by not more than \$100 and  
19 \$10 per year, respectively."

20 SECTION 2. Section 321-372, Hawaii Revised Statutes, is  
21 amended as follows:

- 22 1. By repealing the definition of "facial tattoo":



1        [~~"Facial tattoo" means any tattoo applied above the~~  
2 ~~jawline, anterior to the ear and frontal hairline including the~~  
3 ~~eyelids, eyebrows, or lips."~~]

4        2. By amending the definition of "tattoo artist" to read:

5        "Tattoo artist" means any person who creates indelible  
6 marks or decorative designs by introducing pigments beneath the  
7 surface of the skin, resulting in permanent or semi-permanent  
8 markings, with the aid of needles, electric machines, hand  
9 tools, or other devices[-] or means."

10        SECTION 3. Section 321-373, Hawaii Revised Statutes, is  
11 amended to read as follows:

12        "§321-373 Regulation of tattoo artists. [~~(a)~~] The  
13 department shall adopt rules under chapter 91 to implement this  
14 part. The rules shall include but not be limited to:

- 15        (1) Prohibiting the use of injections, unless administered  
16 by a physician licensed under chapter 453 [~~or 460,~~] or  
17 by a registered nurse licensed under chapter 457;
- 18        (2) Appropriate restrictions on topical anesthetics;
- 19        (3) Prescribing procedures and conditions for  
20 sterilization, storage of sterilized equipment,  
21 resterilization, and disposal of discarded needles and  
22 other equipment;



- 1 (4) Creating examination standards; and  
2 (5) Fixing penalties and fines for violations of this part  
3 or any of the rules adopted by the department.

4 ~~[(b) The rules may provide for separate standards for~~  
5 ~~facial tattoos.] "~~

6 SECTION 4. Section 321-374, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§321-374 License required; exemptions. (a) Except as  
9 otherwise provided by law, no person shall practice the  
10 occupation of tattoo artist in this State ~~[either gratuitously~~  
11 ~~or for pay]~~, with or without compensation, consideration, or  
12 donation, or shall announce oneself either publicly or privately  
13 as prepared or qualified to practice that occupation without  
14 having a valid unrevoked license from the department to do so.

15 (b) Physicians holding a valid unrevoked license under  
16 chapter 453 ~~[or 460]~~ are exempt from the requirements of this  
17 part.

18 (c) The department may issue, to tattoo artists who are  
19 not licensed in the State, temporary licenses that are valid for  
20 a maximum of fourteen consecutive days per calendar year for:

21 (1) Educational, trade show, or product demonstration  
22 purposes; or



1       (2) The purpose of practicing the occupation of tattoo  
2       artist at a permitted tattoo location.  
3 Temporary licensees shall be subject to this part and applicable  
4 rules.

5       (d) Applications for temporary licenses shall be made in  
6 writing to the department at least sixty days prior to the  
7 proposed event and accompanied by a non-refundable application  
8 fee of \$100 and written proof satisfying the requirements under  
9 subsection (e). An applicant shall be notified of the  
10 disposition of the application within twenty business days of  
11 the receipt of application.

12       (e) An applicant for a temporary license shall have  
13 either:

14       (1) Passed a blood borne pathogen course developed  
15 specifically for the tattoo industry, approved by the  
16 director, within two years of the date of application;  
17 or  
18       (2) Passed the state tattoo artist written examination  
19 within two years of the date of the application.

20       (f) Temporary license fees may be increased annually by  
21 not more than \$10.



1        (g) Licensed tattoo artists shall tattoo only in a shop or  
2 temporary location that has a valid unrevoked permit issued by  
3 the director."

4        SECTION 5. Section 321-375, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6        "(a) No license shall be issued unless the applicant takes  
7 an examination as prescribed by the director and receives a  
8 passing score~~[-]~~ or meets the criteria specified in section 321-  
9 374(e). No license shall be issued unless all fees required by  
10 the director have been paid."

11        SECTION 6. Section 321-377, Hawaii Revised Statutes, is  
12 amended to read as follows:

13        "~~§321-377 Suspension~~[-]~~ or revocation~~[-, or denial of the~~~~  
14 ~~renewal]~~ of permit or license. (a) The director may revoke~~[-]~~  
15 or suspend~~[-, or deny the renewal of]~~ the permit or license of  
16 any person ~~[applying to be]~~ permitted or licensed under this  
17 part who:

- 18        (1) Is found guilty of any fraud, deceit, or misconduct in  
19            the practice of the occupation of tattoo artist; or  
20        (2) Violates this part or any of the rules adopted by the  
21            department.



1           (b) In every case where it is proposed to revoke ~~[7]~~ or  
2 suspend ~~[, or deny the renewal of]~~ a permit or license, the  
3 director shall give the permittee or licensee ~~[or applicant]~~  
4 concerned notice and a hearing. The notice shall be given in  
5 writing by registered or certified mail, with return receipt  
6 requested, at least fifteen days before the hearing. All  
7 hearings shall be conducted pursuant to chapter 91."

8           SECTION 7. Section 321-379, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "~~[+] §321-379 [1] Discipline; complaints; grounds;~~  
11 ~~proceedings; hearings.] Enforcement; penalties.~~ (a) [The  
12 director shall have the power to revoke, limit, condition, or  
13 suspend a license as a tattoo artist and to fine or otherwise  
14 discipline a licensed tattoo artist for any violation of  
15 subsection (b).] If the department determines that any person  
16 has violated or is violating any provision of this part, any  
17 rule adopted pursuant to this part, or any term or condition of  
18 a permit or license issued pursuant to this part, the department  
19 may take enforcement action and impose penalties as provided in  
20 section 321-20, except that the department may impose a penalty  
21 not to exceed \$10,000 per offense.





1           (b) ~~[The department shall have the power to accept,~~  
2 ~~investigate, prosecute, and hear complaints regarding any~~  
3 ~~person, who is a licensed tattoo artist regarding the following~~  
4 ~~allegations:]~~ Violations of this part include but are not  
5 limited to:

6           ~~[(1) Unfitness or incompetence by reason of negligence,~~  
7           ~~habits, or other causes regardless of whether actual~~  
8           ~~damage or damage to the public is established;~~

9           ~~(2) Habitual intemperance, addiction, or dependency on~~  
10           ~~alcohol or other habit-forming substances;~~

11           ~~(3) Mental incompetence resulting in an inability to~~  
12           ~~practice as a tattoo artist;~~

13           ~~(4)]~~ (1) Submitting to or filing with the department any  
14           application, notice, statement, or other document in  
15           procuring or attempting to procure licensure as a  
16           tattoo artist~~[, which]~~ that is false or untrue or  
17           contains any material misstatement of fact~~[,],~~ or  
18           assisting another party in doing so;

19           ~~(5)]~~ (2) Using the title~~[,]~~ licensed tattoo artist~~[,]~~ or  
20           any other designation tending to imply that the person  
21           is a licensed tattoo artist when the person is not in



- 1 fact licensed or the person's license has been
- 2 suspended or revoked;
- 3 ~~[(6)]~~ (3) Violating the conditions or limitations ~~[upon~~
- 4 ~~which licensure occurs,]~~ of a permit or a license or
- 5 assisting another party in violating those conditions;
- 6 ~~[(7)]~~ (4) Engaging in ~~[dishonorable, unethical, or~~
- 7 ~~unprofessional]~~ conduct ~~[of a character likely to~~
- 8 ~~deceive, defraud, or harm]~~ resulting in physical
- 9 injury to an individual or the public in the course of
- 10 professional services or activities;
- 11 ~~[(8)]~~ ~~Having disciplinary action taken against the tattoo~~
- 12 ~~artist in another state;~~
- 13 ~~-(9)-~~ (5) Aiding or abetting an unlicensed person,
- 14 knowingly combining or conspiring with an unlicensed
- 15 person, allowing one's license to be used by an
- 16 unlicensed person, or acting as agent or associate of
- 17 an unlicensed person to evade the use of title
- 18 restrictions of this part;
- 19 ~~[(10)]~~ ~~Engaging in false or misleading advertising; or~~
- 20 ~~-(11)-~~ ~~Engaging in sexual conduct in connection with~~
- 21 ~~professional services or activities.]~~



1       (6) Tattooing any person under the age of eighteen without  
2       the written consent of the person's parent or legal  
3       guardian or not maintaining the consent forms in a  
4       confidential manner at the tattoo shop for not less  
5       than two years; or

6       (7) Making a false or misleading statement to the  
7       department relating to any matter under this part.

8       (c) An enforcement action under this section may be  
9       combined with a permit or license revocation or suspension under  
10      section 321-377 and may be brought together as one  
11      administrative action.

12      ~~[-(e)]~~ (d) In any proceeding under this section, the person  
13 subject to the proceeding shall be given notice and the  
14 opportunity for a hearing in conformity with chapter 91."

15      SECTION 8. Section 321-376, Hawaii Revised Statutes, is  
16 repealed.

17      ~~["§321-376 Facial tattoos. Application of facial tattoos~~  
18 ~~shall be prohibited except by a physician licensed under chapter~~  
19 ~~453 or 460, or by a tattoo artist who is under the general~~  
20 ~~supervision of such a physician."]~~

21      SECTION 9. Section 321-378, Hawaii Revised Statutes, is  
22 repealed.



1           ~~["§321-378] Denial of licensure, hearing. (a) No~~  
2 ~~applicant shall be licensed as a tattoo artist if:~~

3           ~~(1) The applicant has been convicted of a crime and the~~  
4           ~~basis of denial of licensure falls within the~~  
5           ~~exceptions provided in section 831-3.1;~~

6           ~~(2) The applicant has been declared mentally incompetent~~  
7           ~~by any court and the decree has not since been~~  
8           ~~dismissed; or~~

9           ~~(3) Proceedings brought against the applicant pursuant to~~  
10           ~~this section resulted in findings of any of the causes~~  
11           ~~listed in subsection 321-379(b).~~

12           ~~(b) Any person whose application for licensure has been~~  
13 ~~denied shall be given notice and the opportunity for a~~  
14 ~~hearing." ]~~

15           SECTION 10. Section 321-380, Hawaii Revised Statutes, is  
16 repealed.

17           ~~["§321-380] Penalties. (a) Any person against whom~~  
18 ~~proceedings have been brought pursuant to section 321-379 which~~  
19 ~~resulted in findings of any of the causes listed in subsection~~  
20 ~~321-379(b) may be assessed a fine of not less than \$100 nor more~~  
21 ~~than \$5,000 for each offense. Any action taken to impose or~~



1 ~~collect the penalty provided for in this subsection shall be~~  
2 ~~considered a civil action.~~

3 ~~(b) The director may bring a civil action to enjoin any~~  
4 ~~person for violation of section 321-379(b)."]~~

5 SECTION 11. Section 321-383, Hawaii Revised Statutes, is  
6 repealed.

7 ~~["§321-383] License without necessity of examination.~~  
8 ~~All persons holding valid licenses as tattoo artists from the~~  
9 ~~department of health and practicing on the day prior to~~  
10 ~~January 1, 1991, shall be considered licensed under this part on~~  
11 ~~January 1, 1991, without necessity of examination."]~~

12 SECTION 12. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 13. This Act shall take effect upon approval.

APPROVED this 17 day of JUN, 2009



GOVERNOR OF THE STATE OF HAWAII