

STORAGE NAME: h3343.brca

DATE: March 9, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3343

RELATING TO: Barbering and Cosmetology

SPONSOR(S): Representative Chestnut

COMPANION BILL(S): CS/SB 880 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
 - (2) GOVERNMENTAL RULES AND REGULATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill is identical to the Barber and Cosmetology sections of HB 2011 that passed the House in 1997, but died in the Senate. The bill:

1. Makes various changes the DBPR requested for administrative purposes.
2. Allows citizens of Florida and foreign countries to obtain a restricted barber's license.
3. Establishes a registration process for hair wrappers and exempts them and hair braiders from having to practice in a licensed cosmetology or specialty salon.
4. Authorizes continuing education for cosmetologists and allows the DBPR to privatize that activity.
5. Allows photography salons to hire a cosmetologist to oversee hair arranging and exempts those salons from having to be licensed as cosmetology salons.

The DBPR estimates it will collect an additional \$15,555 annually from persons applying for a restricted barber's license.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

This bill is identical to the changes made to chapters 476 and 477, F.S., barbers and cosmetologists, by the 1997 Committee on Business Regulation and Consumer Affairs. HB 2011 passed the House, but died in the Senate at the end of the 1997 Legislative Session.

The Department of Business and Professional Regulation (DBPR) requested changes to HB 2011 to allow the DBPR to institute computer-based testing. Those amendments were incorporated into the bill prior to its passage by the committee. However, a number of the changes characterized as relating to computer-based testing are actually changes the DBPR wants for the reasons stated below:

Barbers - Chapter 476, F.S.

The current law:

1. Specifies that an applicant for a barber's license is entitled to licensure by examination if they meet certain requirements. The DBPR is concerned that the entitlement language could spawn legal action if DBPR refuses to license an applicant even if that applicant did not meet the licensure requirements.
2. Requires the Barber's Board to promulgate rules relating to reexamination schedules and additional training requirements following three failed examination attempts. The DBPR sets all examination schedules and the board may not want to prescribe additional requirements.
3. Specifies the requirements for applying to take the barber examination. The DBPR, at the request of the Barber's Board, is requesting a change to the statutory catch line that the board believes will give it additional authority over the issuance of barber's licenses.
4. Specifies that applications be submitted at least 30 days prior to the exam date. The DBPR contends that 30 days is not sufficient time to process applications. However, representatives of the barber's industry believe 30 days is sufficient, and to extend the time would unnecessarily lengthen the licensure process.
5. Requires applicants to furnish two photographs to the DBPR with their application. One of these is to be returned to the applicant for presentation at the examination. However, the DBPR actually keeps one photograph with the application and sends the other to the Bureau of Testing. The DBPR states that it is impractical to return one photograph to the applicant since it cannot determine that the picture presented at the time of testing is actually the unaltered photograph sent to and returned by the DBPR.
6. Specifies the responsibilities of the Barber's Board and the DBPR relating to examinations for licensure. The DBPR contends that this language conflicts with s. 455.217, F.S., which contains general examination provisions applicable to all practice acts.
7. Requires the board to certify for licensure any applicant who passes the examination administered by the DBPR. The DBPR believes that the term administered could hamper the privatization of computer-based testing.

Additionally, the rules of the Barber's Board allow an individual who simply cuts hair to apply for a restricted barber's license. These licenses are issued to individuals who

hold a license in another state; have not been disciplined for barbering violations in the past 15 years; and pass a practical examination. This language effectively prohibits Florida citizens and individuals from foreign countries from obtaining a restricted barber's license.

Cosmetologists - Chapter 477, F.S.

Hair wrapping entails wrapping ribbons or beads through strands of human hair and is usually performed at booths or kiosks in resort areas such as Disney World or Panama City Beach. Questions were raised in 1996 regarding licensure of this activity and the Board of Cosmetology determined it is the practice of cosmetology.

In August 1996, Disney World terminated its agreements with the companies providing hair wrapping and 80 hair wrappers were laid off, losing approximately \$200,000 in wages. No data are available on the total number of people affected throughout the state. On February 10, 1997, the board adopted an emergency rule authorizing hair wrappers to register as hair braiders if they take 16 hours of course work, and pay a \$25 registration fee and a \$50 salon registration fee. A permanent rule was adopted after the 1997 Legislature did not pass language establishing a separate category for hair wrappers. These requirements are the same as those for hair braiders. Hair braiding is the interweaving of hair for compensation and is currently required to be performed in a licensed cosmetology salon.

The definition of cosmetology includes hair arranging performed in a licensed cosmetology salon. Exemptions are given to certain activities including fashion photography. However, businesses that cater to the general public and offer hair arranging as part of a photography session (i.e., Glamor Shots) must hire licensed cosmetologists and meet cosmetology salon requirements.

This chapter also specifies that an applicant for a cosmetology license is entitled to licensure by examination if they meet certain requirements. The DBPR is concerned that the entitlement language could spawn legal action if DBPR refuses to license an applicant even if that applicant did not meet the licensure requirements.

Present law does not provide continuing education requirements for cosmetologists, though representatives of the industry contend that such a requirement is necessary.

This chapter includes provisions specifying the responsibilities of the Board of Cosmetology and the DBPR relating to examinations for licensure. The DBPR contends that this language conflicts with s. 455.217, F.S., which contains examination provisions applicable to all practice acts. However, s. 455.217, F.S., is general authority that does not contain specific language that is included in the practice acts, such as the frequency with which examinations are to be given or specific rulemaking authority to the boards regarding examinations.

B. EFFECT OF PROPOSED CHANGES:

Barbers - Chapter 476, F.S.

This bill makes the changes requested by the DBPR by:

1. Changing the current language *entitling* an applicant to a barber's license to language that makes such an applicant *eligible* for licensure after they meet the statutory requirements.
2. Allowing, rather than requiring, the Barber's Board to promulgate rules relating to reexamination schedules and additional training requirements following three failed examination attempts.
3. Expanding, at the request of the Barber's Board, the current requirements for applicants to apply to take the barber's examination by including in the statutory directory the provision that it is an application for licensure by examination. The board requested this change to give it more authority over the licensure process. However, it is not clear how such a change will give the board more authority, it creates confusion with the licensure section of the chapter, and, it could delay unnecessarily the issuance of barber's licenses.
4. Deleting the requirement that applications be submitted at least 30 days prior to the exam date and remaining silent on the time by which an applicant must apply prior to the examination date. This change could increase the time it takes an applicant to be licensed.
5. Continuing to require applicants to furnish two photographs to the DBPR with their application. One is to remain with the application and one is to be provided to the Bureau of Testing. The proposed language is unclear as to who is to provide the second photograph to the bureau, the DBPR or the applicant.
6. Repeals the section relating to examinations of applicants for a barber's license, leaving s. 455.217, F.S., as the statutory authority. However, that section does not include the provision that exams be given at least four times each year as is required in the repealed section. The repeal also removes the board's specific authority to adopt rules relating to examinations, though such rule adoption by the various boards is contemplated in s. 455.217, F.S.
7. Requires the board to certify for licensure any applicant who passes the examination that is approved by the board and certified by the DBPR. This change removes the phrase "administered by the department" which the DBPR believes could hamper the privatization of computer-based testing. However, the phrase "certified by the department" may be equally problematic, since the DBPR only certifies national examinations. Barber's are not given a national examination.

This bill also extends the restricted barber's license to anyone who completes a restricted barber's course, or has held a restricted Florida license or a license from another country within the past five years; has not been disciplined for barbering violations within the past 5 years; and passes a written and practical examination.

Cosmetologists - Chapter 477, F.S.

This bill defines hair wrapping; provides for hair wrappers to register with the DBPR and pay a biennial \$25 registration fee; requires 16 course-hours prior to registration; exempts hair wrappers and braiders from having to practice in a cosmetology or specialty salon; requires the use of sanitized implements; authorizes the board to

require up to 16 hours of continuing education for cosmetologists; and allows the DBPR to privatize continuing education and the resulting paperwork.

The bill also allows photography studio salons to hire a cosmetologist to supervise hair arranging in the salons, and exempts photography studios from the cosmetology salon requirements.

Additionally, the bill incorporates changes requested by the DBPR that:

1. Changes the "entitled to licensure by examination" language to say an applicant is eligible for such licensure.
2. Repeals the section specifying the examination authority of the board and the DBPR. This change removes the specific authority in ch. 477 and replaces it with the more general authority of ch. 455. This change has the same potential problems as those discussed above relating to the proposed repeal of the barber's exam provisions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No. Although more people are likely to obtain a restricted barber's license, the bill actually lessens governmental intrusion by opening the practice to Florida and foreign citizens. Also, hair wrappers are currently required by rule to register with the DBPR and pay a fee.

(3) any entitlement to a government service or benefit?

Yes. The government will recognize the practice of hair wrapping instead of making hair wrapping fit into the hair braiding category.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No. Hair wrappers, by board rule, currently are required to pay a \$25 registration fee.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Barbers and hair wrappers pay to register.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. More people will have access to the practice of barbering and hair wrapping.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapters 476 and 477, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Barbers

Section 1. Amends s. 476.114, F.S., to clarify intent and make rulemaking permissive.

Section 2. Amends s. 476.124, F.S., to include additional authority to the Barber's Board over the licensure process; to delete specific application deadlines; and to make the requirement relating to submission of photographs correspond to current DBPR practice.

Section 3. Repeals s. 476.134, F.S., to allow the examination authority in s. 455.217, F.S., to control.

Section 4. Amends s. 476.144, F.S., to allow certain Florida residents and foreign individuals to apply for a restricted barber's license under certain circumstances.

Cosmetologists

Section 5. Amends s. 477.013, F.S., to define "hair wrapping" and "photography studio salon."

Section 6. Amends s. 477.0132, F.S., to provide registration requirements for hair wrappers, exempt them and hair braiders from salon requirements, and provide for use of sanitary implements.

Section 7. Amends s. 477.0135, F.S., to exempt photography studio salons from licensure requirements.

Section 8. Amends s. 477.019, F.S., to provide continuing education requirements for cosmetologists and allow the DBPR to privatize that activity.

Section 9. Repeals s. 477.022, F.S., to give the department the added authority over examinations through s. 455.217, F.S.

Section 10. Amends s. 477.026, F.S., to establish a registration fee for hair wrappers.

Section 11. Amends s. 477.0263, F.S., to allow cosmetologists to work in photography studio salons.

Section 12. Makes the bill take effect July 1 of the year in which it passes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Revenue:	1998-99	1999-00
Department of Business & Professional Regulation Restricted Barber's application fee Professional Regulation Trust Fund	\$15,555	\$15,555

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenue:	1998-99	1999-00
Department of Business & Professional Regulation Professional Regulation Trust Fund	\$15,555	\$15,555

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Persons who become eligible as a result of this bill to apply for a restricted barber's license will pay \$255; \$100 for licensure application, \$150 for examination, and \$5 into the unlicensed activity fund. The DBPR estimates 61 people will apply and pay the fee. Hair wrappers are currently paying the \$25 registration fee under the Cosmetology Board rule, so the bill does not create a new cost.

2. Direct Private Sector Benefits:

Florida citizens who are currently prevented from applying for a restricted barber's license, and, therefore, cannot practice barbering, will be able to do so as a result of this bill.

3. Effects on Competition, Private Enterprise and Employment Markets:

The DBPR estimates 61 people will apply for a restricted barber's license. This small number of new barbers should have little effect on competition or private enterprise.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Representative Chestnut will offer a strike-everything amendment that corrects the problems in the bill that are identified in the Effects of Proposed Changes section of this document.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

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