

SESSION OF 2002

**CONFERENCE COMMITTEE REPORT
HOUSE SUBSTITUTE FOR SENATE BILL NO. 643**

As Agreed to May 3, 2002

Brief *

House Sub. for SB 643 amends three acts currently administered by the Board of Cosmetology and the statute that creates the Board. In general, the amendments expand the powers of the Board in regard to the licensing and regulation of persons licensed to practice as cosmetologists, estheticians, manicurists, nail technologists, and electrologists and the regulation of beauty shops and schools of cosmetology; expand the scope of practice of certain of the persons licensed under the cosmetology laws by amending definitions; and create a new category of licensee. Other amendments concern cosmetology schools, tanning salons, and the composition of the Board of Cosmetology.

Cosmetology

Sub. for SB 643 expands the definition of cosmetology by adding bleaching and relaxing the hair to the current definition as well as replacing the general authority to engage in "performing any other beautifying process" with specific authority to engage in any other noninvasive beautifying process on any skin surface by means of hands or mechanical or electrical appliances, other than electric needles and for other than the treatment of medical, physical, or mental ailments. Similar changes are made in the definition of esthetician along with authority to use cosmetic preparations, antiseptics, lotions, creams, or other preparations. The definition of manicurist is expanded to authorize cleansing, stimulating or performing similar work on the arms, hands, ankles, or feet by means of hands or mechanical or electrical appliances and using cosmetic and other preparations in any of the practices authorized to be performed by manicurists. A definition of "instructor-in-training is added to the

*Conference committee summary reports are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree.

statute that defines terms used in the cosmetology statutes. New authority is given for a manicurist or esthetician to practice in the licensee's home and for manicurists, estheticians, and electrologists to practice in places other than a licensed shop or clinic, including various health care facilities and private residences of persons requiring home care as long as statutory requirements are met. Changes are made in the requirements to be met by persons practicing in another state who apply for a Kansas license and in the examination requirements to be met by persons applying for licensure by examination.

The statute that defines unlawful practices under the cosmetology laws is amended by Sub. for SB 643 to authorize the Board to issue a cease and desist order against any person who violates the provisions of the statute and to assess civil penalties for such violations not in excess of \$1,500, or both. The statute that sets out the grounds for disciplinary action under the cosmetology laws is amended to add authority to revoke, censure, limit or condition, suspend, or deny a license if the licensee has been subject to disciplinary action in another jurisdiction. KSA 2001 Supp. 65-1909, which sets out unlawful acts, is amended to authorize the Board to bring an action seeking an injunction against an unlawful practice. The amendment further provides, in any civil action, that it shall be presumed that irreparable damage will occur when the Board alleges and proves a violation of the licensing laws was committed. New language is added that allows a court, in addition to issuing an order for injunctive relief, to assess a fine of not more than \$1,500 against any person engaging in protected practices without a license.

Changes are made in the statute that concerns licensing examinations given by the Board, including a new provision that requires the written part of the examination to be given at the point that 1,000 hours of training or the equivalent thereof in credit hours has been completed. Authorization is given for a practical test to be given prior to licensure.

Other amendments relate to the licensing and regulation of schools of cosmetology, nail technology, esthetics, and electrology. The amendments add alternatives to the requirements to be met to be licensed as an instructor; limit the number of instructors-in-training that may be counted as meeting the required ratio of instructors and students; authorize the renewal of a license as an instructor or a school within 30 days after the expiration date of the last license on payment of a new delinquent license renewal fee created by the bill; and set out new procedures for converting required clock hours of

instruction to credit hours at the election of the school. A new subsection added to KSA 2001 Supp 65-1903 provides for a new instructor-in-training permit, and sets out requirements for and limitations on such permit.

The section of the act under which the statutory maximums applicable to the various fees for the classifications of cosmetologists, instructors, and schools are set is amended by Sub. for SB 643 to increase certain of the fee maximums and to authorize a fee for the new instructor-in-training permit. Language that prohibits the Board from requiring continuing education as a requirement for license renewal or reinstatement added by the 1998 Legislature is deleted from the statute.

Tanning Facilities

A statute that concerns the licensing of tanning facilities is amended to change the definition of the crime of operating an unlicensed tanning facility or violation of the laws or rules and regulations adopted by the Board or the Secretary of Health and Environment relating thereto by deleting the term "knowingly." A new statute created by Sub. for SB 643 authorizes the Board to issue cease and desist orders and to assess civil penalties for operating a tanning facility without a valid license. The new provisions relating to bringing actions for injunctive relief and presumption of irreparable damage added to the cosmetology laws are also incorporated into the new statute and thereby made applicable to the laws under which tanning facilities are regulated.

A statute that concerns the adoption of rules and regulations for tanning facilities is amended to reference KSA 65-1,148 and to provide that the Secretary of Health and Environment is to adopt sanitation standards for all tanning facilities. The statute is further amended to make a violation of rules and regulations adopted by the Board or the Secretary grounds for the suspension of a tanning facility license until such time as deficiencies have been corrected. Other amendments make violations of rules and regulations adopted by the Board or the Secretary grounds for the revocation, cancellation, suspension, or placement on probation of a license to operate a tanning facility.

Tattooing and Color Technology and Body Piercing

The statutes relating to the licensing and regulation of persons who engage in tattooing and permanent color technology and persons who engage in body piercing that were amended by the 2001 Legislature to transfer the administration of the act from the Board of Cosmetology to the Secretary of Health and Environment on July 1, 2002 are repealed by Sub. for SB 643 which has the effect of negating the proposed transfer.

KSA 2001 Supp. 65-1946 is amended to make it clear that permanent color technicians and tattoo artists, persons performing body piercing, and tattoo and body piercing facilities must comply with all applicable standards adopted by the Secretary of Health and Environment pursuant to existing law.

Board of Cosmetology

Sub. for SB 643 amends the statute that provides for the creation and membership of the Board of Cosmetology. The amendments provide that three, rather than four members shall be licensed under the provisions of KSA 65-1901 through 65-1912 (the cosmetology statutes) at least two of whom shall be licensed cosmetologists; one member shall be a licensed permanent color technologist and tattoo artist or licensed body piercer; one member is to be the owner and operator of a licensed tanning facility; one member is to be a person who holds a valid school license or a person who is engaged in the day-to-day operation of a school licensed by the Board; and two members are to represent the general public. At least one of the public members is to be an African-American if at least one of the cosmetology members is not.

Sanitation Standards

An existing statute that requires the Secretary of Health and Environment to adopt rules and regulations establishing sanitation standards for professions, shops, salons, clinics, schools, and colleges regulated by the State Board of Barber Examiners or the State Board of Cosmetology is amended by the addition of the word "facilities" to make it clear that tanning salons and places in which tattooing and body piercing are conducted come under the purview of the statute. Sanitation standards for the purposes of the statute means standards

for both personal and environmental sanitation and for the prevention of infectious and contagious disease.

A new statute is created by Sub. for SB 643 requiring the Secretary of Health and Environment, not later than January 1, 2003, to review all rules and regulations related to methods and procedures for tattooing, permanent color technology, and body piercing and to report the results of the review to the appropriate standing committees of the Legislature. The new statute also provides that all rules and regulations of the Board of Cosmetology that establish sanitation standards for tanning facilities, tattoo facilities, body piercing facilities, permanent color technicians and tattoo artists, and persons performing body piercing are to remain in effect and deemed to be rules and regulations of the Secretary of Health and Environment under KSA 65-1,148 until revised, amended, revoked, or nullified by the Secretary.

Background

In its original form, SB 643 was introduced at the request of the Secretary of Health and Environment who requested the transfer of responsibility for the administration of laws relating to permanent color technologists and tattoo artists and body piercers be postponed for one year because the Department's budget did not contain funding to implement the transfer. The Senate Committee further amended the bill to transfer all the responsibilities of the Board of Cosmetology to the Secretary on July 1, 2003, and to abolish the Board on that date.

The substitute bill as passed by the House limited the transfer of responsibilities to those enacted by the 2001 Legislature and incorporated amendatory provisions that were originally contained in HB 2977 and 2001 HB 2314.

The Conference Committee amendments delete all statutory references to the transfer of responsibilities for permanent color technologists and tattoo artists and body piercers from the Board of Cosmetology to the Secretary of Health and Environment; make adjustments in the membership of the Board of Cosmetology; clarify an existing law relating to rules and regulations that create sanitary standards for persons and places regulated by the State Board of Barber Examiners and the Board of Cosmetology; and delete references in existing laws that are in conflict with the latter statute.

There is no fiscal note on the substitute bill. However, the fiscal note on HB 2977 does indicate the expansion of the scope of practice

of the various scopes of practice of persons licensed under the cosmetology laws would require two new FTE inspector positions resulting in additional expenditure of \$64,000 a year. The Board would also have to hire a full-time education consultant to establish academic requirements based on credit-hour standards at a cost of about \$54,000 a year plus the cost of vehicle, travel, and supply.