

STORAGE NAME: h3343s1.grr

DATE: March 26, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3343

RELATING TO: Barbering and Cosmetology

SPONSOR(S): Committee on Governmental Rules and Regulations and Representative Chestnut

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

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 7 NAYS 0
 - (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 3343:

- Makes various changes the DBPR requested for administrative purposes;
- Allows citizens of Florida and foreign countries to obtain a restricted barber's license;
- Establishes a registration process for hair wrappers and exempts them and hair braiders from having to practice in a licensed cosmetology or specialty salon;
- Authorizes continuing education for cosmetologists and allows the DBPR to privatize that activity;
- Allows photography salons to hire a cosmetologist to oversee hair arranging and exempts those salons from having to be licensed as cosmetology salons;
- Provides additional requirements for the operation of mobile cosmetology salons; and
- Provides that the Department shall not issue or renew either a license or registration certificate, under either the barber or cosmetology statutes, to a person, barbershop or salon when there is an outstanding fine, interest or costs associated with or resulting from department enforcement action.

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

The committee substitute creates no additional fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

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.
8. Does not provide the Department with the authority under ch. 476, F.S., to withhold the issuance or renewal of a license or certificate of registration where the person or barbershop has an outstanding fine, interest, or costs associated with departmental enforcement action or has not fulfilled the conditions of a final order.

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.

Finally, as with the barber's statute, DBPR too does not have the authority under ch 477, F.S., to withhold the issuance or renewal of a license or certificate of registration where the person or salon has an outstanding fine, interest, or costs associated with departmental enforcement action or has not fulfilled the conditions of a final order.

B. EFFECT OF PROPOSED CHANGES:

The bill as amended, does the following:

Barbers - Chapter 476, F.S.

- Clarifies intent of statute with regard to applicant eligibility for examination;
- Amends language regarding the submittal by applicants of photographs;
- Amends language regarding the frequency of examinations and the use of private concerns to conduct such tests;
- Amends language relating to applicants for a restricted barbers license and for applicants practicing pending results of examination; and
- Amends language relating to unauthorized practice.

Cosmetologists - Chapter 477, F.S.

- 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;
- Provides that photography studio salons may hire a cosmetologist to supervise hair arranging in the salons, and exempts photography studios from the cosmetology salon requirements;
- Changes the "entitled to licensure by examination" language to say an applicant is eligible for such licensure;
- Provides additional requirements for the operation of mobile cosmetology salons; and
- Amends language relating to unauthorized practice.

The bill provides for an effective date of July 1 of the year in which enacted.

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?

Yes. The board is authorized to adopt rules necessary to govern the licensure, operation, and inspection of mobile cosmetology salons. This authority is would provide the board the means to address, among other things, issues of water acquisition and sewage disposal, vehicle identification, and lettering to be applied to the vehicle.

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

Yes. The board is given responsibility for regulating mobile cosmetology salons. Additionally, 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:

The bill as amended addresses:

Barbers

Section 1. Amends s. 476.114, F.S., to clarify the intent of the statute for applicant eligibility for examination and to make rulemaking permissive.

Section 2. Amends s. 476.124, F.S., to make the requirement relating to submission of photographs correspond to current DBPR practice.

Section 3. Amends s. 476.134, F.S., to direct that the barbers license examination be held not less than four times each year; removes authority of department to employ professional testing services and language related to this activity.

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; creates 476.144(7), F.S., to provide that an applicant may practice barbering pending examination results under the supervision of a licensed barber, and that if the examinee fails the first exam, such examinee may continue to practice so long as the examinee applies for the next available exam but may not continue if the examinee fails the second exam.

Section 5. Amends s. 476.204(1)(c), F.S., to include those practicing barbering pending notification of examination results as persons not unlawfully practicing under ch. 476, F.S.

Section 6. Amends s. 476.214, F.S., to provide that the department shall not issue or renew a license or certificate of registration where a person or barbershop owes an outstanding fine, interest, or costs associated with department enforcement action until such fines, interests or costs are paid in full or until all terms and conditions of the final order are satisfied.

Cosmetologists

Section 7. Amends s. 477.013, F.S., to define "hair wrapping" and "photography studio salon."

Section 8. Amends s. 477.0132, F.S., to provide registration requirements for hair wrappers, requires them to take a 6 hour course which includes instruction in communicable diseases, sanitation and sterilization, disorders and diseases of the

scalp, and the laws affecting hair wrapping; exempts them and hair braiders from salon requirements, and provides for use of sanitary implements.

Section 9. Amends s. 477.0135, F.S., to exempt photography studio salons from licensure requirements.

Section 10. Amends s. 477.019, F.S., to clarify the intent of the statute for applicant eligibility for examination; provide that an applicant may practice pending examination results under the supervision of a licensed cosmetology and that if the examinee fails the first exam, such examinee may continue to practice so long as the examinee applies for the next available exam but may not continue if the examinee fails the second exam; provide for the continuing education requirements for cosmetologists and allow the DBPR to privatize that activity; exempts those whose sole occupation is hair braiding or hair wrapping from the continuing education requirements; and provides that in the mandatory continuing education requirements made pursuant to this chapter shall be accomplished only as a secondary action to any other penalty

Section 11. Amends s. 477.0201, F.S., to provide that a specialist may practice pending issuance of registration upon submission of an application, including proof of successful completion of education requirements, and payment of applicable fees and under the supervision of a registered specialist.

Section 12. Amends s. 477.022, F.S., to provide for the conducting of the examination once a year; and deletes reference to location of testing facilities.

Section 13. Amends s. 411.025, F.S., to provide the statutory basis for the governing of the operations of mobile cosmetology salons.

Section 14. Amends s. 477.026, F.S., to establish a registration fee of \$25 for hair wrappers.

Section 15. Amends s. 477.0263, F.S., to provide a cosmetologist practicing in a photography studio salon is except from the cosmetology statutes relating to practice in a licensed salon.

Section 16. Amends s. 477.028, F.S., to provide that the department shall not issue or renew a license or certificate of registration where a person or salon owes an outstanding fine, interest, or costs associated with department enforcement action until such fines, interests or costs are paid in full or until all terms and conditions of the final order are satisfied.

Section 17. Amends s. 477.029, F.S., to include those practicing hair wrapping or hair braiding to hold themselves out as such pending notification of examination results as persons not unlawfully practicing under ch. 477, F.S.

Section 18 Provides an effective date of July 1 of the year in which the bill 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 & Profession 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.

Additionally, those persons who have outstanding fines, interest, or costs associated with departmental enforcement actions will have to satisfy those debts prior to obtaining the issuance or renewal of a barber or cosmetologist license.

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.

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike-everything amendment was reported favorably by the Committee on Business Regulations and Consumer Affairs in during its meeting of March 11, 1998. The amendment extensively rewrites HB 3343 and was amended in the Committee on Governmental Rules and Regulations and incorporated into a committee substitute. CS/HB 3343 is discussed in the body of this document.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Rebecca R. Everhart

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