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Joint Committee on Finance

Paper #577

Transfer Regulation of Tattooing, Body Piercing and Tanning to the Department of Financial Institutions and Professional Services (Health Services -- Public Health and Other Programs)

[LFB 2015-17 Budget Summary: Page 241, #4]

CURRENT LAW

The Department of Health Services (DHS) Food Safety and Recreational Licensing Section (FSRL) in the Division of Public Health regulates tattooists, tattooing establishments, body-piercers, and body piercing establishments (collectively, "body art" establishments and practitioners). In addition to body art establishments, FSRL currently regulates restaurants, lodging establishments, and other recreational facilities, such as swimming pools and campgrounds. DHS staff, or local health departments that DHS has designated as agents, inspect each body art establishment before it can be licensed and annually thereafter. All body art practitioners must apply for a license to apply a tattoo, or to perform body piercing.

Body art establishments pay an annual license fee of \$135 (or \$220 for a combined tattoo and piercing establishment) and a one-time pre-inspection fee of \$255 (or \$400 for a combined establishment), and practitioners must pay an annual license fee of \$60, as established by rule. Local health departments may charge fees in excess of these amounts.

The DHS Radiation Protection Section (RPS) regulates tanning facilities. RPS conducts a range of radiation-related activities, including inspection and registration of x-ray and mammography devices. Tanning facilities must obtain a permit to possess or operate a tanning device (this does not apply to devices owned by an individual in their home, or phototherapy units used in medical offices). DHS collects a \$10 annual permit fee, as established by rule.

GOVERNOR

Transfer the regulatory responsibility for tattooists and tattoo establishments, body-piercers and body piercing establishments, and tanning facilities from DHS to the Department of

Financial Institutions and Professional Standards (DFIPS), effective January 1, 2016. Renumber current statutes relating to these professions to a new chapter, Chapter 463 ("Body Art and Tanning Facilities") under DFIPS. Transfer to DFIPS statutory requirements for denying or revoking licenses, and provisions that permit local public health departments to act as agents of the Department.

Change the manner in which permit or license fees would be set for the professions and establishments in this item from administrative rule to the current biennial fee-setting structure that applies to professions regulated by the Department of Safety and Professional Services (DSPS). Specify that DHS would establish fees for issuance and renewal of licenses and permits for 2015 and 2016 by rule.

Repeal references to the statutes for tattooing, body piercing and tanning from program revenue appropriation that supports DHS licensing, review and certifying activities.

DOA Secretary Transfer Authority. Transfer from DHS to DFIPS all assets and liabilities, tangible personal property (including records), contracts in effect, and pending matters that the Department of Administration (DOA) Secretary determines are primarily related to the regulation of tattooing, body piercing and tanning, on January 1, 2016. Require DFIPS to carry out any contractual obligation unless modified or rescinded to the extent allowed under the contract. Specify that all materials submitted to, or actions taken by DHS with respect to a pending matter would be considered as having been submitted to or taken by DFIPS.

Provide that all rules promulgated under HS 161 and 173, and all other rules promulgated and orders issued by DHS that the DOA Secretary determines are primarily related to the regulation of tattooing, body piercing and tanning, that are in effect on January 1, 2016 would remain in effect until their specified expiration dates or until amended or repealed by DFIPS.

Cross-References and Other Statutory Changes. The bill would make multiple changes to cross-references to reflect renumbered statutory provisions, change the term "permit" to "license," and other minor changes to current statutory provisions.

DISCUSSION POINTS

1. The administration proposed creating DFIPS, effective January 1, 2016, to consolidate into a single agency DSPS, the Department of Financial Institutions (DFI), the Educational Approval Board (EAB), and certain DOA functions regarding businesses. In addition to those functions, the proposal would have transferred to DFIPS the body art and tanning regulatory activities currently conducted by DHS.

2. There are currently 203 tattooing establishments, 13 body piercing establishments, 174 combination body art establishments, and 1,050 licensed tanning facilities in Wisconsin. There are currently 1,205 licensed tattooists, and 362 licensed body piercers.

3. DHS estimates that in 2014-15 it will collect approximately \$111,000 in program revenue from licensing fees from body art establishments and practitioners (not including inspection

fees), and approximately \$10,000 in program revenue from tanning permit fees. The Department estimates that state staff in Madison and other regional locations spend approximately 2,400 hours annually on inspections and other regulatory activities related to body art and tanning. These estimates do not include the revenue and staff time for the 44 local health departments that also perform inspections of body art establishments.

4. Under separate provisions, the bill would also transfer regulatory authority for restaurants and certain other food-related establishments, lodging establishments, and certain recreational facilities (such as swimming pools and campgrounds) from DHS to the Department of Agriculture, Trade, and Consumer Protection (DATCP). This proposal was developed last summer by a joint DATCP-DHS workgroup. On May 5, 2015, the Committee approved that transfer, with modifications to funding in the bill, a freeze on food-related fees, and the creation of a Food Safety Advisory Council.

5. That provision would also transfer \$3.4 million PR and 35.0 full-time equivalent PR positions to DATCP. These transferred positions are currently responsible for inspections of body art establishments, as well as restaurants, hotels, and other recreational establishments.

6. On May 8, 2015, the Governor asked that the DSPPS/DFI merger into DFIPS be removed from the bill. In addition, DOA has indicated that it would recommend that DSPPS conduct body art and tanning regulation, rather than DHS (as under current law), or DATCP (to which the staff that currently regulate these establishments would be transferred). The administration argues that the body art and tanning areas would align with the DSPPS role in regulating cosmetology-related establishments and professions.

7. Statutes require DHS to inspect all body art establishments before issuing a license, and currently a combination of DHS and contracted local health department staff perform this function. It is not clear, however, what DSPPS staff would conduct the current pre-licensing inspections for body art establishments if DSPPS assumed that regulatory authority. The Division of Regulation and Compliance conducts some business inspections, such as inspections triggered by complaints. Other staff in the Division of Industry Services inspects commercial buildings, multifamily dwellings, and other building components (such as elevators or plumbing systems) for compliance with building code and safety requirements, rather than for public health purposes. The bill would not have provided any additional staff to DFIPS for this function, and the administration has not recommended providing DSPPS with additional staff if DSPPS assumes this role.

8. The Committee could adopt the administration's revised recommendation to transfer regulation of body art and tanning to DSPPS (Alternative 1a and 1b, respectively).

9. However, under the bill and the Committee's previous action, the staff that currently conduct the inspection of body art establishments (as well as restaurants, and lodging and recreational establishments) would be transferred to DATCP. In developing the proposal to transfer regulation of restaurants and other recreational establishments, the joint DATCP-DHS workgroup originally included a recommendation to transfer body art regulation as well. The Committee could include the regulation of body art establishments and practitioners in that transfer to DATCP, as DHS currently regulates all of those establishments with its FSRL staff (Alternative 2a). It could

also transfer regulation of tanning facilities to DATCP (Alternative 2b). This would maintain the same inspection staffing for body art establishments and practitioners as exists under current law. This alternative would also apply the same general provisions of Chapter 97 of the statutes (as modified by the budget bill) to body art and tanning establishments and practitioners.

10. Finally, the Committee could delete the provision (Alternative 3). Staff in the radiation protection section would continue to issue permits for tanning facilities. It would not be clear what DHS staff would conduct inspections of body art establishments, as the transfer of the relevant inspection staff to DATCP has been previously approved by the Committee. It is possible that DHS could modify and maintain its current contractual relationship with local health departments that currently act as agents for the purposes of inspections.

ALTERNATIVES

1. Modify the bill to transfer regulatory authority for one or both of the following areas to the Department of Safety and Professional Services (DSPS).

- a. Tattooists, tattoo establishments, body piercers, and body piercing establishments.
- b. Tanning facilities.

2. Delete provision. Instead, transfer the regulatory authority for one or both of the following areas to the Department of Agriculture, Trade and Consumer Protection (DATCP). In addition, apply the general provisions of Chapter 97 of the Statutes, as modified under the bill (that would apply to food safety and regulation, and regulation of lodging establishments and recreational establishments) to the transferred establishment and practitioners.

- a. Tattooists, tattoo establishments, body piercers, and body piercing establishments.
- b. Tanning facilities.

3. Delete provision, so that DHS would continue to regulate tattooists, tattoo establishments, body piercers, body piercing establishments, and tanning facilities.

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