

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 1044(Nguyen) – As Amended June 13, 2016

SENATE VOTE: 38-0

SUBJECT: Barbering and cosmetology

SUMMARY: Requires the Board of Barbering and Cosmetology (BBC) to determine through regulations when a fine can be assessed to an establishment owner and a licensee for the same violation, and authorizes the BBC to establish a payment plan for citations that exceed \$500.

EXISTING LAW:

- 1) Establishes the Barbering and Cosmetology Act (Act) and the BBC to license, regulate, and discipline professional work in hair, skin, nail care, and electrolysis; and, ensure the protection of the public is paramount when other interests are sought to be promoted. (Business and Professions Code (BPC) Section 7301, *et seq.*)
- 2) Defines an "establishment" to mean any premises, building or part of a building where any licensed activity is practiced. (BPC Section 7346)
- 3) Requires the BBC to maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. (BPC Section 7553(b))
- 4) Requires the BBC or its authorized representatives to inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted inspections. (BPC Section 7353(c))
- 5) Establishes grounds for disciplinary action including failure to comply with the provisions of the Act; failure to comply with health and safety standards as established by the BBC; and, failure to comply with the BBC's rules for establishments, among other offenses, as specified. (BPC Section 7404)
- 6) Authorizes the BBC to assess administrative fines and issue citations, as specified, for violations of the Act. (BPC Section 7406)
- 7) States that any licensee served with a citation may avoid payment of the associated administrative fine by presentation of written proof satisfactory to the BBC or its executive officer that the violation has been corrected. (BPC Section 7409)
- 8) States that persons to whom a notice of violation or a citation is issued or an administrative fine is assessed, may appeal the citation to a disciplinary review committee by the BBC, as specified. (BPC Section 7410)
- 9) Requires the BBC to establish by regulation a schedule of administrative fines for violations of the Act, and the schedule must indicate for each type of violation, whether in the BBC's discretion, the violation can be corrected. (BPC Section 7407)

- 10) States that persons who fail to pay administrative fines that were not contested or were contested but the appeal has been adjudicated cannot be issued a license or allowed to renew any licenses issue to them until all fines are paid in addition to any application, renewal, or delinquency fees which are required. (BPC Section 7414)

THIS BILL:

- 1) Requires the BBC to determine by regulation when a fine is assessed to both the holder of the establishment license and the individual licensee for the same violation.
- 2) Requires the BBC to also determine by regulation when a fine is assessed to only the holder of the establishment license or to only an individual licensee for the same violation
- 3) Requires the BBC to consider when establishing the regulations the egregiousness of the violation of the health and safety regulations and whether the violation is a repeated violation by licensees within the same establishment.
- 4) Authorizes the BBC to enter into a payment plan for citations and administrative fines that exceed \$500, and requires the BBC to define by regulation the parameters of the payment plan which must include, but is not limited to, the terms of the plan and grounds for cancellation of the plan.
- 5) Makes permissive, instead of requires, the BBC to deny a license or a license renewal if fines are not paid, as specified.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, this bill will result in negligible state costs.

COMMENTS:

Purpose. This bill requires the BBC to determine through regulations when a fine should be assessed to both the establishment owner and an individual licensee or assessed only to the establishment owner or to only the individual licensee. In addition, this bill would allow the BBC to accept a payment plan for citations. This bill is sponsored by the Board of Barbering and Cosmetology. According to the author, "[This bill] will not take away the responsibility of the owner of the establishment, but will allow the [BBC] to determine when the fine shall be assessed to both the individual and the owner. This allows the [BBC] to hold individual licensees to a higher level of responsibility, by ensuring that the individual who has attended school and passed the licensing examination is the first line of consumer protection and therefore responsible for upholding the health and safety laws of the [BBC]. [This bill] would allow the [BBC] to work with individuals on a case by case basis to try and set up a payment plan for any outstanding fines."

Background. *Board of Barbering and Cosmetology.* The BBC is responsible for licensing and regulating barbers, cosmetologists, estheticians, electrologists, manicurists, apprentices, and approximately 41,000 establishments. Establishment licensees do not need to hold a separate professional license. In order to obtain an establishment license, an individual must submit an application to the BBC and pay the appropriate fee. The application must contain information about the applicant, whether it is a person, firm, or corporation that will be operating the establishment, and specifically prohibits issuing an establishment license if the individual, or

each officer, director, or partner has committed any acts or crimes, as specified, which are grounds for denial. The BBC licenses and regulates over 550,000 licensees, including over 40,000 establishments. The types of establishments that the BBC regulates, include, but are not limited to, nail salons, barbers, and hair salons.

BBC Enforcement. Existing law permits the BBC to take enforcement actions against an establishment for issues mainly pertaining to health and safety violations. To maintain the BBC's health and safety requirements, BPC Section 7353(b) requires the BBC to maintain a program of targeted and random inspections of establishments. As part of the inspection program, inspectors will provide the licensee with a copy of an inspection report as a record of the inspection. The original inspection report, the photographs taken during the inspection, and any inspector comments are then forwarded to the BBC's home office. The Cite and Fine Program will review the material for accuracy, issue a citation and enter the citation information into BreZE, Department of Consumer Affairs' licensing and enforcement system. Citations with egregious health and safety violations or unlicensed activity are forwarded to the Enforcement Program for further investigation.

Establishment Owners and Booth Renters. An individual who owns a BBC licensed establishment is not required to hold a separate barber or cosmetology license. Establishments can be owned by a corporation, firm or by an individual. BPC Section 7348 requires an establishment to at all times be in the charge of a BBC licensee. However, the owner of an establishment is responsible for the activities of all employees working in the establishment. According to information provided by the BBC, the owner of an establishment is responsible for the establishment and will be issued a citation for violations that exist in the establishment in addition to each individual in violation. Even if an establishment owner has booth renters and/or independent contractors employed, the owner is responsible for each licensee.

Licensees working in an establishment can be an independent contractor or an employee of the establishment. Independent contractors are commonly referred to as "booth renters." Booth renters are considered separate business entities operating within the establishment and are responsible for setting their own hours of operation, paying their own required insurance, and maintaining a separate business license.

Because an establishment owner is responsible for the conduct of all employees (regardless of booth renter or employee status), if a violation is found by an individual, a citation is issued to both the individual and the establishment owner. During the BBC's last sunset review in March of 2015 the issue of booth renters was raised. It was noted that the barbering and cosmetology industry has reported to the BBC potential issues of accountability, in that establishment owners are being forced to be held accountable for the deficiencies and subsequent violations of booth renters, and that it should be the individual licensee, not the owner, who should have to comply with regulations and deal with enforcement actions. It has been reported that establishment owners believe that they already have many laws and regulations to comply with and that if something is cited at the station of a booth renter, the establishment owner should not be forced to oversee that renter, and potentially receive a citation and fine for that individual's actions. Owners do not want to be held liable for the actions of individuals who, in their eyes, are independent contractors.

In order to alleviate the duplicative citation issue, one solution that has been discussed is the establishment of a booth renters' license which could be seen as a mechanism to clarify the

responsibility of a booth renter and establishment owner. However, as noted in the staff background paper during the BBC's sunset review a potential concern with the new license is how the BBC would administer the inspection process for booth renters, given that each booth could possibly be regulated as a separate entity. Additionally, creating this new license could be perceived as owners not wanting to maintain responsibility for individuals operating at their place of business.

It is unclear why a responsible business owner would want to ignore violations in their establishment and not require all individuals working closely with them to obey the law, especially because consumers will most likely link services to the establishment as well as the licensee providing services. By requiring the BBC to establish through regulation when a fine should be assessed to an individual and an establishment owner or to an establishment owner or an individual, this bill seeks to address the issue of establishment owners being fined along with booth renters for the same violation.

This bill will authorize the BBC to establish a payment plan for citations with administrative fines that exceed \$500. In 2004, the BBC was granted authority to increase the maximum amount of a fine from \$2,500 to \$5,000. In the *BBC's 2014 Sunset Review Report*, it was reported that the health and safety infractions most often cited are violations of rules regarding the disinfection and storage of tools, implements, instruments, and products. The top non-health and safety-related violation is not properly displaying establishment or individual licenses as required in Title 16 California Code of Regulations Section 965. Currently, licensees are not able to renew a license unless they have paid all fines as required by the BBC. This bill will revise the current prohibition for licensure renewal if fines are not paid, and provide the BBC with discretion in authorizing a renewal for applicants who may not have all fines or citations paid as a result of a payment plan as determined by the BBC.

ARGUMENTS IN SUPPORT:

The Board of Barbering and Cosmetology writes in support, "This bill is a big step in establishing parameters in how the [BBC] currently issues citations and fines and will also allow the [BBC] to set up payment plans for high amount citations. This will ensure that the businesses in California can correct their violations without being in jeopardy of losing their license due to unpaid fines."

The Professional Beauty Federation of California writes in support, "[this bill]...would respond to our concern of individual licensees and salon owners paying twice for the same cited violation. When the individual stylist/technician is a booth renter, they often are contractually obligated to identify the salon owner for any fine they are asses as a result of a violation the booth renter makes (meaning the booth renter ends up paying double the fine.)"

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Board of Barbering and Cosmetology (sponsor)

Professional Beauty Federation of California

REGISTERED OPPOSITION:

None on file.

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