

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/13

SPONSOR Torraco LAST UPDATED _____ HB _____

SHORT TITLE Barber and Cosmetologist Cease and Desist Orders SB 372

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicate to HB 350

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Attorney General Office (AGO)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 372 (SB 372) creates cease and desist powers to the Board of Barbers and Cosmetologists Act to persons violating the provisions of the Barbers and Cosmetologists Act or the Body Art Safe Practices and the rules promulgated in accordance with these acts.

SB 372 also proposes to amend the Body Art Safe Practices Act by eliminating the cap on penalties that the Board may impose for any imposed violations. As the Body Art Safe Practices Act currently exists, the Board may not impose a penalty in excess of \$150 for any violation thereof. If SB 372 is enacted, the Board would be authorized to impose penalties not exceeding \$1,000 for certain violations. The violations for which a penalty not exceeding \$1,000 would be permitted include: (1) obtaining or attempting to obtain a license by fraudulent misrepresentation; (2) willfully falsifying by oath or affirmation information required pursuant to the BASPA; or (3) practicing or attempting to practice under an assumed name or by fraudulent misrepresentation. Penalties for any other violations of the act may not exceed \$150.

FISCAL IMPLICATIONS

No fiscal impact

SIGNIFICANT ISSUES

In 2012 local news media channel KOAT-7 began an undercover assignment into the tattoo business. Channel 7 found 48 unlicensed tattoo parlors and 46 unlicensed artists performing tattoos. And since January 2011, the Board has received 65 complaints against licensees. Adding the power of cease and desist to the Board of Barbers and Cosmetologists will help to ensure that all persons who obtain services from salons or body art establishments have licensed, sanitary services provided.

Upon the boards inspectors conducting inspections of licensed or unlicensed establishments i.e. (barber shops, salons, nail salons, tattoo and piercing studios) they would conclude if conditions within the establishment present a substantial danger of illness, or the potential danger of serious physical harm to patrons. If either exists the Board would be empowered to issue an order demanding that the person committing such violations cease and desist from such activity. It may also be used if unlicensed activity is occurring for an extended period of time after inspectors have requested the establishment and/or its practitioners come into compliance.

PERFORMANCE IMPLICATIONS

The AGO writes: although SB 372 grants the Board the authority to issue cease and desist orders, it provides no authority for the Board to enforce such orders. As drafted, a person who fails to comply with a cease and desist order would not be subject to any discipline by the Board. Although, in the case of a violation of the Body Art Safe Practices Act (BASPA), the Board could seek relief in the district to enjoin the operation of a body art establishment or the practice of a body artist not in compliance with the BASPA and the district court could impose a civil penalty of up to \$500 for such violations, the Board is otherwise powerless to respond to a failure to comply with a cease and desist order. SB 372 does not specify what consequences will result if a person fails to comply with a cease and desist order issued pursuant to SB 372's amendment to the Barbers and Cosmetologists Act and BASPA.

RM/svb