

Enrolled Senate Bill 217

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CHAPTER

AN ACT

Relating to cosmetology; creating new provisions; amending ORS 345.010, 690.005, 690.015, 690.025, 690.046, 690.047, 690.155, 690.165, 690.195, 690.205, 690.225 and 690.360; repealing ORS 345.400, 345.430, 345.440 and 345.450; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

REGULATION OF COSMETOLOGY

SECTION 1. Sections 2 and 3 of this 2023 Act are added to and made a part of ORS 690.005 to 690.225.

SECTION 2. The Health Licensing Office may adopt rules to carry out its duties under ORS 690.005 to 690.225.

SECTION 3. The Board of Cosmetology shall convene a curriculum requirements advisory committee consisting of representatives of schools. The advisory committee shall make recommendations to the board regarding curriculum requirements for a field of practice as described in ORS 690.046. Prior to adopting rules regarding the curriculum requirements, the board shall consult with the advisory committee.

SECTION 4. ORS 690.005 is amended to read:

690.005. As used in ORS 690.005 to 690.225:

(1) "Authorization" has the meaning given that term in ORS 676.562.

[(1)] (2) "Barbering" means any of the following practices, when done upon the human body for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Shampooing, styling, cutting, singeing and conditioning of the hair of an individual.

(b) Applying hair tonics, dressings and rinses.

(c) Massaging of the scalp, face and neck and applying facial and scalp treatments with creams, lotions, oils and other cosmetic preparations, either by hand or mechanical appliances, except that the mechanical appliances may not be galvanic or faradic.

(d) Shaving, trimming or cutting of the beard or mustache.

[(2)] (3) "Certificate" means a written authorization for the holder to perform in one or more fields of practice.

[(3)] (4) “Cosmetology” means the art or science of beautifying and improving the skin, nails and hair and the study of cosmetics and their application.

[(4)] (5) “Demonstration permit” means a written authorization for a person to practice, demonstrate and teach one or more fields of practice on a temporary basis.

[(5)] (6) “Esthetics” means any of the following skin care or facial care practices performed on the human body or face for the purpose of keeping the skin of the human body or face healthy and attractive and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) The use of the hands or mechanical or electric apparatuses, appliances or devices for cleansing, stimulating, manipulating, exfoliating or applying lotions or creams.

(b) Temporary removal of hair by using lotion, cream, an appliance, wax, thread, sugar, tweezers, dermaplaning, a depilatory or other means.

(c) Makeup artistry.

(d) Eyebrow and eyelash services.

(e) Facial and body treatments.

[(6)] (7) “Facility” means an establishment operated on a regular or irregular basis for the purpose of providing services in one or more fields of practice.

[(7)] (8) “Field of practice” means the following cosmetology disciplines:

(a) Barbering.

(b) Esthetics.

(c) Hair design.

(d) Nail technology.

(e) Natural hair care.

[(8)] (9) “Freelance license” means a written authorization that allows a practitioner to practice outside or away from a licensed facility.

[(9)] (10) “Hair design” means any of the following practices, when done upon the human body for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Shaving, trimming or cutting of the beard or mustache.

(b) Styling, permanent waving, relaxing, cutting, singeing, bleaching, coloring, shampooing, conditioning, applying hair products or similar work upon the hair of an individual.

(c) Massaging the scalp and neck when performed in conjunction with activities in paragraph (a) or (b) of this subsection.

[(10)] (11) “Independent contractor” means a practitioner who qualifies as an independent contractor under ORS 670.600 and who is not under the control and direction of a facility license holder.

[(11)] (12) “License” means a written authorization issued under ORS 690.055 to a person to operate a facility or freelance business for providing services related to one or more fields of practice to the public.

[(12)(a)] (13)(a) “Mechanical or electrical apparatus, appliance or device” includes, but is not limited to, galvanic current, high-frequency microcurrents, light-emitting diode therapy and microdermabrasion that does not penetrate beyond the epidermis except through natural physiological effects.

(b) “Mechanical or electrical apparatus, appliance or device” does not include lasers or intense pulsed light or a device, as that term is defined by the Board of Cosmetology by rule, in collaboration with the Board of Certified Advanced Estheticians.

[(13)] (14) “Nail technology” means any of the following manicuring or pedicuring practices performed for cosmetic purposes and not for medical diagnosis or treatment of disease or physical or mental ailments:

(a) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating the nails of the hands or feet.

(b) Massaging, cleansing, treating or beautifying the hands, arms below the elbow, feet or legs below the knee.

(c) Applying, sculpturing or removing artificial nails of the hands or feet.

[(14)(a)] **(15)(a)** “Natural hair care” means:

(A) The braiding, cornrowing, extending, lacing, locking, sewing, twisting, weaving or wrapping of human hair, natural fibers, synthetic fibers or hair extensions through the use of hands or simple devices such as clips, combs, hairpins or needle and thread;

(B) The use of scissors to trim synthetic fibers, hair extensions or sewn-in weave extensions as is necessary to perform the activities described in this paragraph;

(C) The making of customized wigs from natural hair, natural fibers, synthetic fibers or hair extensions; or

(D) Shampooing or conditioning of the hair of an individual.

(b) “Natural hair care” does not include the use of scissors, except as provided in paragraph (a)(B) of this subsection, penetrating chemical hair treatments, chemical hair coloring agents, chemical hair straightening agents, chemical hair joining agents, permanent wave styles or chemical hair bleaching agents.

[(15)] **(16)** “Practitioner” means a person certified to perform services included within a field of practice.

[(16)] **(17)** “Registration” means a written authorization issued to an independent contractor to hold forth to the public as a business entity providing services in a field of practice.

[(17)] **(18)** “School” means an educational establishment that [*has a license issued by the Department of Education and is operated for the purpose of teaching one or more fields of practice. For purposes of this subsection, “field of practice” does not include natural hair care*] **offers a program of study in one or more fields of practice other than natural hair care, including, but not limited to, a career school licensed under ORS 345.010 to 345.450 including a proficiency-based career school, a community college or an educational establishment operated by a school district.**

[(18)] **(19)** “Temporary facility permit” means a written authorization issued under ORS 690.055 to provide services on a temporary basis in one or more fields of practice.

SECTION 5. ORS 690.015 is amended to read:

690.015. (1) This section establishes prohibitions relating to the practice of hair design, barbering, esthetics, nail technology and natural hair care. The prohibitions under this section are subject to the exemptions under ORS 690.025. A person who commits an act prohibited under this section is subject to the penalties under ORS 690.992 in addition to any administrative action taken by or any civil penalty imposed by the Health Licensing Office under ORS 676.612.

(2) A person may not:

(a) Perform or attempt to perform services in a field of practice without an active [*certificate, demonstration permit, registration or freelance license*] **authorization.**

(b) Operate a facility without a license or temporary facility permit.

(c) Perform or attempt to perform services in a field of practice outside a licensed facility or temporary facility unless the person holds a freelance license issued under ORS 690.123.

(d) Practice hair design, barbering, esthetics, nail technology or natural hair care as an independent contractor without [*a registration*] **an authorization.**

(e) Display a sign or in any way advertise or purport to offer services in a field of practice without first obtaining [*a permit, certificate, independent contractor registration or facility license*] **an authorization.**

(f) Knowingly make a false statement on an application to obtain or renew [*a certificate, registration, license or permit*] **an authorization.**

(g) Allow an individual in the employ or under the supervision or control of the person to perform in a field of practice without [*a certificate or permit*] **an authorization.**

(h) Sell, barter or offer to sell or barter a document evidencing [*a certificate, registration, license or permit*] **an authorization.**

(i) Purchase or procure by barter a document evidencing [*a certificate*] **an authorization** with intent to use it as evidence of the person’s qualification as a practitioner.

(j) Materially alter with fraudulent intent a document evidencing [*a certificate, registration, license or permit*] **an authorization.**

(k) Use or attempt to use a fraudulently obtained, counterfeited or materially altered document evidencing [*a certificate, registration, license or permit*] **an authorization.**

SECTION 6. ORS 690.025 is amended to read:

690.025. (1) ORS 690.005 to 690.225 do not apply to:

(a) Persons who perform service without compensation in case of emergency or in domestic administration.

(b) Persons licensed by a health professional regulatory board listed in ORS 676.160 who are acting within the scope of their professional license.

(c) Persons identified by the Health Licensing Office or Board of Cosmetology by rule who are acting under the authority of a hospital or long term care facility licensed under ORS 441.025 or a residential **care** facility licensed under ORS 443.415.

(d) Persons engaged in rendering emergency medical assistance as defined in ORS 30.800.

(e) Persons licensed by the State Board of Pharmacy, merchants or other individuals when demonstrating apparatus or supplies for purposes of sale.

(f) Commissioned medical and surgical officers and personnel of the United States Armed Services while operating on a military base and personnel of correctional institutions while operating on the premises of a correctional facility.

(g) Subject to subsection (3) of this section, persons applying temporary makeup, combing hair, brushing hair, braiding hair, applying hair spray or holding cream to hair or styling hair through the use of barrettes, ties, clips, ribbons and other similar hair accessories for the sole purpose of preparing an individual for a professional photograph, provided that the person does not use any product that alters the keratin of the individual's hair.

(h) Subject to subsection (3) of this section, persons applying temporary makeup or styling hair by any method for the sole purpose of preparing an individual for a professional film or video performance or a theatrical performance.

(i) A student while engaged in training at the direction of and under the direct supervision of the faculty of a school [*licensed under ORS 345.010 to 345.450 to teach a field of practice. For purposes of this paragraph, "field of practice" does not include natural hair care*].

(j) Persons performing spray tanning services using a handheld airbrush tanning device that applies to another individual, without physical contact, a spray tanning solution that may include, but is not limited to, products containing dihydroxyacetone.

(2) The office may exempt from ORS 690.005 to 690.225 practitioners providing services at charitable or [*fund raising*] **fund-raising** events. In establishing an exemption, the office shall consider and evaluate each written request on an individual basis.

(3) The office may develop and disseminate guidelines for persons described in subsection (1)(g) and (h) of this section for the purpose of ensuring sanitation and hygiene best practices. The office is not required to adopt rules to implement this subsection.

SECTION 7. ORS 690.046 is amended to read:

690.046. (1) To qualify for certification as a practitioner of hair design, barbering, esthetics, nail technology or natural hair care, an applicant shall:

(a) If the applicant is applying for certification to practice hair design, barbering, esthetics or nail technology[, *successfully complete all courses required by rule of the State Board of Education for graduation from a school teaching one or more fields of practice*]:

(A) Complete the curriculum requirements in the field of practice for which certification is sought that are adopted by the Board of Cosmetology by rule and approved by the Health Licensing Office; and

(B) Submit satisfactory evidence from a school to the office that demonstrates the applicant has successfully met the requirements described in subparagraph (A) of this paragraph.

(b) Successfully pass the certification examination approved, administered or recognized by the board [of Cosmetology for] in the field of practice [in] for which certification is sought.

(c) Pay the applicable fees established under ORS 676.576.

(d) Meet any additional requirements the board [of Cosmetology] may impose by rule [for] in the field of practice for which certification [in a particular field of practice] is sought.

(2) The office may waive all or part of the requirements described in subsection (1) of this section and allow an applicant who meets all of the other requirements of subsection (1) of this section to take the certification examination if:

(a) For an applicant who holds an active authorization issued in another state or territory of the United States or another country:

(A) The office determines that the applicant's education or training, including any education or training obtained in the military, is substantially equivalent to the certification requirements described in subsection (1) of this section and any rules adopted under subsection (1) of this section; and

(B) The applicant's active authorization has not been subject to disciplinary action by the authorizing body.

(b)(A) For an applicant who has received education or training outside of this state and does not hold an active authorization issued by another jurisdiction, the school that provided to the applicant a skills assessment and practical evaluation:

(i) Submits to the office evidence that the applicant passed the skills assessment and practical evaluation; and

(ii) Attests, on a form prescribed by the office, to having verified the applicant's prior training or education.

(B) An applicant described in this paragraph shall obtain a skills evaluation and practical assessment from a school.

[2] **(3)** A person who is certified to practice hair design or barbering under this section is authorized to practice natural hair care.

SECTION 8. ORS 690.047 is amended to read:

690.047. [(1) For purposes of this section, "field of practice" does not include natural hair care.]

[(2) The Board of Cosmetology may waive all or part of the educational requirement for an applicant in a field of practice and allow the applicant to take the certification examination, provided that:]

[(a) The applicant's education or training, including relevant education or training obtained in the military, is determined by the board to be substantially equivalent to Oregon certification requirements;]

[(b) The applicant is otherwise qualified to take the examination; and]

[(c) The applicant holds an active certification that was issued in another state or a territory of the United States and has not been subject to disciplinary action by the other certifying body.]

[3] The Health Licensing Office may issue a specialty certificate in a field of practice **other than natural hair care** to a practitioner who has:

[(a)] **(1)** Completed post-graduate education approved by the office that is separate from the education or training required for entry-level certification;

[(b)] **(2)** Passed an examination approved or recognized by the Board of Cosmetology; and

[(c)] **(3)** Paid the applicable fees established under ORS 676.576.

SECTION 9. ORS 690.155 is amended to read:

690.155. (1) There is established within the Health Licensing Office the Board of Cosmetology consisting of seven members appointed by the Governor. At all times the membership of the board shall be so constituted that:

(a) [Six] **Four** members of the board shall be practitioners with active [certificates] **authorizations**.

(b) **One member shall be a representative of an hourly-based school.**

(c) **One member shall be a representative of a proficiency-based school.**

[(b)] (d) One member shall be a public member who is not a practitioner.

(2) Of the members described in subsection (1)(b) and (c) of this section, at least one member must be a practitioner with an active authorization.

[(2)] (3) The term of office of each member of the board is four years, but a member serves at the pleasure of the Governor. Vacancies shall be filled by the Governor by appointment for the unexpired term. A member shall hold the member's office until the appointment and qualification of a successor. A member is eligible for reappointment. If a person serves two consecutive full terms, a period of at least four years must elapse before the person is again eligible for appointment to serve on the board.

[(3)] (4) The Director of the Health Licensing Office, or a designated representative, shall serve as an ex officio member of the board but without the right to vote.

SECTION 10. ORS 690.165 is amended to read:

690.165. In addition to the powers otherwise granted by ORS [345.430 and] 690.005 to 690.225, the Board of Cosmetology shall have the power to:

(1) Determine whether applicants are qualified to take certification examinations, **except as that power is vested in the Health Licensing Office under ORS 690.046.**

(2) Administer, approve or recognize certification examinations and designate the time, place and administrators of certification examinations.

(3) Contract for the administration of examinations as part of regional or national examinations and contract with independent testing services for examination administration.

(4) Pursuant to ORS 676.568, direct the [Health Licensing] office to issue [certificates, registrations, licenses and permits] **authorizations** to individuals determined by the board to be qualified.

(5) Except as otherwise provided in ORS 690.205 (2) or other provision of law, adopt rules establishing and enforcing standards for safety, infection control, professional conduct, **curriculum** and any other matters relating to fields of practice, facilities or locations used by persons providing services regulated by ORS 690.005 to 690.225.

(6) Pursuant to ORS 676.612 and 690.167, direct the office to suspend, revoke, limit or refuse to issue or renew [certificates, registrations, licenses or permits] **authorizations** or impose a period of probationary activity on the holder.

(7) Do any act necessary or proper to effect and carry out the duties required of the board by ORS 690.005 to 690.225.

(8) Adopt rules prescribing standards of professional conduct for persons practicing hair design, barbering, esthetics, nail technology or natural hair care.

(9) Consult with the office about the issuance and renewal of a license under ORS 690.055 [authorizing a facility to provide barbering, esthetics, hair design, nail technology services or natural hair care].

(10) Pursuant to ORS 690.046, direct the office to approve a school's curriculum.

SECTION 11. ORS 690.195 is amended to read:

690.195. (1) The Health Licensing Office shall keep a record of [its] **the office's** proceedings relating to the issuance, refusal, suspension and revocation of [certificates, registrations, licenses and permits] **authorizations** and to the imposition of probation. This record [shall] **must** also contain the name, place of business and [the] date of each [certificate, registration, license and permit] **authorization** issued by the office.

(2) The office shall keep a record of all complaints received, including the date of receipt, **the** name and place of business of each practitioner involved, the name and address of each complainant and the nature of the complaint.

(3) The records of the office shall at all reasonable times be open to inspection by the public.

SECTION 12. ORS 690.205 is amended to read:

690.205. (1) The Board of Cosmetology may adopt rules for the administration of ORS [345.440 and] 690.005 to 690.225 and for prescribing safety and infection control requirements for facilities. Infection control requirements for facilities shall be subject to the approval of the Oregon Health

Authority. [A copy of the rules adopted by the board shall be furnished by the board to the owner or manager of each facility.]

(2) Notwithstanding subsection (1) of this section, the board may not prohibit the use of the facility for domestic purposes if the part devoted to domestic purposes is in a completely separate room not used by customers, with walls extending from floor to ceiling and with any connecting doors kept closed while the facility is in actual operation.

(3) Rules adopted by the board prescribing safety and infection control requirements for facilities shall be adopted in accordance with the procedures set forth in ORS chapter 183.

SECTION 13. ORS 690.225 is amended to read:

690.225. (1) In addition to any other duties prescribed by law, the Health Licensing Office shall provide for the inspection of facilities [and schools licensed to teach practitioner skills under ORS 345.010 to 345.450].

(2) Inspections conducted under this section shall determine whether the facilities comply with the health, safety, infection control and licensing rules of the Board of Cosmetology [and whether the schools comply with the health, safety and infection control requirements under ORS 345.010 to 345.450 and rules of the office. A report of the results of the inspection shall be submitted to the Higher Education Coordinating Commission].

(3)(a) The office may not inspect a school unless the Higher Education Coordinating Commission requests the office's assistance in carrying out an inspection of a school.

(b) The office may not impose any disciplinary action on a school.

SECTION 14. ORS 690.360 is amended to read:

690.360. (1) A person may not:

(a) Perform or attempt to perform services in a field of practice without a license to perform services in that field of practice;

(b) Perform or attempt to perform services in a field of practice outside a licensed facility;

(c) Display a sign or in any way advertise or purport to offer services in a field of practice without a license to perform services in that field of practice;

(d) Operate a facility, display a sign or in any way advertise or purport to offer services in a field of practice in a facility without a license to operate a facility or a temporary license to operate a facility;

(e) Knowingly make a false statement on an application to obtain or renew a license;

(f) Allow an individual in the employ or under the supervision or control of the person to perform services in a field of practice without a license to perform services in that field of practice;

(g) Sell, barter or offer to sell or barter a document evidencing a license;

(h) Purchase or procure by barter a document evidencing a license with intent to use the document as evidence of the person's qualification to provide services in a field of practice;

(i) Materially alter with fraudulent intent a license or temporary license; or

(j) Use or attempt to use a fraudulently obtained, counterfeited or materially altered license or temporary license.

(2) ORS 690.350 to 690.410 do not limit, preclude or otherwise interfere with the practice of other persons or health care providers licensed in this state.

(3) Subsection (1)(a), (b) or (d) of this section does not apply to:

(a) A student while engaged in training at the direction of and under the direct supervision of the faculty of a school [licensed under ORS 345.010 to 345.450 to teach a field of practice]; or

(b) An individual self-administering body piercing.

CONFORMING AMENDMENTS

SECTION 15. ORS 345.010 is amended to read:

345.010. As used in ORS 345.010 to 345.450 and 345.992 to 345.997:

(1) "Agent" means an individual who is employed by or for a career school, or is working on behalf of the school under a contract, for the purpose of actively procuring students, enrollees or

subscribers of the school by solicitation in any form that is made at a place or places other than the school office or place of business of the school.

[(2) *“Barbering” has the meaning given that term in ORS 690.005.*]

[(3)] (2) “Career school” or “school” means any private proprietary professional, technical, home study, correspondence, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession.

[(4) *“Esthetics” has the meaning given in ORS 690.005.*]

[(5) *“Hair design” has the meaning given in ORS 690.005.*]

[(6)] (3) “License” means the authority the career school has been granted to operate under ORS 345.010 to 345.450.

[(7) *“Nail technology” has the meaning given in ORS 690.005.*]

[(8)] (4) “Registration” means the approval by the Higher Education Coordinating Commission of a teacher or agent to instruct in or to represent the school.

CONTINUITY OF CURRICULA

SECTION 16. A school that teaches a curriculum that was approved by the Higher Education Coordinating Commission before the operative date specified in section 19 of this 2023 Act may continue to teach the curriculum after the operative date specified in section 19 of this 2023 Act unless the Health Licensing Office determines that the curriculum must be approved by the office pursuant to rules adopted by the Board of Cosmetology under ORS 690.005 to 690.225.

REPEALS

SECTION 17. ORS 345.400, 345.430, 345.440 and 345.450 are repealed.

UNIT CAPTIONS

SECTION 18. The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

OPERATIVE AND EFFECTIVE DATES

SECTION 19. (1) Sections 2 and 3 of this 2023 Act, the amendments to ORS 345.010, 690.005, 690.015, 690.025, 690.046, 690.047, 690.155, 690.165, 690.195, 690.205, 690.225 and 690.360 by sections 4 to 15 of this 2023 Act and the repeal of ORS 345.400, 345.430, 345.440 and 345.450 by section 17 of this 2023 Act become operative on July 1, 2024.

(2) The Board of Cosmetology, the Higher Education Coordinating Commission and the Health Licensing Office may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board, the commission and the office to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board, the commission and the office by sections 2 and 3 of this 2023 Act, the amendments to ORS 345.010, 690.005, 690.015, 690.025, 690.046, 690.047, 690.155, 690.165, 690.195, 690.205, 690.225 and 690.360 by sections 4 to 15 of this 2023 Act and the repeal of ORS 345.400, 345.430, 345.440 and 345.450 by section 17 of this 2023 Act.

SECTION 20. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate April 3, 2023

Repassed by Senate June 15, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 25, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State