



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 434 (as introduced 8-20-19)
Sponsor: Senator Aric Nesbitt
Committee: Regulatory Reform

Date Completed: 10-8-19

CONTENT

The bill would amend Article 12 of the Occupational Code to do the following:

- **Require the Department of Licensing and Regulatory Affairs (LARA) and 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.**
- **Delete a provision requiring a cosmetology establishment to be under the daily attendance and supervision of a licensed cosmetologist who is at least 18 years old and has had at least one year's practical experience in cosmetology.**
- **Revise various licensing requirements governing the practice of cosmetology, and require them to be applied to mobile salons.**
- **Modify a provision pertaining to the circumstances under which the license of the operator of a cosmetology establishment is considered void.**
- **Modify various provisions pertaining to a school of cosmetology or a cosmetology establishment conducting an apprenticeship program, and revise apprentice program requirements.**
- **Require a school of cosmetology to ensure that a licensed instructor supervised a demonstration given by a specialist demonstrator to a classroom.**
- **Require a school of cosmetology to ensure that the premises of the school were completely separated by full partitions and doors from any other activity, business, or dwelling.**
- **Require an individual licensed to perform cosmetology services under the laws of another state to establish that sanctions had not been imposed against him or her by a similar licensing or registration board of any other state before he or she could be issued a license to practice cosmetology in Michigan.**
- **Modify existing prohibitions for licensees, including allowing a licensed cosmetologist to perform cosmetology services for a patron at a location that was not on the premises of a licensed cosmetology establishment if the services were performed at a nursing home, a home for the aged, or an adult foster care facility.**
- **Allow, rather than require, LARA to inspect a cosmetology establishment or school of cosmetology to determine whether the licensee was conforming to Article 12 and the rules promulgated under it.**

The bill would repeal Section 1214 of the Occupational Code. (Section 1214 specifies that a school of cosmetology upon enrolling a student or a cosmetology establishment upon accepting an apprentice must file an application with LARA and obtain proof of at least a ninth grade education or the equivalent of a ninth grade education. The application and proof of education must be kept on file until the student or apprentice applies for examination to obtain

a license. The requirement does not apply to a student enrolling in a program offered as part of the regular curriculum of a public school and approved by the State Board of Education.)

The bill would take effect 90 days after it was enacted.

Mobile Salons

Under the bill, LARA and the Board of Cosmetology would have to promulgate rules for the operation of mobile salons and the performance of cosmetology services in or at the premises of mobile salons. These rules would have to be promulgated within one year after the bill's effective date, and would have to include sanitation standards that met existing sanitation rules and could establish one or more of the following for providing cosmetology services in a mobile salon:

- Safety requirements.
- Permanent address requirements at which one or more of the following were located: a) records of appointments, b) license numbers of employees, or c) if applicable, the vehicle identification number of the license holder's self-contained facility.
- Enforcement actions to ensure compliance with the requirements under Article 12 and all local laws and ordinances.

"Mobile salon" would mean either 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, or 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 operator, including any of the following:

- A cosmetology establishment operated by another person.
- A client's home.
- A nursing home or a home for the aged as defined in the Public Health Code.
- An adult foster care facility as defined in the Adult Foster Care Facility Licensing Act.

(As defined in the Public Health Code, "nursing home" means a nursing care facility, including a county medical care facility, that provides organized nursing care and medical treatment to seven or more unrelated individuals suffering or recovering from illness, injury, or infirmity. "Home for the aged" means a supervised personal care facility at a single address, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility that provides room, board, and supervised personal care to 21 or more unrelated, nontransient, individuals 55 years of age or older. The Adult Foster Care Facility Licensing Act defines "adult foster care facility" as a home or facility that provides foster care to adults.)

For a mobile salon, "premises" would mean one of the following, as applicable:

- For a mobile salon that was a self-contained vehicle, the vehicle or other device and the equipment installed in the vehicle or device.
- For a mobile salon that was a business with equipment transported to different locations temporarily, the equipment used to perform the cosmetology services; and the temporary location at which the equipment was used, while the equipment was there.

Issuance of Cosmetology Establishment License

Currently, LARA must issue a license to a person for the operation of a cosmetology establishment if all of the following requirements are met:

- An application is submitted by the owner or managers of the establishment.
- The application includes a drawing or diagram indicating the premises to be licensed and the location of required equipment and facilities.
- The premises have satisfactorily passed an inspection conducted by LARA for the purpose of determining whether the establishment has met sanitation and equipment standards prescribed in rules promulgated by LARA's Director.

Under the bill, LARA would have to issue a license to a person to operate a cosmetology establishment, at the premises specified in the application, if all of the following requirements were met:

- An application was submitted to LARA by or on behalf of the proposed operators of the establishment.
- The application included the premises address and a drawing or diagram that showed the location of required equipment and facilities and, if the establishment were adjacent to a dwelling or school of cosmetology, that the premises were completely separated by full partitions and doors from the dwelling or school.
- The establishment and premises have passed an inspection conducted to determine whether they meet the sanitation and equipment standards prescribed by rule, and any other applicable requirements of Article 12.

In addition, except as provided above, the cosmetology establishment must be under the daily attendance and supervision of a licensed cosmetologist who is at least 18 years old and has had at least one year's practical experience in cosmetology. The bill would delete this provision.

Licensing Provisions

Under the Occupational Code, LARA may issue a limited cosmetology establishment license to an entity that seeks to provide only one or more cosmetology services on the establishment premises. If the establishment license is limited to only manicuring services or skin care services, the supervising licensee may be an individual licensed only in that service. A licensed cosmetologist working in a limited licensed cosmetology establishment may not perform cosmetology services for which the premises are not licensed. If the cosmetology establishment license is limited to electrology, the supervising licensee must be a licensed electrologist. A licensed cosmetologist may not supervise a cosmetology establishment whose cosmetology license is limited to rendering electrology unless the cosmetologist is licensed as an electrologist. The bill would revise these provisions.

Under the bill, LARA could issue a limited cosmetology establishment license to a person that was seeking to provide only one or more cosmetology services on the premises of the establishment. A licensed cosmetologist who was working in the premises of a limited licensed cosmetology establishment could not perform cosmetology services that the operator was not licensed to provide in the establishment.

Currently, LARA may grant a temporary establishment license to a person who has fulfilled all licensure requirements except for the completion of the inspection. The transfer of ownership or location of a cosmetology establishment voids the license. The filing of a new license application is a predicate to the change in ownership or location of an establishment. The bill would delete these provisions.

Instead, the license of the operator of a cosmetology establishment would be considered void if there were a sale or other transfer of the cosmetology establishment, a sale or other transfer

of the ownership of the operator, or a change in the location of the cosmetology establishment. A person whose license was void would have to submit a new license application and obtain a new license to continue to provide cosmetology services.

These provisions only would apply to a cosmetology establishment that was a mobile salon beginning on the effective date of rules promulgated for the operation of mobile salons.

School of Cosmetology Requirements

Under the Code, a school of cosmetology must meet all of the following requirements:

- Maintain a course of practical training and technical instruction, as outlined in the various curricula set forth in rules promulgated by the Director of LARA, equal to the requirements for prelicensure training under Article 12, subject to certain provisions.
- Possess efficient apparatus and equipment prescribed in the rules promulgated by the Director that are sufficient for the ready and full teaching of each subject in the curriculum.
- Employ or engage at least one licensed instructor, who is competent to provide instruction in each subject of its curriculum, for every 20 students.
- Operate for teaching purposes only.
- Allow instructors to practice on the public only to demonstrate techniques to students and to correct the work of students.
- Display its license for the school of cosmetology and the license of each instructor who works in the school in a prominent place in the school that is visible to the public at all times.
- Display a sign in the school that states that services are performed by students of the school.
- At the time he or she enrolls in the school, provide to each student a financial contract that states the total cost and all charges involved in the complete course of study.
- In any advertising materials distributed or published by the school that refer to the cost of tuition or related subjects, include the same financial information as described above.

In addition, the bill would require a school of cosmetology to meet the following:

- If a specialist demonstrator gave a classroom demonstration, ensure that a licensed instructor supervised the demonstration.
- The premises of the school were completely separated by full partitions and doors from any other activity, business, or dwelling.

Under the Code, a cosmetology establishment charging a fee for the teaching of cosmetology or one or more services of cosmetology is considered a school of cosmetology and is required to comply with these provisions. A cosmetology establishment conducting an apprenticeship program without charging a fee for the teaching of cosmetology must comply with certain apprenticeship provisions (described below). A cosmetology establishment which has successfully trained one apprentice is eligible to train additional apprentices except that a cosmetology establishment may not have more than two apprentices at the same time. The bill would delete these requirements. Instead, the operator of a school of cosmetology would have to ensure that the school met the requirements listed above.

Apprenticeship Program

Currently, a school of cosmetology or a cosmetology establishment conducting an apprenticeship program must comply with all of the following requirements:

- Require that a student or apprentice be in attendance not more than seven hours per day or not more than 40 hours per week.
- Keep a daily record of the attendance of each student or apprentice, a copy of which must be sent to LARA monthly, establish grades, and require a student or apprentice to pass an examination before certifying to LARA that an individual has completed training.
- Permit a cosmetology student or apprentice to practice on the public only after completing at least 350 hours of instruction in the general cosmetology curriculum, including both theory and practical hours, subject to certain restrictions.

The bill would delete these provisions. Instead, the operator of a school of cosmetology, or the operator of a cosmetology establishment that conducted an apprenticeship program, would have to ensure that the school or apprenticeship program met all of the following requirements:

- A student or apprentice was not required to be in attendance for more than 40 hours per week.
- A daily record of the attendance of each student or apprentice was maintained and a copy of the record was sent to LARA monthly.
- A grading system for students or apprentices was established.
- A student or apprentice was required to pass an examination before the operator of the school or establishment certified to LARA that he or she had completed training.
- Before the school began training a student, or the establishment accepted an apprentice, the operator of the school or establishment obtained proof that he or she had a high school education, unless the student was enrolling in a program offered as a part of the regular curriculum of a public school and approved by the State Board of Education.
- Before the school began training a student, or the establishment accepted an apprentice, the operator of the school or establishment would have to submit an application to LARA on behalf of the student or apprentice and retain a copy of the proof of education described above, if applicable, and the application in the records of the school or establishment until he or she applied for examination to obtain a license.

In addition, a student or apprentice would be permitted to practice on members of the public only after he or she completed at least 350 hours of instruction in the general cosmetology curriculum, including both theory and practical hours. A student or apprentice in a natural hair cultivation, manicuring, skin care, or electrology curriculum could practice on the public only after he or she completed at least 1/4 of the hours required by the applicable curriculum, including both theory and practical hours.

The operator of a cosmetology establishment that conducted an apprenticeship program could not charge a fee for the teaching of cosmetology services to apprentices on the premises. The operator of a cosmetology establishment where one apprentice had been successfully trained could allow the training of additional apprentices at the establishment, except that not more than two apprentices could be trained at the same time. If the location of a cosmetology establishment where an apprenticeship program was conducted changed, the operator of the establishment could continue the program at the new location if a new license were issued, and apprentices who were receiving training at the original location could continue to receive training at the new location.

Under the Code, the transfer of ownership or location of a school of cosmetology voids the license. The filing of a new license application is a predicate to the change in ownership or location. The bill would delete these provisions. Instead, under the bill, the license of the operator of a school of cosmetology would be considered void if there were a sale or other transfer of the school or the ownership of the operator, or a change in the location of the

school. A person whose license was void would have to submit a new license application and obtain a new license to continue to operate a school of cosmetology.

License to Practice Cosmetology; Other State

Currently, upon submission of an application to LARA, an individual licensed to perform cosmetology services under the laws of another state must, without examination, be issued a license to practice the services for which that individual was previously licensed if the applicant is at least 17 years old and of good moral character, and requirements for registration or licensure in the particular state were substantially equal to the requirements then in effect in Michigan. In addition, the bill would require that the applicant establish that sanctions had not been imposed against him or her by a similar licensing or registration board of any other state.

Penalties

A licensee that commits or has committed one or more of the following is subject to penalties set forth in the Code:

- Continued practice by an individual who knows he or she has an infectious or contagious disease.
- Contracting with, being employed by, or being provided space or leasing space from a hospital, nursing home, convalescent home, or similar facility for the purpose of practicing cosmetology, without a cosmetology establishment license, although a licensed cosmetologist may practice on a patient at one of these facilities (or on a person requiring home care) because of an illness or infirmity.

The bill would delete the second provision listed above.

In addition, the Code specifies that a licensee is subject to penalty if he or she practices cosmetology on the public outside of the premises of a license cosmetology establishment or school of cosmetology. However, a licensed cosmetologist may perform cosmetology services for a patron at a location that is not on the premises of a licensed cosmetology establishment provided that the services rendered involve a special event in which the cosmetology service is required to be performed for an on-site participant of the event. Under the bill, a licensed cosmetologist could perform cosmetology services for a patron at a location that was not on the premises of a licensed cosmetology establishment if the services were performed at any of the following:

- A nursing home.
- A home for the aged.
- An adult foster care facility.

(Under Article 6 of the Code, a person, school, or institution that violates the Code or a rule or order promulgated or issued under it must be assessed one or more of the following penalties:

- Placement of a limitation on a license or certificate of registration for an occupation regulated under Articles 8 through 25.
- Suspension of a license or certificate of registration.
- Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- Revocation of a license or certificate of registration.

- In the case of a person licensed or registered under the Code and except as otherwise provided, an administrative fine to be paid to LARA of not more than \$10,000.
- Censure.
- Probation.
- A requirement that restitution be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.)

Inspection

Under the Code, LARA must inspect each cosmetology establishment at least once annually. The Department must inspect each school of cosmetology or cosmetology establishment training apprentices at least twice annually. The bill would delete these provisions.

Under the bill, LARA could inspect a cosmetology establishment or school of cosmetology to determine whether the licensee was conforming to Article 12 and the rules promulgated under it.

MCL 339.1201 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have an indeterminate, but likely minor, fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local government. The promulgation of rules and other administrative duties likely would be covered by existing appropriations, as well as revenue received from license application and renewal fees. An estimate of the number of mobile salon license applicants is not available, but is expected to be relatively low compared to nonmobile cosmetology establishments.

Allowing cosmetology services to be performed at additional locations likely would not result in a significant change to the number of license applications.

Fiscal Analyst: Elizabeth Raczkowski

SAS\S1920\s434sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.