

SB 230-FN - AS INTRODUCED

2022 SESSION

22-3038

11/05

SENATE BILL ***230-FN***

AN ACT relative to the practice of body art.

SPONSORS: Sen. Cavanaugh, Dist 16

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill defines and regulates body art establishments.

This bill is a request of the office of professional licensure and certification.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~in brackets and struckthrough~~.
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the practice of body art.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Body Art; Definitions; Establishment. Amend RSA 314-A:1 by inserting after
2 paragraph II the following new paragraph:

3 II-a. "Establishment" means the physical place where tattooing, body piercing, or branding
4 is practiced. A booth attached to or within an establishment that is operated independently of the
5 establishment shall be subject to separate licensure in the same manner as an establishment. The
6 term "establishment" shall not include temporary structures where a practitioner practices for a
7 limited time.

8 2 Body Art; License Requirements. Amend RSA 314-A:2, II to read as follows:

9 II. The procedure and timeframe for license renewals shall be as described in RSA 310-A:1-
10 h. ***Establishments that are licensed as an establishment, shop, or facility by one of the***
11 ***other boards, commissions, or councils attached to the office of professional licensure and***
12 ***certification shall pay a reduced fee for a body art establishment license.***

13 3 Body Art; Rulemaking. Amend RSA 314-A:6, IV to read as follows:

14 IV. ~~[Inspection of body piercing, branding, and tattooing establishments]~~ ***Regulation of***
15 ***establishments, including any special rules for independently operated booths, as follows:***

16 (a) ***Procedures for issuing, renewing, suspending, revoking, or denying licenses***
17 ***for establishments.***

18 (b) ***Holding hearings, conducting investigations, whether public or***
19 ***confidential, and issuing orders relating to such hearings and investigations. The***
20 ***contested case provisions of RSA 541-A:31-36 shall apply when a person is aggrieved by a***
21 ***decision of the executive director under this section. Appeals shall be made in accordance***
22 ***with RSA 541.***

23 (c) ***Conditions, requirements, and standards for operation under an***
24 ***establishment license, including health and safety standards.***

25 (d) ***The content of application forms and procedures to open, close, relocate,***
26 ***change ownership, or renew an establishment.***

27 (e) ***Requiring the display of establishment licenses and practitioner***
28 ***identification.***

29 (f) ***Procedures to grant or deny an establishment exemption.***

30 4 New Paragraphs; Body Art; Prohibited Acts. Amend RSA 314-A:7 by inserting after
31 paragraph III the following new paragraphs:

SB 230-FN - AS INTRODUCED
- Page 2 -

1 IV. Operate an establishment without an establishment license.

2 V. Operate an establishment unless such establishment is under the direct supervision and
3 management of a practitioner licensed under this chapter.

4 5 Body Art; License Revocation and Suspension. RSA 314-A:9 is repealed and reenacted to read
5 as follows:

6 314-A:9 License Revocation or Suspension.

7 I. The executive director, in consultation with the advisory board, may undertake
8 disciplinary proceedings:

9 (a) Upon his or her initiative; or

10 (b) Upon written complaint of any person which charges that a person or establishment
11 licensed by the board has committed misconduct and the grounds therefor.

12 II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

13 (a) The practice of fraud or deceit in procuring or attempting to procure a license to
14 practice under this chapter;

15 (b) Any unprofessional conduct, or dishonorable conduct unworthy of, and affecting the
16 practice of the profession;

17 (c) Unfitness or incompetence by reason of negligent habits; negligent or willful acts
18 performed in a manner inconsistent with the health and safety of persons relying on the expertise of
19 the licensee;

20 (d) Willful or repeated violation of the provisions of this chapter;

21 (e) Suspension or revocation of a license, similar to one issued in this chapter in another
22 jurisdiction and not reinstated.

23 III. The executive director, in consultation with the advisory board, may take disciplinary
24 action in any one or more of the following ways:

25 (a) By reprimand;

26 (b) By suspension, limitation, or restriction of a license;

27 (c) By revocation of a license;

28 (d) By requiring the person to participate in a program of continuing education in the
29 area or areas the person has been found deficient;

30 (e) By imposing an administrative fine in accordance with RSA 314-A:10.

31 6 New Paragraph; Body Art; Violations; Penalty. Amend RSA 314-A:12 by inserting after
32 paragraph II the following new paragraph:

33 III. Any person who operates an establishment in New Hampshire without first obtaining
34 an establishment license shall be guilty of a class A misdemeanor if a natural person or guilty of a
35 felony if any other person.

36 7 New Sections; Body Art; Establishment License; Inspectors. Amend RSA 314-A by inserting
37 after section 14 the following new sections:

SB 230-FN - AS INTRODUCED
- Page 3 -

1 314-A:15 Establishment Licensure.

2 I. Any New Hampshire licensed body art practitioner may obtain an establishment license
3 upon application and fee provided that the establishment meets all requirements in the rules
4 adopted by the executive director. Establishment licenses granted pursuant to this section shall be
5 conspicuously posted within the establishment.

6 II. In addition to licenses issued under paragraph I, the executive director may issue an
7 establishment license to an owner who does not hold a personal body art license provided that the
8 owner employs a licensed body art practitioner as manager. This section shall not authorize such
9 owner to personally engage in tattooing, body piercing, or branding.

10 III. The executive director shall grant or deny an establishment an exemption from licensure
11 in accordance with the rules adopted pursuant to this chapter.

12 314-A:16 Inspectors.

13 I. The executive director shall employ inspectors and authorize them to enter and inspect
14 any establishment licensed under this chapter for the purpose of ascertaining whether or not the
15 provisions of this chapter and rules adopted thereunder are being observed. Each inspector shall file
16 a report with the executive director of his or her inspection findings and results. Salaries and
17 necessary expenses shall be charged against the office of professional licensure and certification fund
18 established in RSA 310-A:1-e.

19 II. The executive director shall adopt rules relative to the qualifications of an inspector
20 under this section.

21 8 Office of Professional Licensure and Certification; New Classified Position; Salary and
22 Expenses.

23 I. One program inspector, labor grade 21, is hereby established as a classified position in the
24 office of professional licensure and certification.

25 II. The amount necessary to pay for the salary and necessary expenses of the position
26 established in paragraph I, which shall be in addition to any sums appropriated in 2021, 90:1, 01-21-
27 21-216010-3302, for the division of enforcement, shall be a charge against the office of professional
28 licensure and certification fund established in RSA 310-A:1-e.

29 9 Effective Date. This act shall take effect January 1, 2023.

**SB 230-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the practice of body art.

FISCAL IMPACT: ☒ **State** ☒ **County** ☐ **Local** ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Revenue	\$0	\$59,400	\$6,000	\$72,000
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	☒ General ☐ Education ☐ Highway ☒ Other - Office of Professional Licensure and Certification Budget			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill defines and regulates body art establishments on a biennial basis. It also establishes a new labor grade 21 program inspector at the Office of Professional Licensure and Certification as well as establishes a penalty for an unlicensed establishments.

The Office of Professional Licensure and Certification (OPLC) states this bill would have a fiscal impact to both State revenues and State expenditures. OPLC indicates there are currently 395 licensed body art practitioners. Assuming half of those individuals obtain a license for an establishment there would be 198 new licenses. OPLC further assumes a 10% increase in licenses after the first fiscal year and each fiscal year thereafter, given the rise in microblading. Lastly, OPLC assumes the new establishment license fee would be \$300 per biennium. The impact of these assumptions to state revenues per fiscal year would be as follows:

- FY 2023: \$59,400 (\$300 x 198)
- FY 2024 : \$6,000 (\$300 x 20)
- FY 2025: \$72,000 (\$300 x 240)

OPLC also notes the cost of the new program inspector hired at a labor grade 21, step 1, would increase state expenditures by \$54,000 in FY 2023, \$56,000 in FY 2024 and \$59,000 in FY 2025. OPLC assumes half of this new position would be utilized for cosmetology licensing and funded through licensing fees for those services. This bill authorizes the new position and provides authority to fund the position through the office of professional licensure and certification fund established in RSA 310-A:1-e.

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
Department of Corrections	FY 2022	FY 2023
FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

AGENCIES CONTACTED:

Office of Professional Licensure and Certification, Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties