

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 15, 2001 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Ms. Emalene Correll, Legislative Research Department
Mr. Norman Furse, Revisor of Statutes
Ms. Lisa Montgomery, Revisor of Statutes
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:

Mr. March Stafford, General Counsel, Kansas State Board of Healing Arts
Ms. Mary Lou Davis, Board of Cosmetology

Others attending: See attached guest list.

Discussion 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 discussion on HB 2275 and asked Mr. Norm Furse to give a brief history of the bill. Mr. Furse stated that tattooing really started for those under and by the time it got to legislation, body piercing was added in. He stated the bill is actually two-fold. First it's for prohibiting services to 18 or under unless there is parental consent. The second is the concern regarding health issues. Mr. Furse also provided handouts regarding definitions found in the "Substitute for HB 2275" and "Policy Considerations" which are (Attachments #1) attached hereto and incorporated into the Minutes by reference.

Mr. Mark Stafford, General Counsel, Kansas State Board of Healing Arts, also provided additional comments. In support of the bill, Mr. Stafford stated that the definitions in the bill describe body piercing and the Kansas Board of Healing Arts requests that this definition be amended to clarify that a body pierces may not practice surgery. He then read the statute of "body piercing". A copy of his comments is (Attachment #2) attached hereto and incorporated into the Minutes by reference.

Chairperson Wagle asked for questions or comments from the Committee. The questions and comment from Senators Salmans, Brungardt, and Wagle and Mr. Furse ranged from the intent is not to alter, did the definition change, laser cosmetic abuse, to questioning the word "cosmetic".

Ms. Mary Lou Davis, Board of Cosmetology also provided additional comments, a copy of which is (Attachment #3) attached hereto and incorporated into the Minutes by reference. Ms. Davis' provided the "Substitute" portion of the bill dealing with fees, penalties, and what people licensed under this act can and cannot do.

Chairperson then asked Mr. Furse to explain the balloon on the bill, a copy of which is (Attachment #4) attached hereto and incorporated into the Minutes by reference. A healthy discuss again followed regarding changes in the bill, especially dermis/epidermis constituting skin and durmopunching.

Adjournment

As it was 2:35, the meeting adjourned.

The next meeting is scheduled for March 21, 2001.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

12 in all

DATE: Thursday, March 15

NAME	REPRESENTING
Chip Wheelen	Assn of Osteopathic Med.
Dean Handlon	Omaha Ne for a...x
Rogene Handlon	B.O. Cos /
Mary Pau Davis	Ns. Bd of Cosmetology
Mark Stafford	Healing Arts Board
LARRY BUENINGA	Bd OF HEALING ARTS
Tom Bell	KHA
Jerry Slaughter	KMS
Chris Collins	KMS

Substitute for HOUSE BILL No. 2275

By Committee on Health and Human Services

AN ACT concerning cosmetic and figurative professional services; amending K.S.A. 65-2869, K.S.A. 2000 Supp. 65-1940, 65-1941, 65-1942, 65-1943, 65-1944, 65-1945, 65-1946, 65-1947, 65-1948, 65-1949, 65-1950 and 65-1954 and repealing the existing sections; also repealing K.S.A. 2000 Supp. 65-1952.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 65-1940 is hereby amended to read as follows: 65-1940. As used in this act, unless the context otherwise requires:

- (a) "Board" means the Kansas state board of cosmetology.
- (b) ~~"Director" means the executive director of the board.~~
- (c) ~~"Department" means the department of health and environment.~~
- (d) ~~"Secretary" means the secretary of health and environment.~~
- (e) ~~(b) "Licensed permanent color technician and tattoo artist" means a person licensed under this act to practice tattooing or permanent color technology, or both.~~
- (f) (c) "Permanent color technician and tattoo artist" means a person who practices tattooing or permanent color technology, or both pursuant to this act.
- (g) (d) "Body piercing" 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 removable jewelry or other objects in or through the human body, except puncturing the external part of the human ear ear-lobe shall not be included in this definition. This act shall not be construed to authorize a licensed body piercer to implant or embed foreign objects into the human body or otherwise to engage in the practice of medicine and surgery.
- (h) (e) "Physician" means a person licensed to practice medicine and surgery by the state board of healing arts.
- (i) (f) "Tattoo" means the indelible mark, figure or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being.
- (j) (g) "Tattooing" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the sub-cutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.
- (k) ~~"Tattoo facility" (h) "Facility" means any room or space or any part thereof where tattooing is, permanent color technology or body piercing, or any combination thereof, are practiced or where the business of tattooing is, permanent color technology or body piercing, or any combination thereof, are conducted.~~
- (l) ~~"Body piercing facility" means any room space, or any part thereof, where body piercing is practiced or where the business of body piercing is conducted.~~
- (m) (i) "Permanent color technology" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as

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All costs assessed under this section shall be remitted to the state treasurer at least monthly and shall be deposited in the state treasury and credited to the cosmetology fee fund.

Sec. 17. 65-2869 is hereby amended to read as follows: For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

(a) Persons who publicly profess to be physicians or surgeons, or publicly profess to assume the duties incident to the practice of medicine or surgery or any of their branches.

(b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature *to sever, penetrate, or alter body tissue* 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, physical or mental illness or psychological disorder, *or for cosmetic or figurative purposes* of human beings.

(c) Persons who attach to their name the title M.D., surgeon, physician, physician and surgeon, or any other word or abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases or injuries of human beings.

Sec. 18. K.S.A. 65-2869, K.S.A. 2000 Supp. 65-1940, 65-1941, 65-1942, 65-1943, 65-1944, 65-1945, 65-1946, 65-1947, 65-1948, 65-1949, 65-1950, 65-1952 and 65-1954 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the Kansas Register.

Policy Considerations re H 2275

1. Body piercing def. p. 1.
2. Deletion of KDHE from joint r/r authority.
3. Temporary licenses:
 - Trainer's license sec. 5
 - Apprentice license sec. 6
 - Temporary license to practice sec. 10(a)
 - Temporary facility license section 10(b)
4. Facility license includes mobile facilities sec. 8.
4. Reciprocity license sec. 7.
5. Exclusion p. 2 should reinsert language deleted, lines 34-35.
6. Enumeration of disciplinary actions p. 9, lines 24-25 need to include other permissible actions.
7. New fees for various fee changes p. 10, sec. 15.
8. Assessment of investigation and hearing costs against unlicensed persons p. 11, lines 18-22.

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



235 S. Topeka Blvd.
Topeka, KS 66603-3068
(785) 296-7413
FAX # (785) 296-0852
(785) 368-7102

MEMORANDUM

To: Hon. Susan Wagle, Chairperson
Senate Committee on Public Health and Welfare

From: Mark W. Stafford, General Counsel
Kansas State Board of Healing Arts

Date: March 15, 2001

Re: 2001 House Bill No. 2275

Thank you for the opportunity to provide additional comment in support of House Bill 2275. That bill amends statutes that regulate the practice of cosmetic and figurative services, including body piercing. The Board of Healing Arts is mindful of the need to protect the public health, safety and welfare. This is especially true when a professional or consumer service invades the human body. We believe that a consumer's desire of self-expression must be balanced against the government's objective of protecting the public. House Bill 2275 seeks to serve that balance.

The definitions in the bill describe body piercing. We request that this definition be amended to clarify that a body piercer may not practice surgery. Simply piercing the skin might not pose a substantial health or safety threat if performed by a person who is trained in the technique. But some new body sculpturing practices go well beyond that practice and do pose a substantial threat. The Board requests that the definition be amended as follows:

(g) (d) "Body piercing" 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 *removable* jewelry or other objects ~~in or~~ through the human body, except puncturing the external part of the human ear *lobe* shall not be included in this definition. *This act shall not be construed to authorize a licensed body piercer to implant or embed foreign objects into the human body or otherwise to engage in the practice of medicine and surgery.*

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

MEMBERS OF THE BOARD
ROBERT L. FRAYSER, D.O., PRESIDENT
HOISINGTON
LANCE E. MALMSTROM, D.C., VICE-PRESIDENT
TOPEKA

DONALD B. BLETZ, M.D., OVERLAND PARK
JAMES D. EDWARDS, D.C., EMPORIA
HOWARD D. ELLIS, M.D., LEAWOOD
FRANK K. GALBRAITH, D.P.M., WICHITA
JOHN P. GRAVINO, D.O., LAWRENCE
SUE ICE, PUBLIC MEMBER, NEWTON
JANA D. JONES, M.D., LEAVENWORTH

BETTY MCBRIDE, PUBLIC MEMBER, COLUMBUS
CHARLOTTE L. SEAGO, M.D., LIBERAL
CAROLINA M. SORIA, D.O., WICHITA
EMILY TAYLOR, PUBLIC MEMBER, LAWRENCE
ROGER D. WARREN, M.D., HANOVER
RONALD J. ZOELLER, D.C., TOPEKA

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The Board is also concerned that the definition of medicine and surgery becomes eroded by many of these cosmetic or figurative practices, and should be amended to clarify that though not specifically listed, a surgery for cosmetic purposes is the practice of medicine and surgery for which a license by the Board of Healing Arts is required. We are now beginning to see actual patient injury caused by unlicensed persons performing surgical operations for cosmetic purposes. Yet these unlicensed persons argue through their legal counsel that surgery for a cosmetic purpose is not the practice of medicine and surgery, as defined by K.S.A. 65-2869. We therefore request that the statute be amended as follows:

For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

(a) Persons who publicly profess to be physicians or surgeons, or publicly profess to assume the duties incident to the practice of medicine or surgery or any of their branches.

(b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature *to structurally alter, revise or destroy body tissue* by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, *aesthetic condition*, fractures, bodily injury, infirmity, disease, physical or mental illness or psychological disorder, of human beings.

(c) Persons who attach to their name the title M.D., surgeon, physician, physician and surgeon, or any other word or abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases or injuries of human beings.

Further, we suggest that this language be made effective upon publication in the *Kansas Register*.



BILL GRAVES, Governor

KANSAS BOARD OF COSMETOLOGY

714 SW Jackson, Suite 100
Topeka, KS 66603-3714
Phone: (785) 296-3155
Fax: (785) 296-3002
e-mail: kboc@ink.org

Substitute for HOUSE BILL No. 2275

65-1954 Same; penalties; civil fines; costs and attorney fees; disposition of proceeds. (a) The board, in addition to any other penalty prescribed under the act governing *body piercers*, permanent color technicians and tattoo artists, may assess civil fines and costs, including attorney fees, after proper notice and an opportunity to be heard, against any person or entity for a violation of the statutes, rules and regulations or orders enforceable by the board in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation.

- (b) In determining the amount of penalty to be assessed pursuant to this section, the board may consider the following factors among others: (1) Willfulness of the violation; (2) repetitions of the violation; and (3) magnitude of the risk of harm caused by the violation.
- (c) In addition to a civil penalty and costs, the board may assess investigation and hearing costs against a licensee for proceedings which have resulted in a successful action by the board against the license of the licensee *or the unlicensed person under this act and amendments thereto*.
- (d) All civil fines assessed and collected under this section shall be remitted to the state treasurer at least monthly and shall be deposited in the state treasury and credited to the state general fund. All costs assessed under this section shall be remitted to the state treasurer at least monthly and shall be deposited in the state treasury and credited to the cosmetology fee fund.
- (e) *Persons licensed under this act to engage in the practice of tattooing, body piercing and permanent cosmetics shall not be deemed to be engaged in the practice of the healing arts when practicing under and in accordance with this act.*

HOUSE BILL No. 2275

By Committee on Health and Human Services

2-1

AN ACT concerning the state board of cosmetology; persons and practices regulated by the board; permanent color technology, tattooing and body piercing; amending K.S.A. 2000 Supp. 65-1940, 65-1941, 65-1942, 65-1943, 65-1944, 65-1945, 65-1946, 65-1947, 65-1948, 65-1949, 65-1950 and 65-1954 and repealing the existing sections; also repealing K.S.A. 2000 Supp. 65-1952.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 65-1940 is hereby amended to read as follows: 65-1940. As used in this act, unless the context otherwise requires:

- (a) "Board" means the Kansas state board of cosmetology.
- ~~(b)~~ "Director" means the executive director of the board.
- ~~(c)~~ "Department" means the department of health and environment.
- ~~(d)~~ "Secretary" means the secretary of health and environment.
- ~~(e)~~ (b) "Licensed permanent color technician and tattoo artist" means a person licensed under this act to practice tattooing or permanent color technology, or both.
- ~~(f)~~ (c) "Permanent color technician and tattoo artist" means a person who practices tattooing or permanent color technology, or both pursuant to this act.
- ~~(g)~~ (d) "Body piercing" 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, except puncturing the external part of the human ear ear-lobe shall not be included in this definition.
- ~~(h)~~ (e) "Physician" means a person licensed to practice medicine and surgery by the state board of healing arts.
- ~~(i)~~ (f) "Tattoo" means the indelible mark, figure or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being.
- (j) (g) "Tattooing" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

65-1953

removable

This act shall not be construed to authorize a licensed body piercer to implant or embed foreign objects into the human body or otherwise to engage in the practice of medicine and surgery.

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1 — c) The board shall establish all fees under this act. The fees and
2 charges established under this section shall not exceed the cost of admin-
3 istering the regulatory program under this act pertaining to the purpose
4 for which the fee or charge is established.

5 Sec. 16. K.S.A. 2000 Supp. 65-1954 is hereby amended to read as
6 follows: 65-1954. (a) The board, in addition to any other penalty pre-
7 scribed under the act governing *body piercers*, permanent color techni-
8 cians and tattoo artists, may assess civil fines and costs, including attorney
9 fees, after proper notice and an opportunity to be heard, against any
10 person or entity for a violation of the statutes, rules and regulations or
11 orders enforceable by the board in an amount not to exceed \$5,000 for
12 the first violation, \$10,000 for the second violation and \$15,000 for the
13 third violation and for each subsequent violation.

14 (b) In determining the amount of penalty to be assessed pursuant to
15 this section, the board may consider the following factors among others:
16 (1) Willfulness of the violation; (2) repetitions of the violation; and (3)
17 magnitude of the risk of harm caused by the violation.

18 (c) In addition to a civil penalty and costs, the board may assess in-
19 vestigation and hearing costs against a licensee *or an unlicensed person*
20 for proceedings which have resulted in a successful action by the board
21 against the license of the licensee *or the unlicensed person* under ~~K.S.A.~~
22 ~~2000 Supp. 65-1947~~ *this act* and amendments thereto.

23 (d) All civil fines assessed and collected under this section shall be
24 remitted to the state treasurer at least monthly and shall be deposited in
25 the state treasury and credited to the state general fund. All costs assessed
26 under this section shall be remitted to the state treasurer at least monthly
27 and shall be deposited in the state treasury and credited to the cosme-
28 tology fee fund.

29 Sec. 17. K.S.A. 2000 Supp. 65-1940, 65-1941, 65-1942, 65-1943, 65-
30 1944, 65-1945, 65-1946, 65-1947, 65-1948, 65-1949, 65-1950, 65-1952
31 and 65-1954 are hereby repealed.

32 Sec. 18. This act shall take effect and be in force from and after its
33 publication in the statute book.

See attached

, 65-1953

And by renumbering sections accordingly

Sec. 17. K.S.A. 2000 Supp. 65-1953 is hereby amended to read as follows: 65-1953. No person shall perform body piercing or tattooing on or to any person under 18 years of age without the prior written and notarized consent of the parent or court appointed guardian of such person and the person giving such consent must be present during the body piercing or tattooing procedure. The written permission and a copy of the letters of guardianship when such permission is given is granted by a guardian, shall be retained by the person administering such body piercing or tattooing for a period of five years. Violation of this section is a class E A misdemeanor.