

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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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>18 Y, 0 N w/CS</u>	<u>McDonald</u>	<u>Billmeier</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill creates a cosmetology licensing exemption for individuals providing makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment (OFE) as a "qualified production" as defined in s. 288.1254(2)(d), F.S. 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. Individuals exempted under this subsection are not permitted to provide such services to the general public.

The bill also creates a cosmetology licensing exemption for individuals providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent or providing makeup or special effects services to the general public for no compensation. The term "theme park or entertainment complex" has the same meaning as in s. 509.013(9), F.S.

The bill authorizes the Board of Cosmetology to adopt by rule restrictions established in regulations of the U.S. Food and Drug Administration related to use of a cosmetic product or to any substance used in the practice of cosmetology where the board finds that the product or substance poses a risk to the health, safety, and welfare of persons providing cosmetology services or to clients.

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 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:** h0467b.com.doc  
**DATE:** April 8, 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. Section 1 of the bill reduces government regulation of persons providing makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment (OFE) as a “qualified production” as defined in s. 288.1254(2)(d), F.S., and of persons providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent or providing makeup or special effects services to the general public for no compensation. 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.<sup>1</sup>

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.<sup>2</sup>

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

<sup>1</sup> s. 477.014, F.S.

<sup>2</sup> s. 477.013, F.S.

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

Cosmetology salons and specialty salons are required to be licensed<sup>4</sup> and cosmetology services can only be performed in a licensed salon unless specifically exempted.<sup>5</sup>

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.<sup>6</sup>

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.

### **Entertainment Industry Financial Incentive Program**

Section 288.1254, F.S., creates an entertainment industry financial incentive program, subject to appropriation. The purpose of this incentive program is to pay financial incentives to qualified

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<sup>3</sup> s. 477.019, F.S.

<sup>4</sup> s. 477.025, F.S.

<sup>5</sup> s. 477.0263, F.S. Exceptions include: nursing home, hospital, or residence when the client for medical 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.

<sup>6</sup> 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.

productions of filmed entertainment and digital-media-effects companies for expenditures made in Florida and to filmed entertainment projects that relocate to Florida from other states. Section 288.1254(2)(d), F.S., defines a “qualified production” to mean:

...filmed entertainment that makes expenditures in this state for the total or partial production of a motion picture, made-for-television movie with a running time of 90 minutes or more, commercial, music video, industrial and educational film, television series pilot, or television episode. Productions that are deemed by the Office of Film and Entertainment to contain obscene content, as defined by the United States Supreme Court, shall not be considered qualified productions.

Section 288.1254, F.S., provides for an application process to be administered by the Governor’s Office of Film and Entertainment (OFE), with oversight by the Office of Tourism, Trade, and Economic Development. It specifies eligibility requirements for qualified productions and projects, requires an annual report on the state’s return on investment from these financial incentives, and provides that annual funding for the entertainment industry financial incentive program is subject to legislative appropriation.

There are two types of reimbursement incentives provided in s. 288.1254, F.S. The first is a reimbursement of up to 15 percent for qualifying expenditures in Florida for a qualified production that demonstrates a minimum of \$850,000 in total qualified expenditures. The second type of reimbursement provides a payment not to exceed five percent of annual gross revenues on qualified expenditures before taxes or \$100,000, whichever is less, for a digital-media-effects company in the state that provides digital material to a qualified production certified by OFE.<sup>7</sup>

### **Theme Park or Entertainment Complex**

Section 509.013(9), F.S., defines “theme park or entertainment complex” to mean a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

### ***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.

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.<sup>8</sup> The sale and use of cosmetic nail preparations containing MMA has been banned in Canada.<sup>9</sup>

According to DBPR, 38 states have banned MMA.<sup>10</sup> 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.

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<sup>7</sup> See s. 288.1254(4)(a) and (b), F.S.

<sup>8</sup> US Food and Drug Administration, “FDA/CFSAN Office of Cosmetics and Colors Fact Sheet” (March 30, 2000).

<sup>9</sup> Alberta Human Resources and Employment, “Workplace Health & Safety, Chemical Hazards” (July 2003).

<sup>10</sup> 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.

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:**

The bill creates a cosmetology licensing exemption for individuals providing makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment (OFE) as a “qualified production” as defined in s. 288.1254(2)(d), F.S. 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. Individuals exempted under this subsection are not permitted to provide such services to the general public.

The bill also creates a cosmetology licensing exemption for individuals providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent or providing makeup or special effects services to the general public for no compensation. The term “theme park or entertainment complex” has the same meaning as in s. 509.013(9), F.S.

The bill authorizes the Board of Cosmetology to adopt by rule restrictions established in regulations of the U.S. Food and Drug Administration related to use of a cosmetic product or to any substance used in the practice of cosmetology where the board finds that the product or substance poses a risk to the health, safety, and welfare of persons providing cosmetology services or to clients.

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 takes effect July 1, 2004.

**C. SECTION DIRECTORY:**

**Section 1.** Amends s. 477.0135, F.S., relating to exemptions; creating two exemptions to cosmetology licensure.

**Section 2.** Amends s. 477.016, F.S., relating to rulemaking; authorizing rules relating to certain restrictions established by regulation of the U.S. Food and Drug Administration.

**Section 3.** Amends s. 477.0265, F.S., relating to prohibited acts; prohibiting use of MMA in a cosmetology salon, mobile cosmetology salon, specialty salon, or cosmetology school.

**Section 4.** Reenacts the penalty provision in s. 477.029(1)(h) and (2), F.S., for the purpose of incorporating the amendment to s. 477.0265, F.S., in section 3 of the bill.

**Section 5.** Provides an effective date.

**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.<sup>11</sup>

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:

None.

B. RULE-MAKING AUTHORITY:

Section 2 of the bill authorizes the Board of Cosmetology to adopt rules relating to restrictions established by regulation of the U.S. Food and Drug Administration.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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.

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<sup>11</sup> Analysis by Department of Business and Professional Regulation (January 21, 2004).

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Committee on Commerce adopted a strike-all amendment to HB 467 and passed the bill with a committee substitute. The committee substitute differs from the original bill as follows:

- Amends s. 477.0135, F.S., to provide a licensure exemption for cosmetology for individuals providing:
  1. makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment (OFE) as a “qualified production” as defined in s. 288.1254(2)(d), F.S.; clarifies that these individuals who provide such services in these industries are exempt from working in a licensed salon; prohibits these exempted individuals from providing such services to the general public.
  2. makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent or providing makeup or special effects services to the general public for no compensation; states that the term “theme park or entertainment complex” has the same meaning as in s. 509.013(9), F.S.
- Amends s. 477.016, F.S., to authorize the Board of Cosmetology to adopt by rule restrictions established in regulations of the U.S. Food and Drug Administration related to use of a cosmetic product or to any substance used in the practice of cosmetology where the board finds that the product or substance poses a risk to the health, safety, and welfare of persons providing cosmetology services or to clients.
- Deletes changes made to s. 477.0263, F.S., leaving the section unchanged.
- Deletes provision in s. 477.0265, F.S., prohibiting the use of a cosmetic substance in a manner inconsistent with restrictions established by the U.S. Food and Drug Administration. This was done to avoid problems with the Board of Cosmetology being required to only use those restrictions at the time of passage of the bill until the section could be amended by the Legislature. Violation of a rule is punishable under s. 477.0265, F.S.

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 of the original bill as presented to the Tourism Subcommittee.