



BILL NO. 109

Government Bill

*3rd Session, 61st General Assembly
Nova Scotia
60 Elizabeth II, 2011*

An Act to Regulate Body Art Facilities

CHAPTER 44
ACTS OF 2011

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 15, 2011**

The Honourable Maureen MacDonald
Minister of Health and Wellness

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act to Regulate Body Art Facilities

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Safe Body Art Act*.

2 In this Act,

(a) “Administrator” means a public health inspector appointed as the Administrator pursuant to this Act;

(b) “body art facility” means any premises at or in which body art services are offered or carried out in exchange for compensation;

(c) “body art service” means the act of permanently or semi-permanently altering the body for non-medical reasons for the purpose of cultural, artistic or self-expression reasons by

(i) branding,

(ii) piercing,

(iii) tattooing, or

(iv) any other act prescribed by the regulations;

(d) “contamination” means the presence of an infectious, chemical or physical agent on a body surface, inanimate object or other surface;

(e) “communicable disease” means a disease, due to a specific infectious agent or its toxic products, that arises through the transmission of that agent or its toxic products

(i) directly or indirectly from an infected person or animal,

(ii) directly or indirectly through the agency of a person, animal or plant carrying the disease, an inanimate object or the environment;

(f) “dwelling” means a building or a portion of a building that is occupied and used as a residence and includes a house, condominium, apartment, cottage, mobile home, trailer or boat that is occupied and used as a residence;

(g) “medical officer” means a medical officer as defined in the *Health Protection Act*;

(h) “Minister” means the Minister of Health and Wellness;

(i) “occupier” means an occupier at common law, and includes

(i) a person who is in physical possession of premises, or

(ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on the premises or the persons allowed to enter the premises,

and, for the purpose of this Act, there may be more than one occupier of the same premises;

(j) “permit” means a permit issued pursuant to this Act;

(k) “premises” means any place, area, structure or building, including a mobile, stationary, temporary or permanent facility or a temporary or permanent location;

(l) “public health inspector” means a person appointed as a public health inspector pursuant to this Act.

3 This Act does not apply with respect to services offered or carried out by

- (a) a duly qualified medical practitioner;
- (b) a dentist who is licensed to practise dentistry in the Province; or
- (c) any other person exempted by the regulations.

4 (1) The Minister shall, in accordance with the *Civil Service Act*, appoint an Administrator for the purpose of this Act.

(2) The Administrator must meet

- (a) the qualifications set out in subsection 5(2) to be appointed as a public health inspector; and
- (b) any qualifications prescribed by the regulations.

5 (1) The Minister shall, in accordance with the *Civil Service Act*, appoint one or more public health inspectors for the purpose of this Act.

(2) A public health inspector appointed pursuant to this Section must hold

- (a) a Certificate in Public Health Inspection (Canada) issued by the Board of Certification of the Canadian Institute of Public Health Inspectors; or
- (b) a Certificate in Sanitary Inspection (Canada) issued by the Board of Certification of the Canadian Institute of Public Health Inspectors or its predecessor organization.

6 The Minister may engage, upon such terms and conditions as the Minister considers necessary, the services of such professional or technical persons to assist in the efficient carrying out of the intent and purpose of this Act and the regulations.

7 (1) Unless exempted by this Act or the regulations, no person shall operate a body art facility without first having obtained a permit from the Administrator.

(2) An application for a permit for a body art facility shall be made to the Administrator in accordance with the regulations.

(3) Subject to this Act and the regulations, the Administrator shall issue a permit for a body art facility to an applicant upon payment of the fee established by the regulations.

8 (1) The Administrator shall not issue or renew a permit and may suspend or revoke a permit for a body art facility if, in the opinion of the Administrator,

(a) the past conduct of the applicant or permit holder affords reasonable grounds to believe that the operation of the body art facility would not be carried out in accordance with this Act and the regulations;

(b) the applicant or permit holder does not have or will not have available all premises, facilities and equipment necessary to operate a body art facility in accordance with this Act and the regulations;

(c) the applicant or permit holder is not complying or will not be able to comply with this Act or the regulations; or

(d) the operation of the body art facility represents or would represent a risk to human health.

(2) Any condition that is injurious to human health or in the opinion of the Administrator is potentially injurious to human health is deemed to be a risk to human health pursuant to this Act.

9 The Administrator or a public health inspector may request a medical officer to investigate, under this Act or the *Health Protection Act*, whether a risk to human health, a health hazard within the meaning of the *Health Protection Act* or a communicable disease or a disease or condition prescribed by the regulations exists or may exist.

10 (1) Where an applicant or permit holder has received notification that the Administrator has refused to grant or renew a permit or has suspended or revoked a permit, the applicant or permit holder may appeal to the Minister, by notice in writing, stating concisely the reasons for the appeal.

(2) An appeal must be conducted in the manner determined by the Minister.

(3) The Minister may dismiss an appeal, allow an appeal or make any decision the Administrator is authorized to make.

(4) The decision of the Minister is final and binding on the appellant and the Minister, and the appellant shall take such action as may be necessary to implement the decision.

11 The Administrator may designate types or classes of body art facilities for which permits are issued under Section 6.

12 The Administrator may impose or amend terms and conditions on a permit.

13 A person to whom a permit is issued shall comply with all terms and conditions of the permit.

14 It is a condition of a permit that a body art facility must be constructed and maintained in such a manner that no condition exists that is a risk to human health.

15 It is a condition of a permit that a body art facility must have appropriate maintenance, cleaning, sterilization and sanitation programs to control physical, chemical and biological

contamination of equipment, surfaces and tools used for body art services, as required by this Act and the regulations.

16 (1) No person who is infected with a communicable disease or a disease or condition prescribed by the regulations or is known to be a carrier of a communicable disease shall participate in any way in body art services, except as prescribed by the regulations.

(2) It is a condition of a permit that no person who is infected with a communicable disease or a disease or condition prescribed by the regulations or is known to be a carrier of a communicable disease participate in any way in body art services, except as prescribed by the regulations.

17 (1) Subject to subsection (2), the Administrator or a public health inspector may, at any reasonable time, for the purpose of carrying out the Administrator's or inspector's duties, under this Act or the regulations enter without a warrant any premises if there are reasonable and probable grounds to believe the premises are a body art facility, and may

(a) make any inspection, examination, test, analysis or inquiry that the Administrator or inspector considers necessary;

(b) order any substance, thing, solid, liquid, gas, plant, animal or other organism to be produced for inspection, examination, testing or analysis;

(c) seize or take samples of any substance, thing, solid, liquid, gas, plant, animal or other organism, other than samples of human bodily substances;

(d) order any person to

(i) provide the Administrator or inspector with information, including personal information, personal health information or proprietary or confidential business information, and

(ii) produce any document or record, including a document or record containing personal information, personal health information or proprietary or confidential business information,

and examine or copy the information, document or record, or take it to copy or retain as evidence;

(e) take photographs or videotapes of premises, or any condition, process, substance, thing, solid, liquid, gas, plant, animal or other organism located in or on the premises;

(f) bring any machinery, equipment or other thing into or onto the premises;

(g) use any machinery, equipment or other thing located in or on the premises;

(h) order that any machinery, equipment or other thing be operated, used or dismantled in or on the premises under specified conditions.

(2) The Administrator or public health inspector shall not enter any part of a dwelling without the consent of the occupier unless under a warrant issued pursuant to the *Summary Proceedings Act*.

18 (1) Where the Administrator or a public health inspector removes documents or records from premises for the purpose of clause 17(1)(d) and makes a copy or extract of them or any part of them, the Administrator or public health inspector shall give a receipt to the occupier for the documents or records removed.

(2) Where documents or records are removed from premises, the documents or records shall be returned to the occupier as soon as possible after the copies or extracts have been made.

(3) A copy or extract of any document or record related to an inspection, examination, test or inquiry, purporting to be certified by the Administrator or a public health inspector, is admissible in evidence in any action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original without proof of the appointment, designation, authority or signature of the person purporting to have certified the copy.

19 The Administrator or public health inspector may be accompanied by a medical officer or other persons for any purpose referred to in subsection 17(1) and the medical officer or those other persons may carry out inspections, examinations, tests and inquiries and take samples or do such other things as directed by the Administrator or public health inspector.

20 An owner or occupier of premises and any employees or agents of the owner or occupier shall give all reasonable assistance to the Administrator or a public health inspector to enable the Administrator or public health inspector to exercise powers or carry out duties and functions under this Act and the regulations, and shall furnish the Administrator or public health inspector with such information that the Administrator or public health inspector reasonably requires for any purpose referred to in subsection 17(1).

21 (1) No person shall hinder or obstruct the Administrator or a public health inspector in the exercise of powers or carrying out of duties or functions under this Act and the regulations.

(2) For greater certainty, a refusal of consent to enter a dwelling is not and shall not be considered to be hindering or obstructing within the meaning of subsection (1), except where a warrant has been obtained pursuant to the *Summary Proceedings Act*.

22 No person shall knowingly make a false or misleading statement, either orally or in writing, to the Administrator or a public health inspector while the Administrator or the public health inspector is exercising powers or carrying out duties or functions under this Act or the regulations.

23 Where the Administrator or a public health inspector is empowered, authorized or required by any of the provisions of this Act or the regulations to do any act, matter or thing, the Administrator or public health inspector may use such force as is reasonably necessary.

24 The Administrator or a public health inspector may, in the performance of duties under this Act, call for the assistance of any constable, police officer or other peace officer and, where called for such assistance, it is the duty of the constable, police officer or peace officer to render assistance.

25 The Administrator, a public health inspector, a medical officer or another person performing a duty or exercising a power under this Act is immune from liability for performing the duty or exercising the power in good faith.

26 The production by the Administrator or a public health inspector of a certificate or identification signifying appointment, purporting to be signed by the Minister, is admissible as evidence as proof of appointment without further proof of the signature or authority of the Minister.

27 (1) In a prosecution for a violation of this Act or the regulations it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

(2) Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the violation of this Act or the regulations is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted.

(3) Unless otherwise provided in this Act, no person shall be convicted of an offence under this Act or the regulations if the person establishes that the person exercised all due diligence to prevent the commission of the offence.

28 (1) Every person who contravenes this Act or the regulations or an order made pursuant to this Act or the regulations is guilty of an offence and liable, on summary conviction,

(a) in the case of a corporation,

(i) for a first offence, to a fine not exceeding ten thousand dollars, and

(ii) for a second or any subsequent offence, to a fine not exceeding fifty thousand dollars; or

(b) in the case of an individual,

(i) for a first offence, to a fine not exceeding two thousand dollars or to imprisonment for a term of not more than six months, or both, and

(ii) for a second or subsequent offence, to a fine not exceeding ten thousand dollars or to imprisonment for a period of not more than one year, or both.

(2) Where an offence under this Act or the regulations is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

29 (1) Where a person is convicted of an offence pursuant to this Act, in addition to any other punishment that may be imposed pursuant to this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order requiring the offender to comply with such conditions as the court considers appropriate and just,

in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

(2) An order made pursuant to subsection (1) comes into force on the day on which it is made or on such other day as the court may order and may not continue in force for more than three years after that day.

30 A prosecution for an offence pursuant to this Act may not be commenced more than two years after the later of

- (a) the date on which the offence was committed; and
- (b) the date on which evidence of the offence first came to the attention of the Administrator or a public health inspector.

31 (1) Where the provisions of any Act or any by-law or regulation of a regional municipality, town, municipality of a county or district or other local body are in conflict with this Act or the regulations, this Act and the regulations prevail to the extent of the conflict.

(2) Notwithstanding subsection (1), a by-law or regulation described in subsection (1) may impose or prescribe higher or more stringent standards or requirements than those provided for by this Act or the regulations if an enactment authorizes the by-law or regulation to impose or prescribe such standards or requirements.

32 (1) The information, records of interviews, reports, statements, notes, memoranda or other data or material prepared by or supplied to or received by the Administrator, a public health inspector or a medical officer providing assistance, in connection with research, studies or evaluations relating to morbidity, mortality or the cause, prevention, treatment or incidence of disease, or prepared by, supplied to or received by any person engaged in such research or study with the approval of the Minister, are privileged and are not admissible in evidence in any court or before any tribunal, board or agency except as and to the extent that the Minister directs.

(2) Nothing in this Section prevents the publication of reports or statistical compilations relating to research or studies that do not identify individual cases or sources of information or religious affiliations.

(3) The Administrator, a public health inspector or a medical officer who has provided assistance may not be compelled to give evidence in court or in proceedings of a judicial nature concerning knowledge of any of the matters referred to in subsection (1) gained in the exercise of a power or duty under this Act except as and to the extent that the Minister directs.

(4) Notwithstanding subsections (1) and (3), where a judge of the Supreme Court of Nova Scotia is satisfied, upon application, that it is in the public interest to do so, the judge may order the disclosure of any information or the giving of any evidence for the purpose of an inquiry authorized by the Governor in Council pursuant to the *Public Inquiries Act*.

33 (1) The Governor in Council may make regulations

- (a) prescribing acts that are body art services;

- (b) prescribing the duties and powers of the Administrator and public health inspectors;
- (c) prescribing the qualifications of the Administrator;
- (d) providing for the exemption from this Act or the regulations, or any part thereof, of any person or any class of persons or of any body art facility or any type or class of body art facility and prescribing the terms and conditions of the exemption;
- (e) prescribing the manner of using devices and the devices to be used in a body art facility;
- (f) prescribing the facilities and equipment to be provided and maintained at body art facilities and the manner of operating a body art facility;
- (g) respecting the cleaning and sanitation of body art facilities;
- (h) requiring and governing the disposal of any waste at a body art facility;
- (i) prescribing the records to be made and kept at body art facilities;
- (j) providing for the issue, renewal, suspension, revocation or reinstatement of or refusal to issue or renew permits and prescribing the fees payable for permits or the renewal of permits;
- (k) providing for the inspection of body art facilities;
- (l) providing for the inspection of premises before a permit is issued;
- (m) providing for the keeping of records of permits and for the inspection of those records by any person;
- (n) prescribing terms and conditions to which permits may be subject;
- (o) prescribing standards for any type or class of body art facility;
- (p) prescribing diseases or conditions for the purpose of Sections 9 and 16;
- (q) establishing the circumstances under which a person who has a prescribed disease or condition may participate in body art services;
- (r) governing appeals;
- (s) incorporating or adopting by reference, in whole or in part, a written standard, rule, regulation, guideline, code or document as it reads on a prescribed day or as it is amended from time to time;
- (t) respecting any matter the Governor in Council considers necessary or advisable for the administration of a system of administrative penalties;
- (u) prescribing forms for the purpose of this Act and the regulations;
- (v) defining any word or expression used but not defined in this Act;
- (w) further defining any word or expression defined in this Act;
- (x) respecting any matter the Governor in Council considers necessary or advisable to effectively carry out the intent of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

34 Schedule B of Chapter 450 of the Revised Statutes, 1989, the *Summary Proceedings Act*, as enacted by Chapter 30 of the Acts of 2002 and amended by Chapter 4 of the Acts of 2004 and Chapter 32 of the Acts of 2007, is further amended by adding immediately after “Retail Business Designated Day Closing Act” the following:

Safe Body Art Act

35 Section 26F of Chapter 5 of the Acts of 1995-96, the *Cosmetology Act*, as enacted by Chapter 10 of the Acts of 2003, is amended by striking out clause (a) and substituting the following clause:

(a) the reference to “professional misconduct” in clause 21(c) shall not mean the definition provided in that clause, but shall be read to mean

(i) failing to ensure that all cosmetologists employed or otherwise engaged by the holder of a salon permit or school permit fulfil their professional responsibilities under this Act and by-laws,

(ii) failing to comply with the *Safe Body Art Act* and the regulations made pursuant to that Act, or

(iii) failing to ensure that all cosmetologists employed or otherwise engaged by the holder of a salon permit or school permit comply with the *Safe Body Art Act* and the regulations made pursuant to that Act;

36 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
