

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2721**

As Agreed to April 2, 2008

**Brief\***

HB 2721, if enacted, would amend a number of statutes that govern persons licensed by the Kansas Board of Cosmetology including cosmetologists, persons engaged in the body arts (tattooing, cosmetic tattooing, and body piercing), estheticians, nail technologists, electrologists, and schools and tanning salons licensed by the Board.

**Changes in Practice Definitions**

The bill would change the definition of cosmetology to limit cosmetology practices to those that are done for esthetic rather than medical purposes and to limit cosmetology practices relating to hair removal to temporary hair removal by the use of hands or mechanical or electrical appliances, other than electric needles. The same changes are made in the definition of esthetician.

**Prohibited Practices**

The statute that sets out those practices relating to cosmetology, esthetics, nail technology, and electrology that are limited to persons licensed by the Board would be amended to include, tattooing, cosmetic tattooing, or body piercing and further amended to prohibit cosmetologists, nail technologists,

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/klrd>

estheticians, and electrologists from providing a service using a medical device registered with the federal Food and Drug Administration or defined by state or federal law that may be distributed only on the order of a physician. The prohibition would not keep licensees of the Board of Cosmetology from providing services using a medical device on the order of and under the supervision of a physician in a location maintained by the physician. For the purposes of the act under which cosmetologists are regulated, the term physician is defined as a person licensed by the Board of Healing Arts to practice medicine and surgery.

### **Licensed Schools**

Pursuant to the bill, schools of cosmetology, from and after July 1, 2009, would have to have a student-instructor ratio of at least one instructor for every 25 students on the floor where consumer services are provided and one instructor for every 25 students in the instructional classroom and require not less than 1,000 clock hours of instruction rather than the 650 clock hours currently required. The same student-instructor ratio would apply to schools teaching nail technology from and after July 1, 2009. The amendments would make the same instructor-student ratio applicable to schools teaching esthetics and the number of required clock hours of instruction would increase from 650 to 1,000 hours on and after July 1, 2009. The statutory language that relates to schools teaching electrology would be amended to clarify that such schools are required to have one full-time instructor for every four students on the floor where consumer services are provided in addition to one instructor for every four students in the instructional classroom as of the effective date of the bill.

### **Applicants for Reciprocal Licensure or Licensure by Examination**

Under amendments proposed by the bill, applicants for a reciprocal license to practice cosmetology, esthetics, or

electrology and all applicants for licensure by examination would no longer have to submit a written statement from a person licensed to practice medicine and surgery showing the applicant to be free of infectious or contagious disease.

### **Apprenticeship Requirements**

Applicants for examination and licensure as an esthetician would be required under the amendments to have completed not less than 1,000 rather than 650 clock hour of apprenticeship in a licensed school.

### **General Provisions**

As provided by new language that would be added to a statute that concerns the display of licenses, each holder of a salon, clinic, or school license would be required to display the sanitation standards prescribed by the Secretary of Health and Environment in a conspicuous place in addition to the inspection reports and licenses now required to be displayed.

Other amendments would require disciplinary actions taken by the Board to be in accordance with the Kansas Administrative Procedure Act and clarify the Board's authority to assess civil penalties in addition to other disciplinary actions.

Allowing any individual to engage in activities that require a license would be added to those violations for which a disciplinary action may be taken.

### **Tanning Facilities**

A statute that concerns the licensing of tanning facilities by the Board of Cosmetology would be amended to give the Board the authority to deny or refuse to renew a license and to assess a fine not in excess of \$1,000 against a licensee for each of the violations of the law set out in the statute.

## **Body Arts**

The act under which tattoo artists, permanent color technicians, and persons engaged in body piercing are licensed would be amended to change the definition of “permanent color technician” to “cosmetic tattoo artist,” and to define the term “body piercer.” References to tattoo and body piercing facilities would be changed to establishments, and the definition of body piercing would be changed to limit the practice to puncturing the skin with needles. New definitions of cosmetic tattooing establishment, court appointed guardian, needle, trainer and apprentice would be added to the act. Technical changes would be made in several statutes to reflect the terminology changes that would be created by the bill.

New violations would be added to the list of violations that can result in a disciplinary action, including:

- Producing an indelible mark or figure on the body of another by scarring, using scalpels or other related equipment;
- Producing an indelible mark or figure on the body of another by branding, using a hot iron or other instrument; and
- Using any instrument, other than a needle, for the purpose of tattooing, cosmetic tattooing, or body piercing.

A violation of any of the restrictions noted above would constitute a class A misdemeanor.

New licensure requirements would be created by the bill, including:

- Making license application fees nonrefundable;

- Expanding the requirements for licensure as a tattoo artist, cosmetic tattoo artist, or body piercer to require:
  - Completion of a training program under a person licensed as a trainer by the Board or another state in the area of practice in which the person seeks licensure;
  - Completion of at least 50 procedures;
  - Payment of a non-refundable application fee;
  - Completion of eight hours of continuing education approved by the Board, in infection control and bloodborne pathogens, in addition to the infection control curriculum requirement; and
  - Successful completion of an exam approved, administered, or recognized by the Board.

Licensees would be required to complete five hours of continuing education, approved by the Board, in infection control and blood-borne pathogens as a condition of annual license renewal.

Further amendments to the act would set out new procedures for renewal of a license within six months after it expires, as well as procedures if renewal is sought more than six months after a license expires; require each establishment for tattooing, cosmetic tattooing, or body piercing to be inspected by the Board to ensure proper safety and infection control techniques are followed before an establishment license is issued; and require each establishment to post its license conspicuously.

The bill would expand the disciplinary actions available to the Board for tattoo artists, cosmetic tattoo artists, or body piercers to add options for censure, limiting or conditioning a license, refusing to renew a license, and assessing a fine. The

list of violations that can trigger disciplinary action would be expanded by adding:

- Has been convicted of any felony offense and has failed to demonstrate, to the Board's satisfaction, that the licensee has been sufficiently rehabilitated to warrant the public's trust;
- Has obtained, or attempted to obtain, a license through fraud, bribery, deceit, misrepresentation, or other misconduct; or
- Has become a danger to the public by reason of alcohol or drug abuse.

The bill would require civil fines assessed against tattoo artists, cosmetic tattoo artists, and body piercers to be deposited in the Cosmetology Fee Fund, rather than the State General Fund.

### **Conference Committee Action**

The Conference Committee amended the bill to include a definition of physician and to delete the word "licensed" before the word "physician" to conform the language with the new definition.

### **Background**

The bill was introduced at the request of the Kansas Board of Cosmetology, whose representative testified in support of the bill and offered amendments to the bill in the House Committee. Written testimony in support of the introduced version of the bill was submitted by the Academy of Aesthetics Arts. There was no testimony in opposition to the bill at the time of the House Committee hearing. The House Committee amended the bill to incorporate amendments proposed by the Board which deleted

the requirement for applicants for licensure to provide a written statement from a physician indicating the applicant is free from infectious or contagious disease. The amendments also clarified that an application for license renewal more than six months after a license has expired must be accompanied by an application and application fee, and that the required continuing education hours must have been obtained within two months of submitting the application and fees. The amendments clarified that all application, renewal and delinquent fees related to licenses for tattoo artists, cosmetic tattoo artists, and body piercers are to be non-refundable. The Committee also made technical changes.

The House Committee of the Whole amended the bill to make technical corrections, and to change the effective date to July 1, 2009, for provisions regarding changes to instructor-student ratios in schools licensed to teach cosmetology or esthetics, and for provisions increasing the number of hours of training required for estheticians.

In the Senate Committee, the Executive Director of the Board of Cosmetology spoke in support of the bill and offered amendments. Written testimony was provided by a representative of an out-of-state organization representing manufacturers of equipment for light-based aesthetics who requested amendments to the bill.

The Senate Committee amended the bill to incorporate technical changes to clarify the effective date of the increase in course clock hours; the effective date of increased student-to-instructor ratios; and the fund into which civil fines are to be deposited. An additional amendment offered by the Board and adopted by the Committee clarified the use of medical devices by Board of Cosmetology licensees.

The fiscal note prepared by the Division of the Budget indicates passage of the bill could result in additional revenues to the State General Fund through collection of fines.

Kansas board of cosmetology