

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 771 CS

Cosmetology

**SPONSOR(S):** Carroll

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1630

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>17 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Community Colleges &amp; Workforce Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Thomas</u>	<u>Ashworth</u>
3) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u>	<u>Belcher</u>
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Chapter 477, F.S., regulates the practice of cosmetology which is currently defined to include the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes. Under this practice act, a person could also obtain a specialty registration for more narrow professional services, such as manicuring, pedicuring, or facials. Practitioners may also be registered to practice the occupation of hair braiding, hair wrapping, or body wrapping. Qualifications for licensure as a cosmetologist include 1,200 hours of training at a Florida approved school of instruction and successful completion of the licensure examination. Applicants for registration, as opposed to licensure, must also complete approved training courses relating to their specialty or specific practice.

The bill:

- redefines "cosmetology" to include hair technician services, esthetician services, and nail technician services;
- allows qualified individuals who are authorized to practice, to be licensed as a hair technician, esthetician, nail technician or cosmetologist;
- amends the hair braiding course content requirements and increases the educational hours;
- revises the qualifications for practice, including the allowance of a cosmetologist licensed before January 1, 2007, to perform all services of a licensed cosmetologist; allows a facial specialist registered or enrolled in a cosmetology school before January 1, 2007, to take the exam for an esthetician license; a manicure, pedicure, or nail extension specialist registered or enrolled in a cosmetology school before January 1, 2007, to take the exam for a nail technician license; and allows specialists registered before January 1, 2007, to continue to practice under their specialty registration without taking a licensure examination; provides for the renewal of current specialty registrations;
- revises the requirements for hair technician, esthetician, nail technician and cosmetology applicants and allows persons who were enrolled or began their education prior to January 1, 2007, to take the examination and be licensed as a cosmetologist upon completion of 1,200 educational hours; adds additional procedures for out-of-country and other state endorsement; and
- increases the required educational hours, set by the Board of Cosmetology, for cosmetologists from 1,200 to 1,800, estheticians from 260 to 600, nail specialists from 240 to 350, and hair braiders from 16 to 40.

The Department of Business and Professional Regulation indicates that the additional workload will be handled with existing staff.

The bill provides an effective date of January 1, 2007.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/7/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill requires more education and the development and administration of exams for a new category of licensure, hair technician, as well as more education and the development and administration of exams for an esthetician license and a nail technician license. It also increases the educational hours for a cosmetologist license.

Promote personal responsibility - The bill allows for licensees from another state or country to apply for endorsement rather than by the current requirement of licensure by examination.

The bill allows licensees to provide services at special events (i.e., weddings, proms, corporate events, etc.). Individuals performing the services must be employed by a licensed salon and the scheduling of the event must be made through a licensed salon.

The bill allows individuals who hold a valid cosmetology license in any state or who are authorized to practice in another country, to perform services in conjunction with a department store demonstration and without the requirement that services be performed in a licensed salon.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

The Board of Cosmetology (board) within the Department of Business and Professional Regulation (DBPR) is the agency responsible for the regulation of cosmetology under chapter 477, F.S. No person other than a duly licensed cosmetologist can practice cosmetology or use the name or title of a cosmetologist unless exempted under law.

Section 477.013(4), F.S., defines cosmetology to mean the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

In order to be licensed as a cosmetologist, a person must be at least 16 years of age or have received a high school diploma; must pay the required application fee; must satisfy an experience requirement by being authorized to practice cosmetology in another state or country for at least a year or an education requirement of 1,200 hours of training from a cosmetology program licensed pursuant to chapter 1005, F.S., a cosmetology program within the public school system, Cosmetology Division of the Florida School for the Deaf and the Blind, or a government-operated cosmetology program in the state. Finally, the person must pass the licensure examination.

Cosmetology salons and specialty salons are required to be licensed and cosmetology services can only be performed in a licensed salon unless specifically exempted.

Section 477.0135, F.S., exempts certain persons from the provisions of chapter 477, F.S., when practicing pursuant to their professional or occupational responsibilities and duties.

Section 477.0263(3), F.S., permits a person who holds a valid cosmetology license in any country, territory, or jurisdiction of the United States to perform cosmetology services in a location other than a licensed salon when the services are performed in connection with the motion picture, fashion photography, theatrical, or television industry; a photograph studio salon; a manufacturer trade show demonstration; or an educational seminar.

## Effect of proposed changes

Section 1. Amends 477.013, F.S., to address the definition of “cosmetology” and the services allowed under the “hair technician” license, the “esthetician” license, and the “nail technician” license; clarify that an esthetician can tint eyebrows or eyelashes, clarify that a hair technician can weave or braid a person’s hair; and clarify that a nail technician can manipulate the superficial tissue of a person’s forearms, hands or legs below the knee or feet; moves the body wrapping service into the esthetician license; define “salon” and strike the definition of “specialty salon”; amend the definition of shampooing to mean “cleansing” of the hair rather than just “washing” of the hair; clarify the definition of hair braiding to mean “the weaving or interweaving of a person’s own natural hair” rather than “the weaving or interweaving of natural human hair.”

Section 2. Creates 477.0131, F.S., to specify categories of licensure to include hair technicians, estheticians, nail technicians, and cosmetologists.

Section 3. Amends 477.0132, F.S., to require hair braiding providers to take and pass a course of at least 40 hours consisting of 4 hours of instruction on HIV/AIDS, 5 hours of instruction on sanitation and sterilization, 5 hours of instruction on diseases and disorders of the scalp, 2 hours of instruction on Florida laws and rules, and 24 hours of hands-on instruction in the application and removal of hair braiding; a person may be exempt from the 24 hours of instruction in the application and removal of hair braiding if they demonstrate skill in application and removal of hair braiding through a board-approved examination; body wrappers who hold registrations issued before January 1, 2007, may continue to practice as a body wrapper; the board is required to adopt continuing education requirements for the renewal of body wrapping registrations; and eliminate the allowance for hair braiders, hair wrappers, and body wrappers to practice once their application and fee are submitted.

Section 4. Amends 477.014, F.S., to prohibit the use of “cosmetologist”, “hair technician”, “esthetician”, or “nail technician” and prohibit individuals from practicing as cosmetologists, hair technicians, estheticians or nail technicians without being properly licensed as such; allow cosmetologists licensed before January 1, 2007, to perform all services of a licensed cosmetologist; allow facial specialists and manicure/pedicure/nail extension specialists who are registered or enrolled in school before January 1, 2007, to take the exam for licensure; allow specialists registered before January 1, 2007, to continue to practice under the name of their respective specialty registration without taking the respective licensure exam; give the board rulemaking authority for renewal of registration existing before January 1, 2007.

Section 5. Amends 477.019, F.S., to expand the education requirements, set by the Board of Cosmetology, to make application for examination to include the allowance of applicants to be at least 16 years of age or has received a high school diploma or a GED, or has passed an ability-to-benefit test; require the following educational hour requirements:

- a. Hair Technician – 1,000 hours
- b. Esthetician – 600 hours (from 260 hours)
- c. Nail Technician – 350 hours (from 240 hours)
- d. Cosmetologist – 1,800 hours (from 1,200 hours)

The bill allows a student who has enrolled and begun his/her education before January 1, 2007, to take the exam to be licensed as a cosmetology upon completion of 1,200 hours; require a student who begins his/her education on or after January 1, 2007, to comply with the new educational hours before taking the exam; eliminate the ability of a student to petition the board to sit for the examination after completing 1,000 educational hours; allow a graduate of a licensed cosmetology school or a program within the public school system, after submitting a complete application for examination for licensure as a cosmetologist, hair technician, esthetician or nail technician to practice in his/her respective area for a maximum of 60 days, provided he/she practices under the supervision of a licensed professional in a licensed salon; if he/she fails the exam the first time, he/she may continue to practice under the supervision of a licensed professional in a licensed salon for an additional 60 days, provided the applicant applies for the next available exam; the applicant may not continue to practice if he/she fails

the exam twice; allows for the endorsement of current active out-of-country cosmetology licenses so long as those out-of-country qualifications are substantially similar to, equivalent to, or greater than the qualifications required of applicants from Florida; require the board and the department to adopt procedures to expedite the process by which qualified endorsement applicants may obtain information validating his/her licensure status from the applicant's original state or country; allow for work experience to be substituted for required educational hours in the amount and manner provided by board rule; and remove the current 48 hour cap on the number of hours of continuing education refresher courses.

Section 6. Amends 477.0212, F.S., to require the board to adopt rules for license renewal or continuing education; and increase statutory fee caps for the reactivation of an inactive license – from \$50 to \$100.

Section 7. Amends 477.023, F.S., to add the allowance of the certification of grooming and salon services training programs to the already existing cosmetology training programs within the public school system and does not prevent the government operation of any other cosmetology program in this state.

Section 8. Amends 477.025, F.S., to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 9. Amends 477.026, F.S. to add hair technicians, estheticians, and nail technician categories to the current fee structures; and to eliminate application and endorsement registration fees for specialists.

Section 10. Amends 477.0263, F.S., to exempt individuals conducting department store demonstrations who hold a valid cosmetology license in another state or country to provide cosmetology services outside of a license salon and allow licensees or registrants to perform services outside a licensed salon for special events so long as the person is employed by a licensed salon and appointments for such services are made through a licensed salon.

Section 11. Amends 477.0265, F.S., to change references from “cosmetology” to “in the field of cosmetology.”

Section 12. Amends 477.028, F.S., to add conforming language to include “hair technician, esthetician, or nail technician” and change references from “cosmetology” to “in the field of cosmetology.”

Section 13. Amends 477.029, F.S., to add conforming language to include “hair technician, esthetician, or nail technician” strike reference to “cosmetology” salon.

Section 14. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 15. Provides an effective date of January 1, 2007.

#### C. SECTION DIRECTORY:

Section 1. Amends 477.013, F.S., relating to the definition of “cosmetology” and the services allowed under the “hair technician” license, the “esthetician” license, and the “nail technician” license.

Section 2. Creates 477.0131, F.S., specifying categories of licensure to include hair technician, estheticians, nail technicians, and cosmetologists.

Section 3. Amends 477.0132, F.S., relating to hair braiding, hair wrapping, and body wrapping registration.

Section 4. Amends 477.014, F.S., relating to qualifications for the practice of cosmetology.

Section 5. Amends 477.019, F.S., expanding the education requirements.

Section 6. Amends 477.0212, F.S., requiring the board to adopt rules for license renewal or continuing education; and increase statutory fee caps for the reactivation of an inactive license – from \$50 to \$100.

Section 7. Amends 477.023, F.S., relating to schools of cosmetology licensure.

Section 8. Amends 477.025, F.S. relating to cosmetology salons; specialty salons; requisites; licensure; inspection; mobile cosmetology salons, and to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 9. Amends 477.026, F.S. relating to fees, revising fee provisions.

Section 10. Amends 477.0263, F.S., relating to cosmetology services to be performed in licensed salon; exception.

Section 11. Amends 477.0265, F.S., relating to prohibited acts to change references from “cosmetology” to “in the field of cosmetology.”

Section 12. Amends 477.028, F.S., relating to disciplinary proceedings to add conforming language.

Section 13. Amends 477.029, F.S., relating to penalties to add conforming language.

Section 14. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 15. Provides an effective date of January 1, 2007.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

### **FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.

2. Expenditures: None.

### **B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **C. FISCAL COMMENTS:**

The DBPR projects:

- that the bill has a fiscal impact on the DBPR related to workload, testing services and licensure costs;
- the Division of Professions will need additional Other Personal Services (OPS) staff in the board office and expenses budget for travel as this bill will increase board meeting agendas and require additional travel days; and
- licensure costs will be associated with the creation of the new licenses (new application processing procedures, updating LicensEase to incorporate new licenses and their requirements, creation of new applications forms, renewal processing for new license types, etc.).

The DBPR estimates they will also have additional exam testing costs the first year related to the development of four new examinations for cosmetology licensure. The department indicates that the additional workload will be handled with existing staff.

### Fee Caps

The DBPR notes that since first being regulated in 1978, cosmetology fee caps have been at the \$25 fee level. Fees for endorsement applications were raised to the current level of \$50 in 1982. Fees for reactivation were set at the current level of \$50 in 1983. As of December 31, 2005, the balance in the cosmetology account within the Professional Regulation Trust Fund was a negative \$1,042,545. Without raising the fee caps, the projected deficit as of June 30, 2009, is estimated to be \$5,151,823.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill gives the board authority to develop continuing education rules for the renewal of body wrapping registrations and all other registrations existing prior to January 1, 2007. The bill allows for work experience to substitute for required educational hours in the amount and manner provided by board rule. The bill provides rulemaking authority for the renewal or reactivation requirements for inactive licensees. There is rulemaking authority which currently exists to include the proposed allowance for hair technicians, estheticians, nail technicians or registered specialists to perform services in a location other than a licensed salon such as a nursing home, hospital or residence when a client, for reasons of ill health, are unable to go to a licensed salon. The bill grants rulemaking authority for the allowance of services outside a licensed salon for special events so long as the individual is employed by a licensed salon and schedules appointments through a licensed salon.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

The DBPR notes:

- Section 3. – It is unclear as to how the provision exempting a hair braiding applicant from the required 24 hours of instruction through demonstration of skill in application and removal of hair braiding through a board-approved examination would be implemented.
- Language should be included in the existing statute to show that the department currently issues a full specialty registration. A full specialty registration is merely a combination of the facial and manicure/pedicure/nail extension specialty registrations.

## **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 16, 2006, the Business Regulation Committee adopted four amendments which modified the bill in the following manner and reported the bill favorably with committee substitute.

Amendment #1 and #2 by Carroll - Removes language referencing "manipulating tissue" to avoid conflict with massage therapy.

Amendment #3 by Carroll - Removes language to clarify that an applicant for licensure must provide documentation for approval by endorsement.

Amendment #4 by Carroll - Deletes a duplicate sentence inadvertently placed in the bill.

On April 4, 2006, the Community Colleges and Workforce Committee adopted two amendments which modified the bill in the following manner. This analysis reflects the bill as amended.

Amendment #1 – Removes the increase of the fee caps that the Board of Cosmetology may authorize for the licensing fees collected by DBPR.

Amendment #2 – Removes the word “epilating”.