

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 896(Nguyen) – As Amended May 23, 2016

SENATE VOTE: 27-4

SUBJECT: Barbering and cosmetology: nail care establishments: credit and debit cards

SUMMARY: Requires an establishment that offers nail care services to accept a debit or credit card payment for a tip or gratuity, if the establishment accepts a debit or credit card for payment of nail care services, as specified.

EXISTING LAW:

- 1) Establishes the Barbering and Cosmetology Act (Act) and the Board of Barbering and Cosmetology (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) Establishes nail care as a specialty branch in the practice of cosmetology and defines nail care as the practice of cutting, trimming, polishing, coloring, tinting, cleansing, manicuring, or pedicuring the nails of any person or massaging or beautifying from the elbow to the fingertips or the knee to the toes of any person. (BPC Section 7316(c)(2))
- 3) Provides for licensure of manicurists by the BBC to practice nail care and requires applicants to be over the age of 17, complete 10th grade in public California school or equivalent, not be subject to a denial and have either completed a course in nail care from a BBC approved school, or practiced nail care in another state for a period of time equivalent to the study and training of a BBC approved course or completed an apprenticeship program in nail care. (BPC Section 7326)
- 4) States that every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for. (Labor Code (LC) Section 351)
- 5) Requires an employer who permits patrons to pay gratuities by credit card to pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company, and requires payment of gratuities by credit card to be made to the employees no later than the next regular payday following the date the patron authorized the credit card payment. (LC Code Section 351)

THIS BILL:

- 1) Requires an establishment offering nail care services that accepts a debit or credit card as payment for nail care services to also accept a debit or credit card for payment of a tip, consistent with specified provisions in the LC.

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 will require nail care establishments, which are licensed by the BBC, to accept credit or debit cards for purposes of leaving a tip, if they allow credit or debit cards for the payment of services. This bill is sponsored by the author. According to the author, "Currently, nail salons in the state accept various forms of payment for services provided and any tip left for the technician. Some salons only accept cash. Most establishments allow clients to use a debit or credit card for the cost of the service and to leave their technician a tip. A small number of establishments accept paying for a service with a credit or debit card, but do not allow a tip to be charged. Requiring salons that allow clients to use credit or debit cards to also leave a tip on a credit card or debit card will not only be more convenient for the client but it will also ensure that technicians are appropriately compensated for their labor."

Background. *Nail Care.* In California, a licensed cosmetologist can practice nail care and the BBC also licenses manicurists as a separate licensure category. To become a licensed manicurist, an applicant must submit to the BBC proof of completion of 400 hours of technical instruction and practical training as specified in Title 16 Section 950.4 of the California Code of Regulations. Additionally, the BBC recommends that schools provide training in the area of communication skills including professional ethics, salesmanship, decorum, record-keeping, client service record cards, basic tax responsibilities related to independent contractors, booth renters, employees, and employers.

Licensed Establishments. The BBC licenses and regulates over 550,000 licensees, including over 50,000 establishments. The types of establishments that the BBC regulates, include, but are not limited to, nail salons, barbers, and hair salons. The BBC is required to maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to health and safety. Currently, the BBC does not differentiate between the types of establishments it licenses, and business models may vary.

The BBC currently licenses over 126,000 manicurists, 310,000 cosmetologists (who can also perform nail care services) and 50,000 establishments. BBC does not include information in its establishment license data to differentiate between an establishment offering nail care services specifically and those offering other personal beautification services.

An establishment licensee may operate a business to conduct any of the professional services for which a license is required under the Act. Establishment owners (establishment licensees) do not need to hold a separate professional license in order to own and operate an establishment; however, BPC Section 7348 specifies that an establishment must at all times be in the charge of a licensed person.

Under current law, there is no requirement for licensed establishments to accept a certain form of payment for professional services. Establishment owners or individual licensees may choose to accept any form of payment for professional services including, but not limited to prohibiting checks, but accepting credit cards, or requiring cash-only transactions. While the BBC inspects establishments for compliance with applicable health and safety requirements, it does not inspect businesses for labor related issues, including how the payment for services is made. This bill would require nail care establishments, which accept a credit card or debit card as a form of

payment, to also allow tips to be added to the debit or credit card. This bill does not require a nail care establishment to accept a credit card or debit card as a form of payment. The author contends that with so many establishments statewide, it would make sense to have a uniform payment system. As currently drafted, this bill would apply only to nail establishments.

Tippling. According to information provided on the website of the Internal Revenue Service (IRS), tips are discretionary (optional or extra) payments determined by a customer that employees receive from customers. Tips can be presented in the form of cash, electronic formats (credit, debit, gift cards or other electronic means), or as noncash items such as tickets.

"Employees must report to their employer all cash tips received except for the tips from any month that total less than \$20. Cash tips include tips received from customers, charged tips (for example, credit and debit card charges) distributed to the employee by his or her employer, and tips received from other employees under any tip-sharing arrangement."

Credit and Debit Cards. California businesses are not required to accept a credit card or debit card as a form of payment for services. Civil Code Section 1725(a) lists the specific requirements for businesses if they choose to accept credit cards, which include, but are not limited to, prohibiting the recording of a credit card number or contacting a credit card issuer to determine if the credit amount available will cover the amount of the purchase. Under current California law, LC Section 351 specifically prohibits an employer from collecting, taking, or requiring an employee to credit the amount of gratuity as part of the employee's wages. Additionally, LC Section 351 specifies that if an employer permits gratuity to be paid through a credit card, the employer may not deduct any payment processing fees or costs that may be charged to the employer by the credit card company. Under this bill, nail establishment owners would need to comply with the provisions of LC Section 351 and would not be permitted to deduct processing fees related to the payment of gratuity. Regardless of the form of payment, tips or gratuity belong solely to the employee, not the employer, and the provisions of this bill do not alter this existing structure in California.

At the federal level, according to information retrieved from a United States Department of Labor, Wage and Hour Division, fact sheet, "Where tips are charged on a credit card and the employer must pay the credit card company a percentage on each sale, the employer may pay the employee the tip, less that percentage. For example, where a credit card company charges an employer three percent on all sales charged to its credit service, the employer may pay the tipped employee 97 percent of the tips without violating the Fair Labor Standards Act. However, this charge on the tip may not reduce the employee's wage below the required minimum wage. The amount due the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card company."

Nail Establishment Concerns. Labor concerns for nail technicians were raised in a May 7, 2015, article from the *New York Times*, "The Price of Nice Nails," in which it was reported: "The New York Times interviewed more than 150 nail salon workers and owners, in four languages, and found that a vast majority of workers are paid below minimum wage; sometimes they are not even paid. Workers endure all manner of humiliation, including having their tips docked as punishment for minor transgressions, constant video monitoring by owners, even physical abuse. Employers are rarely punished for labor and other violations... Tips or wages are often skimmed or never delivered, or deducted as punishment for things like spilled bottles of polish."

In August of 2015, the Assembly Select Committees on Women in the Workplace, and Girls and Women of Color held a joint hearing with the Assembly Committees on Health, Business and Professions, and Labor and Employment, which focused on both the health and safety of licensees regarding exposure to chemicals and other ingredients, and concerns about labor practices in nail salons. The purpose of that hearing was for state agencies, advocates, and industry to obtain and share information, address concerns, and discuss policy recommendations regarding nail salon practices. As part of that discussion, the issue of tips was raised.

ARGUMENTS IN SUPPORT:

None on file.

ARGUMENTS IN OPPOSITION:

The Professional Beauty Federation of California writes in opposition, "While we support the intent to encourage tips to be given to our wonderful licensees, we cannot support the level of statutory micromanagement of salon business operations called for under [this bill]. Salon owners pay on average 3% fees to credit card companies for the benefit of allowing their clientele to use such payment methods, and those charges apply to tips. While rare, some salons choose to forgo having to pay that fee for tips (and instead encourage cash tips), and we believe that should be their prerogative."

POLICY ISSUE(S):

Types of Establishments. As currently drafted, this bill is only applicable to nail care establishments; however, the BBC does not issue an establishment license based on the type of services each establishment offers. An establishment license would permit the establishment licensee to offer any of the professional services for which a license is required under BPC Sections 7301, *et seq.* For example, a licensed establishment may provide hair care (cosmetologist), skin care (esthetician), and nail care (manicurist) under one license. It is unclear if the author's intent is to make this bill applicable to all establishments that provide a broad range of services including nail care services or just to those establishments that provide only nail services.

Ensuring Employees Receive the Proper Tips. The issue of proper tip collection was raised during the previous 2015 joint informational hearing. Part of that discussion called into question the practice of employers not properly distributing tips to their employees, and employees potentially being unaware of the tips they have received. Although, current California law (LC Section 351) specifies that tips are the sole property of the employee for which the tip was made, this bill does not address if tips are properly distributed to the appropriate employee for which the tip was provided.

Compliance. As currently drafted, it is unclear how the provisions of this bill would be enforced. The author may wish to clarify what, if any, role the BBC would play in ensuring compliance with the provisions of this bill.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

Professional Beauty Federation of California
Board of Barbering and Cosmetology

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