



# Ohio Legislative Service Commission

## Final Analysis

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### **Am. Sub. S.B. 213** 131st General Assembly (As Passed by the General Assembly)

**Sens.** Jordan and Tavares, Beagle, Brown, Eklund, Uecker, Yuko, Coley, Burke, Faber, Hite, Hughes, Jones, Obhof, Peterson

**Reps.** Brown, Green, Amstutz, Anielski, Antani, Antonio, Barnes, Boose, Boyd, Brenner, Burkley, Butler, Celebrezze, Conditt, Craig, Driehaus, Ginter, Hambley, Henne, Howse, Kunze, McColley, M. O'Brien, Perales, Ramos, Reece, Reineke, Rezabek, Roegner, Rogers, Ruhl, Sears, K. Smith, Sprague, Strahorn, Sweeney, Thompson

**Effective date:** September 13, 2016

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## **ACT SUMMARY**

### **Boutique services**

- Establishes "boutique services" as a separate branch of cosmetology and requires each individual wishing to practice that branch to register with the State Board of Cosmetology.

### **Prohibited activity**

- Prohibits an individual from practicing a branch of cosmetology other than in a licensed facility unless the individual is exempt from the Cosmetology Law.
- Prohibits an individual from using cosmetology to treat or attempt to cure a physical or mental disease or ailment.
- Creates additional penalties for using or possessing a prohibited substance at a school of cosmetology or salon.

### **Cosmetology licensing**

- Requires a salon operator license applicant to affirm that the applicant will post a toll-free number and online process for customers to report Cosmetology Law violations and to ensure compliance with the act's apprenticeship requirement.

- Eliminates "managing" cosmetology licenses and eliminates the requirement that every salon have a managing cosmetologist present to supervise when the salon is open.
- Creates "advanced" cosmetology licenses, which are largely similar to the eliminated managing cosmetology licenses.
- Modifies application and licensing procedures for licenses issued by the Board.
- Increases various statutory fees charged by the Board to amounts currently collected under continuing authority.
- Permits the Board to develop and administer its own examinations or to contract with a national testing service to develop or administer the examinations.
- Requires continuing education for licensees to include training on identifying and addressing human trafficking, safety and sanitation, and law and rule updates.

### **Disciplinary actions**

- Makes the following grounds for licensee discipline: a conviction of or plea of guilty to a human trafficking violation, failure to cooperate with an investigation or inspection, or failure to respond to a subpoena.
- In certain circumstances, allows the Board to take disciplinary action against a licensee without conducting an adjudication hearing.
- Modifies the fines that may be issued for violations of the Cosmetology Law.

### **State Board of Cosmetology**

- Allows the Board to investigate individuals and inspect premises with alleged Cosmetology Law violations, regardless of whether it is a licensee.
- Requires the Board to issue a pre-examination work permit to an individual seeking an instructor license.
- Requires the Board to provide a toll-free number and online service to receive complaints of Cosmetology Law violations.
- Expands the Board's hiring authority by allowing the Board to hire other individuals necessary for the administration of the Cosmetology Law.
- Adds two individuals to the Board's membership.



- Requires the Board to issue a rule for the timing of licensure examination for students who have not yet completed education.

## General

- Expands the list of activities covered under the practice of esthetics to include enhancement of the skin by skin care, facials, body treatments, hair removal, and other treatments; and eye lash extension services.
- Clarifies the list of activities covered by the practice of manicuring.
- Makes other changes to the Cosmetology Law.

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## CONTENT AND OPERATION

### Boutique services

The act establishes boutique services as a separate branch of cosmetology, and requires individuals who practice these services to register with the Board (see "**Boutique services registration**," below).<sup>1</sup> "Boutique services," is defined as braiding, threading, and shampooing.

Under the act, the "practice of braiding" means utilizing the technique of intertwining hair in a systematic motion to create patterns in a three-dimensional form, including patterns that are inverted, upright, or singled against the scalp that follow along straight or curved partings. It may include twisting or locking the hair while adding bulk or length with human hair, synthetic hair, or both and using simple devices such as clips, combs, and hairpins. The "practice of braiding" does not include any of the following:

- Application of weaving, bonding, and fusion of individual strands or wefts of hair;
- Application of dyes, reactive chemicals, or other preparations to color, straighten, curl, or alter the structure of hair;
- Embellishing or beautifying hair by cutting or singeing it (except as needed to finish the ends of synthetic fibers used to add bulk or lengthen hair).

The phrase "practice of braiding" does not appear to be used anywhere else in the Cosmetology Law or the act, and it is unclear whether the practice of braiding is meant to differ from braiding. Pre-existing law, unchanged by the act, defines "braiding" as intertwining the hair in a systematic motion to create patterns in a three-dimensional form, inverting the hair against the scalp along part of a straight or curved row of intertwined hair, or twisting the hair in a systematic motion, and includes extending the hair with natural or synthetic hair fibers.

The act defines "threading" and "shampooing" as follows:

<sup>1</sup> R.C. 4713.69.



- "Threading" includes a service that results in the removal of hair from its follicle from around the eyebrows and other parts of the face with the use of a single strand of thread and an astringent. A service is not threading if chemicals of any kind, wax, or any implements, instruments, or tools are used to remove the hair.
- "Shampooing" means the act of cleansing and conditioning an individual's hair under the supervision of an individual licensed under the Cosmetology Law, and in preparation to immediately receive service from a licensee.<sup>2</sup>

### **Boutique services registration**

For the Board to issue a boutique services registration, an applicant must be at least 16, of good moral character, and have the equivalent of an Ohio public school tenth grade education. Additionally, the applicant must submit a written application on a form prescribed by the Board that contains all of the following:

- The address and telephone number where boutique services will be performed (the address may not be a P.O. box);
- If the applicant has an occupational license, certification, or registration to provide beauty services in another state, the type of license and the state of licensure;
- Whether the applicant has ever had an occupational license, certification, or registration suspended, revoked, or denied in any state;
- An affidavit providing proof of formal training or apprenticeship under an individual providing boutique services.

An individual who holds a current, valid boutique registration with the Board may engage in the practice of boutique services, but no other branch of cosmetology. The place of business where boutique services are performed must comply with the safety and sanitation requirements for licensed salon facilities. By March 13, 2017 (six months after the act's effective date), the Board must specify the manner by which boutique services registrants must meet continuing education requirements that the Board may adopt.<sup>3</sup>

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<sup>2</sup> R.C. 4713.01.

<sup>3</sup> R.C. 4713.14(C) (5) and (D) (5), 4713.35, and 4713.69.



## Inspections

The act permits the Board, on its own motion or on receipt of a written complaint, to investigate or inspect the activities or premises of any individual or entity that has allegedly violated the Cosmetology Law, regardless of whether it is a licensee. If the Board determines based on its investigation that there is reasonable cause to believe there is a violation, the Board must give the person notice and a hearing in accordance with the Administrative Procedure Act.<sup>4</sup> The Board must keep a transcript of the hearing and issue a written opinion to all parties of its findings and ground for any disciplinary actions it takes.<sup>5</sup>

## Prohibited activity

The act prohibits an individual from practicing a branch of cosmetology other than in a licensed facility unless the individual or practice is exempt from the Cosmetology Law. The act defines "licensed facility" as any premises, building, or part of a building in which the Board authorizes cosmetology services to be performed. And the act defines "salon" to mean a licensed facility on any premises, building, or part of a building in which an individual engages in the practice of one or more branches of cosmetology.

The act prohibits an individual from using cosmetology to treat or attempt to cure a physical or mental disease or ailment.

Whoever violates these prohibitions is guilty of a fourth degree misdemeanor for a first offense. For each subsequent offense, a violator is guilty of a third degree misdemeanor.<sup>6</sup>

## Penalties for prohibited substances

The act also creates additional penalties for an individual who uses or possesses a prohibited substance at a school of cosmetology or salon. Under the act, if a Board inspector samples a product used or sold in a school or salon and determines that an individual has used or possessed a prohibited substance in violation of the Cosmetology Law, the Board must take disciplinary action against the individual. Continuing law prohibits the following substances: (1) any cosmetic product containing an ingredient prohibited by the U.S. Food and Drug Administration (FDA), (2) any cosmetic product used in a manner inconsistent with a FDA regulation, and (3) any

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<sup>4</sup> R.C. Chapter 119.

<sup>5</sup> R.C. 4713.66.

<sup>6</sup> R.C. 4713.14(Q) and (R), 4713.01, 4713.35, and 4713.99.



liquid nail monomer containing any trace of methyl methacrylate (MMA). Any fine assessed against the individual for a prohibited substance violation must include the cost of the inspector's test. A person's license may be suspended or revoked.

Additionally, under continuing law, an individual who violates the prohibited substance prohibition is guilty of a fourth degree misdemeanor for a first offense and a third degree misdemeanor for a subsequent offense.<sup>7</sup>

## **Types of licensing and registration**

### **Managing licensee becomes advanced licensee**

The act eliminates the managing cosmetologist, managing esthetician, managing hair designer, managing manicurist, and managing natural hair stylist licenses, and requires the Board to establish the advanced license. The Board must replace all existing managing licenses with "advanced" licenses, for the same branch of cosmetology, by September 13, 2018 (two years after the act's effective date).

Requirements for "advanced" licensure are largely the same as the requirements were for a managing license. Under continuing law, an applicant must have either a specified number of advanced training hours from a school licensed in Ohio, or have practiced a minimum specified number of hours in Ohio or another state.

For the training option, the act maintains the required hours for the advanced licensure as a cosmetologist and for the various branches of cosmetology.

For the practice option, the act lowers the number of practice hours required to obtain an advanced license to 1,800 regardless of the branch of cosmetology licensed. Under prior law, applicants for a manager's license were required to have completed at least 2,000 practice hours.

An advanced licensee generally has the same privileges and responsibilities of a managing licensee under prior law, but as outlined in "**Salon management**," below, an advanced licensee is not specifically licensed to manage salons. An advanced licensee is specifically permitted to work in a beauty salon, as opposed to managing it.<sup>8</sup>

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<sup>7</sup> R.C. 4713.141, 4713.14(M), and 4713.99.

<sup>8</sup> R.C. 4713.14(E), 4713.01, 4713.25, 4713.30, 4713.35, and 4713.55 and Section 3, with conforming changes in R.C. 2925.01, 4713.081, 4713.09, 4713.31, 4713.34, 4713.36, 4713.39, 4713.56, 4713.58, 4713.59, 4713.60, 4713.61, 4713.62, and 4713.63.



## **License to operate a salon**

### **Salon management**

The act eliminates the requirements that the Board adopt rules governing the management of salons. It also eliminates the management requirement for salons operating under the Cosmetology Law. Thus, a salon need only affirm that an individual holding a current, valid, cosmetologist license for the branch of cosmetology services performed at the salon will be present during the salon's operating hours or posted salon hours. Under prior law, to be licensed to operate a salon, an individual applying for the license was required to affirm that a managing cosmetologist or individual with the appropriate type of managing license would have charge of and immediate supervision over the salon at all times when the salon was open for business. If the salon was engaged primarily in retail sales, prior law required a managing cosmetologist or managing licensee to have had charge of and immediate supervision over the salon only during advertised service hours if the practice of cosmetology was restricted to those posted hours.

### **License to operate a salon – generally**

In addition to continuing law requirements for a salon operating license, the act requires an applicant to affirm that a notice containing a toll-free number and online process for reporting alleged Cosmetology Law violations, as prescribed by the Board, is posted at the salon in a common area.<sup>9</sup>

### **Independent contractor license**

Under the act, the Board may issue a license to engage in the practice of a branch of cosmetology as an independent contractor to an applicant who holds a current valid license for the type of salon in which the applicant will practice, and who satisfies other conditions. Prior law required that the applicant have a valid license to manage a salon to qualify for an independent contractor license. As described above, the act eliminates the manager's license. And it does not require that an applicant for an independent contractor license hold the advanced license that the act establishes.<sup>10</sup>

### **Instructor license**

Under continuing law, an applicant for an instructor license must have either a specified number of advanced training hours from a school licensed in Ohio, or have practiced a minimum number of hours in Ohio or another state. The act retains

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<sup>9</sup> R.C. 4713.41 and 4713.08.

<sup>10</sup> R.C. 4713.39.





requirements for the training option. But for the practice option, it lowers the number of practice hours to obtain an instructor license to 1,800, regardless of the branch of cosmetology. Under prior law, applicants for an instructor license who had opted for the practice option had to complete at least 2,000 practice hours.

The act requires the Board, by September 13, 2018 (two years after the act's effective date), to create a curriculum and an examination for a cosmetology instructor license and to conduct an examination for qualified individuals. An instructor license applicant must pass the examination before being issued the instructor license.<sup>11</sup>

### **Pre-examination work permit**

The act authorizes the Board to issue a pre-examination work permit to an individual seeking an instructor license who has applied to take the examination and who has satisfied all conditions to obtain the license. An individual who has been issued the temporary license may instruct the branch of cosmetology for which the individual seeks an instructor license for no more than 120 days.<sup>12</sup> Under continuing law, the Board is authorized to issue pre-examination work permits for individuals seeking a practicing license.

### **Regulation of tanning facilities**

The act expands the definition of tanning facility to include premises that contain equipment or booths that use chemicals applied to human skin, including chemical applications commonly referred to as spray-on, mist-on, or sunless tans.<sup>13</sup>

## **Discipline against licensees**

### **Additional grounds for discipline**

The act expands the grounds for which the Board may take disciplinary action against a licensee, registrant, or permit holder to include the following reasons:

- Failure to cooperate with an investigation or inspection;
- Failure to respond to a subpoena;
- Conviction of or plea of guilty to a violation of the criminal offense of human trafficking;

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<sup>11</sup> R.C. 4713.24(B) and 4713.31(J).

<sup>12</sup> R.C. 4713.22(C).

<sup>13</sup> R.C. 4713.01.



- For a salon, any person's conviction of or plea of guilty to a violation of the criminal offense of human trafficking for an activity that took place at the salon.

The act limits the Board's broad ability to take disciplinary action for failing to comply with the Cosmetology Law by applying this authority to only failing to comply with safety, sanitation, and licensing requirements.<sup>14</sup> However, the act prohibits the Board from taking disciplinary action against a licensed salon or cosmetology school operator for a Cosmetology Law violation that was committed by a licensee while practicing within the salon or school, when the licensee's actions were beyond the salon or school operator's control.<sup>15</sup>

### **Adjudication requirements**

Continuing law requires the Board to generally take disciplinary action pursuant to the Administrative Procedure Act – the Board must provide a notice and hearing before taking the action. Under the act, the Board must notify a licensee or registrant who is in violation of a law subject to disciplinary action and the owner of the salon in which the violation was found. These notice recipients may request a hearing under the Administrative Procedure Act. Under continuing law, the Board may take action against the individual or owner if a hearing has not been requested, (or under the act, a consent agreement has not been entered into) by 30 days after the date of the notice.

The act also expands the Board's authority to take disciplinary action without adjudication for health and safety violations. Under continuing law, the Board may take this emergency action if an inspector believes that a condition in a tanning facility creates an immediate danger to the health and safety of a person using a tanning facility. The act expands that authority to allow the Board to take emergency action for an immediate danger to the health or safety to any person using any facility licensed under the Cosmetology Law. Additionally, the act allows the Board to take disciplinary action without an adjudication against an individual or salon that violates the act's human trafficking prohibitions.

The act also allows the Board, in lieu of adjudication, to enter into a consent agreement with the licensee, permit holder, or registrant. If a majority of a quorum of the Board ratifies the agreement, it is considered to constitute the Board's findings and

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<sup>14</sup> R.C. 4713.64(A).

<sup>15</sup> R.C. 4713.64(I).



orders on the matter. If the Board does not ratify the agreement, the case must be scheduled for adjudication under the Administrative Procedure Act.<sup>16</sup>

### Notice of discipline or adjudication

The act also identifies alternative methods for the Board to provide notice of an adjudication or disciplinary action. Under the act, in addition to the notification methods under the Administrative Procedure Act, the Board may send notices by any traceable delivery method that requires the delivery person to obtain a signature upon delivery. The Board may also send notices by email, if the email delivery system certifies that the notice has been received.<sup>17</sup>

### Fines

The act reduces the fine amounts that the Board may impose for Cosmetology Law violations. The following table illustrates the changes:

Offense	Former limits for fines imposed against licensees	The act's limits for fines imposed against licensees
First time a violator commits an offense	\$500	\$250 plus \$100 for each additional violation discovered during that inspection
Second time a violator commits an offense	\$1,000, if the violator had previously been fined for the offense	\$500 plus \$200 for each additional violation discovered during the inspection
Third and subsequent time a violator commits an offense	\$1,500, if the violator had been fined for the same offense two or more times	\$1,000 plus \$300 for each additional violation discovered during the inspection

Under the act, the Board must issue an order notifying a violator of a fine imposed. The notice must specify the due date for the fine, which must be less than 45 days after the Board issues the order. The Board may extend the due date to up to 90 days after the Board issues the order upon the request of a violator or on the Board's own motion.

If a violator does not pay the fine by the due date and does not request an extension within ten days after the date the Board issues the order, the Board must add an additional penalty equal to 10% of the fine. If the fine is not paid within 90 days after

<sup>16</sup> R.C. 4713.64(C), (G), and (H).

<sup>17</sup> R.C. 4713.64(J).



the Board's order, the Board must add interest to the fine at a rate specified in the Board's rules.

If a penalty remains unpaid on the 91st day after the Board issues an order, the Board must certify the fine amount and any interest or additional penalty to the Attorney General for collection. The Attorney General may assess the collection cost to the amount certified.<sup>18</sup>

## **Application for licensure**

The act requires an applicant to submit a set of the individual's biometric fingerprint scan taken at the Board's offices, and include, in addition to the requirements under continuing law, on the written application form furnished by the Board all of the following:

(1) The individual's name and any identifying information required by the Board;

(2) A recent photograph of the individual that meets the Board's specifications;

(3) A photocopy of the individual's current driver's license or other proof of legal residence.<sup>19</sup>

## **Examinations**

The act requires examinations for licensure for any branch of cosmetology to assess the ability of an applicant to maintain a safe and sanitary place of service delivery. It allows the Board to develop and administer the appropriate examination or to contract with a national testing service to develop or administer the examination.

The act also requires the Board to adopt rules regarding the equipment or supplies an individual must bring to a licensing examination.

The act prohibits the Board from releasing the questions developed for an examination and the practical demonstrations used in the testing process, except for the following purposes: (1) review or rewriting of any part of the examination on a periodic basis as prescribed in Board rules, (2) testing of individuals in another state for admission to the profession of cosmetology or any of its branches as required under a contract or by means of a license with that state, or (3) complying with a public records

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<sup>18</sup> R.C. 4713.64(E).

<sup>19</sup> R.C. 4713.20 and 4713.28.



request after which the questions or the demonstrations have become a public record and otherwise may lawfully be released.

In addition, examination papers and scored results of the practical demonstrations of an individual must be open for inspection by the individual or the individual's attorney for at least 90 days following the announcement of the individual's grade, except for papers that under the terms of a contract with a testing service are not available for inspection. On written request by the individual or the individual's attorney no later than 90 days after announcement of the individual's grade, the Board must have the individual's examination papers re-graded manually.

Also, the act specifies that test materials, examinations, or evaluation tools that the Board develops or contracts with a private or government entity to administer become public records under Ohio Public Records Law 15 years after the materials, examinations, or tools were first used in an examination, unless state or federal law prohibits the release, or the record is the proprietary information of a private entity.<sup>20</sup>

## **Licensing fees**

Under continuing law, the Board has the authority, with Controlling Board approval, to increase fees for licenses and examinations if the fee increase does not exceed the statutory amount by more than 50%. The act increases the statutory fee amounts to the amounts currently collected by the Board, as follows:

- For a temporary pre-examination work permit, from \$5 to \$7.50.
- For initial application to take an examination, from \$21 to \$31.50.
- For application to retake an examination, from \$21 to \$31.50.
- For issuance of a practicing license, an advanced license, or an instructor license, from \$30 to \$45.
- For issuance of a license to practice a branch of cosmetology or an instructor license to an applicant who is licensed in another state or country, from \$60 to \$70.
- For renewal of a license, from \$30 to \$45.
- For issuance of a new salon license or change of name or ownership of a salon license, from \$60 to \$75.

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<sup>20</sup> R.C. 4713.24.



- For renewal of a salon license, from \$50 to \$60.
- For lapsed license renewal, from \$30 to \$45 per license renewal period that has elapsed since the license was last issued or renewed, but not fees for more than three lapsed renewal periods.
- For a duplicate license, from \$15 to \$20.
- For the processing of a check returned for insufficient funds, from \$20 to \$30.

The act also allows for the Board to establish an installment plan to pay fines and fees, to extend the payment due date by up to 90 days, and to reduce fees as the Board considers appropriate. If the licensee has not paid the fee by the due date, the Board must certify the amount of the fee to the Attorney General for collection. The Attorney General may assess the collection cost to the amount certified.<sup>21</sup>

### **Continuing education requirements**

Continuing law allows the Board to adopt rules to establish a continuing education requirement for licensees of up to eight hours in a biennial licensing period. The act applies that requirement to boutique services registrants. The act also requires any continuing education requirements adopted by the Board to include training in identifying and addressing the crime of human trafficking. Additionally, at least two of the eight continuing education hours must be earned in courses concerning safety and sanitation, and at least one of the eight hours must be earned in courses concerning law and rule updates.<sup>22</sup>

Also, continuing law requires the Board to inform each affected licensee of the continuing education requirement that applies to the next licensing period. The act clarifies that the Board must include the continuing education requirements in the licensee's renewal notification.

Furthermore, the act requires that continuing education requirements be completed by January 15 of each odd-numbered year. Prior law required that the education be completed by January 30.<sup>23</sup>

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<sup>21</sup> R.C. 4713.08(A)(18)(a)(i), 4713.10, 4713.11, not in the act, and 4713.63.

<sup>22</sup> R.C. 4713.09.

<sup>23</sup> R.C. 4713.59.



## **Designations on licenses**

The act requires the Board to specify the branch of cosmetology that a license entitles the holder to offer on each salon license and independent contractor license issued.<sup>24</sup> Continuing law includes the same requirement for the other licenses issued by the Board.

## **Display of license**

The act eliminates the requirement that every holder of a practicing license, instructor license, or independent contractor license display the license in a public and conspicuous place in the license holder's place of employment. Instead, a licensee or registrant need only maintain the board-issued wallet-sized license or electronically generated license certification or registration and a current government-issued photo identification that can be produced upon inspection or request. The act similarly modifies the display requirement for cosmetic therapists and massage therapists who offer professional services in a salon.<sup>25</sup>

## **Schools of cosmetology**

The act allows a private school of cosmetology to offer competency-based credit to satisfy minimum hours of training and instruction. Under prior law, although any school could offer clock hours or credit hours to satisfy instruction requirements, only a school operated by a public entity was authorized to offer competency-based credit.

The act also requires every school of cosmetology to annually review the subjects and coursework required to receive an initial cosmetology license and an advanced license and to incorporate training standards adopted by the Board.<sup>26</sup>

## **Career-technical students working in clinic**

Under the act, a student in a career-technical program learning a branch of cosmetology may continue developing skills in that branch of cosmetology after completing the required coursework or obtaining a license by working in the school clinic if the individual's services are provided in the licensed school clinic and the student is not compensated. This authority terminates when the student graduates.<sup>27</sup>

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<sup>24</sup> R.C. 4713.55.

<sup>25</sup> R.C. 4713.56.

<sup>26</sup> R.C. 4713.45.

<sup>27</sup> R.C. 4713.16(F).



## State Board of Cosmetology

### Board duties

In addition to the Board's continuing law duties, the act requires the Board to do all of the following:

- Regulate the practice of cosmetology and all of its branches within Ohio;
- Investigate the activities or inspect the premises of an individual or licensee if it appears that the Cosmetology Law has been violated;
- Provide a toll-free number and an online service to receive complaints of Cosmetology Law violations;
- Include the email address and telephone number of each individual issued a license or registration under the Cosmetology Law in its annual report to the Governor;
- Require Board-appointed inspectors to conduct inspections of licensed facilities: within 90 days of the opening of those facilities for business, upon a complaint reported to the Board, within 90 days of a documented violation, and at least once every two years (independent contractors are treated as individual salons for inspection purposes);
- Provide to each individual authorized to operate a facility under the Cosmetology Law a copy of the Department of Public Safety's poster regarding the national human trafficking resource center hotline.

The act allows the Board to delegate any of the above duties, as well as any of its continuing law duties, to its Executive Director or to a person designated by the Executive Director.<sup>28</sup>

### Board employees

The act expands the Board's hiring authority by allowing it to hire individuals as necessary for the administration of the Cosmetology Law. Under continuing law, the Board may hire inspectors, examiners, consultants on examination contents, and clerks. The act also expands the role of inspectors hired by the Board to include inspection and

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<sup>28</sup> R.C. 4713.07.





investigation of all facilities regulated by the Cosmetology Law. Under prior law, these inspectors could inspect only tanning facilities.<sup>29</sup>

### **Board membership**

The act adds two new members to the Board:

One individual who holds a current, valid esthetician license and who has been actively practicing esthetics for at least five years immediately before the individual's appointment; and

One member who holds a current, valid tanning permit and who has owned or managed a tanning facility for at least five years immediately before the individual's appointment.

The Governor must appoint these two new members by December 31, 2016. The new members will serve from the date of appointment until October 31, 2021. Under continuing law, subsequent terms of office are for five years.

With the act's elimination of the managing cosmetologist license, the former law requirement for two Board members to hold valid managing cosmetologist licenses and be actively engaged in managing a beauty salon is modified. Under the act, those two Board members must instead hold current cosmetologist licenses and must be actively engaged in managing beauty salons for at least five years, but need not be licensed as a managing cosmetologist.

Under the act, the Board's independent contractor member must hold a valid independent contractor license at the time of appointment. Under prior law, the appointee was required to be either an independent contractor, or an owner or manager of a salon where an independent contractor practiced cosmetology. As a result of this amendment, an owner or manager of such a salon who holds a seat on the Board on the act's effective date (September 13, 2016) may retain that seat until the term expires.

The act modifies the requirement for the Board member who represents schools of cosmetology. It specifies that this member must be an owner or executive actively engaged in the daily operations of the school. Prior law required that this member be an owner of a licensed school of cosmetology.

The act also specifies that not more than one Board member may have a common financial connection with any school of cosmetology or salon.<sup>30</sup>

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<sup>29</sup> R.C. 4713.06.

## **Board officers**

The act requires the Board to elect from among themselves a vice-chairperson, in addition to the chairperson they elect under continuing law. The act also requires the Board's Executive Director to serve as its secretary.<sup>31</sup>

## **Board records**

Continuing law requires the Board to keep public records open for inspection, and the act requires the Board to do so in accordance with Ohio's Public Records Law and in accordance with any rule the Board adopts in compliance with Ohio's records retention policy.<sup>32</sup>

## **Immunity**

The act provides civil immunity for an individual for reporting information to the Board that appears to show a violation of the Cosmetology Law or for testifying before the Board in an administrative hearing. The civil immunity does not apply if the individual reports or testifies in bad faith.<sup>33</sup>

## **Annual report**

Beginning one year after the act's effective date, the Board must annually submit to the Governor, President of the Senate, and Speaker of the House a written report that lists the following activity for the preceding 12-month period, as well as any recommendations the Board has for changes to the Cosmetology Law:

- The number of students enrolled in courses at licensed public and private cosmetology schools;
- The number of students graduating from licensed public and private cosmetology schools;
- The annual cost to attend each licensed public or private cosmetology school;
- The loan default rates for licensed public and private cosmetology schools;

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<sup>30</sup> R.C. 4713.02 and Sections 4 and 5.

<sup>31</sup> R.C. 4713.02 and 4713.06.

<sup>32</sup> R.C. 4713.02.

<sup>33</sup> R.C. 4713.07.



- The first-time licensure exam passage rate for graduates of all public and private cosmetology schools;
- The number of new and renewal licenses in each cosmetology profession;
- The number of complaint-driven inspections conducted by the Board;
- The number and type of violations, including a list of the top ten violations (to aid in the identification of focus areas for continuing education purposes);
- The 20 salons and individuals cited with the most violations for unlicensed workers;
- The number of adjudications or disciplinary actions taken by the Board.<sup>34</sup>

### Cosmetology definitions

The act makes the following changes to terms defined in the Cosmetology Law:<sup>35</sup>

The act defines **cosmetology** as the art or practice of embellishment, cleansing, beautification, and styling of hair, wigs, postiches, face, body, or nails.

The act expands the list of activities covered by the definition of the **practice of esthetics** to include enhancement of the skin by skin care, facials, body treatments, hair removal, and other treatments, and eye lash extension services. "Hair removal" and "eye lash extensions" are defined as follows:

"Hair removal" includes tweezing, waxing, sugaring, and threading. "Hair removal" does not include electrolysis.

"Eye lash extensions" include temporary and semi-permanent enhancements designed to add length, thickness, and fullness to natural eyelashes.

The act clarifies, by definition, that the **practice of manicuring** includes cleaning, trimming, shaping the free edge of, or applying polish to any individual's nails, applying nail enhancements and embellishments to any individual; and using lotions or softeners on an individual's hands or feet.

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<sup>34</sup> R.C. 4713.071.

<sup>35</sup> R.C. 4713.01.

The act specifies that a **salon** does not mean a tanning facility, although a tanning facility may be located in a salon.

## Technical changes

The act changes "person" to "individual" throughout the Cosmetology Law when "person" is used more narrowly than as it is defined for the Revised Code.<sup>36</sup> For purposes of the Revised Code as a whole, "person" is defined to include an individual, corporation, business trust, estate, trust, partnership, and association.<sup>37</sup>

## Additional changes

The act makes additional nonsubstantive and conforming changes to the Cosmetology Law that are not covered in this analysis.<sup>38</sup>

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## HISTORY

ACTION	DATE
Introduced	09-23-15
Reported, S. Gov't Oversight & Reform	01-27-16
Passed Senate (32-0)	02-10-16
Reported, H. Gov't Accountability & Oversight	05-11-16
Passed House (96-0)	05-18-16
Senate concurred in House amendments (33-0)	05-24-16

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<sup>36</sup> R.C. 4713.01, 4713.02, 4713.07, 4713.08, 4713.081, 4713.082, 4713.13, 4713.14, 4713.16, 4713.17, 4713.20, 4713.21, 4713.22, 4713.24, 4713.25, 4713.26, 4713.28, 4713.34, 4713.35, 4713.37, 4713.41, 4713.42, 4713.44, 4713.45, 4713.48, 4713.56, 4713.57, 4713.58, 4713.60, 4713.61, 4713.62, 4713.63, 4713.64, 4713.641, and 4713.99.

<sup>37</sup> R.C. 1.59(C), not in the act.

<sup>38</sup> R.C. 4713.01, 4713.02, 4713.03, 4713.44, and 4713.48.

