

Joint Oversight Hearing of the
Senate Committee on Business, Professions, and Economic Development and
Assembly Committee on Business and Professions

***Occupational Licensing and Economic Opportunity:
Review of the California Board of Barbering and Cosmetology***

Monday, October 14, 2019
10:00 am
State Capitol, Room 4203

BACKGROUND

Occupational Licensing

Recent studies and reports have focused on the impacts of licensing requirements for employment and on individuals seeking to become employed. According to a July 2015 report on occupational licensing released by the White House, strict licensing creates barriers to mobility for licensed workers, citing several groups of people particularly vulnerable to occupational licensing laws, including former offenders, military spouses, veterans and immigrants.

In October 2016, the Little Hoover Commission released a report entitled *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*. The report noted that one out of every five Californians must receive permission from the government to work, and for millions of Californians that means contending with the hurdles of becoming licensed. The report noted that many of the goals to professionalize occupations, standardize services, guarantee quality and limit competition among practitioners, while well intended, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers. The study found that occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach.

The report found that California compares poorly to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means. According to the report, researchers from the Institute for Justice selected 102 lower-income occupations, defined by the Bureau of Labor Statistics as making less than the national average income, ranging from manicurist to pest control applicator. Of the 102 occupations selected, California required licensure for 62, or 61 percent of them. According to the report, California ranked third most restrictive among 50 states and the District of Columbia, following only Louisiana and Arizona. California ranked seventh of 51 when measuring the burden imposed on

entrants into these lower- and moderate-income occupations: on average, California applicants must pay \$300 in licensing fees, spend 549 days in education and/or training and pass one exam.

The hearing is the second in a series of sunset review oversight hearings for the California State Board of Barbering and Cosmetology. The goal for this discussion is to provide members of the committees with information about impacts of occupational licensing, including potential barriers to employment and economic mobility, highlighting national trends in the regulation of the beautification services industry.

California State Board of Barbering and Cosmetology

The Board of Barbering and Cosmetology (BBC) is responsible for licensing and regulating barbers, cosmetologists, estheticians, electrologists, manicurists, apprentices and establishments. In 1927, the Board of Barber Examiners and the Board of Cosmetology were established. The Board of Barber Examiners governed the barbering profession, and the Board of Cosmetology governed the cosmetology profession. The Board of Barber Examiners consisted of 5 members, 2 of which were public members. The Board of Cosmetology consisted of 7 members, 2 of which were public members. Throughout the years there were minor changes to the laws of each profession. In 1939, the manicurist license and the electrology license were added, and in 1978 the esthetician license was added. In 1992, the Board of Barber Examiners and the Board of Cosmetology were merged to create the BBC.

In July 1997, the BBC was eliminated by the California Legislature and its duties, powers, and functions were transferred directly to the Department of Consumer Affairs (DCA) and were administered by the Bureau of Barbering and Cosmetology. The BBC was reinstated through SB 1482 (Polanco), Chapter 1148, Statutes of 2002, but was sunset again and its functions transferred back to a Bureau within DCA as a result of SB 797 (Ridley-Thomas), Chapter 33, Statutes of 2008. The current BBC was reconstituted in 2009 as a result of AB 1545 (Eng), Chapter 35, Statutes of 2008.

The BBC is an autonomous regulatory entity within the Department of Consumer Affairs. It is a special fund agency supported by fees, with full policy and enforcement authority over the practices of hair, skin and nail care, and electrolysis in the state. The Barbering and Cosmetology Act (Act) regulates the practice of barbering, cosmetology and electrolysis. Title protection is provided for the use of the term “cosmetologist” and “barber.” The Act also regulates the specialty branches within the practice of cosmetology, including skin and nail care. The Act provides exemptions for: those involved in the health care field who, within their own scope of practice, may perform particular procedures which would constitute the practice of barbering or cosmetology; commissioned officers in the military service, or their attendants, when engaged in the actual performance of their official duties; persons employed in the movie, television, theatrical, or radio business; licensed persons not receiving compensation for services outside of an establishment; and persons selling or demonstrating certain products.

Today, California’s Board of Barbering and Cosmetology (BBC) licenses and regulates close to 600,000 licensees. Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in areas. The BBC's licensing population includes:

Barbers; Barber Apprentices; Cosmetology Apprentices; Cosmetologists; Electrologists; Estheticians; Manicurists; Establishments; and Mobile Units.

The Act specifies the regulations and requirements for licensure and BBC regulations outline the specific educational and training curriculum applicants are required to complete. For example, to become a licensed cosmetologist, an applicant must submit proof of completion to BBC of 1600 training hours covering all practices of a cosmetologist, according to the following:

- 1100 hours of technical instruction and practical training in hair dressing – 65 hours of hairstyling including hair analysis, shampooing, finger waving, pin curling, comb outs, straightening, waving, curling with hot combs and hot curling irons and blower styling; 40 hours of permanent waving and chemical straightening including hair analysis, acid and alkaline permanent waving, chemical straightening including the use of sodium hydroxide and other base solutions; 60 hours of hair coloring and bleaching including hair analysis, predisposition and strand tests, safety precautions, formula mixing, tinting, bleaching, high and low lights, and the use of dye removers and; 20 hours of hair cutting including the use of scissors, razor (shaper), electrical clippers/trimmers, and thinning (tapering) shears for wet and dry cutting.
- 200 hours of technical instruction in health and safety – 20 hours on the Act and BBC regulations; 45 hours on health and safety/hazardous substances including cosmetology chemistry like the chemical composition and purpose of cosmetic, nail, hair and skin care preparations, elementary chemical makeup, chemical skin peels and chemical and physical changes of matter, hazardous substances chemicals and health in establishments, protection from hazardous chemicals and preventing chemical injuries, ergonomics, theory of electricity in cosmetology, bacteriology, communicable diseases, including HIV/AIDS, Hepatitis B, and staph and Material Safety Data Sheets; Disinfection and Sanitation (20 hours of Technical Instruction); 20 hours in disinfection and sanitation including proper procedures to protect the health and safety of the consumer as well as the technician and proper disinfection procedures for equipment used in establishments and; 15 hours in the subjects of anatomy and physiology.
- 200 hours of technical instruction and practical training in esthetics – 25 hours in manual, electrical and chemical facials including cleansing, scientific manipulations, packs, and masks, electrical facials using electrical modalities, dermal lights and electrical apparatus, chemical skin peels, packs, masks and scrubs; 25 hours in eyebrow beautification and makeup including eyebrow arching and hair removal, the use of wax, tweezers, electric or manual, and depilatories for the removal of superfluous hair, skin analysis, complete and corrective makeup, the application of false eyelashes, and lash and brow tinting, if a product exists that is not disapproved, prohibited or banned by the U.S. Food and Drug Administration, the Occupational Safety and Health Administration, or the U.S. Environmental Protection Agency.

- 100 hours of technical instruction and practical training in manicuring and pedicuring – 10 hours of manicuring and pedicuring including water and oil manicure, including nail analysis, and hand/foot and arm/ankle massage; 25 hours of artificial nails and wraps including acrylic, liquid and powder brush-ons, artificial nail tips and nail wraps and repairs.
- BBC also recommends that schools provide training in communication skills that includes professional ethics, salesmanship, decorum, record-keeping, client service record cards, and basic tax responsibilities related to independent contractors, booth renters, employees, and employers.

For applicants who have received training from a BBC-approved school, the BBC provides the schools a Proof of Training document (POT) that is completed by the school administration. The POT verifies how many hours of training were completed. In order to verify submitted POT documents, a representative from the school is required to sign, under the penalty of perjury, that the information is true and correct.

The BBC requires individuals seeking licensure as a barber, cosmetologist, esthetician, electrologists, or a manicurist to take and pass both a written examination and a practical examination.

Legislative Focus on BBC Licensure Burdens

The 1600 hour education requirement for cosmetology licensure has been a discussion point for the Legislature during previous sunset review oversight of the BBC. During the 2012-13 sunset review oversight, Committee staff raised the issue of appropriate licensing categories, noting the need for BBC to evaluate adding specialized certificates or licensure in certain practices. The review asked whether many of the beautification services offered by BBC licensees require the mandatory schooling and training hours necessary for a cosmetologist or esthetician and noted that while there may be significant health concerns related to some practices, there may also not be a need for an individual performing specialized services to invest in a whole training program. The review found that training for many of the beautification services provided by BBC licensees is provided directly from manufacturers and likely not even reflected in BBC-approved curriculum and at BBC-approved schools. Staff noted that many entrepreneurial individuals throughout the state, including a large number of women and minorities, have become successful small business owners focused on providing one specialized service. In a background paper prepared by Committee staff during the 2012-13 review of BBC, staff recommended BBC explore balancing the consumer health, safety and harm from certain services with the desire to keep people employed throughout the state offering limited services and required BBC to review the issue of recognizing specialized service providers and provide a report by January 1, 2014 on this issue.

In 2013, the BBC submitted a report back to the Legislature on this issue titled *Appropriate Licensing of Subcategories* in which BBC expressed concern over licensing any subcategories of practice that are already captured by the broader license for a cosmetologist, such as a waxing-only specialist or make-up artist, as these practice areas are covered under the scope of practice

of a cosmetologist and esthetician. The report further cited BBC concerns that offering a sub-license may diminish the existing scope of practice for licensees and could significantly increase the BBC's workload.

To help address concerns of individuals who seek to practice a subspecialty of a license, the BBC proposed creating a BBC-approved industry certification. Essentially, a cosmetologist interested in a hair coloring specialty certification would take an unknown number of courses from a BBC-approved provider, at an unknown cost to the individual, in order to obtain an industry certification in that specialty. This effort, however, does not address the issue of an individual desiring to only practice one beautification service and does not assist nor meet the current needs of individuals seeking to obtain a single practice license that may alleviate the burden from having to complete a full cosmetology or esthetics program.

The 2014-15 sunset review oversight of the BBC further examined the issue of the required curriculum and connection to practice. AB 181 (Bonilla, Chapter 430, Statutes of 2013), the bill stemming from the comprehensive review of BBC, required BBC to conduct a study and review of the 1600-hour training requirement for cosmetologists, conduct an occupational analysis of the cosmetology profession in California, and conduct a review of the national written examination for cosmetologists and of the California practical examination, in order to evaluate whether both examinations assess critical competencies for California cosmetologists and meet professional testing standards.

Currently in California, all BBC-regulated beautification services are required to be obtained within a BBC licensed establishment. BCP § 7317 specifically states that it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology or electrolysis practices, for compensation, in an establishment or mobile unit which is not licensed by the BBC (other than incidental services provided by individuals employed to provide services in the theater, radio, television or motion picture production industry or services performed on a client who is ill or has a physical or mental incapacitation and the appointment is made through a licensed establishment.) Legally, those BBC-licensed establishments or the twenty-one licensed mobile units are the only facilities where consumers can access services of licensed professionals regulated by the BBC. Currently, a cosmetologist styling the hair of a bride at a hotel or other venue is guilty of unlicensed activity because they are operating outside of a BBC-licensed establishment.

During the 2014-15 sunset review oversight, BBC reported that current trends in the beautification industry show that consumers are beginning to seek services outside the walls of a traditional brick and mortar establishment such as homes, hotels, businesses, and other non-traditional locations. In its 2014 sunset report to the Legislature, the BBC provided information on other states that offer a more flexible license or registration. Washington offers a personal service license and Oregon offers a freelance authorization, both of which allow consumers to access services outside of a licensed establishment. Ohio offers a temporary special event permit which temporarily allows for cosmetology services to be provided in a location not licensed by the regulatory entity. In addition, New York authorizes licensees to practice in remote locations as long as the applicable requirements are followed. Individuals receive services at business offices, hotels, or other sites not traditionally common to industry practices in California.

In response to the questions of whether more people are seeking beautification services outside of a traditional salon establishment and whether BBC needs to update current establishment requirements to meet consumer demands, AB 181 also required BBC to establish regulations to issue a personal services permit (PSP). BBC was required to hold at least two stakeholder meetings and was authorized to issue a PSP to individuals who meet the requirements set forth in the regulation. PSP holders would be able to perform services outside of a licensed establishment but would still be required to obey existing health and safety requirements. AB 181 prohibited BBC from requiring a PSP holder to be employed by an establishment unless BBC determines it would be necessary in order to maintain consumer safety. The regulations also authorized BBC to require a PSP applicant to have proof of liability insurance and pass a criminal background clearance. The final regulation is pending.