

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 415                      Cosmetology

**SPONSOR(S):** Carroll and others

**TIED BILLS:**                                      **IDEN./SIM. BILLS:** SB 996

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>10 Y, 0 N</u>	<u>Livingston/Smith</u>	<u>Liepshutz</u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u></u>	<u>Livingston/Topp</u>	<u>Thorn</u>
3) <u>Policy &amp; Budget Council</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. 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;
- revises the qualifications for practice, including the allowance of a cosmetologist licensed before July 1, 2009, to perform all services of a licensed cosmetologist; allows a facial specialist registered or enrolled in a cosmetology school before July 1, 2009, to take the exam for an esthetician license; a manicure, pedicure, or nail extension specialist registered or enrolled in a cosmetology school before July 1, 2009, to take the nail technician exam; allows specialists registered before July 1, 2009, 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 July 1, 2009, 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
- splits the cosmetology license requirement of 1200 hours of training into three separate licenses and establishes new education training hours for each license. The skin care specialist registration (260 hours) becomes an esthetician license with 600 hours of training. The manicure, pedicure/nail specialist registration (240 hours) becomes a nail technician license with 350 hours of training. A hair technician license is created with 1,000 hours of training (new license). A cosmetologist license will encompass all three licenses and require 1800 hours of training. In current statute a cosmetologist is a hair stylist only not a person who is trained and licensed in all three professional areas.

The bill contains a nonrecurring appropriation of \$60,149 from the department's Administrative Trust Fund for fiscal year 2008-2009. Per the department, the legislation will provide no new revenues in FY 08-09 and will cost approximately \$196,764. After FY 2008-09, the department anticipates annual revenues of approximately

\$233,920 with expenses of \$75,000 in FY 2009-10 and \$56,000 in FY 2010-11. The department is requesting half (.50) of one Full-time Equivalent position for FY 2008-09 and two short-term part-time OPS positions.

## **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 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, such as persons in the armed services.

Section 477.0263(3), F.S., allows a person who holds a 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 which combines all three licenses.

Section 3. Amends 477.0132, F.S., to allow body wrappers who hold registrations issued before January 1, 2009, to continue to practice as a body wrapper and requires the board to adopt continuing education requirements for the renewal of body wrapping registrations.

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, 2009, 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, 2009, to take the exam for licensure; allow specialists registered before January 1, 2009, 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, 2009.

Section 5. Amends 477.019, F.S., to expand the education requirements, set by the board, to make application for examination to include a GED, or has passed an ability-to-benefit test<sup>1</sup>, in addition to being at least 16 years of age or having received a high school diploma; to 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, 2009, to take the exam to be licensed as a cosmetology upon completion of 1,200 hours; requires a student who begins his/her education on or after January 1, 2009, to comply with the new educational hours before taking the exam; eliminates the ability of a student to petition the board to sit for the examination after completing 1,000 educational hours; allows a graduate of a licensed cosmetology school or a program

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<sup>1</sup> The “Ability to Benefit Test” or ATB is a list of tests, that are acceptable to DOE and the federal government that can be administered to determine that a person is at a high enough academic functioning level to benefit from instruction. Passage of the ATB will allow a student to obtain federal financial aid for their cost of attendance to the school. It is not administered by the school/institution but by a 3rd party, someone on DOE’s test administration list. It is most often used for people who do not have a high school diploma. E-mail from Susan Lehr, VP Government Relations, Florida Community College, Jacksonville, and dated 1/26/2007.

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 for a maximum of 60 days, the services are provided under the supervision of a licensed professional in a licensed salon; if the applicant fails the exam the first time, the applicant 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; failure of the examination on two occasions would void the temporary authority to conduct services under supervision; allows for the endorsement of current active out-of-country cosmetology licensees so long as those out-of-country qualifications are substantially similar to, equivalent to, or greater than the qualifications required of applicants from Florida; allows for work experience to be substituted for required educational hours in the amount and manner provided by board rule; and removes 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 continuing education rules for license renewal.

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 appropriation of \$60,149 of nonrecurring funds from the Administrative Trust Fund of the DBPR upon becoming a law for fiscal year 2008-2009

Section 16. Provides an effective date of July 1, 2009.

#### C. SECTION DIRECTORY:

Section 1. Amends 477.013, F.S., relating to the definition of “cosmetology”; 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 training requirements.

Section 6. Amends 477.0212, F.S., requiring the board to adopt rules for license renewal or continuing education.

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, to add hair technicians, estheticians, and nail technician categories to the current fee structures

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

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 appropriation upon becoming a law for the 2008-2009 Fiscal Year.

Section 16. Provides effective dates of July 1, 2008 for the appropriation section and of July 1, 2009 for the remaining sections of the bill.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The department does not anticipate any revenues in FY 2008-09 and then annual revenues of \$233,920 thereafter.

REVENUE			
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Licensure by Endorsement Fees: 2,924 applicants	0	\$233,920	\$233,920
Application \$50, License \$25, Unlicensed Activity \$5			
TOTAL:	0	\$233,920	\$233,920

2. Expenditures:

The proposed legislation will cost approximately \$196,764 in its first year and will then drop off to \$75,000 in FY 2009-10 and \$56,000 in FY 2010-11.

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
<b>Recurring Budget</b>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Salaries/Benefits # of FTE's CIU .50 FTE	19,871	19,871	19,871
Salary Rate 14,719			
Other Personal Services Div. of Professions	15,845	15,845	0
Examination Testing Svcs for PR ( Cat. 100106)	7,000	7,000	7,000
Expenses	9,544	9,544	6,700
Contract Services	0	0	0
HR Services/TR/DMS	265	265	199
Subtotal	52,525	52,525	33,770

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
<b>Non-Recurring Budget</b>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Other Personal Services Testing & Education	15,845	0	0
Expense	3,388	0	0
Operating Capital Outlay	1,000	0	0
Examination Testing Svcs for PR ( Cat. 100106)	23,940	0	0
Contracted Services - IT	50,000	0	0
HR Services/TR/DMS	66	0	0
Subtotal	94,239	0	0

<b>Non-Operating Expenditures</b>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Service Charge to GR (7.3% of revenue)	0	17,076	17,076
Indirect Costs (DBPR Administrative Overhead)	50,000	5,000	5,000

Other/Transfers	0	0	0
Subtotal	0	17,076	17,076
TOTAL Expenditures	196,764	74,601	55,846

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The proposed legislation increases education requirements, which will increase costs to students in the cosmetology, esthetician, nail technician, full specialist and body wrapper programs.

**D. FISCAL COMMENTS:**

The bill contains a nonrecurring appropriation of \$60,149 from the department's Administrative Trust Fund for fiscal year 2008-2009.

Per the department, the legislation will provide no new revenues in FY 08-09 and will cost approximately \$196,764. After FY 2008-09, the department anticipates annual revenues of approximately \$233,920 with expenses of \$75,000 in FY 2009-10 and \$56,000 in FY 2010-11. The department is requesting half (.50) of one Full-time Equivalent position for FY 2008-09 to be located in the Central Intake Unit to assist with increased applications and two short-term part-time OPS positions, one of which will be located in the Division of Professions for FY 2008-09 and FY 2009-10 and will assist with the increased workload in the board office, and the other of which will be located in the Division of Service Operations for FY 2008-09 and will assist with exam development.

Other expenditures are related to one-time costs of modifying the department's licensing by adding new license types required by the legislation and developing three new exam types for the new licenses. Less the nonrecurring appropriation of \$60,149 as provided in the bill, the department will operate at a deficit of \$136,615 for the first year, and the department believes that a Special Assessment on a four-year cycle would be required to support the costs of the changes proposed in this legislation. The Board of Cosmetology recently had to transfer \$800,000 from its Unlicensed Activity Account to its Operating Account because revenues have not been able to support current regulatory costs.

**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 noted.

B. RULE-MAKING AUTHORITY:

The bill requires the board to adopt rules restricting applicants from repeating duplicative training curricula between licensure categories. 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, 2009. 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, is 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:

In the 2007 legislative session, SB 920 relating to cosmetology and which was nearly identical to this bill, was passed and sent to the Governor. The legislation was vetoed by Governor Crist. The veto message states, in part,

“While I support efforts to protect the public, I am concerned that this bill provides too much regulation without a justifiable need. I believe that government exists to accomplish the will of the people, not to restrict economic or personal liberties. This bill dramatically increases the educational requirements that a person must meet before entering the workplace – in some cases, it more than doubles the current requirements. I am concerned that this bill is overly burdensome and would have negative impacts on peoples’ livelihoods. Regulation should protect the public, but not limit competition or act as state sponsored protectionism against free enterprise.

D. STATEMENT OF THE SPONSOR

The Strike-All that I have submitted will compromise hours for cosmetologist to 1500 hours which is the national standard. This bill has the full support of the Florida Association of Beauty Professionals, Community Colleges, Salon Owners, and Private Beauty Schools. The current law has not been updated in 23 years which has created a need for health and safety of our public.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On February 21, 2008 the Business Regulation committee adopted a strike-everything amendment and passed the bill favorably, as amended. The strike-all amendment differs from the bill as filed in the following areas:

Reduces hours of education for new cosmetologist license 1800 to 1500 hours (current law is 1200);



Specifies cosmetologist scope of practice for new license is specified for: hair stylist services to include hair removal services (eyebrows and lip by waxing and tweezing); nail services for the natural nails for pedicure and manicure (excludes artificial nails); and facials (excludes expanded skin care treatments with chemicals and other extensive services);

Codifies, for nail and skin services, certain rules relating to health and safety requirements on contagious/communicable disease and infection and disinfection requirements;

Prohibits the use of a credo blade (razor for removing calluses);

Allows an applicant to schedule to take the licensure examination upon graduation when the student has 100 hours left before graduation;

Authorizes board and DBPR to evaluate the feasibility, processes and associated costs of utilizing a national exam for cosmetology licenses;

Changes the term from "hair technician" to "hair stylist;"

Removes the provision that allowing students to work without being licensed after they failed their licensure exam.