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FISCAL IMPACT REPORT

SPONSOR: HAFC DATE TYPED: 3/17/03 HB 480 & 615/HAFCS/aSPAC

SHORT TITLE: Body Art Safe Practices Act SB _____

ANALYST: Dunbar

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|--------------------------------|----------------------|---------------|
| FY03 | FY04 | FY03 | FY04 | | |
| | | | Indeterminate See Narrative | | |
| | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

| Estimated Revenue | | Subsequent Years Impact | Recurring or Non-Rec | Fund Affected |
|-------------------|------|--------------------------------|----------------------|---------------|
| FY03 | FY04 | | | |
| | | Indeterminate See Narrative | Recurring | New Fund |
| | | | | |

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Responses Received From
 Department of Health (DOH)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of SPAC Amendment

The Senate and Public Affairs Committee amend the bill as follows:

- Specifies the Sections of 1 through 17 as the “Body Art Safe Practices Act”
- Establishes a maximum licensure fee of \$150. (Address concerns of RLD).

- Provides for revocation of licenses not only for establishments but also for employees that fail to comply with the provisions of the act. (Address concerns of RLD).
- Compels proof of undergoing training in “blood-borne pathogen” areas or other required training before a license is issued. (Address concerns of RLD.)
- Provides for the board to return any samples of equipment or supplies within 3 business days that were taken for the purpose of determining compliance with the provisions of the act.
- Changes the “Body Art Safe Practices Fund” to the “Use of Barbers and Cosmetologists Fund”.
- Enables “emancipated minors” to receive services in body art provided that they provide proof of emancipation.
- Removes the “informed consent form” from the act and requires the presence of parents or legal guardians before administering body art.
- Changes the membership of the board by noting that one member be licensed pursuant to the Body Art Safe Practices Act. (Address concerns of RLD.)
- Provides for the board to adopt and file rules necessary to carry out the provisions of the “Body Art Safe Practices Act”.

Synopsis of Original Bill

The House Appropriation and Finance Committee Substitute for HB 480 and HB 615 enacts the Body Art Safe Practices Act that provides for a state governmental regulation of body art establishments by the Department of Health (DOH). For purposes of the bill, “body art establishment” is defined as a “fixed or mobile place where body art is administered on the premises”. The term “body art” is defined as “tattooing, body piercing or scarification” not including “practices that are considered medical procedures by the New Mexico board of medical examiners”. The bill addresses licensing, application, revocation, suspension, inspection, single use items, sanitization, sterilization, judicial review, enforcement, disease control and records retention. Additionally, the bill establishes a Body Art Safe Practices Fund, provides for parental consent if the person is under 18 years of age and allows for municipalities to set more stringent standards. Ultimately, the bill would establish the regulation of those aspects of tattooing and body piercing that might result in the acquisition or transmission of infectious diseases.

The HAFCS Substitute for HB 480 & HB 615 removes all references to the Department of Health, replacing them with the “board of barbers and cosmetologists.” In addition, the bill:

- Adds a new section (3.A) stating that: “an employee of a board art establishment shall obtain a body art license, requirements which shall be defined by the board”;
- Changes from the requirement for attendance at a blood-borne pathogen training program from “at least every three years” to “annually”;
- Adds a new section (3.F) stating that: “An individual not licensed may work as an apprentice employee provided that the apprentice employee complete an approved blood-borne pathogen training program and practice under the direct supervision of a licensed employee and meet requirements established by the board”;
- Adds a subsection (3.I.3) requiring the body art establishment to keep each employees “board issued license with identification photograph” on file;
- Adds a new subsection (4.D.) stating that: “Inks, dyes and pigments may be inspected [by the board] to ensure their sterility”;
- Adds a new subsection (11.B) stating that: “An operator or employee may photocopy the

client's parent's or guardian's photographic identification for verification purposes and may refuse to provide body art services if the client, parent or guardian refuses to permit the photocopying of the identification"; and

- Adds a new subsection (11.C) stating that: "An operator or employee may refuse to provide body art services to a client who is or appears to be intoxicated on alcohol or drugs."

Significant Issues

The practices of tattooing, body piercing, and scarification are largely unregulated in the State of New Mexico. Transmission of infectious diseases by potential contamination of equipment used for these practices is a legitimate public health concern. Epidemiologic research has established not only biologic plausibility but also some survey-based evidence that blood borne pathogens such as hepatitis B and C viruses are likely transmitted through contaminated body art equipment. Tattooing and body piercing are similar to certain medical and dental procedures that involve penetrating body tissues with foreign bodies, thereby potentially introducing infectious agents. Because medical and dental procedures are regulated in order to reduce the risk of acquisition of infectious diseases, it is appropriate that body art procedures should be regulated similarly.

By changing the responsible agency to the Board of Barbers and Cosmetologists, the would address the public health concerns identified by the Department within a regulatory structure better suited to establishments whose function is cosmetic rather than health-oriented. However, the \$500 civil monetary penalty may not be sufficient to impact egregious licensure violations.

The above change in administering the provisions of the bill from the DOH, to the board of barbers and cosmetologists is an improvement over the current unregulated practice of body piercing. However, a question arises as to the board's competency in matters pertaining to the risk of acquisition of infectious diseases since tattooing and body piercing are similar to certain medical and dental procedures that involve penetrating body tissues with foreign bodies.

FISCAL IMPLICATIONS

Although the bill states that it makes an appropriation, there is no appropriation specified. The bill would establish a Body Art Safe Practices Fund in the state treasury that includes the deposit of license fees, charges and fines. Whereas it is conceivable that some program activities could be maintained by this fund, no resources are made available to establish the program.

RLD is concerned that the bill does not contain an appropriation for administration or for start-up costs. The department points out that although it creates the "body art safe practices fund" and provides that all license fees, charges and fines imposed by the Barbers and Cosmetologists Board shall be deposited in the fund, the bill does not designate the amount of fee to be charged for licensing nor what would cause charges and fines to be imposed.

ADMINISTRATIVE IMPLICATIONS

RLD express concern that the number of body artists or body artist establishments that are subject to licensure, is unknown. This makes difficult to estimate the cost to the Barbers and Cosmetologists Board to administer this new act. RLD points out that the Barbers and Cosmetologists Board could not administer this act without additional resources, including inspectors, op-

erational staff, instate travel funds, and per-diem.

TECHNICAL ISSUES

In Section 2, paragraph I, “hand sink” is defined but is not referred to subsequently.

In Section 2, paragraph M, “procedure surface” is defined but is not referred to subsequently.

In Section 2, paragraph P, “sharps container” is defined but is not referred to subsequently.

RLD provided the following technical issues with the amended bill:

- The scopes of practices are under “definitions” which can be challenged when the Barbers and Cosmetologists Board is considering revocation or suspension of a license;
- Without clear scopes of practices the perimeters are left unclear on the licensees limitations, which is a health, safety concern;
- HB480 is a “practice” act, however there is no provision that protects “titles” used within the practice;
- Page 5, lines 17 through 18, states that action is against the operator of a body art establishment, and therefore action is not necessarily against the employee who is in violation, which puts the total responsibility on the establishment and none on the employee;
- There is no educational and testing requirements outlined in the act, reference is only made to the licensee attending a blood-borne pathogen training within 90 days of receipt of a license, which is a health, safety concern;
- Page 12, line 4, agent in charge is named, however there is no definition;
- Traditionally there is a licensing “board” consisting of persons within the industry being licensed and members of the public that are charged with the responsibility of licensing and providing for examination requirements. Members of the board are also charged with the responsibility of taking action against those who violate the act. This amendment gives the oversight of this Act to the Barbers and Cosmetologist board, who are not persons engaged in the industry of body art.
- In Section 12 there are no minimum and maximum fees defined, traditionally maximum fees are defined;

OTHER SUBSTANTIVE ISSUES

Tattooing, body piercing and scarification involve the penetration of body tissues by needles. In the case of tattooing and body piercing, foreign bodies are introduced into body tissues that are susceptible to infection. By analogy to medical and dental procedures, it is important that instruments that penetrate susceptible body tissues should be free of materials capable of transmitting infectious diseases. Of particular importance are blood borne viral infections that can establish serious chronic diseases including HIV, hepatitis B and hepatitis C. It is also possible to develop serious bacterial infections as a result of piercing the skin, including Staphylococcal and Streptococcal infections. In some instances, these infections can be life-threatening. Although the risk attributable to tattooing in the transmission of hepatitis and HIV infection is not known, there are several lines of evidence that support the plausibility that body art procedures could transmit these infections (Haley RW, Fischer RP. “Commercial tattooing as a potentially important source of hepatitis C infection.” *Medicine Baltimore* **80**: 134, 2001; Balaskaran R et al. “A

case-control study of risk factors for sporadic hepatitis C virus infection in the southwestern United States. *Am J Gastroenterol* **94**:1341, 1999; Nishioka et al. "Tattooing and the risk for transfusion-transmitted diseases" *Epidemiology & Infection* **128**: 63, 2002; Samuel MC et al., "Association between heroin use, needle sharing and tattoos received in prison with hepatitis B and C positivity among street-recruited injecting drug users in New Mexico USA" *Epidemiology & Infection* **127**: 475, 2001.).

BD/yr:njw