

**Department of Legislative Services**  
 Maryland General Assembly  
 2015 Session

**FISCAL AND POLICY NOTE**

House Bill 499 (Delegate Davis)  
 Economic Matters

**State Board of Cosmetologists - Licensing - Hair Braiders, Cosmetology Assistants, and Microdermabrasion**

This bill establishes a limited license to provide “hair braiding services” and a limited license to provide “limited cosmetology services.” An existing limited license to provide “hair services” is repealed. A “senior esthetician” definition is added, which is analogous to the licensed senior cosmetologist definition in current law. A licensed senior cosmetologist or senior esthetician may qualify to provide “microdermabrasion services” and obtain an endorsement on a license issued by the State Board of Cosmetologists if the individual meets specified requirements. A person may not “tattoo” another individual in a beauty salon in the State. The board must establish a minimum requirement of eight hours of continuing education as a condition of license renewal for all licensees.

**Fiscal Summary**

**State Effect:** General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) and the Maryland Higher Education Commission (MHEC) increase in total by \$248,400 in FY 2016 to hire administrative staff and for one-time programming and examination development expenses. Future year expenditures reflect additional staff for DLLR in FY 2017, annualization, and the elimination of one-time costs. General fund revenues cannot be reliably estimated at this time. Nonbudgeted revenues for the Private Career School Guaranty Fund increase beginning in FY 2016.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	\$0	-	-	-	-
NonBud Rev.	-	-	-	-	-
GF Expenditure	\$248,400	\$336,200	\$342,600	\$358,300	\$374,900
Net Effect	(\$248,400)	(\$336,200)	(\$342,600)	(\$358,300)	(\$374,900)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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## Analysis

### Bill Summary:

#### *Limited Licenses*

A limited license to provide “hair braiding services” and a limited license to provide “limited cosmetology services” is established, while an existing limited license to provide “hair services” is repealed. While a limited license is in effect, it authorizes the licensee to provide only those services. The limited licenses are generally integrated into the regulatory structure of existing limited licenses.

#### *Hair Braiding Services*

To provide “hair braiding services” means to provide to an individual, for compensation, the service of braiding the hair of the individual by (1) cleaning the hair; (2) combing or brushing the hair; and (3) providing a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

An applicant for a limited license to provide hair braiding services must be age 17 or older, have completed successfully a ninth grade education or the equivalent, and have received training by successfully completing the courses of instruction in safety and sanitation and, at a minimum, the diseases of the hair and scalp at an approved cosmetology school.

#### *Limited Cosmetology Services*

To provide “limited cosmetology services” means to provide to an individual, for compensation, the service of arranging, cleansing, curling, dressing, finishing, setting, or singeing the hair. It does *not* include other “hair services” such as bleaching, coloring, or cutting the hair.

An applicant for a limited license to provide limited cosmetology services must be age 17 or older, have completed successfully a ninth grade education or the equivalent, have

received training by serving as a registered apprentice for at least 12 months, and pass a practical examination.

### *Microdermabrasion Endorsement for Senior Cosmetologists and Senior Estheticians*

A “senior esthetician” definition is added, which is analogous to the licensed senior cosmetologist in current law and means an individual who has at least two years of experience providing esthetic services and has passed a test approved by the board. “Microdermabrasion services” means to engage in a procedure, for compensation, during which a machine rapidly discharges super-fine crystals on the surface of the skin to remove the outermost layer of skin and vacuums away the crystals and dead skin. An applicant for a microdermabrasion endorsement on a license issued by the board must (1) be a licensed senior cosmetologist or a senior esthetician; (2) have received training by successfully completing instruction in a course on microdermabrasion approved by the board; (3) have at least five years of experience as a microdermabrasion operator under the supervision of a licensed physician; and (4) pass an examination required by the board.

An applicant for an endorsement must apply to the board and pay the examination fee to the board or the board’s designee. While the endorsement is in effect, it authorizes the licensee to provide microdermabrasion services.

### *Tattooing*

“Tattoo” means to make an indelible mark or design on the skin of an individual by the insertion of a pigment under the skin or by the production of scars, including permanent makeup services. A person is prohibited from tattooing another individual in a beauty salon in the State.

### *Continuing Education*

The board must establish a minimum of eight hours of continuing education requirements as a condition of license renewal for each license issued by the board.

**Current Law:** The practice of cosmetology includes:

- providing hair services, which means arranging, bleaching, cleansing, coloring, curling, cutting, dressing, singeing, permanent waving, waving, or other procedures intended to beautify, clean, or embellish hair;
- arching or dyeing eyebrows;
- dyeing eyelashes;

- providing esthetic services, which means cleansing, exercising, massaging, or stimulating skin with electrical, mechanical, or other means; applying to the face an alcohol, cream, lotion, astringent, or cosmetic preparation; and removing superfluous hair by use of a depilatory, tweezers, or wax; or
- nail technician services, including manicures, pedicures, and application or maintenance of artificial nail enhancement products.

The board does not regulate certain services such as shampooing or braiding of hair. Licensed cosmetologists can provide all of the services listed above, while hairstylists, estheticians, and nail technicians practice under a limited license that restricts the scope of services to hair, esthetic, and nail services, respectively.

An individual who wants to become a licensed cosmetologist, hairstylist, esthetician, or nail technician has two options for learning the trade – enrolling in an approved cosmetology school or training as a registered apprentice in a salon under a senior cosmetologist, an esthetician with two years of experience, or a nail technician with two years of experience, depending on the license that the individual seeks. An apprentice must train at least 20 hours per week and receives credit for hours served if the supervisor submits a monthly report to the board.

The board is required to adopt regulations that establish detailed curriculum standards for use by the State Board of Education or MHEC in approving applications for instruction in the practice of cosmetology, the provision of hair services, the provision of esthetic services, and the provision of nail technician services at public schools or private career schools.

The qualifications required for a license vary according to profession:

- *cosmetologist*: two years as a registered apprentice or at least 1,500 hours of instruction;
- *senior cosmetologist*: two years as a licensed cosmetologist and passage of a written exam;
- *hairstylist (limited license)*: 15 months as a registered apprentice or at least 1,200 hours of instruction;
- *nail technician (limited license)*: 3 months as a registered apprentice or at least 250 hours of instruction; and
- *esthetician (limited license)*: 6 months as a registered apprentice or at least 600 hours of instruction.

The fee for licensure as a cosmetologist, esthetician, or nail technician is \$25 and the examination fee for all three categories is \$100. The apprentice registration fee is \$10.

There is no continuing education requirement for any category of licensee.

### *Private Career Schools*

An institution of postsecondary education (including a private career school) may not commence or continue to operate, do business, or function without a certificate of approval from MHEC. MHEC may require any institution of postsecondary education that is required to obtain a certificate of approval to furnish a performance bond or other form of financial guarantee in the form and amount determined by the Secretary of Higher Education.

By rule and regulation, MHEC may create and provide for the operation of a guaranty fund for private career schools. Generally, the Private Career School Guaranty Fund must be used to reimburse any student at a private career school who is entitled to a refund of tuition and fees because the institution has failed to perform faithfully any agreement or contract with the student or failed to comply with other requirements in current law. Each private career school that is required to obtain a certificate of approval from MHEC must pay an initial fee and a recurring annual fee into the fund.

**Background:** The State Board of Cosmetologists was created by Chapter 282 of 1935. Its functions include (1) establishing qualifications for and providing approval of apprenticeships, licenses, and permits for services under the board's authority; (2) regulating the examination process; (3) disciplining licensees who have violated laws or regulations; (4) establishing fees to recover the cost of the board's services; and (5) regulating sanitary conditions in schools and salons.

Chapter 412 of 2013 established a limited license issued by the board to provide hair services under specified conditions. "Provide hair services" means to provide to an individual for compensation the service of beautifying, cleaning, or embellishing the hair of an individual by arranging, coloring, or dressing the hair, among other services.

**State Fiscal Effect:** The board cannot handle the additional administrative burden associated with the creation and implementation of new license categories in addition to adopting and verifying continuing education standards with existing staff. MHEC's staff resources are similarly constrained. MHEC requires additional staff to review and approve an estimated 30 new private career schools and to provide ongoing annual reviews of those schools.

General fund expenditures, therefore, increase by \$248,400 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of DLLR hiring two administrative staff and one board secretary to assist in the creation and

implementation of new license categories and the development of continuing education standards. This estimate also reflects the cost of MHEC hiring one program administrator *half time* to review new private career school applications for approval. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes a one-time \$25,000 programming expense for DLLR to develop an electronic continuing education system, a one-time \$40,000 programming expense for DLLR to develop four license categories, and a one-time \$20,000 expense for DLLR to develop four exams.

Given the bill’s October 1, 2015 effective date, and the time needed for programming and exam development, the new licenses and continuing education requirements are not anticipated to be implemented until July 1, 2016. At that time, DLLR requires one additional administrative staff and one investigator to effectively regulate the industry. Therefore, general fund expenditures increase by \$336,172 in fiscal 2017, which accounts for the partially delayed implementation of the license and continuing education requirements.

	<u><b>FY 2016</b></u>	<u><b>FY 2017</b></u>
New Positions	3.5	2
Salaries and Fringe Benefits	\$146,484	\$309,352
One-Time Programming Expenses	65,000	-
Exam Development Expense	20,000	-
Other Operating Expenses	<u>16,916</u>	<u>26,820</u>
<b>Total State Expenditures</b>	<b>\$248,400</b>	<b>\$336,172</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the elimination of one-time costs.

The effect on the number and type of licenses and endorsements issued by the board cannot be reliably estimated at this time; however, given the bill’s October 1, 2015 effective date, and the time needed for programming and exam development, general fund revenues likely increase beginning in fiscal 2017. As licensing fees for cosmetologists and limited licenses are the same, there is no loss of revenue due to some individuals pursuing a limited license instead of a cosmetologist license.

The bill creates a lower barrier to entry into the cosmetology profession by separating certain limited services from the general practice of cosmetology. This may result in additional individuals seeking licensure to provide *only* these services who otherwise would not seek or qualify for licensure as a cosmetologist. The bill also authorizes a new service, microdermabrasion, to be offered by senior cosmetologists and senior estheticians that is outside the current scope of cosmetology. General fund revenues likely increase beginning in fiscal 2017 from fees paid for the microdermabrasion endorsement.

Examination fees are paid directly to a third-party vendor by the applicant and, therefore, have no effect on general fund revenues or expenditures.

Businesses that currently provide training in the limited services not regulated by the board must apply to MHEC for certification, pay a \$300 application fee, and pay a \$2,500 guaranty fund fee. These businesses must also pay a guaranty fund fee when submitting an annual report to MHEC. These fees all accrue to the Private Career School Guaranty Fund, a nonbudgeted fund that MHEC is authorized to create. Therefore, nonbudgeted revenues increase beginning in fiscal 2016 from initial certifications and thereafter from initial certifications and annual fees. The amount cannot be reliably estimated at this time.

**Small Business Effect:** Small businesses that provide cosmetology, limited cosmetology, hair braiding, and/or microdermabrasion services benefit from additional individuals licensed to provide these services under the bill. Small businesses also benefit to the extent that the businesses that provide continuing education for the 49,000 individuals licensed by the board are small businesses.

Small businesses that currently provide training in the limited services not regulated by the board must apply to MHEC for certification, pay a \$300 application fee and a \$2,500 guaranty fund fee, and provide evidence of a financial guarantee (for example, a performance bond) for 100% of tuition liability. These businesses are also required to submit an annual report and pay a fee to MHEC to maintain their certification; however, they also benefit from increased demand for their services.

**Additional Comments:** The bill repeals a limited license to provide hair services (as a hairstylist), but it does not specify the treatment of those individuals who either possess a limited license prior to the bill's effective date or who are registered as an apprentice or in the process of completing required instruction. The bill also removes "providing hair services" as an eligible service offered by a limited practice beauty salon. Practically, as DLLR has not yet issued regulations for the limited license to provide hair services or the limited license beauty salon, these provisions have no effect.

The Department of Legislative Services (DLS) conducted a sunset evaluation of the board in 2009. In its evaluation, DLS noted that the board's revenues have consistently outpaced the costs attributed to it. Board revenues have since continued to exceed expenditures by a substantial margin: by \$421,000 in fiscal 2014 and by a projected \$546,000 in fiscal 2015. The evaluation recommended that the excess revenues be used for additional administrative staff, as the board's staffing level was not sufficient to handle licensing, complaints, and other issues. DLLR advises that its current staffing level remains similarly constrained. As the board is general funded, all revenues accrue to the general fund. Thus, the revenue

stream currently attributable to the board is sufficient to cover the cost of the additional administrative positions required to implement the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Maryland Higher Education Commission; Maryland State Department of Education; Department of Health and Mental Hygiene; Department of Legislative Services

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Analysis by: Stephen M. Ross

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510