

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 415 Cosmetology

SPONSOR(S): Jobs & Entrepreneurship Council, Carroll and others

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

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 & Entrepreneurship Council</u>	<u>16 Y, 0 N, As CS</u>	<u>Livingston/Topp</u>	<u>Thorn</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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:

The bill redefines the practice of cosmetology to include hair stylist services, esthetician services, and nail technician services. The bill authorizes a person to obtain a license as a hair stylist, esthetician, or nail technician. A cosmetologist may provide all three of these specialty services. The bill defines the services that each class of license may perform. Persons licensed as a cosmetologist or as a specialist under current law may continue to hold their current license or registration.

The bill increases minimum education requirements. It increases the minimum required hours for licensure as a cosmetologist from 1,200 to 1,500 hours. The bill requires 1,000 minimum hours of education for a hair stylist. It increases the minimum number of hours from 260 to 600 required for an esthetician and from 240 to 350 for a nail technician. The bill allows a student who has enrolled and begun formal education before July 1, 2009, to take the examination to be licensed as a cosmetologist upon completion of 1,200 hours of training.

The bill re-defines the term "salon." The bill authorizes cosmetology and cosmetology specialty services to be performed outside of a licensed salon under certain circumstances. It also allows persons holding a valid cosmetology license in any state to conduct department store demonstrations.

The bill contains a recurring appropriation of \$22,712 and a nonrecurring appropriation of \$51,000 from the department's Administrative Trust Fund for fiscal year 2008-2009 and a recurring appropriation of \$18,755 and a nonrecurring appropriation of \$24,696 from the department's Professional Regulation Trust Fund. The total appropriation for FY 2008-09 is \$117,163. The department anticipates annual revenues of approximately \$233,920 and regulatory costs in out-years of approximately \$48,000 in FY 2009-10 and \$30,000 in FY 2010-11.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill requires more education and the development and administration of examinations for a new category of licensure, hair stylist, as well as more education and the development and administration of examinations 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

Definitions

Section 1. Amends 477.013, F.S., to address definitions. The bill amends s. 477.013(3), F.S., to redefine the term “cosmetologist” to include all the services licensed under chapter 477, F.S.

The bill also amends s. 477.013(4), F.S., to redefine the term cosmetology to mean the practice of performing or offering to perform for compensation any of the listed services for aesthetic rather than medical services.

The bill defines the term “hair stylist” in s. 477.013(6), F.S. Hair stylist services include treating a person’s hair, hair weaving, shampooing, servicing an artificial hairpiece and coloring and styling a mustache or beard. Hair stylist services also include providing basic hair removal procedures.

The term “esthetician” relates to non-medical, cosmetic facial services. Esthetician services include beautifying the skin, facials, hair removal, tinting eyebrows and lashes, body wrapping and skin baths. Nail technician services include treating a person’s nails by manicuring and pedicuring, affixing artificial nails. The services also include cleansing a person’s forearms, hands, legs below the knee, or the feet.

The bill includes body wrapping services within the esthetician license classification. The bill includes a definition for “body wrapping” under the definition for “esthetician services” in s. 477.013(5)(f), F.S. “Body wrapping” by an esthetician includes “the application of oils, lotions, or other fluids to the body using wraps.” However, the bill also maintains the current “body wrapping” specialty and the current definition for the term in s. 477.013(14), F.S.,

The bill deletes the current definition for the term “specialty salon.” It defines the term “salon” to mean a place of business where the practice of one or more of the cosmetology, hair stylist, esthetician, nail technician, or specialty services are offered or performed for compensation.

The bill deletes the term “specialty” and includes the current definition for that term within the meaning of the term “specialist.” In addition, the bill deletes the current definition for the term “skin care services” and redefines those terms within the meaning of “specialist.”

The bill amends the definition of “specialist” in s. 477.013(9), F.S., to provide that a specialist’s services include the massaging of the hands. It also provides that a specialist’s services include “skin care services” without involving message.

The bill amends the definition for the term “shampooing” to mean “cleansing” of the hair rather than “washing” of the hair. It also deletes the reference to “applying hair tonics” from the definition.

The bill amends 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.” It deletes the current definition of “skin care services.”

License Classifications

Section 2. Creates 477.0131, F.S., to specify categories of licensure to include hair stylists, estheticians, nail technicians, and cosmetologists (which combines all three licenses).

Section 3. Amends 477.0132, F.S., to increase the required course hours for body wrapping from 12 to 40 hours.

Section 4. Amends 477.014, F.S., to prohibit the use of “cosmetologist”, “hair stylist”, “esthetician”, or “nail technician” and prohibit individuals from practicing as cosmetologists, hair stylists, estheticians or nail technicians without being properly licensed as such; allow cosmetologists licensed before July 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 July 1, 2009, to take the exam for licensure; allow specialists registered before July 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 July 1, 2009.

Section 5. Amends s. 477.016, F.S., to require that the board adopt rules to require and enforce health protection standards for the performance of natural or artificial nail services. The rules must provide for the maintenance of a clean and safe work area through pedicure equipment disinfection requirements.

Section 6. Amends s. 477.019, F.S., by creating (3), to allow cosmetology students to apply for the licensure examination for any cosmetology license during the last 100 hours of training. Upon approval of the application, the applicant may schedule the examination for a date when the training hours are completed. The applicant has six months from the date of approval to take the examination. The applicant must reapply if he or she fails to take the examination after six months of the approval. The bill authorizes the board to establish by rule the procedures for the pregraduate application process.

Section 7. Also amends s. 477.019, F.S., to increase from 1,200 to 1,500 the minimum number of required hours of training for a full cosmetology license, composed of training from the hair stylist, esthetician, and nail technician curricula.

The bill requires 1,000 minimum hours of education for a hair stylist. It increases from 260 to 600 hours the minimum number of required hours for an esthetician (currently the 260 hours is only applicable to the facial specialty), and from 240 to 350 the minimum number of required hours for a nail technician.

The bill increases the required education hours for persons providing the current services of a facial specialist from 260 to 600 hours.

The bill authorizes a student who has enrolled and begun formal education before July 1, 2009, to take the exam to be licensed as a cosmetologist upon completion of 1,200 hours of training. It requires that a student who begins education on or after July 1, 2008, to comply with the new minimum required hours of training before taking the examination.

The bill delays until July 1, 2009 the repeal of the right of students of a licensed cosmetology school or program to apply for the examination after completing a minimum of 1,000 educational hours. This delayed effective date permits currently enrolled cosmetology students to take the cosmetology examination after completing a minimum of 1,000 educational hours.

The bill allows an applicant who passes all parts of the licensure examination for a cosmetologist, hair stylist, esthetician, or nail technician on their first attempt, to practice until receipt of the respective license. The applicant must practice under the supervision of an individual who holds the same active license or a cosmetologist licensed before July 1, 2009. If an applicant fails any part of the examination the first time, the applicant may immediately reapply for reexamination.

The bill authorizes licensure by endorsement of current active out-of-country cosmetology licenses, in addition to practice in another state, provided that the out-of-country qualifications are substantially similar to, equivalent to, or greater than the qualifications required of Florida licensees.

Section 8. Amends 477.0212, F.S., to require the board to adopt continuing education rules for license renewal.

Section 9. 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 10. Amends 477.025, F.S., to eliminate the distinction between a cosmetology salon and a specialty salon.

Fees

Section 11. Amends 477.026, F.S. to include hair stylists, estheticians, and nail technicians in the fee structure while maintaining the current fee cap of \$25 for original licensing and renewal, and \$50 for an endorsement application, examination, and reexamination. The current cap for specialists is \$30. Registration fees for hair braiders and hair wrappers remain unchanged at \$25, and body wrappers are included in the fees for the estheticians.

Services

Section 12. 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 13. Amends 477.0265, F.S., to prohibit the use of a device containing a razor blade, commonly referred to as a credo, to remove, scrape, and cut calluses from the hands or feet.

Conforming References

Section 14. Also amends 477.0265, F.S., to conform to the new licensing terminology of cosmetologist, hair stylist, esthetician, and nail technician.

Section 15. Amends 477.028, F.S., to add conforming language to include hair stylist, esthetician, or nail technician.

Section 16. Amends 477.029, F.S., to add conforming language.

Section 17. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 18. The bill requires that the department in conjunction with the board evaluate the feasibility, processes, and associated costs of using a national examination for cosmetology, hair stylist, esthetician, and nail technician services licenses that would improve reciprocity with other states. The bill requires that the findings of this evaluation must be made available to the Legislature and the public no later than January 1, 2009.

Section 19. Provides an appropriation.

Section 20. Provides an effective date of July 1, 2008, except as otherwise provided in the bill.

C. SECTION DIRECTORY:

Section 1. Amends 477.013, F.S., relating to the definitions.

Section 2. Creates 477.0131, F.S., specifying categories of licensure.

Section 3. Amends 477.0132, F.S., increasing hours for body wrapping registration.

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

Section 5. Amends s. 477.016, F.S., requiring board rules relating to health standards for nail services.

Section 6. Amends 477.019, F.S., expanding the training requirements.

Section 7. Also amends s. 477. 019, F.S., relating to hours of training and education.

Section 8. Amends 477.0212, F.S., requiring the board to adopt rules for license renewal or continuing education.

Section 9. Amends 477.023, F.S., relating to schools of cosmetology licensure.

Section 10. Amends 477.025, F.S. to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 11. Amends 477.026, F.S. relating to fees.

Section 12. Amends 477.0263, F.S., relating to services to be performed in a licensed salon with exceptions.

Section 13. Amends 477.0265, F.S., relating to prohibited acts.

Section 14. Also amends s. 477.0265, F.S., to conform to new licensure terminology.

Section 15. Amends 477.028, F.S., relating to disciplinary proceedings to add conforming language.

Section 16. Amends 477.029, F.S., relating to penalties to add conforming language.

Section 17. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 18. Requires evaluation of recommendations for reciprocity with other states.

Section 19. Provides an appropriation upon becoming a law for the 2008-2009 Fiscal Year.

Section 20. Provides effective dates of July 1, 2008 and July 1, 2009 for certain 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.

2. Expenditures:

The proposed legislation will cost approximately \$117,163 in its first year and will then drop off to \$48,000 in FY 2009-10 and \$30,000 in FY 2010-11.

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 recurring appropriation of \$22,712 and a nonrecurring appropriation of \$51,000 from the department's Administrative Trust Fund for fiscal year 2008-2009 and a recurring appropriation of \$18,755 and a nonrecurring appropriation of \$24,696 from the department's Professional Regulation Trust Fund. The total appropriation for FY 2008-09 is \$117,163. The department anticipates annual revenues of approximately \$233,920 and regulatory costs in out-years of approximately \$48,000 in FY 2009-10 and \$30,000 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. The appropriation provided in the bill is expected to cover all implementation costs to the department.

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: gives the board rulemaking authority for renewal of registrations existing before July 1, 2009; requires that the board adopt rules to require and enforce health protection standards for the performance of natural or artificial nail services (the rules must provide for the maintenance of a clean

and safe work area through pedicure equipment disinfection requirements); authorizes the board to establish by rule the procedures for the pregraduate application process for taking the licensure examination early; authorizes the board to adopt rules to prevent an applicant from having to repeat curricula components; provides that a person who holds one or more licenses may obtain an additional license by completing training as determined by board rule; provides that work experience may be substituted for education hours in an amount and manner determined by board rule; allows the number of hours for continuing education refresher courses to be set by board rule; and requires that the board adopt rules for the continuing education requirements prior to license renewal or reactivation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the 2007 legislative session, SB 920 relating to cosmetology and which was similar 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 [bill] 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 March 6, 2008 the Jobs & Entrepreneurship Council adopted a council substitute and passed the bill favorably. The CS 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 allowing students to work without being licensed after they failed their licensure exam.

Replaces original appropriation of \$60,146 with \$117,163 per the department's analysis and estimate of needs.