

Enrolled
House Bill 2105

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Health Licensing Office)

CHAPTER

AN ACT

Relating to regulation of practice of cosmetology; amending ORS 345.010, 345.400, 345.430, 345.440, 345.450, 348.290, 690.005, 690.015, 690.025, 690.046, 690.075, 690.165 and 690.167.

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

SECTION 1. ORS 690.005 is amended to read:

690.005. As used in ORS 690.005 to 690.235:

(1) "Agency" means the Health Licensing Office.

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

(a) Shampooing, *[arranging,]* styling, *[curling,]* cutting, *[temporarily waving,]* singeing*[,* *cleansing]* 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, but such appliances shall not be galvanic or faradic.

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

(3) "Board" means the Board of Cosmetology.

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

(5) "Cosmetology" means the art or science of beautifying and improving the skin, nails and hair. "Cosmetology" *includes* **and** the study of cosmetics and their application.

(6) "Demonstration permit" means a written authorization for a person to practice, demonstrate and teach one or more fields of practice on a temporary basis.

[(7) "Facial technology" means the use of the hands, mechanical or electrical apparatus or appliances, cosmetic preparations, antiseptics, tonics, lotions or creams in massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work performed on the human face and neck above the seventh vertebra for cosmetic purposes and not for the treatment of disease or physical or mental ailments.]

(7) "Esthetics" means any of the following skin care practices performed on the human body for the purpose of keeping the skin 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 electrical apparatuses or appliances for cleansing, stimulating, manipulating, exfoliating or applying lotions or creams.

- (b) **Temporary removal of hair.**
- (c) **Makeup artistry.**
- (d) **Facial and body wrapping.**
- (e) **Facial and body waxing.**

(8) "Facility" means an establishment operated on a regular or irregular basis for the purpose of providing services in one or more fields of practice.

(9) "Field of practice" means **the following cosmetology disciplines:**

- (a) Barbering.
- (b) [*Facial technology*] **Esthetics.**
- (c) Hair design.
- (d) Nail technology.

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

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

(b) [*Arranging,*] Styling, [*dressing, curling, temporary waving,*] permanent waving, relaxing, cutting, singeing, bleaching, coloring, [*dyeing, cleansing,*] shampooing, conditioning, applying hair [*tonics*] **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.

(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.

(12) "License" means a written authorization issued under ORS 690.055 to a person to operate a facility for providing services related to one or more fields of practice to the public.

(13) "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. [*"Manicuring or pedicuring" includes*]:

(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**, [*or*] feet **or legs below the knee.**[; *and*]

(c) Applying, sculpturing [*and*] **or** removing [*of*] artificial nails of the hands **or feet.**

(14) "Practitioner" means a person certified to perform services included within a field of practice.

(15) "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.

(16) "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.

(17) "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 2. ORS 690.015 is amended to read:

690.015. (1) This section establishes prohibitions relating to the practice of hair design, barbering, [*facial technology*] **esthetics** and nail technology. The prohibitions under this section are subject to the exemptions under ORS 690.025. A person who violates a prohibition under this section is subject to the penalties under ORS 690.992 in addition to any administrative action taken by the Board of Cosmetology under ORS 690.075 or any civil penalty imposed by the Health Licensing Office under ORS 676.612. [*A person violates a prohibition under this section if the person does any of the following*]

(2) **A person may not:**

[*(1)*] (a) [*Performs*] **Perform** or [*attempts*] **attempt** to perform as a practitioner without a certificate, demonstration permit or certificate of identification.

[*(2)*] (b) [*Operates*] **Operate** a facility without a license or temporary facility permit.

[(3)] (c) [*Operates*] **Operate** a facility unless it is at all times under the direct supervision of a practitioner.

[(4)] (d) [*Practices*] **Practice** hair design, barbering, [*facial technology*] **esthetics** or nail technology as an independent contractor without a registration.

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

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

[(7)] (g) [*Allows*] **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.

[(8)] (h) [*Sells, barter or offers*] **Sell, barter or offer** to sell or barter a document evidencing a certificate, registration, license, permit or certificate of identification.

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

[(10)] (j) Materially [*alters*] **alter** with fraudulent intent a document evidencing a certificate, registration, license, permit or certificate of identification.

[(11)] (k) [*Uses or attempts*] **Use or attempt** to use as valid a fraudulently obtained, counterfeited or materially altered document evidencing a certificate, registration, license, permit or certificate of identification.

SECTION 3. ORS 690.025 is amended to read:

690.025. [*This chapter*] **ORS 690.005 to 690.235** does not apply to:

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

(2) [*A health care professional acting within scope of the professional license or permit or a person subject to regulation by a health care professional licensing board.*] **Persons licensed by a health professional regulatory board listed in ORS 676.160 who are acting within the scope of their professional license.**

(3) **Persons identified by the agency 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 facility licensed under ORS 443.415.**

[(3)] (4) [*A person*] **Persons** engaged in rendering emergency medical assistance as defined in ORS 30.800.

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

[(5)] (6) Commissioned medical and surgical officers and personnel of the United States Armed [*Forces*] **Services** while operating on a military base and personnel of correctional institutions while operating on the premises of a correctional facility.

[(6)] (7) Persons applying temporary makeup, combing hair or applying hair spray, without compensation specifically for the application or combing, for the sole purpose of preparing any individual for a professional photograph or theatrical performance.

[(7)] (8) 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.

SECTION 4. ORS 690.046 is amended to read:

690.046. To qualify for certification as a practitioner of hair design, barbering, [*facial technology*] **esthetics** or nail technology, an applicant shall:

(1) 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.

(2) Successfully pass the certification examination approved, administered or recognized by the Board of Cosmetology for the field of practice in which certification is sought.

(3) Pay all appropriate fees.

(4) Meet any additional requirements the Board of Cosmetology may impose by rule for certification in a particular field of practice.

SECTION 5. ORS 690.075 is amended to read:

690.075. The Board of Cosmetology may revoke, suspend, refuse to issue or refuse to renew a certificate, registration, license or permit, or place on probation any holder thereof, upon proof that the holder:

(1) Has continually performed hair design, barbering, [*facial technology*] **esthetics** or nail technology while knowingly having an infectious or communicable disease.

(2) Has violated ORS 646.608 in the conduct of a hair design, barbering, [*facial technology*] **esthetics** or nail technology business.

(3) Has violated ORS 690.015 or 690.095 or any rule adopted under ORS 690.165 or 690.205.

(4) Has performed a field of practice while under the influence of alcohol, controlled substances or other skill-impairing substances or has engaged in the illegal use of controlled substances or other skill-impairing substances so as to create a risk or harm to customers.

(5) Has demonstrated negligence, incompetency or misconduct in a field of practice.

(6) Has engaged in fraudulent or deceitful activities in performing in a field of practice.

(7) Has been convicted in any jurisdiction of a crime that bears a demonstrable relationship to the field of practice. A plea of no contest shall be considered a conviction for purposes under this subsection.

SECTION 6. ORS 690.165 is amended to read:

690.165. In addition to the powers otherwise granted by ORS 345.430 and 690.005 to 690.235, the Board of Cosmetology shall have the power to:

(1) Determine whether applicants are qualified to take certification examinations.

(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) Direct the Health Licensing Office to issue certificates, registrations, licenses, permits and certificates of identification 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 and any other matters relating to fields of practice, facilities or locations used by persons providing services regulated by ORS 690.005 to 690.235.

(6) Direct the Health Licensing Office to suspend, revoke, limit or refuse to issue or renew certificates, registrations, licenses or permits or impose a period of probationary activity on the holder thereof.

(7) Do any act necessary or proper to effect and carry out the duties required of the board by ORS 690.005 to 690.235.

(8) Adopt rules prescribing standards of professional conduct for persons practicing hair design, barbering, [*facial technology*] **esthetics** or nail technology.

SECTION 7. ORS 690.167 is amended to read:

690.167. In the manner prescribed in ORS chapter 183 for contested cases and at the direction of the Board of Cosmetology, the Health Licensing Office may impose a form of discipline listed in ORS 676.612 against any person practicing barbering, cosmetology, hair design, [*facial technology*] **esthetics** or nail technology for any of the grounds listed in ORS 676.612 and for any violation of the provisions of ORS 690.005 to 690.235, or the rules adopted thereunder.

SECTION 8. 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 a person employed by or for a career school for the purpose of procuring students, enrollees or subscribers by solicitation in any form, made at a place or places other than the school office or place of business of such school.

(2) "Barbering" has the meaning given that term in ORS 690.005.

(3) "Board" means the State Board of Education.

(4) "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.

(5) [*Facial technology*] "**Esthetics**" has the meaning given in ORS 690.005.

(6) "Hair design" has the meaning given in ORS 690.005.

(7) "License" means the authority the career school has been granted to operate under ORS 345.010 to 345.450.

(8) "Nail technology" has the meaning given in ORS 690.005.

(9) "Registration" means the approval by the Superintendent of Public Instruction of a teacher or agent to instruct in or to represent the school.

(10) "Superintendent" means Superintendent of Public Instruction.

SECTION 9. ORS 345.400 is amended to read:

345.400. In addition to the other requirements of ORS 345.010 to 345.450, the rules adopted by the State Board of Education to regulate schools teaching hair design, barbering, [*facial technology*] **esthetics** or nail technology:

(1) May include rules the board considers necessary to protect the economic or physical health and safety of the public and of the students attending the school including compliance with ORS 345.110.

(2) Shall include rules that set standards for teachers teaching in schools licensed to teach hair design, barbering, [*facial technology*] **esthetics** or nail technology pursuant to ORS 345.010 to 345.450.

(3) Shall require the schools to teach, and require for graduation from the school, courses that meet the following minimum standards:

(a)(A) A minimum hourly training requirement for:

(i) Hair design, 1,450 hours;

(ii) Barbering, 1,100 hours;

(iii) [*Facial technology*] **Esthetics**, 250 hours; and

(iv) Nail technology, 350 hours; and

(B) In addition to the programs listed in this subsection, a student is also required to successfully complete the following requirements once:

(i) Safety and sanitation, 150 hours; and

(ii) Career development, 100 hours.

(b) A student competency-based training requirement for hair design, barbering, [*facial technology*] **esthetics** or nail technology, if the school has developed written requirements for graduation that are approved by the Superintendent of Public Instruction.

SECTION 10. ORS 345.430 is amended to read:

345.430. At the request of the Board of Cosmetology, the Superintendent of Public Instruction shall determine whether a person from out-of-state or out-of-country seeking a certificate in hair design, barbering, [*facial technology*] **esthetics** or nail technology is qualified to take the test of the Board of Cosmetology. A determination shall be made by an evaluation of academic transcripts, apprenticeship records and work experience documentation. If documentation is not available, the superintendent may refer the person to a career school for evaluation and recommendation.

SECTION 11. ORS 345.440 is amended to read:

345.440. Safety and sanitation inspections performed in schools licensed under ORS 345.010 to 345.450 to teach hair design, barbering, [*facial technology*] **esthetics** or nail technology shall be conducted by the Health Licensing Office.

SECTION 12. ORS 345.450 is amended to read:

345.450. (1) In addition to the fees required by ORS 345.080, before issuing any license under ORS 345.010 to 345.450 to a school teaching hair design, barbering, [*facial technology*] **esthetics** or

nail technology, and annually thereafter, the Department of Education shall collect a nonrefundable annual inspection fee of \$100.

(2) The inspection fee collected under subsection (1) of this section shall be transferred to the Health Licensing Office for inspections performed under ORS 345.440.

SECTION 13. ORS 348.290 is amended to read:

348.290. The Oregon Student Assistance Commission shall apply the interest on the amount transferred to the Oregon Student Assistance Fund under section 4, chapter 377, Oregon Laws 1985, to provide financial aid, as defined in ORS 348.505, to students to study barbering, hairdressing, manicure and [*facial technology*] **esthetics** at eligible post-secondary schools.

Passed by House May 2, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate May 18, 2005

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President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State