Legislative Analysis

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COSMETOLOGY LICENSURE REVISIONS

Senate Bill 434 (H-2) as reported from House committee
Sponsor: Sen. Aric Nesbitt
1st House Committee: Regulatory Reform
2nd House Committee: Ways and Means
Senate Committee: Regulatory Reform
Complete to 12-11-19

(Enacted as Public Act 20 of 2020)

BRIEF SUMMARY: Senate Bill 434 would make numerous revisions to the regulation of cosmetologists, cosmetology establishments, and schools of cosmetology; allow for licensed mobile salons, and update provisions for greater clarity.

FISCAL IMPACT: Senate Bill 434 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). LARA would be required to promulgate rules under the bill, but such promulgation would not result in additional departmental expenses. The impact on departmental inspections would also be indeterminate, since facility inspections would need to be completed for mobile salons, but the bill would also change cosmetology establishment inspections from at least an annual basis to "regularly." Mobile salons, since they would be included in the definition of cosmetology establishments, would be required to pay fees in accordance with MCL 338.2225. The fees required to be paid would include a $25 application processing fee and a $25 annual license fee. It is unclear whether revenues from these fees would sufficiently offset departmental expenses.

THE APPARENT PROBLEM:

Significant updates to the cosmetology statutes have not been made for over 20 years. During that time, consumer preferences for how salon services are delivered have changed. For instance, at least 30 states allow for mobile salons—that is, businesses in which licensed cosmetologists travel to the client, rather than the clients always coming to the licensed premises. Some believe that allowing mobile salons in Michigan could increase access to hair and nail services for those who are homebound or lack transportation to a brick and mortar salon. Moreover, other provisions of law are outdated, such as allowing students of cosmetology to attend school each week for up to 40 hours, but not allowing them to attend more than seven hours each day. Many would prefer the greater flexibility of longer hours in a school day rather than going to school six days a week. Legislation addressing these and other concerns has been offered.

THE CONTENT OF THE BILL:

Senate Bill 434 would amend Article 12 of the Occupational Code, which pertains to the regulation of cosmetology services and the training of cosmetologists. In addition to numerous revisions of a technical or editorial nature, the bill would do all of the following:

- Require LARA, in consultation with the Board of Cosmetology, to promulgate rules for the operation of ***mobile salons*** and the performance of ***cosmetology services*** in or at the premises of mobile salons. The rules would have to be promulgated within one year after the bill's effective date. The rules would have to include sanitation standards and could,

among other things, establish safety requirements or enforcement actions. A cosmetology establishment that is a mobile salon would be exempt from the licensing regulations until the rules for the operation of mobile salons took effect.

- Require an application for a cosmetology establishment license to include the address of the premises. For an establishment adjacent to a dwelling or a school of cosmetology, the application would also have to show that the premises are completely separated by full partitions and doors from the dwelling or school.
- Eliminate the requirement that a cosmetology establishment be under the daily attendance and supervision of a licensed cosmetologist.
- Require a licensed instructor to supervise a classroom demonstration given by a specialist demonstrator in a school of cosmetology.
- Eliminate the restriction that a student at a school of cosmetology or an apprentice at a cosmetology establishment may not be in attendance more than seven hours a day. The bill would retain the requirement that a student or apprentice be limited to no more than 40 hours of attendance a week.
- Specify that a cosmetology establishment cannot charge a fee for teaching cosmetology services to apprentices on the premises.
- Allow a cosmetology establishment that is conducting an apprenticeship program, and an apprentice of that program, to continue in a new location if the location of the establishment changes and a new license is issued for that location.
- Repeal section 1214 of the act and incorporate the repealed language into the requirements that must be met by the owner of a school of cosmetology or of a cosmetology establishment. (The repealed section pertains to requiring the owner of a school or establishment to obtain proof that a student or apprentice has a high school degree or the equivalent, unless the individual is a public school student enrolling in a program as part of the public school's curriculum and approved by the state Board of Education.)
- In addition to requirements currently in place for an individual licensed as a cosmetologist in another state to apply for a Michigan license, require the applicant to establish that sanctions have not been imposed against him or her by a similar licensing or registration board of any other state.
- Require LARA to regularly inspect each cosmetology establishment and school of cosmetology to determine whether the licensee is conforming to Article 12 and the rules promulgated under it, rather than requiring an inspection of each cosmetology establishment at least yearly and inspections twice yearly for each cosmetology school and establishment training apprentices.
- Retain the general prohibition on practicing cosmetology on the public outside the premises of a licensed establishment or school and clarify that the prohibition does not apply to services performed for a patron at a special event in which the cosmetology services are required for an on-site participant of the event or performed for a patient or resident of a hospital, nursing home, home for the aged, or adult foster care facility. (This replaces a provision that currently allows a licensed cosmetologist to practice on a patient in a hospital, nursing home, convalescent home, or similar facility or on a person requiring home care due to illness or infirmity. As written, the bill does not include a person requiring home care in the exception, though a licensed mobile salon could provide services to a person requiring home care.)
- Eliminate a provision that currently prohibits a licensee from contracting with, being employed by, or being provided space or leasing space from a hospital, nursing home, convalescent home, or similar facility without a cosmetology establishment license.

- Eliminate a provision allowing LARA to grant a temporary establishment license.
- Incorporate changes proposed by House Bill 4335, which would amend the same section of law to allow a barber college and a school of cosmetology to occupy the same building and share facilities, and which is currently pending Senate floor action.

In addition, the bill would revise several current definitions and add new definitions, as follows:

"Cosmetology" would mean performing one or more cosmetology services, and "***cosmetology services***" would mean hair care services, skin care services, manicuring services, or electrology (currently, these are included in the definition of "cosmetology").

"Cosmetology establishment" would be revised to mean a place of business at which one or more cosmetology services are offered or provided and would include a mobile salon and a cosmetology suite.

"Cosmetology suite" would mean a room or suite located inside a licensed cosmetology establishment that is leased or rented from the owner of the establishment for the purposes of offering or providing one or more cosmetology services.

"***Mobile salon***" would mean either of the following:

- A self-contained vehicle or other device that is moved, towed, or transported from one location to another and in which equipment used to perform one or more cosmetology services is installed. (The vehicle or other device and the equipment installed in either would constitute the premises of the mobile salon.)
- A business in which equipment used to perform one or more cosmetology services is transported to and used on a temporary basis at a location other than the premises of the owner, including a cosmetology establishment owned by another person; a client's home; a nursing home or home for the aged, as defined in the Public Health Code; or an adult foster care facility, as defined in the Adult Foster Care Facility Licensing Act. (The equipment used to perform the cosmetology services, and the temporary location at which the equipment is used while at that location would constitute the premises of the mobile salon.)

"School of cosmetology" would be revised to mean a school that teaches one or more cosmetology services at premises designated in the license application.

The bill would take effect 90 days after enactment.

MCL 339.1201 et seq.

ARGUMENTS:

For:

After more than two decades without a major overhaul, the cosmetology law is in need of updating. The bill, with input from LARA, would make numerous revisions to clarify provisions and provide greater flexibility to LARA, students, cosmetology schools, and cosmetology establishments. As an example, allowing mobile cosmetology salons would open

up a new business model for entrepreneurs. For instance, in addition to serving a homebound population or rural customers lacking access to transportation, a mobile salon could do the hair and nails of wedding attendants at or near the event location, provide a "spa day" experience at a birthday party, or provide services to the homeless or low-income residents of a community. By allowing mobile salons, LARA would provide oversight and develop departmental rules, such as proper sanitation standards, to ensure safety for consumers.

The bill also incorporates input by industry stakeholders, such as requiring a licensed instructor to supervise a product or service demonstration conducted at a school of cosmetology. The requirement that LARA must conduct inspections of licensed premises would be revised to give LARA greater flexibility in scheduling inspections to fit current staffing levels yet maintain safety for the public. The bill would also clarify that in addition to providing services to a resident or patient of a nursing home, services could also be performed in a home for the aged or adult foster care facility for a patient or resident.

POSITIONS:

The Department of Licensing and Regulatory Affairs indicated support for the bill. (10-29-19)

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