

Approved: 3-28-01
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on March 8, 2001 in Room 231-N of the Capitol.

All members were present except: Senator Steineger

Committee staff present: Ms. Emalene Correll, Legislative Research Department
Mr. Norman Furse, Revisor of Statutes
Ms. Lisa Montgomery, Revisor of Statutes
Ms. Rebecca Zapick, Intern for Senator Barnett
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee: Ms. Mary Lou Davis, Board of Cosmetology
Ms. Kelley Benentende, Associate Counselor,
for the Board of Healing Arts

Others attending: See attached guest list.

Hearing on HB 2275 - Board of Cosmetology, regulation of permanent color technology, tattooing and body piercing.

Upon calling the meeting to order, Chairperson Wagle announced that there would be a hearing on **HB 2275** and asked that Mr. Norman Furse, Revisor of Statutes, give an overview of the bill.

Mr. Furse began by stating that the bill relates to the Board of Cosmetology and called attention to the supplemental information which summarizes major policy changes, pointed out the bill was introduced at the request of a representative of the State Board of Cosmetology and otherwise summarized contents of the bill. Highlights of some of the more outstanding policy issues and some changes moving language around are as follows:

Regarding the title, this was a section not amended in the bill and is a little section all by itself, regarding the violation of 65-1942. This change has been picked up in the bill and put into 65-1492 on page 3 so that the other section can be repealed outright. Two terms are being stricken on page 1 ("Director" is being deleted and "Department" and "Secretary" are being stricken (both are policy changes); also on page 3 "ear" changed to "earlobe".

At this time Chairperson Wagle recognized Senator Haley who asked for a clarification from Mr. Furse. Was the bill stating that the upper part of the ear would no longer be included, this then would be body piercing? Mr. Furse stated this needed to be clarified by the Board. Mr. Furse continued his overview by covering the three new licenses being proposed (trainer, apprentice, and temporary), rehabilitation of persons accused of a felony and have had their license suspended, and what the Boards powers of duty are. He stood before the Committee for questions.

Discussion between Senators Praeger and Haley with Mr. Furse regarding who requested the bill, when was tattooing added, what is the rationale of adding the felony conviction to the list of exclusions for applicants, to is it grand fathered for those who currently hold felony convictions or who are paroled.

Chairperson Wagle then introduced the first proponent conferee, Ms. Mary Lou Davis, Board of Cosmetology who stated that "with the implementation of the statutes and through the knowledge gained in the past 4 years, the Board believes other revisions, which she went on to explain, are necessary. A copy of her testimony is (Attachment 1) attached hereto and incorporated into the Minutes by reference.

Chairperson Wagle then asked Ms. Davis to address the questions already asked of Mr. Furse that he said would have to be addressed by the Board regarding KDHE, the earlobe, the training program, "temporary" permit being replaced by "demonstration", and the felony language.

Chairperson Wagle then informed the Committee that she had asked the Board of Healing Arts to comment today on the bill to get a physician's point of view. She then introduced Ms. Kelley Benentende, Associate Counselor for the Kansas Board of Healing Arts addressed three areas of concern of the Committee regarding the type of body piercing which is being performed, who is performing the body piercing, and the performance of piercing on minors without parental consent. A copy of her testimony is (Attachment 2) attached hereto and incorporated into the Minutes by reference.

As there was no opponent or neutral testimony, Chairperson Wagle asked for questions or comments from the Committee. A discussion ensued between Senators Praeger, Barnett, Brungardt, and Wagle and concerning where does cosmetic surgery fit in (ex. Injections and implants), where does Health and Environment fit in, the law based on Oregon Bill, what kind of litigation is coming out of these examples given in Ms. Benentende's testimony, and how protective are we of our young people.

Adjournment

As the Senate convened at 2:30 p.m., Chairperson Wagle said that the Committee will discuss further at a later date. The meeting was adjourned at 2:32 p.m.

The next meeting is scheduled for March 12, 2001.



BILL GRAVES, Governor

KANSAS BOARD OF COSMETOLOGY

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Senate Committee on Public Health and Welfare House Bill 2275

Thursday, March 8, 2001

Madam Chair and Members of the Committee:

In 1997 the legislature enacted regulatory oversight for tattoo artists, body piercers and permanent cosmetic technicians **and** the facilities in which they provide these services. As you know, these body art services are becoming more prevalent and accepted. Therefore, the Board believes that revisions of these statutes will facilitate our efforts to ensure the health and safety of the public while maintaining high standards of practice.

Several provisions of the law are only in need of "clean-up" corrections/revisions. With the implementation of the statutes and through the knowledge gained in the past four years, the Board believes that several other revisions are necessary.

To date the Board currently has 96 licensed body art practitioners and 69 facilities. During calendar year 2000 approximately 28 individuals were issued temporary permits which allows out-of-state individuals to practice at concerts, festivals and etc.

The technical changes include:

- Consistency and uniformity in the language of the statute;
- Clarifies that an inspection confirm compliance with the health and sanitation rules and regulations prior to granting a facility license;
- Clarifies the practitioner application process.

More signification provisions include:

- Licensure for a mobile facility;
- All facility licenses will annually expire on December 31 and have a 60 day grace period for renewal with the appropriate late fee,
- Individuals who allow their practitioner license to expire for more than six months must make application as for initial licensure and "satisfactorily complete" the continuing education requirement;
- Piercing the ear lobe is excluded from the body piercing definition;
- Provision for issuing and establishing a licensure fee for an apprentice and trainer; and
- The Board will have enforcement provisions for violation of licensure statutes or rules and regulations.

This bill did pass the House of Representatives by a vote of 89 to 35.

The Kansas Board of Cosmetology requests your favorable action on House Bill 2275.

Senate Public Health & Welfare Committee
Meeting Date March 8, 2001
Attachment 1-1



BILL GRAVES, Governor

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Senate Committee on Public Health and Welfare House Bill 2314

Thursday, March 8, 2001

During the 1998 legislative session the cosmetology statutes were substantially revised. However, several provisions of the law were inconsistent or in need of technical changes. Other provisions within HB 2314 are more significant.

The Board believes those revisions included in this legislation will facilitate our efforts to ensure the health and safety of the consuming public while maintaining high standards of practice.

Proposed provisions that are basic technical changes include:

- The fee schedule in the present statute reflects a delinquent fee for a school license renewal, however a delinquency provision is not included in the statute.
- The fee schedule in the present statute reflects a delinquent fee for an instructor's license renewal however, a delinquency provision is not included in the statute.
- Practitioner's applying for delinquent renewal will also be required to successfully complete the renewal exam.

Significant revisions include:

- A provision outlines the training and requirements for student instructors. A permit fee is established for the student instructor.
- The current out-of-state (reciprocity) application process is revised through this proposed legislation to be less restrictive while maintaining a high standard of practice.
- All professions of cosmetology (including manicurists, estheticians and electrologists) would be permitted to provide services in the client's home or place of business (within certain criteria).
- Individuals licensed or seeking licensure in Kansas may be subject to disciplinary action in Kansas based on disciplinary action taken against them by another state. "A certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof."
- A provision is included whereby the Board may bring disciplinary action for violation of the cosmetology statutes, rules or regulations.

Additionally, it should be noted that the Board does not anticipate increasing fees in the immediate future other than the fee for cosmetology renewals. The current statute provides a \$60 cap for these renewals. The current biennial renewal fee is \$45. As the budget for 2002 was projected, it was determined that the Board will need to increase the cosmetology practitioner renewal fees. This request will be taken through the Kansas Administrative Regulations process.

The fee schedule in this legislation has been revised. Should the need arise in future years for a necessary fee increase, the legislation would allow the Board to do so – again through the regulation process.

This proposed legislation did receive a full hearing in the House and was reported out favorably on a committee vote of 10 – 5.

The Board requests your favorable consideration of House Bill 2314 and further requests that this legislation be amended on to HB 2275.

Attachment 1-2

**KBOC STATISTICS
JANUARY 5, 2001**

Active Cosmetologist	17,190
Active Manicurist	2,005
Active Cosmetology Technician	62
Active Electrologist	52
Active Esthetician	127
Active Body Piercer	32
Active Permanent Color Technician	5
Active Tattoo Artist	53
<u>Active Tattoo/Permanent Color Technician</u>	<u>6</u>
Sub-Total Individuals	19,532

Active Body Piercing Facilities	30
Active Cosmetology Establishments	3,391
Active Electrology Clinics	27
Active Esthetic Establishments	25
Active Nail Technology Establishments	227
Active Permanent Cosmetic Facilities	5
Active Tanning Facilities	713
Active Tattoo Facilities	31
<u>Active Tattoo/Permanent Cosmetics Facilities</u>	<u>6</u>
Sub- Total Establishments	4,455

Active Tattoo Trainer	2
Active Tattoo/Perm Color Trainer	4
Active Electrology Instructors	1
Active Cosmetology Instructors	137
Active Esthetics Instructors	1
Active Body Piercing Trainer	6
<u>Active Manicuring Instructors</u>	<u>4</u>
Sub-Total Instructors	155

Active Nail Technology Schools	1
<u>Active Cosmetology Schools</u>	<u>25</u>
Sub-Total Schools	26

Active Cosmetology Additional Training Licenses	2
Active Mainicuring Additional Training Licenses	4
Active Electrology Apprentices	3
Active Cosmetology Apprentices	1,397
Active Esthetician Apprentices	38
<u>Active Manicurist Apprentice</u>	<u>64</u>
Sub-Total Apprentices	1,508

Active Cosmetology Temporary Permits	77
Active Esthetician Temporary Permits	10
<u>Active Manicurist Temporary Permits</u>	<u>30</u>
Sub-Total Temporary Permits	117

Demo License - Body Piercer	0
<u>Demo License - Tattoo Artist</u>	<u>0</u>
Sub-Total Demo Licenses	0

TOTAL ACTIVE REGULATED LICENSES

25,793

Attachment 1-3

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



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MEMO

TO: Senator Susan Wagle

FROM: Lawrence T. Buening, Jr. *LTB*
Executive Director

DATE: March 8, 2001

RE: H.B. No. 2275

Thank you for requesting information from the State Board of Healing Arts on H.B. No. 2275. We understand you have received concerns from some of your constituents regarding body piercing. These concerns deal with three areas: (a) the type of body piercing which is being performed, including, the parts of the body being pierced and the permanent implantation of objects; (b) who is performing the body piercing; and (c) the performance of piercing on minors without parental consent.

“Body piercing” is currently defined in K.S.A. 2000 Supp. 65-1940 and means “puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting jewelry or other objects in or through the human body...”(Page 1, lines 30-34). Obviously, much of the body piercing that is being performed extends further than just the puncturing the skin. When jewelry or other objects are inserted in the tongue, parts of the ear other than the earlobe, lips, eyebrows, and other parts of the body, more than just the skin is punctured. The skin consists of only the epidermis and dermis and rests upon the subcutaneous tissues (Dorlands’s Medical Dictionary). In addition to the skin, muscles, cartilage, nerves, and subcutaneous and connective tissues are also involved when body parts are pierced. The current definition of body piercing would not appear to fully reflect what is actually occurring in practice.

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

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*Senate Public Health & Welfare Committee
Meeting Date March 8, 2001
Attachment 2-1*

Although body piercing as it is being performed exceeds the statutory definition in K.S.A. 2000 Supp. 65-1940, it is difficult to conclude that body piercing constitutes the practice of medicine and surgery. K.S.A. 65-2802 defines the healing arts to include “any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury” and includes the practice of medicine and surgery. K.S.A. 65-2869 states that persons are engaged in the practice of medicine and surgery if they “prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease...”. In Acupuncture Society of Kansas v. Kansas State Board of Healing Arts, the Kansas Supreme Court stated as follows:

“We are forced to conclude the legislature had in mind, when using the term ‘surgery’, a more limited meaning such as the rather special meaning developed by the ordinary layman, i.e., ‘Surgery is what surgeon do.’ sever the tissues of the body for the purpose of penetration for treatment, replacement or removal of afflicted parts. The simple piercing of skin by the insertion of a solid wire or needle, not intended to separate or sever tissue, for the purpose of treating by acupuncture is not ‘surgery’ as that term is used in the Healing Arts Act.”

Since body piercing is not being done to cure or relieve any disease or injury, it cannot be concluded that it constitutes the practice of the healing arts. On the other hand, the permanent insertion or implantation of objects in the body is certainly a public health concern. One suggestion might be to amend the current definition of body piercing. Amendatory language might delete the indication that it is limited to puncturing only the skin, but state that the object to be inserted must pass through the human body and cannot be placed in or intended to permanently remain embedded or implanted in the body. At the same time K.S.A. 65-2869 could also be amended to include within the definition of surgery the making of any incision or severing the tissues of the body for the purpose of implantation, replacement, or removal of any human tissue or object.

On the issue of who may perform body piercing, K.S.A. 2000 Supp. 65-1941 currently requires that a person who performs body piercing must have a license issued by the Board of Cosmetology. Current statutory language does not contain any penalties for the unlicensed practice of body piercing. However, H.B. No. 2275 would amend K.S.A. 2000 Supp. 65-1941 to make it a class A non person misdemeanor to perform body piercing without a valid license (Page 2, line 36). Also, under this bill, the Board of Cosmetology is given authority to bring an action for an injunction against persons who practice body piercing without a valid license (Page 2, lines 37-42). These amendments would appear to adequately address the current inability of the Board of Cosmetology to put a stop to the performance of body piercing by unlicensed individuals.

As to the performance of body piercing on minors without parental consent, K.S.A. 2000 Supp. 65-1953 currently makes such conduct a Class C misdemeanor. As such conduct would seem to be at least as egregious as the performance of body piercing by an unlicensed person, consideration might be given to increasing the severity level of the crime for this conduct.

I apologize that I have not had the time to develop any balloon amendments with specific statutory changes. However, if you find any of the above suggestions worthy of consideration by the Legislature, I would be happy to work with you, the Committee and the Board of Cosmetology to create language.

You also inquired as to what other states are doing regarding these issues. Executive Directors of medical boards have developed an Internet network to pose questions to each other. I have asked that these issues be sent out and I hope to have a response from at least a majority of the states by Monday.

The House Subcommittee on Appropriations is considering the Board's budget for FY2002 and FY2003 at 1:30 p.m. today. As soon as the Subcommittee has conducted its review of the Board's request, I will come to the Senate Public Health and Welfare Committee.

Thank you for allowing the Board to have input on these issues. Please feel free to contact me at any time if you have questions or if we can provide any additional information.