

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 467 Cosmetology
SPONSOR(S): D. Davis
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1530 (I)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Tourism (Sub)</u>	<u>5 Y, 0 N</u>	<u>McDonald</u>	<u>Billmeier</u>
2) <u>Commerce</u>	<u></u>	<u>McDonald</u>	<u>Billmeier</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

House Bill 467 creates a cosmetology licensing exemption for individuals providing makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during the production of a motion picture, television broadcast, stage play, or product of any other entertainment-related industry. These individuals are permitted to provide services without having to hold a license or registration in Florida, another state, country, or territory. The bill clarifies that these individuals who provide makeup, special effects, or cosmetology services to actors and other talent in these industries are exempt from working in a licensed salon which is already the practice under s. 477.0263(3), F.S. Individuals exempted by the bill are not permitted to provide hair or makeup services to the general public.

The bill prohibits the use or possession of cosmetic products containing liquid nail monomer having any trace of methyl methacrylate (MMA) in a cosmetology salon, mobile cosmetology salon, or cosmetology school. The bill also makes it unlawful for any person in a licensed cosmetology salon, mobile cosmetology salon or cosmetology school to use a cosmetic product in a manner inconsistent with a restriction established by the US Food and Drug Administration.

The Department of Business and Professional Regulation has stated that it anticipates the cost of enforcement, including the laboratory testing of suspected MMA containing products, would be offset by fines and assessed prosecution and investigation costs collected from violators.

The bill takes effect July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0467a.com.doc
DATE: March 9, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill both reduces and increases government regulation. Sections 1 and 2 of the bill reduce government regulation of persons providing makeup, special effects, or cosmetology services to actors, stunt persons, musicians, extras, or other talent during production of a motion picture, television broadcast, stage play, or product of any other entertainment-related industry. The bill increases regulation by making it unlawful for a cosmetology salon, mobile cosmetology salon, specialty salon, or cosmetology school to use a cosmetic product containing a liquid nail monomer containing any trace of methyl methacrylate (MMA) or to use any cosmetic product inconsistent with the US Food and Drug Administration (FDA) restrictions.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Regulation of Cosmetology

Section 477.012, F.S., expressly states that the Legislature deems it necessary to regulate the practice of cosmetology in the state; however, restrictions shall be imposed only to the extent necessary to protect the public from significant and discernible danger to health and not in a manner which will unreasonably affect the competitive market.

The Board of Cosmetology (board) within the Department of Business and Professional Regulation (DBPR) is the agency responsible for the regulation of cosmetology under ch. 477, F.S. No person other than a duly licensed cosmetologist can practice cosmetology or use the name or title of a cosmetologist unless exempted under law.¹

Cosmetology is defined as:

The mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.²

In order to be licensed as a cosmetologist, a person must be at least 16 years of age or have received a high school diploma; must pay the required application fee; must satisfy an experience requirement by being authorized to practice cosmetology in another state or country for at least a year or an education requirement of 1,200 hours of training from a cosmetology program licensed pursuant to ch. 1005, F.S., a cosmetology program within the public school system, Cosmetology Division of the

¹ s. 477.014, F.S.

² s. 477.013, F.S.

Florida School for the Deaf and the Blind, or a government-operated cosmetology program in the state.³ Finally, the person must pass the licensure examination.

Cosmetology salons and specialty salons are required to be licensed⁴ and cosmetology services can only be performed in a licensed salon unless specifically exempted.⁵

Section 477.0135, F.S., exempts certain persons from the provisions of ch. 477, F.S., when practicing pursuant to their professional or occupational responsibilities and duties.⁶

Finally, s. 477.0263(3), F.S., permits a person who holds a valid cosmetology license in any country, territory, or jurisdiction of the United States to perform cosmetology services in a location other than a licensed salon when the services are performed in connection with the motion picture, fashion photography, theatrical, or television industry; a photograph studio salon; a manufacturer trade show demonstration; or an education seminar.

Makeup Artists in Film and Entertainment:

Film and entertainment companies that produce films, plays and television broadcasts must hire a licensed person to provide cosmetology and makeup services under one of two options:

1. An individual holding a license in another state or who is authorized to provide cosmetology services in another country, territory, of jurisdiction of the United States, or
2. An individual from Florida who holds a cosmetology license or holds a facial specialist or full specialist registration.

According to the Florida Film Commissioner, many of the special effects makeup artists do not hold a license in another state, country, territory or jurisdiction of the United States, although these individuals learn their craft by on-the-job training. The traditional cosmetology and makeup training under the state licensing programs, including Florida, usually do not cover special effects. According to the Film Commissioner, many of the actors often request a specific makeup artist, some who are not licensed, when working on a film or other entertainment industry-related product.

Florida is competing with other states for film and television projects. According to the analysis of DBPR and to the Florida Film Commissioner, California, one of Florida's major competitors, exempts from cosmetology licensure persons providing barbering, cosmetology, or electrolysis services to persons engaged in the theatrical, radio, television or motion picture production industry. Another competitor, Texas exempts a person providing service to someone who is the subject of a television appearance or the filming of a motion picture.

Methyl Methacrylate (MMA)

Methyl Methacrylate (MMA) is an inexpensive adhesive that is used when applying acrylic nails. MMA is used in the manufacture of many products including, but not limited to, resins and plastics, concrete water repellent, prosthetic devices, and as an additive in exterior latex house paint.

³ s. 477.019, F.S.

⁴ s. 477.025, F.S.

⁵ s. 477.0263, F.S. Exceptions include: nursing home, hospital, or residence when the client for medial reasons is unable to go to a licensed salon. Section 477.025, F.S., also exempts nursing homes and assisted living facilities licensed under ch. 400, F.S., from the licensed salon requirement when a cosmetologist provides salon services exclusively to facility residents.

⁶ Medical professional; person practicing barbering; person employed in federal, state, or local institutions, hospitals, or military bases as a cosmetologist; person who only applies cosmetic products in connection with sale or attempted sale of such products at retail; person who only shampoos; person who only cuts, trims, polishes, or cleans fingernails in a barbershop; and person employed by a photography studio salon while under supervision of a cosmetologist.

In 1972, the FDA obtained a court-ordered injunction to prohibit a manufacturer from distributing MMA to the nail industry. The FDA declared it a poisonous and deleterious substance that should not be used in fingernail preparations, but has not officially banned its use. Complaints of personal injury received by FDA associated with the use of fingernail extenders containing MMA include fingernail deformity and damage, as well as contact dermatitis.⁷ The sale and use of cosmetic nail preparations containing MMA has been banned in Canada.⁸

According to DBPR, 38 states have banned MMA.⁹ Maryland imposes a fine of \$1,000 per violation and requires the salon owner to bear the cost of lab testing without regard to whether there is a positive or negative test result. Ohio, New York, and Kentucky have enacted laws identical to Maryland's law. According to the DBPR, most states that ban MMA experience a high rate of MMA cases in the beginning, but after approximately a year the cases decrease to approximately 4 to 5 a year.

Florida does not ban or otherwise limit the use of MMA in cosmetology.

Effect of Proposed Change:

House Bill 467 creates a cosmetology licensing exemption for individuals providing makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during the production of a motion picture, television broadcast, stage play, or product of any other entertainment-related industry. These individuals are permitted to provide services without having to hold a license or registration in Florida, another state, country, or territory. The bill clarifies that these individuals who provide makeup, special effects, or cosmetology services to actors and other talent in these industries are exempt from working in a licensed salon which is already the practice under s. 477.0263(3), F.S. Individuals exempted by the bill are not permitted to provide special effects, or cosmetology makeup services to the general public.

The bill prohibits the use or possession of cosmetic products containing liquid nail monomer having any trace of methyl methacrylate (MMA) in a cosmetology salon, mobile cosmetology salon, or cosmetology school. The bill also makes it unlawful for any persons in a licensed cosmetology salon, mobile cosmetology salon or cosmetology school to use a cosmetic product in a manner inconsistent with a restriction established by the US Food and Drug Administration.

C. SECTION DIRECTORY:

Section 1. Amends s. 477.0135, F.S., creating an exception to cosmetology licensure for persons providing makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during the production of a motion picture, television broadcast, stage play, or product of any other entertainment-related industry.

Section 2. Amends s. 477.0263, F.S., deleting "the motion picture, fashion photography, theatrical, or television industry" from the exemption that permits licensed cosmetologists to perform cosmetology services in a location other than a licensed salon.

Section 3. Amends s. 477.0265, F.S., prohibiting use of MMA in a cosmetology salon, mobile cosmetology salon, specialty salon, or cosmetology school; prohibiting the use of a cosmetic product in a manner inconsistent with a restriction established by the FDA.

⁷ US Food and Drug Administration, "FDA/CFSAN Office of Cosmetics and Colors Fact Sheet" (March 30, 2000).

⁸ Alberta Human Resources and Employment, "Workplace Health & Safety, Chemical Hazards" (July 2003).

⁹ California, Texas, Utah, Washington, Oregon, Alaska, Idaho, Nevada, Arizona, Wyoming, Colorado, Oklahoma, Kansas, South Dakota, Louisiana, Arkansas, Missouri, Wisconsin, Illinois, Kentucky, Tennessee, Mississippi, Alabama, Georgia, Indiana, Michigan, Ohio, North Carolina, Pennsylvania, New York, Maryland, New Jersey, Delaware, Vermont, New Hampshire, Maine, Massachusetts, and Connecticut.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Products containing MMA are more inexpensive than other products used in the application of acrylic nails. The ban of MMA will result in cosmetologists who currently use such products to buy a more expensive alternative product or products.¹⁰

D. FISCAL COMMENTS:

According to the DBPR, MMA would not be tested for as a routine inspection item. If a case warrants testing, samples would be forwarded to a laboratory for chemical analysis, and the chemists would also need to be available for testimony, if necessary. The caseload is projected to be 200 for the first year and 100 per year thereafter. The laboratory utilized by the Division of Pari-Mutuel Wagering in Gainesville can perform the tests for \$150 each. Based on this enforcement model there would not be an FTE impact, however, total costs would be \$32,200 (200 tests x \$161, included 7.3% service charge to GR) for FY 2004-05 and \$16,100 each year thereafter.

Violators would be assessed costs of investigation and prosecution, which would include testing costs. The \$30,000 in laboratory costs would be recovered in the fines collected from the violators. Therefore, the additional costs would be offset by additional revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

2. Other:

Subparagraph 2. of s. 477.0265(1)(h), F.S., may constitute an unconstitutional delegation of legislative authority. An invalid delegation of authority violates the principal of separation of powers

¹⁰ Analysis by Department of Business and Professional Regulation (January 21, 2004).

in Art. II, s. 3, Fla. Const.¹¹ When assigning to an agency a regulatory responsibility, the Legislature must provide the agency with adequate standards and guidelines when delegating the duties.¹² The executive branch must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed.¹³ The bill may constitute an unconstitutional delegation of authority because it delegates to the board the use of federal regulations, that can change periodically, by which to judge the criminal appropriateness of those minimum standards.

Legislation can adopt provisions of legislation or administrative rules from jurisdictions outside of Florida, such as federal and state laws and rules, that exist at the time the legislation is enacted. These laws and rules may not be adopted to incorporate subsequent changes in the legislation and rules from outside this state.¹⁴ The bill does not provide direction as to the date of such regulations that will be used to determine what will constitute a prohibited act under ch. 477, F.S., that will be punishable as a misdemeanor of the second degree.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

As written, it is unclear whether the phrase “product of any other entertainment-related industry” in section 1 of the bill includes the deleted term “fashion photography” in section 2 of the bill. There is no definition of the phrase in section 1 which could lead to very wide interpretation.

The MMA prohibition in section 3 of the bill does not apply to the use of MMA by a licensed cosmetologist in locations other than a cosmetology school, cosmetology salon, mobile cosmetology salon, or specialty salon where licensed cosmetologists are permitted to provide services, such as the home of a client, a nursing home, or hospital, when the client for medical reasons is unable to go to a licensed salon. Additionally, the bill does not prohibit the distribution or sale in the state of cosmetology products containing MMA, provided that the possession for sale does not occur in a cosmetology salon, mobile cosmetology salon, specialty salon, or cosmetology school. According to the Department of Business and Professional Regulation, there has been no discussion by the Board of Cosmetology concerning distribution and sale of MMA by beauty supply stores. The current law and rules do not cover this area of the cosmetology industry.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 8, 2004, the Tourism Subcommittee approved an amendment to further clarify the entertainment industry qualifications for an exemption from the cosmetology licensing requirements and to address constitutional questions raised in the analysis.

¹¹ *Gallagher v. Motors Insurance Corp.*, 605 So.2d 62 (Fla. 1992).

¹² *Florida East Coast Industries, Inc. v. Dept of Community Affairs*, 677 So.2d 357 (Fla. 1st DCA 1966).

¹³ *Florida Home Builders Association v. Division of Labor*, 367 So.2d 219 (Fla. 1979).

¹⁴ *Adoue v. State*, 408 So.2d 567, 569 (Fla. 1982); *Friemuth v. State*, 272 So.2d 473, 476 (Fla. 1976).