



# Ohio Legislative Service Commission

## Bill Analysis

Carol Napp

### **Sub. H.B. 453**

129th General Assembly

(As Reported by H. State Government & Elections)

**Reps.** Grossman, Martin, Stebelton, Thompson, J. Adams, C. Hagan, Hackett, Roegner, Fedor

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## **BILL SUMMARY**

### **STATE BOARD OF COSMETOLOGY**

#### **Powers and duties of the Board**

- Modifies requirements for licenses issued by the State Board of Cosmetology.
- Adds to the requirements for a license to practice a branch of cosmetology, manage a salon, or be a cosmetology instructor a requirement that the application include a recent photograph and proof that the applicant is a legal resident of Ohio or a contiguous state.
- Adds to the requirements for a license to practice a branch of cosmetology a requirement that the applicant show proof of legal residency in the United States.
- Regarding licensing examinations, prohibits release of questions and practical demonstrations except in limited circumstances, but requires an individual's examination papers and demonstration results to be open for inspection by the individual or the individual's attorney, unless this is precluded by a contract with a testing service.
- Permits the Board to investigate or inspect the activities or premises of any person alleged to have violated the cosmetology law, regardless of whether the person is licensed by the Board and permits the Board to discipline for failing to cooperate with an investigation or inspection or to respond to a subpoena.
- Gives the Board or the executive director authority to compel, by order or subpoena, the attendance of witnesses to testify in relation to a matter that is subject to an investigation by the Board.

- Permits the Board to enter into a consent agreement with a license or permit holder who is subject to disciplinary action in lieu of a hearing.
- Permits the Board to require a license holder who is subject to disciplinary action to take corrective action courses.
- Changes the fee for the restoration of a license that is no longer valid.
- Permits the Board to extend the due date for the payment of fees or fines, and requires the Board to certify unpaid fees or fines to the Attorney General for collection.
- Establishes penalties for late payment of fines.

### **Practice of braiding**

- Establishes braiding as a separate branch of cosmetology and requires licensure of braiding stylists, salon managers, instructors, and salons beginning 12 months after the bill's effective date.
- Clarifies that the holder of a hair design or natural hair styling license may practice or teach braiding to the extent that it is part of the practice of hair design or natural hair styling.

### **Practice of threading**

- Establishes threading as a new branch of cosmetology and requires licensure of threading stylists, salon managers, instructors, and salons beginning 12 months after the bill's effective date.
- Clarifies that the holder of a license to practice esthetics may practice or teach threading to the extent that threading is part of the practice of esthetics.

### **Report regarding licensure of braiders and threaders**

- Requires the Board to submit three annual reports regarding licensure of braiders and threaders, starting one year after the bill's effective date.

### **ADMINISTRATIVE PROCEDURE**

- Replaces a requirement that a state agency send notice of a party's right to a hearing under the Administrative Procedure Act by registered mail, return receipt requested, with a requirement that the notice be delivered in person or sent using a delivery system that delivers letters and other materials in the ordinary course of business with traceable delivery and signature receipt.

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## CONTENT AND OPERATION

### STATE BOARD OF COSMETOLOGY

#### Powers and duties of the Board

##### Licenses

###### Application

The bill requires that an application for a license to practice a branch of cosmetology, manage a salon, or be a cosmetology instructor be submitted on a form furnished by the State Board of Cosmetology. It adds the following to the required components of an application:

- (1) The name of the applicant and any other identifying information the Board requires;
- (2) A recent photograph that meets specifications established by the Board;
- (3) A photocopy of the applicant's current driver's license or other proof of legal residence in Ohio or a state contiguous to Ohio;
- (4) Proof that the applicant is qualified to take the examination for the license sought.

As under existing law, the application must include an oath verifying that the application is true and be accompanied by the applicable fee.<sup>1</sup>

The bill requires an individual seeking admission to a licensing examination to submit to the Board a set of the individual's fingerprint impressions. It retains the current requirement that the individual submit as part of the license application proof that the individual satisfies all conditions for the license for which the examination is conducted, other than having passed the examination.<sup>2</sup>

The bill changes the education required for a practicing or managing license from the existing requirement of the equivalent of an Ohio public school 10th grade education to any of the following: (1) graduation from an Ohio high school, (2) the equivalent of an Ohio high school diploma, or (3) a score on an ability-to-benefit test approved by the United States Department of Education and administered under the

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<sup>1</sup> R.C. 4713.28, 4713.30, and 4713.31.

<sup>2</sup> R.C. 4713.20.

Department's guidelines that the Board considers to be satisfactory evidence of possessing at least a 10th-grade level education.<sup>3</sup> For an instructor license it changes the requirement from the existing requirement of the equivalent of an Ohio public school 12th grade education to the three options listed above.<sup>4</sup>

The bill does not change the other requirements applicable to all cosmetology practicing, managing, and instructor licenses: an applicant must be at least 16 years old for a practicing or managing license or at least 18 years old for an instructor license, be of good moral character, and pay the applicable fee.<sup>5</sup>

#### **License to practice a branch of cosmetology**

The bill adds a requirement that an applicant for a practicing license show proof of legal residency in the United States.<sup>6</sup>

As under current law, the bill permits the Board to waive a condition that must be met to be granted a practicing license for an applicant who practices that branch of cosmetology in a state or country that does not license or register branches of cosmetology. However, the bill requires a vote of a majority of the Board.<sup>7</sup>

#### **License to manage a salon**

The bill adds to the requirements for a managing license a requirement that the applicant either already have a current, active practicing license or be qualified to sit for an examination for both a practicing license and a managing license.<sup>8</sup> "Managing license" is defined in current law to include authority to practice the branch of cosmetology practiced at the salon being managed. The bill changes the definition to authorize the holder to manage a salon offering a branch of cosmetology appropriate to the license.<sup>9</sup> The result of these changes is that a person managing a salon must have both a practicing license and a managing license.

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<sup>3</sup> R.C. 4713.28 and 4713.30.

<sup>4</sup> R.C. 4713.31.

<sup>5</sup> R.C. 4713.28, 4713.30, and 4713.31.

<sup>6</sup> R.C. 4713.28.

<sup>7</sup> R.C. 4713.29.

<sup>8</sup> R.C. 4713.30.

<sup>9</sup> R.C. 4713.01.

The bill also changes part of a requirement for an initial managing license. Under current law, an applicant for an initial managing license in any branch of cosmetology must do either of the following:

(1) Have a managing license holder or owner of a salon licensed in the applicable branch of cosmetology located in Ohio or another state certify to the Board that the applicant has practiced that branch of cosmetology for at least 2,000 hours in a salon licensed in that branch of cosmetology or as a cosmetologist in a licensed beauty salon;

(2) Have a school of cosmetology licensed in Ohio certify to the Board that the applicant has successfully completed, in addition to the hours required for a practicing license in the applicable branch of cosmetology, a specified number of Board-approved managing training hours in the applicable branch of cosmetology.

The bill modifies only the first option. It requires that the managing license holder or salon owner who certifies the applicant's hours be an individual for whom the applicant performed services in a licensed salon.<sup>10</sup>

#### **Instructor license**

As with the initial manager's license, the bill modifies the requirement for an initial instructor license by requiring that the individual who certifies that the applicant has been engaged in the practice of a branch of cosmetology be an individual for whom the applicant performed services in a licensed salon. The bill specifies that the salon in which the applicant was employed may be in Ohio or another state.<sup>11</sup> An instructor license authorizes the holder to teach the theory and practice of a branch of cosmetology at a school of cosmetology.<sup>12</sup>

#### **Out-of-state applicant**

An applicant for a practicing, managing, or instructor license in Ohio who is licensed in another state or country must meet certain requirements. The bill adds the following to those requirements:

(1) Proof of legal residence in the United States;

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<sup>10</sup> R.C. 4713.30.

<sup>11</sup> R.C. 4713.31.

<sup>12</sup> R.C. 4713.01.

(2) A recent photograph that meets specifications established by the Board.<sup>13</sup>

The bill specifies that the examination an applicant for an Ohio practicing or managing license who is licensed in another state or country must pass must be a practical and theory examination.<sup>14</sup>

#### **License to operate a salon**

The bill specifies that an application for a license to operate a salon must be submitted on a form furnished by the Board. The bill, like current law, permits the application to be submitted by the owner, manager, or individual in charge of a salon. The bill adds the following to the required components of the application:

(1) The name of the person applying for the license, the location of the salon, and any other identifying information the Board requires;

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

(3) A photocopy of the current driver's license of the individual signing the application or other proof of the individual's legal residence in Ohio or a contiguous state;

(4) Proof that the person satisfies all conditions to obtain the license.<sup>15</sup>

The bill requires the Board to specify on each salon license the branch of cosmetology the license authorizes the license holder to offer.<sup>16</sup>

The bill also makes technical changes to the definitions of "salon," "beauty salon," "esthetics salon," "hair design salon," "nail salon," and "natural hair style salon."<sup>17</sup>

#### **Independent contractor license**

The bill establishes requirements for an independent contractor license that are more detailed than those of current law. An independent contractor license authorizes

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<sup>13</sup> R.C. 4713.34(A)(3) and (4).

<sup>14</sup> R.C. 4713.34(A)(5).

<sup>15</sup> R.C. 4713.41.

<sup>16</sup> R.C. 4713.55.

<sup>17</sup> R.C. 4713.01.

the holder to practice a branch of cosmetology at a salon at which the holder rents space.<sup>18</sup>

Existing law requires that an applicant for an independent contractor license hold a current, valid manager's license and satisfy conditions established in the Board's rules. Under the bill, an individual who holds a current valid manager's license must be granted a license to practice as an independent contractor in the branch of cosmetology for which the manager's license was issued if the individual does both of the following:

(1) Completes an application on a form furnished by the Board that includes the individual's name, physical and e-mail addresses, telephone number, and any other information required by rules adopted by the Board;

(2) Submits to the Board a signed statement attesting that the individual will comply with all of the required duties of an independent contractor license holder.<sup>19</sup>

To meet the duties of an independent contractor, an individual must do all of the following:

(1) Practice in a space the individual rents in a licensed salon and post the independent contractor license in that space;

(2) Supply all of the supplies the individual will use in the practice;

(3) Set the individual's own schedule;

(4) Pay all applicable taxes and comply with any applicable state or federal law or local ordinance;

(5) Pay for any insurance coverage.

The bill requires an independent contractor who rents space in a salon to enter into a contract with the salon or the salon's owner. The contract must specify the business relationship between the parties and the responsibilities of each party. The salon or salon owner must comply with all applicable state and federal laws and local ordinances.<sup>20</sup>

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<sup>18</sup> R.C. 4713.01.

<sup>19</sup> R.C. 4713.39(A).

<sup>20</sup> R.C. 4713.39(B) and (C).



An independent contractor must complete of instruction in business and tax as a condition of license renewal in an amount established by the Board in rules, not to exceed four hours. This instruction is in addition to any continuing education required by the Board.<sup>21</sup>

The bill requires the Board to specify on each independent contractor license the branch of cosmetology the license entitles the license holder to offer within a licensed salon.<sup>22</sup>

### **Tanning facility permit**

The bill requires, rather than permits, the holder of a permit to operate a tanning facility to renew the permit by January 31 of each odd-numbered year and specifies that this permit is necessary to continue operating the facility. Under the bill, the Board must renew the permit on the holder's payment of the renewal fee.<sup>23</sup>

The bill also changes the "tanning facility" definition to specify that a tanning facility is any premises, building, or part of a building that contains one or more rooms or booths with tanning equipment or beds. Existing law defines a tanning facility as a room or booth that houses tanning equipment or beds.<sup>24</sup>

The bill changes the prohibition related to the operation of a tanning facility to specify that a person may not operate a tanning facility that is offered to the public for a fee *or otherwise*, rather than for *other compensation*, without a current, valid permit.<sup>25</sup>

### **License to operate a school of cosmetology**

The bill requires that an application for a license to operate a school of cosmetology be submitted on a form furnished by the Board. It adds the following to the required components of an application:

(1) The name of the person applying for the license, the location of the school, and any other identifying information required by the Board;

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

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<sup>21</sup> R.C. 4713.09.

<sup>22</sup> R.C. 4713.55.

<sup>23</sup> R.C. 4713.48.

<sup>24</sup> R.C. 4713.01.

<sup>25</sup> R.C. 4713.14(T).

(3) Proof that the person satisfies all conditions to obtain the license.<sup>26</sup>

## **Examinations**

The Board is required to conduct the examinations for licenses issued by the Board. The bill permits the Board to either develop and administer an appropriate examination or enter into an agreement with a national testing service to develop the examination, administer it, or both.<sup>27</sup> The Board must adopt rules regarding the equipment or supplies an individual is required to bring to the examination.<sup>28</sup>

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.<sup>29</sup> In addition, examination papers and scored results of the practical 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.<sup>30</sup>

## **Fees**

### **Restoration fee**

The bill changes the fee for the restoration of a license that is no longer valid. Under the bill, this fee is an amount equal to the sum of the following: (1) the current renewal fee, (2) any applicable late fees, and (3) if one or more renewal periods have elapsed since the license was valid, the lapsed renewal fees for not more than three of those renewal periods.<sup>31</sup> Under current law, this fee is \$30 plus the current renewal fee,

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<sup>26</sup> R.C. 4713.44.

<sup>27</sup> R.C. 4713.24(A).

<sup>28</sup> R.C. 4713.24(C).

<sup>29</sup> R.C. 4713.24(D).

<sup>30</sup> R.C. 4713.24(E).

<sup>31</sup> R.C. 4713.10(A)(11).

any applicable late fees, and a lapsed renewal fee of \$45 per license renewal period that has elapsed since the license was last issued or renewed.<sup>32</sup>

The bill also removes a requirement that lapsed renewal fees be deposited into the state's general revenue fund.<sup>33</sup>

### **Payment of fees**

The bill permits the Board to establish an installment plan for the payment of fees and to reduce fees as considered appropriate by the executive director.

The bill also permits the Board to extend the due date for a fee payment by up to 90 days, either at the request of a person who is temporarily unable to pay a fee or on the Board's own motion. If the fee remains unpaid after the due date, the amount of the fee must be certified to the Ohio Attorney General for collection in the form and manner prescribed by the Attorney General. The Attorney General may assess the collection cost to the amount certified in such a manner and amount as prescribed by the Attorney General.<sup>34</sup>

### **Prohibited activities**

The bill adds the following to the activities prohibited under existing law:

--Treating an individual the person hired, sets the schedule of, or compensated by commission or otherwise as an independent contractor for purposes of federal or Ohio taxes or worker's compensation;

--Using any of the services or arts that are part of the practice of a branch of cosmetology to treat or attempt to cure a physical or mental disease or ailment.<sup>35</sup>

### **Investigatory and subpoena power**

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 person who is alleged to have violated the statutes or rules governing the practice of cosmetology, regardless of whether that person is licensed by the Board. If it determines based on its investigation that there is reasonable cause to believe a person is in violation, the Board

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<sup>32</sup> R.C. 4713.10(A)(11) and 4713.63.

<sup>33</sup> R.C. 4713.63.

<sup>34</sup> R.C. 4713.10(B) and (C).

<sup>35</sup> R.C. 4713.14(S) and (U).

is required to give the person notice and a hearing in accordance with the Administrative Procedure Act (R.C. Chapter 119.). 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>36</sup>

The bill gives the Board or the executive director, acting for the Board, authority to compel, by order or subpoena, the attendance of witnesses to testify in relation to any matter over which the Board has jurisdiction that is subject to an inquiry or investigation by the Board. The Board or executive director may require the production of any book, paper, document, or testimony pertaining to the matter of inquiry or investigation. For this purpose, the bill grants the Board or executive director the same power as the judge of a court of common pleas to administer oaths and to compel the attendance of witnesses and punish witnesses for refusal to testify.<sup>37</sup>

Subpoenas may be served by sheriffs or constables, or by certified mail, return receipt requested. A subpoena is considered served on the date delivery is made or the date the intended recipient refuses to accept delivery.

After appearing to testify, witnesses must receive the fees and mileage provided under current law to all witnesses required to attend an adjudication hearing (\$12 for each full day's attendance, \$6 for each half day's attendance, and 50¢ per mile).<sup>38</sup> If two or more witnesses travel together in the same vehicle, the mileage fee must be paid to only one of them, but the witnesses may agree to divide the fee among them in any manner.

If a person fails to obey an order or subpoena, on application by the Board or executive director setting forth the failure, the court of common pleas of any county may issue a subpoena or subpoena duces tecum ordering the person to appear and testify before the Board and produce books, records, or papers, as required. (A subpoena duces tecum is a subpoena ordering a witness to appear in court and bring specified documents, records, or things.<sup>39</sup>)

On the filing of the order, the clerk of court, under the court's seal, must issue process of subpoena for the person to appear before the Board or the director at a time and place named in the subpoena, and each day thereafter until the examination of the

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<sup>36</sup> R.C. 4713.67.

<sup>37</sup> R.C. 4713.66.

<sup>38</sup> R.C. 119.094 (not in the bill).

<sup>39</sup> *Black's Law Dictionary* 1563 (Bryan A. Garner ed., West Publishing Co. 2009) (1891).

person is completed. The subpoena may require that the person bring to the examination any books, records, or papers required by the order. The clerk must also issue, under the seal of the court, such other orders, in reference to the examination, appearance, and production of books, records, or papers, as the court directs. If a person summoned by subpoena fails to obey the subpoena, give testimony, answer questions as required, or obey an order of the court, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person. If the person is brought before the court by virtue of the attachment and upon a hearing the disobedience appears, the court may order the person to be committed and kept in close custody.

### **Disciplinary actions**

The bill creates two new reasons for which the Board may take disciplinary action:

- Failure to cooperate with an investigation or an inspection;
- Failure to respond to a subpoena.

Other reasons for which the Board may take disciplinary action under current law include failure to comply with the requirements of the cosmetology law, continued practice by an individual knowingly having an infectious or contagious disease, habitual drunkenness or addiction to any habit-forming drug, and willful false and fraudulent or deceptive advertising.<sup>40</sup>

On determining that there are grounds for discipline, the Board is permitted to take one or more disciplinary actions. Permitted actions are denying, revoking, or suspending a license or permit and imposing a fine. The bill adds to the actions the Board may take by allowing it to require the holder of a license or permit to take corrective action courses, the amount and content of which are established by the Board in rules.<sup>41</sup> Corrective action courses may not be accepted by the Board as meeting any part of a continuing education requirement.<sup>42</sup>

Disciplinary actions must be taken pursuant to the notice and hearing process in the Administrative Procedure Act. However, the bill permits the Board to enter into a

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<sup>40</sup> R.C. 4713.64(A).

<sup>41</sup> R.C. 4713.64(B) and (D).

<sup>42</sup> R.C. 4713.09.

consent agreement with the license or permit holder instead of conducting a hearing (see "**Consent agreements**," below).<sup>43</sup>

The bill permits the Board to suspend a license or permit if the license or permit holder fails to correct an unsafe condition that exists in violation of the Board's rules or fails to cooperate in an inspection. The suspension must follow a hearing or consent agreement, except that if an inspector believes a violation creates an immediate danger to the health and safety of any person using a facility, the inspector may suspend the license or permit of the facility or the person responsible for the violation without a prior hearing or an opportunity for a consent agreement. This suspension is in effect until the condition is corrected, a hearing is held, or a consent agreement is entered into and the Board either upholds the suspension or reinstates the license or permit. Under current law, the Board and inspectors have this authority only with respect to tanning facility permits, not any other licenses or permits issued by the Board.<sup>44</sup>

### **Consent agreements**

In lieu of taking disciplinary action pursuant to a hearing under the Administrative Procedure Act, the bill permits the Board to enter into a consent agreement with a license or permit holder. When ratified by a majority vote of a quorum of the Board's members, a consent agreement constitutes the findings and order of the Board with respect to the matter addressed in the agreement. If the Board refuses to ratify a consent agreement, the admissions and findings in the agreement are of no effect and the case must be scheduled for adjudication under the Administrative Procedure Act.<sup>45</sup>

### **Payment of fines**

The bill requires the Board to issue an order notifying a violator of a fine imposed as disciplinary action. The notice must specify the date by which the fine is to be paid, which must be less than 45 days after the order is issued. This date may be extended by the Board to up to 90 days after the order is issued at the request of a violator who is temporarily unable to pay or on the Board's own motion.<sup>46</sup> The Board is permitted to establish an installment plan for the payment of fines.<sup>47</sup>

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<sup>43</sup> R.C. 4713.64(C).

<sup>44</sup> R.C. 4713.64(G).

<sup>45</sup> R.C. 4713.64(C).

<sup>46</sup> R.C. 4713.64(E)(2) and (3).

<sup>47</sup> R.C. 4713.10(C).

If a violator fails to pay a fine not later than the date specified in the Board's order and does not request an extension not later than ten days after the date the order is issued or fails to pay the fine not later than the extended date, the Board is required to add to the fine an additional penalty equal to 10% of the fine.<sup>48</sup>

If a violator fails to pay a fine not later than 90 days after the Board issues an order, the Board is required to add to the fine interest at a rate specified in rules adopted by the Board.<sup>49</sup>

If the fine, including any interest or additional penalty, remains unpaid on the 91st day after the Board issues an order, the amount of the fine and any interest or additional penalty must be certified to the Attorney General for collection in the form and manner prescribed by the Attorney General. The Attorney General may assess the collection cost to the amount certified in such a manner and amount as prescribed by the Attorney General.<sup>50</sup>

## **Other powers of the Board**

### **Products with prohibited cosmetic ingredients**

An inspector employed by the Board may take a sample of a product used or sold in a salon or school of cosmetology to determine whether the product contains prohibited cosmetic ingredients or is used in a manner inconsistent with regulations established by federal law.<sup>51</sup> Under current law not changed by the bill, these prohibited ingredients are (1) ingredients that the United States Food and Drug Administration has prohibited by regulation and (2) methyl methacrylate (MMA) as part of a liquid nail monomer.<sup>52</sup> Under the bill, the Board must take disciplinary action if the tests prove that a person is using a product containing prohibited cosmetic ingredients or is using the product in a manner inconsistent with federal regulations. If a fine is imposed, it must include the cost of the test of the products. The person's license may be suspended or revoked.<sup>53</sup>

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<sup>48</sup> R.C. 4713.64(E)(4).

<sup>49</sup> R.C. 4713.64(E)(5).

<sup>50</sup> R.C. 4713.64(E)(6).

<sup>51</sup> R.C. 4713.141 and 4713.14(O).

<sup>52</sup> R.C. 4713.14(N) and (P).

<sup>53</sup> R.C. 4713.141.

### **Supervision of temporary pre-examination work permit holder**

The bill changes the supervision requirement that applies to the holder of a temporary pre-examination work permit. It requires that the permit holder be supervised by a managing license holder, but does not require that managing license to be appropriate for the type of salon in which the permit holder practices as required by existing law.<sup>54</sup>

### **"In escrow" classification for licenses**

The Board is required by current law to develop a procedure by which an individual who holds a practicing, managing, or instructor license may apply to have the license classified inactive if the person is not currently engaged in practicing, managing, or instructing but wishes to do so in the future. The bill changes "inactive" to "in escrow."<sup>55</sup>

### **Board purpose and responsibilities**

The bill adds to existing law a statement that the purpose of the Board is to regulate the practice of cosmetology and all of its branches to protect the public and individuals practicing in accordance with the cosmetology law.<sup>56</sup> It specifies as one of the responsibilities of the Board the duty to regulate the practice of cosmetology and all of its branches in Ohio.<sup>57</sup>

In addition to the actions it must take under existing law, the bill requires the Board to investigate or inspect the activities or premises of a license holder or unlicensed person who is alleged to have violated the cosmetology law.<sup>58</sup> The bill also requires the Board to keep a record of the last known e-mail address and telephone number of each license holder, as well as the last known address required by current law.<sup>59</sup>

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<sup>54</sup> R.C. 4713.22(B).

<sup>55</sup> R.C. 4713.61; conforming changes in R.C. 4713.08 and 4713.63.

<sup>56</sup> R.C. 4713.02(A).

<sup>57</sup> R.C. 4713.07(A)(1).

<sup>58</sup> R.C. 4713.07(A)(2).

<sup>59</sup> R.C. 4713.07(A)(8)(b).



The bill specifically authorizes the Board to delegate any of its duties to the executive director or to an individual designated by the executive director.<sup>60</sup> It requires that the executive director serve as the Board's secretary.<sup>61</sup>

### **Board structure and meetings**

With respect to the structure and meetings of the Board, the bill does all of the following:

--Requires the Board to elect a vice-chairperson in addition to the chairperson.<sup>62</sup>

--Requires the Board to meet *at least* four times a year, rather than four times a year as under current law.<sup>63</sup>

--Specifies that all of the Board's records and files must be kept in compliance with Ohio's public records law (R.C. 149.43) and any rules adopted by the Board in compliance with Ohio's record retention policy.<sup>64</sup>

### **Responsibilities of the executive director**

The bill specifies that the executive director is to carry out the administrative functions of the Board and implement the policies developed by the Board to regulate the practice of cosmetology. The executive director must employ those staff members and consultants necessary to implement the Board's purpose and policies. The executive director is required to delegate to inspectors authority to inspect and investigate all cosmetology facilities.<sup>65</sup>

### **Practice of braiding**

The bill establishes braiding as a separate branch of cosmetology. Currently, braiding is part of the practices of hair design and natural hair styling, but there is no license that covers only braiding. Beginning 12 months after its effective date, the bill creates a separate licensing scheme for braiders, braiding instructors, braiding salons, and managers of braiding salons.

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<sup>60</sup> R.C. 4713.07(B).

<sup>61</sup> R.C. 4713.02(D).

<sup>62</sup> R.C. 4713.02(D).

<sup>63</sup> R.C. 4713.03.

<sup>64</sup> R.C. 4713.02(D).

<sup>65</sup> R.C. 4713.06.

In the bill, the current definition of "braiding" is replaced by a more expansive definition of the "practice of braiding."

"Practice of braiding" is defined by the bill as utilizing the technique of intertwining the 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 patterns. It may include (1) twisting or locking the hair while adding bulk or length with human hair, synthetic hair, or both and (2) using simple devices such as clips, combs, and hairpins.

The bill specifies that the practice of braiding does not include any of the following:

- (1) Application of weaving, bonding, and fusion of individual strands or wefts;
- (2) Application of dyes, reactive chemicals, or other preparations to alter the color or straighten, curl, or alter the structure of hair;
- (3) Embellishing or beautifying hair by cutting or singeing, except as needed to finish the ends of synthetic fibers used to add bulk to or lengthen hair.<sup>66</sup>

### **Braiding licenses**

The bill establishes licenses for braiders, braiding instructors, salon managers, and salons. The license is not valid for any other branch of cosmetology.<sup>67</sup> To be licensed, an applicant must meet the conditions required for all applicants for the type of license sought. An applicant for a braider, managing braider, or braiding instructor license must meet the following additional requirements when making an initial application:

**Braider** – have successfully completed at least 150 hours of instruction at a school of cosmetology licensed in Ohio in subjects related to sanitation, scalp care, anatomy, hair braiding, communication skills, and laws and rules governing the practice of cosmetology.<sup>68</sup>

**Managing braider** – meet one of the following requirements:

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<sup>66</sup> R.C. 4713.01.

<sup>67</sup> R.C. 4713.35.

<sup>68</sup> R.C. 4713.28.

(a) Have practiced braiding for at least 2,000 hours as a braider in a licensed braiding salon or a cosmetologist in a licensed beauty salon. These hours must be certified to the Board by the licensed managing braider, licensed managing cosmetologist or owner of a licensed braiding salon or licensed beauty salon located in Ohio or another state for whom the applicant performed services in a licensed salon.

(b) Have successfully completed at least 150 hours of Board-approved managing braider training in addition to the hours required for licensure as a braider or a cosmetologist. These hours must be certified to the Board by a school of cosmetology licensed in Ohio.<sup>69</sup>

The Board may administer a managing braider examination for individuals who complete managing braider training that is separate from braider training. It may combine the managing braider examination with the braider examination for those who complete a combined 300 hour braider and managing braider course.<sup>70</sup>

**Braiding instructor** – hold a current, valid managing braider license or managing cosmetologist license and meet one of the following requirements:

(a) Have engaged in the practice of braiding in a licensed braiding salon or the practice of cosmetology in a licensed beauty salon for at least 2,000 hours. These hours must be certified to the Board by the licensed managing braider, licensed managing cosmetologist, or owner of a licensed braiding salon or licensed beauty salon in which the applicant has been employed in Ohio or another state for whom the applicant performed services in a licensed salon.

(b) Have successfully completed at least 150 hours of Board-approved braiding instructor training as an apprentice instructor. These hours must be certified to the Board by a school of cosmetology licensed in Ohio.<sup>71</sup>

The bill provides that a licensed braiding instructor who has previously been licensed as a braider or a managing braider is entitled to the reissuance of either of those licenses if the instructor pays the renewal fee and submits proof satisfactory to the Board that any applicable continuing education requirements have been completed.<sup>72</sup>

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<sup>69</sup> R.C. 4713.30.

<sup>70</sup> R.C. 4713.25.

<sup>71</sup> R.C. 4713.31.

<sup>72</sup> R.C. 4713.58.

## Transition period for licensure in the field of braiding

The bill permits a braider to practice as a braider, manage a braiding salon, or teach braiding at a school of cosmetology or a salon without a license until 12 months after the bill's effective date. Also until 12 months after the bill's effective date, it permits a person to employ an unlicensed braider.<sup>73</sup>

## Relation to other branches of cosmetology

Because the practice of hair design and the practice of natural hair styling include braiding, the bill clarifies that license holders in hair design or natural hair styling may practice or teach the practice of braiding to the extent that it is part of the practice of hair design or natural hair styling.<sup>74</sup>

## Practice of threading

The bill establishes the practice of threading as a new branch of cosmetology. The "practice of threading" is defined as removing unwanted hair utilizing techniques performed by hand.<sup>75</sup> (This technique is commonly used to remove facial hair.<sup>76</sup>)

## Licenses

The bill establishes licenses for threaders and for threading instructors, managers, and salons. The license is not valid for any other branch of cosmetology.<sup>77</sup> To be licensed, an applicant must meet the conditions required for all applicants for the type of license sought. An applicant for a threader, managing threader, or threading instructor license must meet the following additional requirements when making an initial application:

**Threader** – have successfully completed at least 150 hours of instruction in a school of cosmetology licensed in Ohio in subjects related to sanitation, anatomy,

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<sup>73</sup> Section 3.

<sup>74</sup> R.C. 4713.01 and 4713.35.

<sup>75</sup> R.C. 4713.01.

<sup>76</sup> WebMD, *Indian Beauty, Health Traditions Reborn* (last visited January 30, 2012), available at <<http://www.webmd.com/skin-beauty/features/indian-beauty-health-traditions-reborn>>.

<sup>77</sup> R.C. 4713.35.

threading, communication skills, and laws and rules governing the practice of cosmetology.<sup>78</sup>

**Managing threader** – meet one of the following requirements:

(a) Have practiced threading for at least 2,000 hours as a threader in a licensed threading salon or a cosmetologist in a licensed beauty salon. These hours must be certified to the Board by the licensed managing threader, licensed managing cosmetologist, or owner of a licensed threading salon or licensed beauty salon located in Ohio or another state for whom the applicant performed services in a licensed salon.

(b) Have successfully completed at least 150 hours of Board-approved managing threader training in addition to the hours required for licensure as a threader or a cosmetologist. These hours must be certified to the Board by a school of cosmetology licensed in Ohio.<sup>79</sup>

The Board may administer a managing threader examination for individuals who complete managing threader training that is separate from threader training. It may combine the managing threader examination with the threader examination for those who complete a combined 300 hour threader and managing threader course.<sup>80</sup>

**Threading instructor** – hold a current, valid managing threader license or managing cosmetologist license and meet one of the following requirements:

(a) Have engaged in the practice of threading in a licensed threading salon or the practice of cosmetology in a licensed beauty salon for at least 2,000 hours. These hours must be certified to the Board by the licensed managing threader, licensed managing cosmetologist, or owner of a licensed threading salon or licensed beauty salon in which the applicant has been employed in Ohio or another state for whom the applicant performed services in a licensed salon.

(b) Have successfully completed at least 150 hours of Board-approved threading instructor training as an apprentice instructor. These hours must be certified to the Board by a school of cosmetology licensed in Ohio.<sup>81</sup>

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<sup>78</sup> R.C. 4713.28.

<sup>79</sup> R.C. 4713.30.

<sup>80</sup> R.C. 4713.25.

<sup>81</sup> R.C. 4713.31.

The bill provides that a licensed threading instructor who has previously been licensed as a threader or a managing threader is entitled to the reissuance of either of those licenses if the licensed threading instructor pays the renewal fee and submits satisfactory proof to the Board that any applicable continuing education requirements have been completed.<sup>82</sup>

### **Transition period for licensure in the field of threading**

The bill permits a threader to practice as a threader, manage a threading salon, or teach threading at a school of cosmetology or a salon without a license until 12 months after the bill's effective date. Also until 12 months after the bill's effective date, a person may employ an unlicensed threader.<sup>83</sup>

### **Relation of practice of threading and practice of esthetics**

Because it specifies that the practice of esthetics includes hair removal (which, depending on the method used to remove the hair, can be "threading"), the bill clarifies that license holders in esthetics may practice or teach the practice of threading to the extent that threading is part of the practice of esthetics. Esthetics deals with skin care.<sup>84</sup>

### **Reports regarding licensure of braiders and threaders**

The bill requires the Board to submit three annual reports regarding licensure of braiders and threaders, starting one year after the bill's effective date. The reports must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives. Each report must list all of the following for the preceding 12-month period:

(1) The number of students enrolled in courses at licensed schools of cosmetology that are required for each of the following licenses: braider, threader, managing braider, managing threader, braiding instructor, and threading instructor;

(2) The number of applicants for each of the following licenses: braider, threader, managing braider, managing threader, braiding instructor, and threading instructor;

(3) The number of licenses issued for each of the following: braiders, threaders, managing braiders, managing threaders, braiding instructors, and threading instructors;

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<sup>82</sup> R.C. 4713.58.

<sup>83</sup> Section 3.

<sup>84</sup> R.C. 4713.01 and 4713.35.

(4) The number of complaints received by the Board related to the unlicensed practice of braiding or threading;

(5) The number of investigations conducted by the Board related to the unlicensed practice of braiding or threading;

(6) The number of adjudications or other disciplinary action taken by the Board related to the unlicensed practice of braiding or threading.

As part of the third and final report, the Board must also include any recommendations it has for changes to the cosmetology law that address both of the following: (1) compliance with the cosmetology law by individuals involved in the practice of braiding or threading and (2) the health and safety of those served by individuals involved in the practice of braiding or threading.<sup>85</sup>

### **Cosmetology definitions**

The bill makes several changes to definitions in the cosmetology law:

--The bill creates a definition of "cosmetology" – the art of practice of embellishment, cleaning, beautification, and styling of hair, wigs, pastiches, face, body, or nails and tanning of the skin.

--The bill specifies that, in addition to the actions provided for in current law, the practice of esthetics includes enhancing the skin by skin care, facials, body treatments, hair removal, and other treatments; applying permanent cosmetics to the eyes, eyebrows and lips; and applying eyelash extensions.

--The bill specifies that, in addition to the actions provided for in current law, the practice of manicuring includes using lotions or softeners on the hands and feet. It also clarifies that the practice of manicuring means cleaning, trimming, shaping the free edge of, or applying polish to the nails of any individual, rather than "manicuring" the nails of any individual.<sup>86</sup>

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<sup>85</sup> R.C. 4713.071.

<sup>86</sup> R.C. 4713.01.

## Conforming and 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>87</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>88</sup>

The bill also makes several technical changes throughout the cosmetology law.<sup>89</sup>

## ADMINISTRATIVE PROCEDURE

### Notice of a right to a hearing

The bill changes the method by which a state agency must notify a party of the right to a hearing under the Administrative Procedure Act. Under the bill, a state agency must either deliver the notice in person or send it using a delivery system that delivers letters, packages, and other materials in the ordinary course of business, with traceable delivery and signature receipt. Under current law, an agency must send the notice by registered mail, return receipt requested.<sup>90</sup>

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## HISTORY

ACTION	DATE
Introduced	02-14-12
Reported, H. State Government & Elections	05-16-12

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<sup>87</sup> R.C. 4713.01, 4713.02, 4713.07, 4713.081, 4713.14, 4713.16, 4713.20, 4713.21, 4713.22, 4713.24, 4713.25, 4713.26, 4713.34, 4713.35, 4713.37, 4713.41, 4713.42, 4713.44, 4713.45, 4713.56, 4713.58, 4713.60, 4713.61, 4713.62, and 4713.64.

<sup>88</sup> R.C. 1.59(C) (not in the bill).

<sup>89</sup> R.C. 4713.16, 4713.17 (repealed), 4713.32, and 4713.60.

<sup>90</sup> R.C. 119.07; conforming changes in R.C. 119.062, 3711.14, 4715.30, 4717.14, 4723.281, 4725.24, 4730.25, 4731.22, 4734.36, 4757.361, 4760.13, 4762.13, 4774.13, 4779.29, and 5123.0414.

