



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 213\***

131st General Assembly

(As Reported by S. Government Oversight and Reform)

**Sens.** Jordan and Tavares, Beagle, Brown, Eklund, Uecker, Yuko

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## **BILL SUMMARY**

### **Boutique services**

- Establishes "boutique services" as a separate branch of cosmetology and requires each individual wishing to practice that branch to register with the State Board of Cosmetology.

### **Prohibited activity**

- Prohibits an individual from practicing a branch of cosmetology in a location other than a licensed facility unless the individual is exempt from the Cosmetology Law.
- Prohibits an individual from using cosmetology to treat or attempt to cure a physical or mental disease or ailment.
- Creates additional penalties for an individual who uses or possesses a prohibited substance at a school of cosmetology or salon.

### **Cosmetology licensing**

- Requires an applicant for a salon operator's license to affirm that the applicant will post a toll-free number and online process for customers to report violations of the Cosmetology Law and ensure compliance with the bill's apprenticeship requirement.

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\* This analysis was prepared before the report of the Senate Government Oversight and Reform Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Eliminates "managing" cosmetology licenses and eliminates the requirement that every salon have a managing cosmetologist present to supervise at the salon when the salon is open for business.
- Creates "advanced" cosmetology licenses, which are largely similar to the eliminated managing cosmetology licenses.
- Modifies application and licensing procedures for licenses issued by the Board.
- Increases various fees charged by the Board.
- Permits the Board to develop and administer its own examinations or to contract with a national testing service to develop or administer the examinations.

### **Disciplinary actions**

- Makes the following grounds for licensee discipline: a conviction of or plea of guilty to a human trafficking violation, failure to cooperate with an investigation or inspection, or failure to respond to a subpoena.
- In certain circumstances, allows the Board to take disciplinary action against a licensee without conducting an adjudication hearing.
- Modifies the fines that may be issued for violations of the Cosmetology Law.
- Requires continuing education for licensees to include training on identifying and addressing human trafficking, safety and sanitation, and law and rule updates.

### **State Board of Cosmetology**

- Allows the Board to investigate and inspect individuals and premises of a person who is alleged to have violated the Cosmetology Law, regardless of whether that person is licensed by the Board.
- Requires the Board to provide a toll-free number and online service to receive complaints of violations of the Cosmetology Law.
- Expands the Board's hiring authority by allowing the Board to hire other individuals necessary for the administration of the Cosmetology Law.
- Adds two individuals to the Board's membership.
- Requires the Board to issue a rule with respect to the timing of licensure examination for students who have not yet completed education.

## General

- Expands the list of activities covered under the practice of esthetics to include enhancement of the skin by skin care, facials, body treatments, hair removal, and other treatments; and eye lash extension services.
- Clarifies the list of activities covered by the practice of manicuring.
- Makes other changes to the Cosmetology Law.

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## CONTENT AND OPERATION

### Boutique services

The bill establishes boutique services as a separate branch of cosmetology.<sup>1</sup> "Boutique services," under the bill, include braiding, threading, and shampooing.

Under the bill, the "practice of braiding" means utilizing the technique of intertwining hair in a systematic motion to create patterns in a three-dimensional form, including patterns that are inverted, upright, or singled against the scalp that follow along straight or curved partings. It may include twisting or locking the hair while adding bulk or length with human hair, synthetic hair, or both and using simple devices such as clips, combs, and hairpins. The "practice of braiding" does not include any of the following:

- Application of weaving, bonding, and fusion of individual strands or wefts of hair;
- Application of dyes, reactive chemicals, or other preparations to color, straighten, curl, or alter the structure of hair;
- Embellishing or beautifying hair by cutting or singeing it (except as needed to finish the ends of synthetic fibers used to add bulk or lengthen hair).

The phrase "practice of braiding" does not appear to be used in the Cosmetology Law or the bill and it is unclear whether the practice of braiding is meant to differ from braiding. Continuing law defines "braiding" as intertwining the hair in a systematic motion to create patterns in a three-dimensional form, inverting the hair against the scalp along part of a straight or curved row of intertwined hair, or twisting the hair in a systematic motion, and includes extending the hair with natural or synthetic hair fibers.

The bill defines "threading" and "shampooing" as follows:

- "Threading" includes a service that results in the removal of hair from its follicle from around the eyebrows and other parts of the face with the use of a single strand of thread and an astringent. A service is not threading if

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<sup>1</sup> R.C. 4713.69.



chemicals of any kind, wax, or any implements, instruments, or tools are used to remove the hair.<sup>2</sup>

- "Shampooing" means the act of cleansing and conditioning an individual's hair in preparation to immediately receive a service from an individual licensed under the Cosmetology Law.

### **Boutique services registration**

The bill establishes a registration requirement for an individual practicing boutique services. To be issued a boutique services registration from the Board, an applicant must be at least 16, be of good moral character, and must have the equivalent of an Ohio public school tenth grade education. Additionally, the applicant must pay a registration fee of \$10 and submit a written application on a form prescribed by the Board that contains all of the following:

- The applicant's name and home address;
- The applicant's home telephone number and cellular telephone number (if the applicant has a cellular telephone number);
- The applicant's email address, if the applicant has one;
- The applicant's date of birth;
- The address and telephone number where boutique services will be performed under the registration (the address may not be a P.O. box);
- If the applicant has an occupational license, certification, or registration to provide beauty services in another state, the type of license and the state of licensure;
- Whether the applicant has ever had an occupational license, certification, or registration suspended, revoked, or denied in any state;
- An affidavit providing proof of formal training or apprenticeship under an individual providing boutique services.

An individual who holds a current, valid boutique registration with the Board may engage in the practice of boutique services, but no other branch of cosmetology. The place of business where boutique services are performed must comply with the safety and sanitation requirements for licensed salon facilities under continuing law.

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<sup>2</sup> R.C. 4713.01.



Within six months after the bill's effective date, the Board must specify the manner by which boutique services registrants must meet continuing education requirements that may be adopted by the Board.<sup>3</sup>

## **Inspections**

The bill permits the Board, on its own motion or on receipt of a written complaint, to investigate or inspect the activities or premises of any individual or entity that is alleged to have violated the Cosmetology Law, regardless of whether that individual or entity is licensed by the Board. If it determines based on its investigation that there is reasonable cause to believe an individual or entity is in violation, the Board is required to give the person notice and a hearing in accordance with the Administrative Procedure Act.<sup>4</sup> The Board must keep a transcript of the hearing and issue a written opinion to all parties of its findings and ground for any disciplinary actions it takes.<sup>5</sup>

## **Prohibited activity**

The bill prohibits an individual from practicing a branch of cosmetology in a location other than a licensed facility unless the individual or practice is exempt from the Cosmetology Law. The bill defines "licensed facility" as any premises, building, or part of a building in which the Board authorizes cosmetology services to be performed. And the bill defines "salon" to mean a licensed facility on any premises, building, or part of a building in which an individual engages in the practice of one or more branches of cosmetology.

The bill prohibits an individual from using cosmetology to treat or attempt to cure a physical or mental disease or ailment.

Whoever violates one of these prohibitions is guilty of a fourth degree misdemeanor for a first offense. For each subsequent offense, a violator is guilty of a third degree misdemeanor.<sup>6</sup>

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<sup>3</sup> R.C. 4713.14(C)(5) and (D)(5), 4713.35, and 4713.69.

<sup>4</sup> R.C. Chapter 119.

<sup>5</sup> R.C. 4713.66.

<sup>6</sup> R.C. 4713.14(Q) and (R), 4713.01, 4713.35, and 4713.99.



## **Penalties for prohibited substances**

The bill also creates additional penalties for an individual who uses or possesses a prohibited substance at a school of cosmetology or salon. Under the bill, if a Board inspector samples a product used or sold in a salon or school and determines that an individual has used or possessed a prohibited substance in violation of the Cosmetology Law, the Board must take disciplinary action against the individual. Under continuing law, the following substances are prohibited: (1) any cosmetic product containing an ingredient that the U.S. Food and Drug Administration (FDA) has prohibited by regulation, (2) any cosmetic product used in a manner inconsistent with a restriction established by the FDA regulation, and (3) any liquid nail monomer containing any trace of methyl methacrylate (MMA). Any fine assessed against the individual for a prohibited substance violation must include the cost of the inspector's test. A person's license may be suspended or revoked.

Additionally, under continuing law an individual who violates the prohibited substance prohibition is guilty of a fourth degree misdemeanor for a first offense and a third degree misdemeanor for a subsequent offense.<sup>7</sup>

## **Types of licensing and registration**

### **Managing licensee becomes advanced licensee**

The bill eliminates the managing cosmetologist, managing esthetician, managing hair designer, managing manicurist, and managing natural hair stylist licenses that are currently issued by the Board. The bill replaces these licenses with "advanced" licenses of the same type and requires the Board to replace all existing managing licenses with "advanced" licenses of the same type not more than two years after the bill's effective date. For example, the Board must issue an "advanced esthetician" license to an individual who holds a managing esthetician license before the bill's effective date.

Requirements for "advanced" licensure are largely the same as the requirements for obtaining a managing license under current law. Under continuing law, an applicant must have either a specified number of advanced training hours from a school licensed in Ohio, or have practiced a minimum specified number of hours in Ohio or another state.

For the training option, the bill lowers the number of "advanced" training hours needed for advanced licensure to 100 hours, regardless of the branch of cosmetology licensed. Therefore, a student in a licensed cosmetology school in Ohio can complete the

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<sup>7</sup> R.C. 4713.141, 4713.14(M), and 4713.99.



number of hours required for an initial license to practice plus an additional 100 hours of advanced training in order to meet the qualifications of advanced licensure.

For the practice option, the bill lowers the number of practice hours required to obtain an advanced license to 1,800 regardless of the branch of cosmetology licensed. Under current law, applicants for a manager's license must complete at least 2,000 practice hours.

An advanced licensee generally has the same privileges and responsibilities of managing licensee under current law, but as outlined in "**Salon management**," below, an advanced licensee is not specifically licensed to manage salons. An advanced licensee is specifically permitted to work in a beauty salon, as opposed to managing it as under current law. Because the duty to manage a salon is removed, it is unclear how, in practice, an advanced licensee differs from a practicing licensee (although, as discussed above, an individual wishing to obtain advanced status must satisfy additional requirements).<sup>8</sup>

## **License to operate a salon**

### **Salon management**

The bill eliminates the requirements that the Board adopt rules governing the management of salons. Also, the bill eliminates the management requirement for salons operating under the Cosmetology Law. Thus, under the bill, a salon need only affirm that an individual holding a current, valid, cosmetologist license pertaining to the branch of cosmetology services performed at the salon will be present during the salon's operating hours or posted salon hours. Under current law, to be licensed to operate a salon, an individual applying for the license must affirm that a managing cosmetologist or individual with the appropriate type of managing license will have charge of and immediate supervision over the salon at all times when the salon is open for business. If the salon is engaged primarily in retail sales, current law requires a managing cosmetologist or managing licensee to have charge of and immediate supervision over the salon only during advertised service hours if the practice of cosmetology is restricted to those posted hours.<sup>9</sup>

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<sup>8</sup> R.C. 4713.14(E), 4713.01, 4713.25, 4713.30, 4713.35, and 4713.55 and Section 3, with conforming changes in R.C. 2925.01, 4713.081, 4713.09, 4713.31, 4713.34, 4713.36, 4713.39, 4713.56, 4713.58, 4713.59, 4713.60, 4713.61, 4713.62, and 4713.63.

<sup>9</sup> R.C. 4713.41 and 4713.08.





## License to operate a salon – generally

In addition to continuing law requirements for a salon operating license, the bill requires an applicant for a license to also affirm both of the following:

- That a notice containing a toll-free number and online process for reporting alleged violations of the Cosmetology Law as prescribed by the Board is posted at the salon in a common area for all customers of the salon;
- That all newly licensed individuals required to complete the bill's apprenticeship requirements (see "**Apprenticeships**," above) are required by the operator to do so.<sup>10</sup>

## Independent contractor license

Under the bill, the Board may issue a license to engage in the practice of a branch of cosmetology as an independent contractor to an applicant who holds a current valid license for the type of salon in which the applicant will practice, and who satisfies other conditions. Current law requires that the applicant have a valid license to manage a salon in order to be eligible for an independent contractor license. As described above, the bill eliminates the manager's license. And the bill does not require that an applicant for an independent contractor license hold the advanced license that is established by the bill.<sup>11</sup>

## Instructor's license

In addition to current law requirements for obtaining a cosmetology instructor's license, the bill requires that an applicant have an Ohio school of cosmetology certify to the Board that the applicant has successfully completed courses in educating students using standards established by the Department of Education and approved by the Board.<sup>12</sup>

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<sup>10</sup> R.C. 4713.35 and 4713.41.

<sup>11</sup> R.C. 4713.39.

<sup>12</sup> R.C. 4713.31.



## **Regulation of tanning facilities**

The bill expands the definition of tanning facility to also include premises that contain equipment or booths that use chemicals applied to human skin, including chemical applications commonly referred to as spray-on, mist-on, or sunless tans.<sup>13</sup>

## **Discipline against licensees**

### **Additional grounds for discipline**

The bill expands the grounds for which the Board may take disciplinary action against a licensee, registrant, or permit holder to include the following reasons:

- Failure to cooperate with an investigation or inspection;
- Failure to respond to a subpoena;
- Conviction of or plea of guilty to a violation of the criminal offense of trafficking in persons;
- In the case of a salon, any person's conviction of or plea of guilty to a violation of the criminal offense of trafficking in persons for an activity that took place on the premises of the salon.

The bill limits the Board's ability to take disciplinary action for failing to comply with the Cosmetology Law's requirements to only those requirements dealing with safety, sanitation, and licensing. <sup>14</sup>However, the bill prohibits the Board from taking disciplinary action against an individual licensed to operate a salon or cosmetology school for a violation of the Cosmetology Law that was committed by an individual licensed to practice a branch of cosmetology while practicing within the salon or school, when the individual's actions were beyond the control of the salon owner or the school.<sup>15</sup>

### **Discipline without adjudication**

Continuing law requires the Board to generally take disciplinary action pursuant to the Administrative Procedure Act – the Board must provide a notice and hearing before taking the action. Continuing law allows the Board to impose discipline without a notice and hearing under certain conditions. The bill allows the Board to take

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<sup>13</sup> R.C. 4713.01.

<sup>14</sup> R.C. 4713.64(A)

<sup>15</sup> R.C. 4713.64(I).



disciplinary action without conducting an adjudication against an individual or salon that violates the human trafficking prohibitions added by the bill (see "**Additional grounds for discipline**," above).

The Board must notify a licensee or registrant who is in violation of a law subject to disciplinary action and the owner of the salon in which the conditions constituting the violation were found. The individual receiving the notice of violation and the owner of the salon may request a hearing under the Administrative Procedure Act. Under continuing law, the Board may take action against the individual or owner if a hearing has not been requested, (or under the bill, a consent agreement has not been entered into) by 30 days after the date the Board notifies the individual or owner.

The bill also expands the Board's current law authority to take disciplinary action without adjudication for health and safety violations. Under current law, the Board may take this emergency action if an inspector believes that a condition in a tanning facility creates an immediate danger to the health and safety of a person using a tanning facility. The bill expands that authority to allow the Board to take emergency action for an immediate danger to the health or safety to any person using any facility licensed under the Cosmetology Law.

The bill also allows the Board, in lieu of adjudication, to enter into a consent agreement with the licensee, permit holder, or registrant. If the agreement is ratified by a majority vote of a quorum of the Board, it is considered to constitute the Board's findings and orders with respect to the matter addressed in the agreement. If the Board does not ratify the agreement, the case must be scheduled for adjudication under the Administrative Procedure Act.<sup>16</sup>

### **Notice of discipline or adjudication**

The bill also provides alternative methods by which the Board may provide notice of an adjudication or disciplinary action to be taken by the Board. Under the bill, in addition to the methods of notification prescribed by the Administrative Procedure Act, the Board may send these required notices by any delivery method that is traceable and requires that the delivery person obtain a signature to verify that the notice has been delivered. The Board may also send these notices by email, so long as the email delivery system certifies that the notice has been received.<sup>17</sup>

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<sup>16</sup> R.C. 4713.64(C), (G), and (H).

<sup>17</sup> R.C. 4713.64(J).



## Fines

The bill also modifies the limits on fines that may be issued for violations of the Cosmetology Law. Under the bill, those limits apply only to violations of the Cosmetology Law that are discovered as the result of an inspection. The following table illustrates the changes made by the bill to the fine limits in current law:

<b>Offense</b>	<b>Current law limits for fines imposed against licensees</b>	<b>Limits for fines imposed against licensees under the bill</b>
First time a violator commits an offense	\$500	\$250 plus \$100 for each additional violation discovered during that inspection
Second time a violator commits an offense	\$1,000, if the violator has previously been fined for the offense	\$500 plus \$200 for each additional violation discovered during the inspection
Third and subsequent time a violator commits an offense	\$1,500, if the violator has been fined for the same offense two or more times	\$1,000 plus \$300 for each additional violation discovered during the inspection

Under the bill, the Board is required to issue an order notifying a violator of a fine imposed. The notice must specify the date by which the fine must be paid, which must be less than 45 days after the Board issues the order. The Board may extend the time for payment to up to 90 days after the Board issues the order upon the request of a violator or on the Board's own motion.

If a violator does not pay the fine by the date specified in the order and does not request an extension within ten days after the date the Board issues the order, the Board must add an additional penalty equal to 10% of the fine. If the fine is not paid within 90 days after the Board's order, the Board must add interest to the fine at a rate specified in rules adopted by the Board.

If a penalty remains unpaid on the 91st day after the Board issues an order, the Board must certify the amount of the fine and any interest or additional penalty to the Attorney General for collection. The Attorney General may assess the collection cost to the amount certified.<sup>18</sup>

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<sup>18</sup> R.C. 4713.64(E).

## **Application for licensure**

The bill requires an individual, as part of the license application, to submit a set of the individual's biometric fingerprint scan taken at the board's offices, and include, in addition to the requirements under continuing law, on the written application form furnished by the Board all of the following:

(1) The individual's name and any identifying information required by the Board;

(2) A recent photograph of the individual that meets the specifications established by the Board;

(3) A photocopy of the individual's current driver's license or other proof of legal residence.<sup>19</sup>

## **Examinations**

The bill requires examinations for licensure for any branch of cosmetology to assess the ability of an applicant to maintain a safe and sanitary place of service delivery. The bill allows the Board to develop and administer the appropriate examination or to contract with a national testing service to develop or administer the examination.

### **Cosmetology instructor examination**

The bill requires the Board, not later than two years after the bill's effective date, to create a curriculum and an examination for licensure as a cosmetology instructor and to conduct an examination for each individual who meets the requirements for admission to the examination.

The bill also requires the Board to adopt rules regarding the equipment or supplies an individual must bring to a licensing examination.

With respect to examination questions, the bill prohibits the Board from releasing the questions developed for an examination and the practical demonstrations used in the testing process, except for either of the following purposes: (1) review or rewriting of any part of the examination on a periodic basis as prescribed in rules adopted by the Board or (2) testing of individuals in another state for admission to the profession of cosmetology or any of its branches as required under a contract or by means of a license with that state. In addition, examination papers and scored results of the practical

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<sup>19</sup> R.C. 4713.20 and 4713.28.



demonstrations of an individual examined by the Board must be open for inspection by the individual or the individual's attorney for at least 90 days following the announcement of the individual's grade, except for papers that under the terms of a contract with a testing service are not available for inspection. On written request made by the individual or the individual's attorney no later than 90 days after announcement of the individual's grade, the Board must have the individual's examination papers re-graded manually.

Also, the bill specifies that test materials, examinations, or evaluation tools used in an examination for licensure under the Cosmetology Law that the Board develops or contracts with a private or government entity to administer are not public records under Ohio Public Records Law, or any other Ohio law.<sup>20</sup>

## **Licensing fees**

The bill increases fee amounts, which must be charged and collected by the Board, as follows:

- For a temporary pre-examination work permit, increased from \$5 to \$7.50.
- For initial application to take an examination, increased from \$21 to \$31.50.
- For application to retake an examination, increased from \$21 to \$31.50.
- For issuance of a practicing license, an advanced license or an instructor license, increased from \$30 to \$45.
- For issuance of a license to practice a branch of cosmetology or an instructor license to an applicant who is licensed in another state or county, increased from \$60 to \$70.
- For renewal of a license, increased from \$30 to \$45.
- For issuance of a new salon license or change of name or ownership of a salon license, increased from \$60 to \$75.
- For renewal of a salon license, increased from \$50 to \$60.

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<sup>20</sup> R.C. 4713.24.



- For lapsed license renewal, increased from \$30 to \$45 per license renewal period that has elapsed since the license was last issued or renewed, but not fees for more than three lapsed renewal periods.
- For a duplicate license, increased from \$15 to \$20.
- For the processing of a check returned for insufficient funds, increased from \$20 to \$30.

The bill also establishes a fee of \$10 for the issuance of a boutique services registration.

The bill also allows for the Board to establish an installment plan for the payment of fines and fees, to extend the date payment is due by up to 90 days, and to reduce fees as considered appropriate by the Board. If the licensee has not paid the fee by the due date, the Board must certify the amount of the fee to the Attorney General for collection. The Attorney General may assess the collection cost to the amount certified.<sup>21</sup>

### **Additional continuing education requirements**

Current law allows the Board of Cosmetology to adopt rules to establish a continuing education requirement for licensees of up to eight hours in a biennial licensing period. The bill applies that requirement to boutique services registrants. The bill also requires any continuing education requirements adopted by the Board to include training in identifying and addressing the crime of trafficking in persons. Additionally, at least two of the eight hours of continuing education must be earned in courses concerning safety and sanitation, and at least one of the eight hours must be earned in courses concerning law and rule updates.<sup>22</sup>

Also, current law requires the Board to inform each affected licensee of the continuing education requirement that applies to the next licensing period. The bill clarifies that the continuing education requirements must be included in the renewal notification it sends the licensee.

Furthermore, the bill requires that continuing education requirements be completed by January 15 of each odd-numbered year. Current law requires that the education be completed by January 30.<sup>23</sup>

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<sup>21</sup> R.C. 4713.08(A)(18)(a)(i), 4713.10, and 4713.63.

<sup>22</sup> R.C. 4713.09.

<sup>23</sup> R.C. 4713.59.

## **Designations on licenses**

The bill requires each salon license and independent contractor license issued by the Board to specify the branch of cosmetology that the license entitles the holder to offer.<sup>24</sup> Continuing law includes the same requirement for the other licenses issued by the Board.

## **Display of license**

The bill eliminates the requirement that every holder of a practicing license, instructor license, or independent contractor license display the license in a public and conspicuous place in the place of the holder's employment. Instead, a licensee or a boutique services registrant need only maintain the board-issued wallet-sized license or electronically generated license certification or registration and a current government-issued photo identification that can be produced upon inspection or request. The bill similarly modifies the display requirement for cosmetic therapists and massage therapists who offer professional services in a salon.<sup>25</sup>

## **Schools of cosmetology**

The bill allows a school of cosmetology operated by a private person to offer competency-based credit for the purpose of satisfying minimum hours of training and instruction. Under current law, although any school may offer clock hours or credit hours for purposes of satisfying instruction requirements, only a school operated by a public entity may offer competency-based credit.

The bill also requires every school of cosmetology to annually review the subjects and coursework required to receive an initial cosmetology license and an advanced license and to incorporate training standards adopted by the Board.<sup>26</sup>

## **Activities exempt from the Cosmetology Law**

Under the bill, a student in a career-technical program learning a branch of cosmetology may continue developing skills in that branch of cosmetology after completing the required coursework or obtaining a license by working in the school clinic if the individual's services are provided in the licensed school clinic and the

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<sup>24</sup> R.C. 4713.55.

<sup>25</sup> R.C. 4713.56.

<sup>26</sup> R.C. 4713.45.





student does not receive any compensation. This authority terminates when the student graduates.<sup>27</sup>

## **State Board of Cosmetology**

### **Board duties**

In addition to the Board's current law duties, the bill requires the Board to do all of the following:

- Regulate the practice of cosmetology and all of its branches within Ohio;
- Investigate the activities or inspect the premises of an individual or licensee if it appears that the Cosmetology Law has been violated;
- Provide a toll-free number and an online service to receive complaints of violations of the Cosmetology Law;
- Include the email address and telephone number of each individual issued a license or registration under the Cosmetology Law in the annual report submitted by the Board to the Governor under continuing law.
- Require Board-appointed inspectors to conduct inspections of licensed facilities, within 90 days of the opening of those facilities for business, upon a complaint reported to the Board, within 90 days of a documented violation, and at least once every two years (independent contractors are treated as individual salons for purposes of these inspections);
- Provide to each individual authorized to operate a facility under the Cosmetology Law a copy of the poster created by the Ohio Department of Public Safety that provides information regarding the national human trafficking resource center hotline.

The bill allows the Board to delegate any of the above duties, as well as any of the Board's continuing law duties, to the Executive Director of the Board or to a person designated by the Executive Director.<sup>28</sup>

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<sup>27</sup> R.C. 4713.16(F).

<sup>28</sup> R.C. 4713.07.



## **Board employees**

The bill expands the Board's continuing law hiring authority by allowing the Board to hire individuals as necessary for the administration of the Cosmetology Law. Currently the Board may hire inspectors, examiners, consultants on examination contents, and clerks. The bill also expands the role of inspectors hired by the Board to include inspection and investigation of all facilities regulated by the Cosmetology Law. Under current law, these inspectors inspect only tanning facilities.<sup>29</sup>

## **Board membership**

The bill adds two new members to the Board:

One individual who holds a current, valid esthetician license and who has been actively practicing esthetics for a period of not less than five years immediately preceding the individual's appointment; and

One member who holds a current, valid tanning permit and who has owned or managed a tanning facility for at least five years immediately before being appointed to the Board. The first tanning facility member must be appointed by the Governor on or before December 31, 2016, and will serve from the date of appointment until October 31, 2021. Under continuing law, subsequent terms of office are for five years.

With the bill's elimination of the managing cosmetologist license, the current law requirement for two of the Board's members to hold valid managing cosmetologist licenses and be actively engaged in managing a beauty salon is modified. Instead those two Board members must hold current cosmetologist licenses and must be actively engaged in managing beauty salons for at least five years, but need not be licensed as a managing cosmetologist.

Under the bill, the Board's independent contractor member must hold a valid independent contractor license at the time of appointment. Under current law, the appointee must be either an independent contractor, or an owner or manager of a salon where an independent contractor practices cosmetology. As a result of this amendment, an owner or manager of such a salon who holds a seat on the Board on the bill's effective date may retain that seat until the current term of the seat expires.

The bill modifies the requirement for the Board member who represents schools of cosmetology. The bill specifies that this member must be an owner or executive

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<sup>29</sup> R.C. 4713.06.



actively engaged in the daily operations of the school. Current law requires that this member be an owner of a licensed school of cosmetology.

The bill also specifies that not more than one member of the Board may have a common financial connection with, any school of cosmetology or salon.<sup>30</sup>

### **Board officers**

The bill requires the Board to elect from among themselves a vice-chairperson, in addition to the chairperson they are required to elect under current law. The bill also requires the Board's Executive Director to serve as the Board's Secretary.<sup>31</sup>

### **Board records**

Continuing law requires the Board to keep public records open for inspection, and the bill requires the Board to do so in accordance with Ohio's Public Records Law and in accordance with any rule adopted by the Board in compliance with Ohio's records retention policy.<sup>32</sup>

### **Immunity**

The bill also provides civil immunity for an individual for reporting information to the Board that appears to show a violation of the Cosmetology Law or for testifying before the Board in an administrative hearing. The civil immunity does not apply if the individual reports or testifies in bad faith.<sup>33</sup>

### **Board to issue rule regarding examination before education completion**

The bill requires the State Board of Cosmetology, not more than two years after the bill's effective date, to adopt a rule under the Administrative Procedure Act to specify the circumstances under which an applicant for a licensure examination may take the examination before having successfully completed the minimum number of educational hours required for the applicable license. The rule must include a provision requiring that a school of cosmetology confirm the number of hours that have been successfully completed by the applicant.<sup>34</sup>

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<sup>30</sup> R.C. 4713.02 and Sections 4 and 6.

<sup>31</sup> R.C. 4713.02 and 4713.06.

<sup>32</sup> R.C. 4713.02.

<sup>33</sup> R.C. 4713.07.

<sup>34</sup> Section 5.



## Annual report

Beginning one year after its effective date, the bill also requires the Board to annually submit to the Governor, President of the Senate, and Speaker of the House of Representatives a written report that lists all of the following activity for the preceding 12-month period, as well as any recommendations the Board has for changes to the Cosmetology Law:

- The number of students enrolled in courses at licensed public and private cosmetology schools;
- The number of students graduating from licensed public and private cosmetology schools;
- The annual cost of attendance at each licensed public or private cosmetology school;
- The loan default rates for licensed public and private cosmetology schools;
- The first-time licensure exam passage rate for graduates of all public and private cosmetology schools;
- The total number of new and renewal licenses in each cosmetology profession;
- The total number of complaint-driven inspections conducted by the Board;
- The total number and type of violations, including a list of the top ten violations (to aid in the identification of focus areas for continuing education purposes);
- The 20 salons and individuals cited with the most violations for unlicensed workers;
- The number of adjudications or disciplinary actions taken by the Board.<sup>35</sup>

## Cosmetology definitions

The bill makes the following changes to terms defined in the Cosmetology Law:<sup>36</sup>

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<sup>35</sup> R.C. 4713.071.

<sup>36</sup> R.C. 4713.01.



The bill defines **cosmetology** as the art or practice of embellishment, cleansing, beautification, and styling of hair, wigs, postiches, face, body, or nails.

The bill expands the list of activities covered by the current law definition of the **practice of esthetics** to include enhancement of the skin by skin care, facials, body treatments, hair removal, and other treatments, and eye lash extension services. "Hair removal" and "eye lash extensions" are defined as follows:

"Hair removal" includes tweezing, waxing, sugaring, and threading. "Hair removal" does not include electrolysis.

"Eye lash extensions" include temporary and semi-permanent enhancements designed to add length, thickness, and fullness to natural eyelashes.

The bill clarifies, by definition, that the **practice of manicuring** includes cleaning, trimming, shaping the free edge of, or applying polish to any individual's nails, applying nail enhancements and embellishments to any individual; and using lotions or softeners on an individual's hands or feet.

The bill specifies that a **salon** does not mean a tanning facility, although a tanning facility may be located in a salon.

## Technical changes

The bill changes "person" to "individual" throughout the Cosmetology Law when "person" is used more narrowly than as it is defined for the Revised Code.<sup>37</sup> For purposes of the Revised Code as a whole, "person" is defined to include an individual, corporation, business trust, estate, trust, partnership, and association.<sup>38</sup>

## Additional changes

The bill makes additional nonsubstantive and conforming changes to the Cosmetology Law that are not covered in this analysis.<sup>39</sup>

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<sup>37</sup> R.C. 4713.01, 4713.02, 4713.07, 4713.08, 4713.081, 4713.082, 4713.13, 4713.14, 4713.16, 4713.17, 4713.20, 4713.21, 4713.22, 4713.24, 4713.25, 4713.26, 4713.28, 4713.34, 4713.35, 4713.37, 4713.41, 4713.42, 4713.44, 4713.45, 4713.48, 4713.56, 4713.57, 4713.58, 4713.60, 4713.61, 4713.62, 4713.63, 4713.64, 4713.641, and 4713.99.

<sup>38</sup> R.C. 1.59(C), not in the bill.

<sup>39</sup> R.C. 4713.01, 4713.02, 4713.03, 4713.44, and 4713.48.

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## HISTORY

### ACTION

### DATE

Introduced  
Reported, S. Gov't Oversight & Reform

09-23-15  
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