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FISCAL IMPACT REPORT

SPONSOR HJCS DATE TYPED 2/22/05 HB 478/HJCS

SHORT TITLE Body Art Safe Practices Act SB _____

ANALYST Hanika-Ortiz

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	Indeterminate	See Narrative	Recurring	Body Art Safe Practices Fund

Relates to SB 80, Parental Consent for Body Art & Piercing

Relates to SB 81, Prohibit Body Art for Minors

Conflicts with SB 364, Body Art Safe Practices Act, administered by the Department of Health.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Health Policy Commission (HPC)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Judiciary Committee Substitute for HB 478 enacts the Body Art Safe Practices Act administered by the Board of Barbers and Cosmetologists (Board) requiring the licensure of body artists and establishments, and the placement of safety regulations to protect the general public. HB 478/HJCS amends Section 61-17A-7 NMSA 1978 to add to the Board two licensed body artists with at least five years experience in their practice, reducing the number of public members from four to two.

Significant Issues

“Body art” is defined in the Act as tattooing, body piercing or scarification that is not considered medical procedures by the New Mexico Medical Board. An exemption will be made for persons who pierce only the outer parameter of the ear, excluding cartilage, using a pre-sterilized encap-

sulated single use stud ear piercing system, and members of a federally recognized tribe, band, nation or pueblo who performs scarification rituals for religious purposes.

The Board of Barbers and Cosmetologists:

- Will be the designated entity to issue the license requirements for qualified body artists, and monitor and enforce the provisions of the Act.
- Shall set new license and renewal fees.
- Shall promulgate rules for the revocation or suspension of licenses.
- Shall annually inspect body art establishments.
- Shall establish sterilization and disposal procedures for equipment and instruments.
- Hold administrative hearings for license suspension. May take complaints to district court with a possible civil penalty up to \$500. Each violation constitutes a separate offense.
- Shall work in conjunction with the DOH to promulgate rules necessary to implement the provisions of the Act.
- Research blood-borne pathogen training programs.
- Deposit all license fees and penalties into the Barbers and Cosmetologists Fund.

Employees of a body art establishment:

- Shall obtain a body artist license after demonstrating the necessary training and experience.
- Shall post a valid, unsuspended board-issued license in a conspicuous place.
- Shall pay annual license renewal fees to the Board.
- Shall provide proof of attending a blood-borne pathogen training program.
- May appeal a suspended, revoked or otherwise denied license.

Operators of a body art establishment:

- Shall obtain a body artist license after demonstrating training and experience to run a sanitary and sterile body art establishment.
- Shall post a valid, unsuspended board-issued license in a conspicuous place.
- Shall pay annual license renewal fees to the Board.
- Shall not transfer license from one person to another.
- Existing businesses prior to the Act have 180 days from the effective date to comply with license requirements.
- Shall keep on file personal employee information, including employee licenses, and identifying photographs.
- Shall keep on file the business' name and hours; location; complete list of all body art performed; list of instruments, body jewelry, equipment, ink, invoices or document of purchases, and copy of the Body Art Safe Practices Act.
- Shall notify board in writing not less than 30 days before changing location.
- Shall allow annual inspections including the copying of records, refusal will be grounds for suspension or revocation.
- May appeal a suspended, revoked or otherwise denied license.

Municipalities may provide more stringent standards.

PERFORMANCE IMPLICATIONS

Tattooing, body piercing, and scarification practices are unregulated in New Mexico. Infectious disease transmission by contaminated equipment used for these practices is a legitimate public health concern.

Regulation and Licensing report the additional workload would severely impede the Board's ability to meet their performance measure for issuance of licenses within 15 working days.

FISCAL IMPLICATIONS

The Board will be permitted to charge a fee not to exceed \$150 for a license application or annual renewal and impose a schedule of penalties not to exceed \$150 for violations of the Act. All license fees and penalties will be deposited in the Barbers and Cosmetologists Fund and will be used to regulate body art in New Mexico.

The Barbers and Cosmetologist Fund balance for FY04 was \$674 thousand. The projected Fund balance for FY05 is \$685.4 thousand and for FY06 \$667.1 thousand. The Board does not have a history of under projecting their Fund balances. Looking back at the previous five years, the Fund has always made more than is spent.

ADMINISTRATIVE IMPLICATIONS

The Board will be administratively attached to the RLD and the DOH can provide technical support.

RLD will additional inspectors, operational staff and travel resources to administer the provisions of the Act. It is unknown how many body artists or body artist establishments exist.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 80, Parental Consent for Body Art & Piercing

Relates to SB 81, Prohibit Body Art for Minors

Conflicts with SB 364, Body Art Safe Practices Act, which makes the DOH the authority body to promulgate rules, establish license regulations and inspect facilities.

TECHNICAL ISSUES

Suggest a medical practitioner as one of the two additional Board members.

Suggest language to the bill requiring disposal of sharps and other contaminated equipment be in accordance with protocols established by the DOH. There is no requirements for disposal of contaminated waste in the bill.

There is no requirement in the bill for an establishment to keep blood borne pathogen training documentation as the list of information available for inspection by the Board.

OTHER SUBSTANTIVE ISSUES

Many states have body art practices in place; including Texas, Utah, Colorado, Arkansas, Iowa, and Oregon. New Mexico does not have a practice law in place. The HPC report there is no national training on body piercing. Piercers receive training from magazines, videos, the internet or observation. The HPC recommends piercers have current Hepatitis B and tetanus update immunizations. HIV transmission is also a risk. Clients remain at risk for hepatitis C and bacterial infections without proper sterilization of instruments and correct sanitary procedures.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

New Mexico will continue to have a public health risk, which could impact health care systems.

AMENDMENT

AMENDMENT proposed to Section 5, (F), page 5, line 15, deleting the period, adding “or renewed” after “...a license is issued”.

AHO/lg:yr