

Enrolled House Bill 3409

Sponsored by Representative KENY-GUYER, Senator DINGFELDER, Representative FREDERICK,
Senators MONROE, KNOPP; Representatives CONGER, DEMBROW, GALLEGOS, GOMBERG,
RICHARDSON, THATCHER, Senators JOHNSON, ROBLAN, SHIELDS, STEINER HAYWARD

CHAPTER

AN ACT

Relating to natural hair care; creating new provisions; amending ORS 690.005, 690.015, 690.025,
690.046, 690.047, 690.165, 690.167 and 690.235; and declaring an emergency.

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

- (a) Shampooing, styling, cutting, singeing 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.

(2) "Board" means the Board of Cosmetology, created within the Oregon Health Licensing Agency.

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

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

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

(6) "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.

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

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

- (a) Barbering.
- (b) Esthetics.
- (c) Hair design.
- (d) Nail technology.

(e) Natural hair care.

(9) "Freelance authorization" means a written authorization that allows a practitioner to practice outside or away from a licensed facility.

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

- (a) Shaving, trimming or cutting of the beard or mustache.
- (b) Styling, permanent waving, relaxing, cutting, singeing, bleaching, coloring, shampooing, conditioning, applying hair 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:

- (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, feet or legs below the knee.
- (c) Applying, sculpturing or removing artificial nails of the hands or feet.

(14)(a) "Natural hair care" means:

(A) The braiding, cornrowing, extending, lacing, locking, sewing, twisting, weaving or wrapping of human hair, natural fibers, synthetic fibers or hair extensions through the use of hands or simple devices such as clips, combs, hairpins or needle and thread;

(B) The use of scissors to trim synthetic fibers, hair extensions or sewn-in weave extensions as is necessary to perform the activities described in this paragraph; or

(C) The making of customized wigs from natural hair, natural fibers, synthetic fibers or hair extensions.

(b) "Natural hair care" does not include the use of scissors, except as provided in paragraph (a)(B) of this subsection, penetrating chemical hair treatments, chemical hair coloring agents, chemical hair straightening agents, chemical hair joining agents, permanent wave styles or chemical hair bleaching agents.

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

[(15)] (16) "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)] (17) "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.

For purposes of this subsection, "field of practice" does not include natural hair care.

[(17)] (18) "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, esthetics [and], nail technology **and natural hair care**. The prohibitions under this section are

subject to the exemptions under ORS 690.025. A person who commits an act prohibited under this section is subject to the penalties under ORS 690.992 in addition to any administrative action taken by or any civil penalty imposed by the Oregon Health Licensing Agency under ORS 676.612.

(2) A person may not:

(a) Perform or attempt to perform services in a field of practice without a certificate, demonstration permit, registration or freelance authorization.

(b) Operate a facility without a license or temporary facility permit.

(c) Perform or attempt to perform services in a field of practice in a facility that does not have a license or temporary facility permit.

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

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

(f) Knowingly make a false statement on an application to obtain or renew a certificate, registration, license or permit or to obtain a freelance authorization.

(g) 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.

(h) Sell, barter or offer to sell or barter a document evidencing a certificate, registration, license, permit or freelance authorization.

(i) 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.

(j) Materially alter with fraudulent intent a document evidencing a certificate, registration, license, permit or freelance authorization.

(k) Use or attempt to use as valid a fraudulently obtained, counterfeited or materially altered document evidencing a certificate, registration, license, permit or freelance authorization.

SECTION 3. ORS 690.025 is amended to read:

690.025. ORS 690.005 to 690.235 do not apply to:

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

(2) 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 Oregon Health Licensing 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.

(4) Persons engaged in rendering emergency medical assistance as defined in ORS 30.800.

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

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

(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.

(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. **For purposes of this subsection, "field of practice" does not include natural hair care.**

(9) The agency may exempt practitioners providing services at charitable or fund raising events. In establishing an exemption, the agency shall consider and evaluate each written request on an individual basis.

SECTION 4. ORS 690.046 is amended to read:

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

[(1)] (a) **If the applicant is applying for certification to practice hair design, barbering, esthetics or nail technology,** 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)] (b) 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)] (c) Pay all appropriate fees.

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

(2) A person who is certified to practice hair design or barbering under this section is authorized to practice natural hair care.

SECTION 5. ORS 690.047, as amended by section 24, chapter 43, Oregon Laws 2012, is amended to read:

690.047. (1) **For purposes of this section, “field of practice” does not include natural hair care.**

[(1)] (2) The Board of Cosmetology may choose to waive all or part of the educational requirement for an applicant in a field of practice and allow the applicant to take the certification examination, provided that:

(a) The applicant’s education or training, including relevant education or training obtained in the military, is determined by the board to be substantially equivalent to Oregon certification requirements;

(b) The applicant is otherwise qualified to take the examination; and

(c) The applicant’s certification in another state is in good standing.

[(2)] (3) The Oregon Health Licensing Agency may issue a specialty certificate in a field of practice to a practitioner who has:

(a) Completed post-graduate education approved by the agency that is separate from the education or training required for entry-level certification;

(b) Passed an examination approved or recognized by the board;

(c) Paid the required fees; and

(d) Completed prescribed continuing education credits as determined by agency rule.

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) Pursuant to ORS 676.607, direct the Oregon Health Licensing Agency to issue certificates, registrations, licenses, permits and freelance authorizations 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) Pursuant to ORS 676.612 and 690.167, direct the agency 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, esthetics [or], nail technology **or natural hair care.**

(9) Consult with the agency about the issuance and renewal of a single facility license under ORS 676.617 authorizing a facility to provide barbering, esthetics, hair design [or], nail technology services **or natural hair care**.

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 Oregon Health Licensing Agency may impose a form of discipline listed in ORS 676.612 against any person practicing barbering, hair design, esthetics [or], nail technology **or natural hair care** 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 690.235 is amended to read:

690.235. (1) The Oregon Health Licensing Agency shall establish by rule and collect fees and charges for the following related to barbering, esthetics, hair design [and], nail technology **and natural hair care**:

- (a) Application.
- (b) Original certificate.
- (c) Certificate renewal.
- (d) Examination.
- (e) Demonstration permit.
- (f) Original license.
- (g) License renewal.
- (h) Temporary facility permit.
- (i) Original registration.
- (j) Registration renewal.
- (k) Replacement or duplicate certificate, license or permit.
- (L) Delinquent renewal.
- (m) Reciprocity.
- (n) Freelance authorization.
- (o) Reactivation.

(p) Providing copies of official documentation or records and for recovering administrative costs associated with compiling, photocopying or preparing and delivering the records.

(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 as authorized by ORS 676.625.

SECTION 9. (1) The amendments to ORS 690.005, 690.015, 690.025, 690.046, 690.047, 690.165, 690.167 and 690.235 by sections 1 to 8 of this 2013 Act become operative on January 1, 2014.

(2) The Board of Cosmetology and the Oregon Health Licensing Agency may take any action necessary before the operative date specified in subsection (1) of this section to enable the board and the agency to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board and the agency by the amendments to ORS 690.005, 690.015, 690.025, 690.046, 690.047, 690.165, 690.167 and 690.235 by sections 1 to 8 of this 2013 Act.

SECTION 10. If House Bill 2101 becomes law, section 8 of this 2013 Act (amending ORS 690.235) is repealed.

SECTION 11. If House Bill 2101 becomes law, section 9 of this 2013 Act is amended to read:

Sec. 9. (1) The amendments to ORS 690.005, 690.015, 690.025, 690.046, 690.047, 690.165[,] **and** 690.167 [and 690.235] by sections 1 to [8] **7** of this 2013 Act become operative on January 1, 2014.

(2) The Board of Cosmetology and the Oregon Health Licensing Agency may take any action necessary before the operative date specified in subsection (1) of this section to enable the board and the agency to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board and the agency by the amendments to ORS 690.005, 690.015, 690.025, 690.046, 690.047, 690.165[,] **and** 690.167 [and 690.235] by sections 1 to [8] **7** of this 2013 Act.

SECTION 12. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House April 23, 2013

Received by Governor:

Repassed by House May 28, 2013

.....M,....., 2013

Approved:

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Ramona J. Line, Chief Clerk of House

.....M,....., 2013

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Tina Kotek, Speaker of House

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John Kitzhaber, Governor

Passed by Senate May 23, 2013

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M,....., 2013

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Kate Brown, Secretary of State