

House Bill 2110

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Superintendent of Public Instruction Susan Castillo for Department of Education)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Transfers from Department of Education to Board of Cosmetology authority to establish education standards for applicants for certification as practitioner of hair design, barbering, esthetics or nail technology.

Transfers from Department of Education to Oregon Health Licensing Agency authority to inspect facilities and schools for hair design, barbering, esthetics or nail technology for compliance with health, safety and infection control requirements.

A BILL FOR AN ACT

1
2 Relating to cosmetology; creating new provisions; amending ORS 345.010, 690.035, 690.046, 690.047,
3 690.165, 690.205, 690.225 and 690.235; and repealing ORS 345.400, 345.430 and 345.450.

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

5 **SECTION 1. (1) The duties, functions and powers of the Department of Education relating**
6 **to the education standards for the certification of practitioners of hair design, barbering,**
7 **esthetics or nail technology are imposed upon, transferred to and vested in the Board of**
8 **Cosmetology, created within the Oregon Health Licensing Agency.**

9 **(2) The duties, functions and powers of the Department of Education relating to the**
10 **health, safety and infection control inspections of facilities and schools licensed to teach**
11 **practitioner skills in hair design, barbering, esthetics or nail technology are imposed upon,**
12 **transferred to and vested in the Oregon Health Licensing Agency.**

13 **SECTION 2. (1) The Superintendent of Public Instruction shall deliver to the Director of**
14 **the Oregon Health Licensing Agency all records within the jurisdiction of the superintendent**
15 **that relate to the duties, functions and powers transferred by section 1 of this 2009 Act.**
16 **Records relating to the education standards for the certification of practitioners shall be**
17 **maintained by the agency for the benefit of the Board of Cosmetology.**

18 **(2) The Director of the Oregon Health Licensing Agency shall take possession of the re-**
19 **ords delivered under subsection (1) of this section.**

20 **(3) The Governor shall resolve any dispute between the Department of Education and the**
21 **Oregon Health Licensing Agency relating to transfers of records under this section, and the**
22 **Governor's decision is final.**

23 **SECTION 3. (1) The unexpended balances of amounts authorized to be expended by the**
24 **Department of Education for the biennium beginning July 1, 2009, from revenues dedicated,**
25 **continuously appropriated, appropriated or otherwise made available for the purpose of ad-**
26 **ministering and enforcing the duties, functions and powers transferred by section 1 (1) of**
27 **this 2009 Act related to education standards are transferred to and are available for ex-**
28 **penditure by the Oregon Health Licensing Agency for the benefit of the Board of**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **Cosmetology for the remainder of the biennium beginning July 1, 2009, for the purpose of**
2 **administering and enforcing the duties, functions and powers transferred by section 1 (1) of**
3 **this 2009 Act.**

4 **(2) The unexpended balances of amounts authorized to be expended by the Department**
5 **of Education for the biennium beginning July 1, 2009, from revenues dedicated, continuously**
6 **appropriated, appropriated or otherwise made available for the purpose of administering and**
7 **enforcing the duties, functions and powers transferred by section 1 (2) of this 2009 Act re-**
8 **lated to inspections of facilities and schools are transferred to and are available for expend-**
9 **iture by the Oregon Health Licensing Agency for the remainder of the biennium beginning**
10 **July 1, 2009, for the purpose of administering and enforcing the duties, functions and powers**
11 **transferred by section 1 (2) of this 2009 Act.**

12 **(3) The expenditure classifications, if any, established by Acts authorizing or limiting**
13 **expenditures by the Department of Education remain applicable to expenditures by the**
14 **Oregon Health Licensing Agency.**

15 **SECTION 4. (1) The transfer of duties, functions and powers to the Board of**
16 **Cosmetology, in the Oregon Health Licensing Agency, by section 1 (1) of this 2009 Act related**
17 **to education standards does not affect any action, proceeding or prosecution involving or**
18 **with respect to such duties, functions and powers begun before and pending at the time of**
19 **the transfer, except that the Oregon Health Licensing Agency is substituted for the Depart-**
20 **ment of Education in the action, proceeding or prosecution.**

21 **(2) The transfer of duties, functions and powers to the Oregon Health Licensing Agency**
22 **by section 1 (2) of this 2009 Act related to inspections of facilities and schools does not affect**
23 **any action, proceeding or prosecution involving or with respect to such duties, functions and**
24 **powers begun before and pending at the time of the transfer, except that the Oregon Health**
25 **Licensing Agency is substituted for the Department of Education in the action, proceeding**
26 **or prosecution.**

27 **SECTION 5. (1) Nothing in sections 1 to 7 of this 2009 Act relieves a person of a liability,**
28 **duty or obligation accruing under or with respect to the duties, functions and powers**
29 **transferred by section 1 of this 2009 Act. The Oregon Health Licensing Agency may under-**
30 **take the collection or enforcement of any such liability, duty or obligation.**

31 **(2) The rights and obligations of the Department of Education legally incurred under**
32 **contracts, leases and business transactions executed, entered into or begun before the op-**
33 **erative date of section 1 of this 2009 Act accruing under or with respect to the duties, func-**
34 **tions and powers transferred by section 1 of this 2009 Act are transferred to the Oregon**
35 **Health Licensing Agency. For the purpose of succession to these rights and obligations, the**
36 **Oregon Health Licensing Agency is a continuation of the Department of Education and not**
37 **a new authority.**

38 **SECTION 6. (1) Notwithstanding the transfer of duties, functions and powers by section**
39 **1 (1) of this 2009 Act, the rules of the Department of Education with respect to such duties,**
40 **functions or powers that are in effect on the operative date of section 1 of this 2009 Act and**
41 **that relate to education standards continue in effect until superseded or repealed by rules**
42 **of the Board of Cosmetology, in the Oregon Health Licensing Agency. References in such**
43 **rules of the Department of Education to the Department of Education or an officer or em-**
44 **ployee of the Department of Education are considered to be references to the Board of**
45 **Cosmetology or an officer or employee of the Board of Cosmetology.**

1 (2) Notwithstanding the transfer of duties, functions and powers by section 1 (2) of this
 2 2009 Act, the rules of the Department of Education with respect to such duties, functions
 3 or powers that are in effect on the operative date of section 1 of this 2009 Act and that relate
 4 to the inspection of facilities and schools continue in effect until superseded or repealed by
 5 rules of the Oregon Health Licensing Agency. References in such rules of the Department
 6 of Education to the Department of Education or an officer or employee of the Department
 7 of Education are considered to be references to the Oregon Health Licensing Agency or an
 8 officer or employee of the Oregon Health Licensing Agency.

9 **SECTION 7.** (1) Whenever, in any uncodified law or resolution of the Legislative Assem-
 10 bly or in any rule, document, record or proceeding authorized by the Legislative Assembly,
 11 in the context of the duties, functions and powers transferred by section 1 (1) of this 2009
 12 Act related to education standards, reference is made to the Department of Education, or
 13 an officer or employee of the Department of Education, whose duties, functions or powers
 14 are transferred by section 1 (1) of this 2009 Act, the reference is considered to be a reference
 15 to the Board of Cosmetology, in the Oregon Health Licensing Agency, or an officer or em-
 16 ployee of the Board of Cosmetology who by section 1 (1) of this 2009 Act is charged with
 17 carrying out such duties, functions and powers.

18 (2) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any
 19 rule, document, record or proceeding authorized by the Legislative Assembly, in the context
 20 of the duties, functions and powers transferred by section 1 (2) of this 2009 Act related to
 21 the inspection of facilities and schools, reference is made to the Department of Education,
 22 or an officer or employee of the Department of Education, whose duties, functions or powers
 23 are transferred by section 1 (2) of this 2009 Act, the reference is considered to be a reference
 24 to the Oregon Health Licensing Agency, or an officer or employee of the Oregon Health Li-
 25 censing Agency who by section 1 (2) of this 2009 Act is charged with carrying out such duties,
 26 functions and powers.

27 **SECTION 8.** ORS 345.440 is added to and made a part of ORS 690.005 to 690.235.

28 **SECTION 9.** ORS 690.035 is amended to read:

29 690.035. (1) A person desiring to obtain a certificate or demonstration permit [*shall*] **for hair**
 30 **design, barbering, esthetics or nail technology must** apply in writing to the Oregon Health Li-
 31 censing Agency on a form approved by the agency. Each application [*shall*] **must** contain an affir-
 32 mation by the applicant that the information contained [*therein*] **in the application** is accurate. The
 33 application must also include evidence establishing to the satisfaction of the agency that the appli-
 34 cant possesses the necessary qualifications.

35 (2) **If the person desiring to obtain a certificate is from another state or country, the**
 36 **Board of Cosmetology shall determine if the person is qualified to take the test of the board.**
 37 **A determination shall be made by an evaluation of academic transcripts, apprenticeship re-**
 38 **records and work experience documentation. If transcripts, records or documentation are not**
 39 **available, the board may refer the person to a career school for evaluation and recommen-**
 40 **dation.**

41 **SECTION 10.** ORS 690.046 is amended to read:

42 690.046. To qualify for certification as a practitioner of hair design, barbering, esthetics or nail
 43 technology, an applicant [*shall*] **must**:

44 (1) Successfully complete [*all courses required by rule of the State Board of Education for grad-*
 45 *uation from a school teaching one or more fields of practice.*] **all of the following:**

1 (a) A minimum hourly training requirement based on the field of practice as follows:

2 (A) Hair design, 1,450 hours;

3 (B) Barbering, 1,100 hours;

4 (C) Esthetics, 250 hours; or

5 (D) Nail technology, 350 hours.

6 (b) A minimum hourly training requirement in:

7 (A) Safety and sanitation, 150 hours; and

8 (B) Career development, 100 hours.

9 (c) A student competency-based training requirement for hair design, barbering, esthet-
10 ics or nail technology, if the school has developed written requirements for graduation that
11 are approved by the Board of Cosmetology.

12 (2) Graduate from a school licensed as a career school under ORS 345.010 to 345.450.

13 [(2)] (3) Successfully pass the certification examination approved, administered or recognized by
14 the board [of Cosmetology] for the field of practice in which certification is sought.

15 [(3)] (4) Pay all appropriate fees.

16 [(4)] (5) Meet any additional requirements the board [of Cosmetology] may impose by rule for
17 certification in a particular field of practice.

18 **SECTION 11.** ORS 690.047 is amended to read:

19 690.047. The Board of Cosmetology may choose to waive all or part of the educational require-
20 ment for an applicant in a field of practice and allow the applicant to take the certification exam-
21 ination, provided that the applicant is otherwise qualified to take the examination and:

22 (1) The [Superintendent of Public Instruction] board determines that the applicant's education
23 or training is substantially equivalent to the education or training [of graduates of schools subject
24 to the rules of the State Board of Education] required under ORS 690.046; or

25 (2) The applicant is certified in another state.

26 **SECTION 12.** The amendments to ORS 690.035, 690.046 and 690.047 by sections 9 to 11 of
27 this 2009 Act first apply to applicants who apply for certification as a practitioner of hair
28 design, barbering, esthetics or nail technology on or after the operative date of the amend-
29 ments to ORS 690.035, 690.046 and 690.047 by sections 9 to 11 of this 2009 Act.

30 **SECTION 13.** ORS 690.225 is amended to read:

31 690.225. (1) In addition to any other duties prescribed by law, the Oregon Health Licensing
32 Agency shall provide for the inspection of facilities and schools licensed under ORS 345.010 to
33 345.450 to teach practitioner skills [under ORS 345.010 to 345.450]. The agency shall conduct in-
34 spections as provided under this section within 90 days of a facility or a school submitting
35 an application for a license or the renewal of a license.

36 (2) Inspections conducted under this section shall determine whether:

37 (a) The facilities comply with the health, safety[,] and infection control [and licensing] rules of
38 the Board of Cosmetology;

39 (b) [and whether] The schools comply with the health, safety and infection control requirements
40 [under ORS 345.010 to 345.450 and] adopted by the rules of the agency[.]; and

41 (c) The facilities comply with the licensing requirements of ORS 345.010 to 345.450 and
42 rules adopted by the Department of Education under ORS 345.010 to 345.450.

43 (3) A report of the results of the inspection [shall] must be submitted to the Department of
44 Education prior to the department granting a license or renewing a license under ORS 345.010
45 to 345.450.

SECTION 14. ORS 690.235 is amended to read:

690.235. (1) The Oregon Health Licensing Agency, in consultation with the Board of Cosmetology, shall establish by rule and collect fees related to the practice of cosmetology. Fees may be assessed for the following:

- (a) Application for a certificate, license or permit.
- (b) Issuance of an original two-year practitioner certificate.
- (c) Renewal of a two-year practitioner certificate.
- (d) Each initial examination section in an individual field of practice and reexamination of failed sections.
- (e) Issuance of a demonstration permit.
- (f) Issuance of a [facility] license **to operate a facility.**
- (g) Renewal of a [facility] license **to operate a facility.**
- (h) Issuance of a temporary facility permit.
- (i) Issuance of an independent contractor registration.
- (j) Renewal of an independent contractor registration.
- (k) Issuance of a duplicate or replacement certificate, license or permit.
- (L) Late renewal fee.
- (m) Reciprocity fee.
- (n) Issuance of a certificate of identification.

(o) Inspection fee for facilities and schools that teach hair design, barbering, esthetics or nail technology.

(2) All moneys received by the agency under this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account, and are appropriated continuously to and shall be used by the agency only for the administration and enforcement of ORS 690.005 to 690.235.

(3) The fees established by the agency under subsection (1) of this section are subject to the prior approval of the Oregon Department of Administrative Services. The fees shall not exceed the cost of administering ORS 690.005 to 690.235 pertaining to the purpose for which the fee is established, as authorized by the Legislative Assembly within the budget of the agency, as that budget may be modified by the Emergency Board.

(4) In addition to the fees established under subsection (1) of this section, the agency may assess fees for providing copies of official documents or records and for recovering administrative costs associated with compiling, photocopying or preparing and delivering the records.

SECTION 15. The amendments to ORS 690.225 and 690.235 by sections 13 and 14 of this 2009 Act first apply to inspections conducted on or after the operative date of the amendments to ORS 690.225 to 690.235 by sections 13 and 14 of this 2009 Act.

SECTION 16. 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)] (2) “Career school” or “school” means any private proprietary professional, technical, home study, correspondence, business or other school instruction, organization or person that offers any

1 instruction or training for the purpose or purported purpose of instructing, training or preparing
 2 persons for any profession.

3 [(5) *“Esthetics” has the meaning given in ORS 690.005.*]

4 [(6) *“Hair design” has the meaning given in ORS 690.005.*]

5 [(7)] (3) “License” means the authority the career school has been granted to operate under ORS
 6 345.010 to 345.450.

7 [(8) *“Nail technology” has the meaning given in ORS 690.005.*]

8 [(9)] (4) “Registration” means the approval by the Superintendent of Public Instruction of a
 9 teacher or agent to instruct in or to represent the school.

10 [(10) *“Superintendent” means Superintendent of Public Instruction.*]

11 **SECTION 17.** ORS 690.165 is amended to read:

12 690.165. In addition to the powers otherwise granted by ORS [345.430 and] 690.005 to 690.235,
 13 the Board of Cosmetology shall have the power to:

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

15 (2) Administer, approve or recognize certification examinations and designate the time, place
 16 and administrators of certification examinations.

17 (3) Contract for the administration of examinations as part of regional or national examinations
 18 and contract with independent testing services for examination administration.

19 (4) Pursuant to ORS 676.607, direct the Oregon Health Licensing Agency to issue certificates,
 20 registrations, licenses, permits and certificates of identification to individuals determined by the
 21 board to be qualified.

22 (5) Except as otherwise provided in ORS 690.205 (2) or other provision of law, adopt rules es-
 23 tablishing and enforcing standards for safety, infection control, professional conduct and any other
 24 matters relating to fields of practice, facilities or locations used by persons providing services reg-
 25 ulated by ORS 690.005 to 690.235.

26 (6) Pursuant to ORS 676.612 and 690.167, direct the agency to suspend, revoke, limit or refuse
 27 to issue or renew certificates, registrations, licenses or permits or impose a period of probationary
 28 activity on the holder thereof.

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

31 (8) Adopt rules prescribing standards of professional conduct for persons practicing hair design,
 32 barbering, esthetics or nail technology.

33 (9) Consult with the agency about the issuance and renewal of a single facility license under
 34 ORS 676.617 authorizing a facility to provide cosmetology services.

35 **(10) Adopt rules that set standards for persons teaching in schools licensed to teach hair**
 36 **design, barbering, esthetics or nail technology pursuant to ORS 345.010 to 345.450.**

37 **SECTION 18.** ORS 690.205 is amended to read:

38 690.205. (1) The Board of Cosmetology may adopt rules for the administration of ORS [345.440
 39 and] 690.005 to 690.235 and for prescribing safety and infection control requirements for facilities.
 40 Infection control requirements for facilities shall be subject to the approval of the Department of
 41 Human Services. A copy of the rules adopted by the board shall be furnished by the board to the
 42 owner or manager of each facility.

43 (2) Notwithstanding subsection (1) of this section, the board may not prohibit the use of the fa-
 44 cility for domestic purposes if the part devoted to domestic purposes is in a completely separate
 45 room not used by customers, with walls extending from floor to ceiling and with any connecting

1 doors kept closed while the facility is in actual operation.

2 (3) Rules adopted by the board prescribing safety and infection control requirements for facili-
3 ties shall be adopted in accordance with the procedures set forth in ORS chapter 183.

4 **SECTION 19. ORS 345.400, 345.430 and 345.450 are repealed.**

5 **SECTION 20. Sections 1 to 8 of this 2009 Act, the amendments to ORS 345.010, 690.035,
6 690.046, 690.047, 690.165, 690.205, 690.225 and 690.235 by sections 9 to 11, 13, 14 and 16 to 18 of
7 this 2009 Act and the repeal of ORS 345.400, 345.430 and 345.450 by section 19 of this 2009 Act
8 become operative on July 1, 2010.**

9 **SECTION 21. The Board of Cosmetology and the Oregon Health Licensing Agency may
10 take any action before the operative date of sections 1 to 8 of this 2009 Act, the amendments
11 to ORS 345.010, 690.035, 690.046, 690.047, 690.165, 690.205, 690.225 and 690.235 by sections 9 to
12 11, 13, 14 and 16 to 18 of this 2009 Act and the repeal of ORS 345.400, 345.430 and 345.450 by
13 section 19 of this 2009 Act that is necessary to enable the board and agency to exercise, on
14 and after the operative date described in section 20 of this 2009 Act, all the duties, functions
15 and powers conferred on the board and agency by sections 1 to 8 of this 2009 Act, the
16 amendments to ORS 345.010, 690.035, 690.046, 690.047, 690.165, 690.205, 690.225 and 690.235 by
17 sections 9 to 11, 13, 14 and 16 to 18 of this 2009 Act and the repeal of ORS 345.400, 345.430
18 and 345.450 by section 19 of this 2009 Act.**

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