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FISCAL IMPACT REPORT

SPONSOR Rawson DATE TYPED 2/4/05 HB _____

SHORT TITLE Body Art Safe Practices Act SB 364/aSPAC

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	Indeterminate		Indeterminate	Recurring	Body Art Safe Practice Fund

REVENUE

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

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

Relates to SB 81, Prohibit Body Art for Minors

Conflicts with HB 478, Body Art Safe Practices Act, administered by the Board of Barbers and Cosmetologists as opposed to the Department of Health.

SOURCES OF INFORMATION

LFC Files

Responses Received From

The Department of Health (DOH)

State Treasurer

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment adds the definition of “minor” to mean “a person younger than eighteen years of age who is not married, is not on active duty in the armed forces and has not been declared emancipated by a court of law”, to the list of definitions in SB 364/a. The amendment also deletes language requiring the department to promulgate rules regu-

lating tongue splitting, thereby prohibiting any person from performing tongue-splitting in any body art establishment in New Mexico.

Synopsis of Bill

SB 364 would establish minimum body art safe practices, prohibit tongue-splitting, create a body art safe practice fund from licensing and renewal fees within the state treasury, and provide a penalty for violations. SB 364 would require parental or guardian consent prior to administering body art on a customer less than eighteen years of age. SB 364 would require the DOH to establish a licensing process and charge a fee not to exceed \$150 for each license or renewal application annually. These fees would be placed in the body art safe practices fund in the state treasury and would fund the activities proposed in SB 364.

Significant Issues

The DOH reports the practices of tattooing, body piercing, and scarification as largely unregulated in 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 be regulated similarly.

The DOH reports The Division of Health Improvement's Health Facility Licensing and Certification (HFL&C) provides for licensure and renewal fees to fund these new prescribed activities. HFL&C Bureau currently is not permitted to use its licensure fees to support its activities. Licensure fees go to a separate fund not available to DOH. DOH will be proposing an amendment to the Public Health Act for the 2005 session that would permit the DOH to expend funds from collected licensure fees.

PERFORMANCE IMPLICATIONS

The DOH reports SB 364 is consistent with the DOH Strategic Plan Program Area 1 Prevention and Disease Control Objective 4: Prevent transmission of hepatitis C. It is also consistent with Program Area 8 Health Certification, Licensing & Oversight Strategic Direction: Improve compliance with and enforce standards of safety and quality of care in New Mexico's health facilities and community-based programs.

FISCAL IMPLICATIONS

SB 364 would establish a Body Art Safe Practices Fund within the state treasury from licensing and renewal fees. SB 364 would allow the DOH to charge \$150 for a license to operate a body art establishment. The DOH believes solid information is needed before determining a fee structure. The DOH is concerned the imposed fee of \$150 proposed by SB 364 may not be generating enough funds to support the program and suggests raising the maximum fee to \$300.00.

The number and location of body art establishments would have to be known before full fiscal impact on the DOH is recognized. The DOH estimates significant departmental impact in developing administrative policies and procedures, hiring, training and supervising of nurse surveyors and administrative support staff, in addition to rental space, equipment and vehicle considerations. The DOH further speculates one surveyor could inspect 25-30 body art establishments per year.

SB 364 creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

The DOH reports the implementation of SB 364 would require creating, staffing, and training new positions dedicated to the licensing and monitoring of body art establishments. A process of identifying body art establishments, determining surveyor workload and establishing regulations and training surveyors would need to be established. Existing DOH personnel or programs are unable to absorb the new regulatory functions defined in SB 364.

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 HB 478, Body Art Safe Practices Act

TECHNICAL ISSUES

It is unclear whether the provisions of SB 364 are directed to all body art “premises”, whether commercial or cultural. There are reportedly Native American religious practices that involve scarification.

Under Section 5, CONSENT, clarification might be needed to avoid conflict as to what is meant by “require proof” within line 17, “...require proof that a customer is eighteen years of age or older.”

OTHER SUBSTANTIVE ISSUES

The DOH reports 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. It is important that instruments that penetrate susceptible body tissues 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 possibly transmit these infections. Despite data that support tattooing in particular as a risk for acquiring blood borne viral infections, it is not possible to estimate the number of these infections that are acquired by that route because there are often confounding risk factors present (most especially, injection drug use).

The DOH feels it is appropriate a state agency regulate hygienic standards of body art establishments in a manner analogous to the regulation of medical care practices, dental practices and barber and beauty services. DOH does not regulate these functions and anticipates a new regulatory framework would need to be established within the DOH to oversee body art establishments. The bill would require the DOH to review applications for license, issue licenses and collect fees, conduct annual inspections of body art establishments, bring administrative actions against establishments found not to be in compliance, and oversee consent requirements.

The DOH reports the HFL&C is able to impose sanctions including civil monetary penalties necessary to enforce its regulations, while SB 364 would require DOH to impose penalties through District Court. The DOH believes this may not be a practical approach to affecting the operations of non-compliant body art establishments. The DOH suggests that authority to impose sanctions and afford a fair hearing process should be within the jurisdiction of the department and its regulatory process. The \$500 civil monetary penalty may be insufficient to impact licensure violations.

ALTERNATIVES

A memorial establishing a committee to study the practice of "body art", including branding, body piercing, tongue piercing, tattooing, cosmetic tattooing, and marking. The committee's study shall include, but not be limited to client safety and public protection, education and training for persons practicing "body art", and the practice environment. The DOH suggests including how other states regulate providers and the costs to administer regulatory oversight of establishments.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Body Art establishments would remain largely unregulated.

AHO/lg