



2020 South Dakota Legislature

House Bill 1273

Introduced by: **Representative** Reimer

1 **An Act to provide certain provisions regarding the regulation of tattooing.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **34-54-1. Definitions.**

5 Terms used in this chapter mean:

6 (1) "Department," the Department of Health;

7 (2) "Guest tattoo artist," a person who is licensed, registered, or certified to practice
 8 tattooing in a jurisdiction outside of this state who is registered with the
 9 department to practice tattooing in this state;

10 (3) "Patron," a person who receives a tattoo or saline tattoo removal;

11 (4) "Secretary," the secretary of the Department of Health;

12 (5) "Tattoo," a mark or design made on or under the skin of a human being by a
 13 process of piercing and ingraining a pigment, dye, or ink in the skin;

14 (6) "Tattoo artist," a person engaged in the practice of tattooing, applying permanent
 15 body make-up, or microblading;

16 (7) "Tattoo establishment," the building or structure where tattooing is practiced;

17 (8) "Tattoo procedure," the service performed or the procedure utilized for tattooing.

18 **Section 2.** That a NEW SECTION be added:

19 **34-54-2. Exclusions from chapter.**

20 (1) This chapter does not apply to a person licensed to practice medicine or dentistry
 21 under chapter 36-4 or chapter 36-6A who performs tattooing exclusively for
 22 medical or dental purposes.

23 (2) This chapter applies only to the tattooing of human beings and does not apply to
 24 the tattooing of any animal.

1 **Section 3.** That a NEW SECTION be added:

2 **34-54-3. Tattoo establishment--Licensure.**

3 An applicant seeking to create a tattooing establishment in this state shall obtain
4 an annual license from the department. An applicant shall apply to the department in the
5 format promulgated by the department, pursuant to chapter 1-26. An application shall
6 include:

- 7 (1) The registered business name, including any fictitious names under which the
8 tattoo establishment conducts business in the state;
9 (2) The street address and telephone number of the tattoo establishment;
10 (3) The name, mailing address, and telephone number of the tattoo establishment's
11 manager;
12 (4) The name and address of the tattoo establishment's registered agent for service of
13 process in the state; and
14 (5) The tax identification number the establishment shall collect and report sales tax
15 to the Department of Revenue.

16 The department shall issue the license if the applicant submits a completed
17 application, pays the applicable fee, and has passed an inspection pursuant to this chapter
18 and the rules promulgated by the department. A temporary tattoo establishment shall
19 meet the same requirements as a permanent tattoo establishment.

20 A license under this section is nontransferable except in the case of a change in
21 ownership.

22 **Section 4.** That a NEW SECTION be added:

23 **34-54-4. Tattoo Establishment--Requirements.**

24 A tattoo establishment shall:

- 25 (1) Display an active license for the establishment in a manner that is easily visible to
26 the public at all times while tattooing is performed at the establishment;
27 (2) Ensure that each tattoo artist and guest tattoo artist, while practicing tattooing at
28 the establishment, meets all applicable requirements of this chapter;
29 (3) Maintain sanitary conditions of the establishment at all times;
30 (4) Comply with all state and local health codes and ordinances;
31 (5) Allow the department to inspect the establishment;
32 (6) Comply with this chapter and rules promulgated by the department and
33 (7) Files sales tax returns to the Department of Revenue on a monthly basis.

1 **Section 5.** That a NEW SECTION be added:

2 **34-54-5. Fees--Promulgation of rules.**

3 The department shall promulgate rules, pursuant to chapter 1-26, establishing the:

4 (1) Fee, not to exceed six hundred dollars, for the licensure and renewal of a tattoo
5 establishment;

6 (2) Fee, not to exceed two hundred dollars, for licensure of a temporary establishment;

7 (3) Fee, not to exceed one hundred fifty dollars, for the licensure and renewal of a
8 tattoo artist;

9 (4) Fee, not to exceed two hundred dollars, for licensure and renewal of a guest tattoo
10 artist;

11 (5) Fee, not to exceed two hundred dollars, for reactivation of an inactive tattoo
12 establishment license or tattoo artist license. A license becomes inactive if it is not
13 renewed before the expiration of the current license; and

14 (6) Fee, not to exceed one hundred fifty dollars, for the inspection of an establishment
15 under this chapter.

16 All fees collected under this chapter shall be deposited in the state general fund.

17 No license under this section is transferable except if a tattoo establishment is only
18 changing ownership.

19 **Section 6.** That a NEW SECTION be added:

20 **34-54-6. Tattoo procedure--Prohibitions--Violation as misdemeanor.**

21 A person may not:

22 (1) Perform a tattoo procedure if the person performing the procedure is under
23 eighteen years of age;

24 (2) Perform a tattoo procedure on another person who is under the influence of drugs
25 or alcohol;

26 (3) Perform a tattoo procedure on a person who is under eighteen years of age, unless
27 the parent or guardian is present and written consent has been given by the minor
28 patron's parent or guardian in accordance with § 34-54-7. However, the provisions
29 of this subdivision do not apply to a person who has been emancipated by
30 marriage;

31 (4) Tattoo any site in which the skin surface exhibits any evidence of unhealthy
32 conditions;

- 1 (5) Provide false information to a tattoo artist or establishment concerning a patron's
2 identification, age, or health;
- 3 (6) Perform a tattoo procedure without a valid tattoo artist license;
- 4 (7) Perform a tattoo procedure at a location without a valid tattoo establishment
5 license;
- 6 (8) Provide false information on an application for licensure or registration;
- 7 (9) Commit fraud, deceit, negligence, or misconduct in the practice of tattooing or the
8 operation of a tattoo establishment or temporary establishment;
- 9 (10) Aid, procure, or assist a person to practice tattooing unlawfully or unlawfully
10 operate a tattoo establishment; or
- 11 (11) Fail to keep the written notarized consent of the parent or guardian of a minor child
12 who is tattooed at a tattoo establishment or knowingly making false entries in a
13 parent's or guardian's written notarized consent.
- 14 A violation of this section is a Class 2 misdemeanor. A second violation of the same
15 offense under this section is a Class 1 misdemeanor.

16 **Section 7.** That a NEW SECTION be added:

17 **34-54-7. Minor--Consent by parent or guardian--Signed statement.**

18 For a person under the age of eighteen, a parent or guardian who desires to give
19 consent to an establishment for performance of a tattoo procedure on the person under
20 the age of eighteen shall:

- 21 (1) Appear in person at the establishment at the time the procedure is performed;
- 22 (2) Produce proof of age of the attesting person; and
- 23 (3) Sign a form provided by the establishment that:
- 24 (a) States the minor's gender and age in years;
- 25 (b) Explains the manner in which the procedure will be performed and the
26 methods for proper care of the affected body area following performance of
27 the procedure; and
- 28 (c) Requires signing of a statement with the exact wording as follows:

29 "I, the undersigned, certify that I am the parent or guardian of the named minor
30 and further give consent to the tattoo procedure(s) as explained. I acknowledge that I am
31 fully aware that to falsify my legal standing as to being the minor's parent or guardian
32 constitutes a Class 2 misdemeanor. A Class 2 misdemeanor means imprisonment for not
33 greater than thirty days or a fine not to exceed five hundred dollars or both (SDCL 22-6-
34 2)."

1 **Section 8.** That a NEW SECTION be added:

2 **34-54-8. Tattoo establishment--Required records--Contents--Duration.**

3 A tattoo establishment shall keep a record of each patron that includes name,
4 address, age, consent form with medical inquiry, and the location and description of each
5 tattoo. This record shall be available for inspection and kept for at least two years.

6 For minors who receive a tattoo as allowed under § 34-54-7, the establishment
7 shall forward to the department within thirty business days following performance of the
8 tattoo procedure, and the department shall retain such paperwork for two years. This
9 paperwork shall include:

- 10 (1) A copy of the proof of age of the attesting person; and
11 (2) The signed document that the person is the minor's parent or guardian that
12 provides permission to perform a tattoo procedure on a minor and that stipulates
13 that the attesting person understands the consequences for falsifying their legal
14 standing as to being the parent or guardian.

15 The department may promulgate rules, pursuant to chapter 1-26, on the necessary
16 paperwork that shall be submitted to the department under this section.

17 **Section 9.** That a NEW SECTION be added:

18 **34-54-9. Tattooing--Licensure--Requirements--Promulgation of rules.**

19 On and after January 1, 2021, no person may perform a tattooing procedure
20 without being licensed as a tattoo artist.

21 A person seeking licensure as a tattoo artist shall apply to the department. An
22 application shall include the name and residence address of the applicant and the name
23 and street address of each tattoo establishment at which the applicant intends to practice
24 tattooing in this state.

25 The department shall issue the license if the applicant:

- 26 (1) Submits a completed application
27 (2) Pays all applicable fees;
28 (3) Undergoes a training program on sterilization procedures and bloodborne
29 pathogens, approved or promulgated by the department pursuant to chapter 1-
30 26;
31 (4) Submits proof that the applicant has taken and passed an examination concerning
32 bloodborne pathogens, sterilization techniques, the provisions of this chapter, and
33 any rules promulgated by the department concerning tattooing; and

1 (5) Has not been registered as a sex offender under § 22-24B-2 or in another state.
2 The department shall promulgate rules, pursuant to chapter 1-26, regarding
3 acceptable forms of proof, application materials, application procedures, and any exam or
4 examination materials under this section.

5 **Section 10.** That a NEW SECTION be added:

6 **34-54-10. Out-of-state tattoo artists--Licensure--Promulgation of rules.**

7 In order to obtain a license, an out-of-state tattoo artist shall show proof of at least
8 two-years of experience as a tattoo artist in another state. For purposes of this section,
9 proof of business or experience may be:

- 10 (1) A copy of a business license;
11 (2) Another state's artist's license; or
12 (3) Tax records, or other similar city, county, state, or federal documents that show
13 the prospective applicant as having been in business or operation.

14 The department shall promulgate rules, pursuant to chapter 1-26, regarding the
15 forms of documentation that may be submitted as evidence or proof under this section.

16 **Section 11.** That a NEW SECTION be added:

17 **34-54-11. Inspections--Promulgation of rules.**

18 The secretary shall conduct at least one inspection of a tattoo establishment prior
19 to issuing a license to perform tattoo procedures. The secretary shall conduct an annual
20 inspection before renewing a license to operate a tattoo establishment. The secretary may
21 inspect a tattoo establishment at any time the secretary deems necessary and shall be
22 given access to the premises and to all records deemed relevant by the secretary for the
23 inspection.

24 Inspection results for tattoo establishments shall be recorded on standard
25 department forms that summarize the requirements of the law and rules and regulations.

26 The department shall promulgate rules, pursuant to chapter 1-26, to establish the
27 standards for inspections of establishments and forms for recording compliance with these
28 standards.

29 **Section 12.** That a NEW SECTION be added:

1 **34-54-12. Failure of inspection--Suspension or revocation of license.**

2 If an establishment fails an inspection under § 34-54-11, the secretary shall give
 3 the establishment thirty days to correct any violations to come into compliance. If the
 4 secretary determines the establishment failed to correct the violations after a re-
 5 inspection, the secretary shall initiate proceedings to suspend the establishment's license
 6 until the violation is corrected, pursuant to a hearing under § 1-26-29. If the secretary
 7 determines that the establishment failed to correct the violation within ninety days of
 8 suspension, the secretary shall revoke the establishment's license.

9 **Section 13.** That § 9-34-17 be AMENDED:

10 **9-34-17. Tattooing, saline tattoo removal, and body piercing.**

11 Any municipality may regulate the practice of tattooing, saline tattoo removal, and
 12 body piercing by licensing practitioners of ~~tattooing, saline tattoo removal, or body~~
 13 piercing; inspecting tattoo, saline tattoo removal, and body piercing establishments; and
 14 establishing standards for sanitation that are at least as stringent as those adopted in
 15 chapter 34-54 or by the Department of Health under § 34-1-17.

16 Terms used in this section mean:

- 17 (1) "Tattooing," to make marks or designs into the skin by puncturing it and inserting
 18 indelible colors. The term includes, permanent make-up, microblading, and similar
 19 techniques to microblading used to partially or fully simulate natural hair;
 20 (2) "Saline tattoo removal," inserting a saline solution in skin to lighten or remove an
 21 existing tattoo. The term does not include the use of other acids or of lasers as
 22 described in § 36-4-8.2;
 23 (3) "Body piercing," to place a permanent or temporary foreign object in a person's
 24 body for a decorative or other nonmedical purpose by a person not directly under
 25 the supervision of a licensed physician as defined by § 36-4-11.

26 The department shall certify any municipality that wishes to operate its own tattoo
 27 establishment licensing program and inspection program for tattoo establishments in
 28 compliance with this section.

29 **Section 14.** That § 34-1-17 be AMENDED:

30 **34-1-17. Promulgation of rules--Orders, rules, and licensing--Matters**
 31 **covered.**

32 The Department of Health may adopt and enforce, subject to chapter 1-26, orders
 33 and rules necessary to preserve and protect the public health and may regulate, by

1 requiring licenses or other appropriate means, control, and, in proper cases, prohibit and
2 suppress any of the following matters:

- 3 (1) The manufacture into articles of commerce, other than food, of diseased, tainted,
4 or decayed animal or vegetable matter;
- 5 (2) The location of cemeteries and the removal and burial of the dead;
- 6 (3) The management of lying-in houses and boarding places for infants, and the
7 treatment of infants therein;
- 8 (4) The construction and equipment, in respect to sanitary conditions, of schools,
9 hospitals, prisons, and other public institutions;
- 10 (5) The treatment in hospitals and elsewhere of persons suffering from any
11 communicable disease, the disinfection and quarantine of persons and places in
12 case of disease, and the reporting of sickness and deaths from disease;
- 13 (6) The distribution of biological products to be used for the prevention and treatment
14 of communicable diseases;
- 15 (7) The diagnosis, control, and treatment of tuberculosis; and
- 16 (8) The minimum sanitation requirements for tattooing, saline tattoo removal, and body
17 piercing as defined in § 9-34-17, including premises, licensure, equipment,
18 methods of operation, and freedom from communicable disease.

19 **Section 15.** This bill shall go into effect on January 1, 2021.