
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**

**Senator Jerry Hill, Chair
2017 - 2018 Regular**

Bill No:	SB 999	Hearing Date:	April 16, 2018
Author:	Morrell		
Version:	April 3, 2018		
Urgency:	No	Fiscal:	Yes
Consultant:	Sarah Mason		

Subject: Barbering and cosmetology: shampooing

SUMMARY: Removes certain hair beautification services from the definition of the practice of barbering and cosmetology.

Existing law:

- 1) Provides for the licensure regulation of the practice of barbering, cosmetology, and electrolysis under the Barbering and Cosmetology Act (Act) by the BBC. (Business and Professions Code (BPC) § 7303)
- 2) Defines the practice of barbering as all or any combination of certain beautification practices (other than selling, fitting, or styling wigs or hairpieces; natural hair braiding or; threading) including: shaving or trimming beards or cutting hair; giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances; singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics; applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, or neck and; hairstyling. (BPC § 7316 (a))
- 3) Defines the practice of cosmetology as all or any combination of all or any combination of certain beautification practices (other than selling, fitting, or styling wigs or hairpieces; natural hair braiding or; threading) including: arranging, dressing, curling, waving, machine-less permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating hair; massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body with hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; removing superfluous hair from a person by using depilatories or tweezers, chemicals, preparations, devices, or appliances; cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring a person's nails; and massaging, cleansing, treating, or beautifying a person's hands or feet. (BPC § 7316 (b)).
- 4) Provides for licensure of cosmetologists by BBC to practice cosmetology and requires applicants to be over the age of 17, complete 10th grade in a public California school or equivalent, not subject to a denial and have either completed a

course in cosmetology from a BBC approved school, or practiced cosmetology in another state for a period of time equivalent to the study and training of a BBC approved course, or holds a license as a barber and completed a cosmetology crossover course or completed an apprenticeship program in cosmetology. (BPC § 7321)

- 5) Provides for licensure of barbers by BBC to practice barbering and requires applicants to be over the age of 17, complete 10th grade in a public California school or equivalent, not subject to a denial and have either completed a course in barbering from a BBC approved school, or practiced barbering in another state for a period of time equivalent to the study and training of a BBC approved course, or holds a license as a cosmetologist and completed a barbering crossover course, or completed an apprenticeship program in barbering, or completed comparable military training. (BPC § 7321.5)
- 6) Requires applicants for licensure to complete both a practical demonstration and a written test that embrace the subjects typically taught in BBC approved program. (BPC § 7338)
- 7) Requires BBC to issue regulations regarding a personal service permit (PSP). Authorizes BBC to issue PSP to an individual who meets the criteria set forth in the regulations. (BPC § 7402.5)

This bill:

- 1) Deletes certain hair beautification services that do not utilize instruments or chemicals from the definition of the practice of barbering and cosmetology. Specifically, the bill deletes shampooing, arranging, dressing, curling, and waving hair from barbering and arranging, dressing, curling, waving, cleansing, shampooing, and beautifying hair from cosmetology.
- 2) Specifies that the practices of barbering and cosmetology do not include arranging, beautifying, cleansing, curling, dressing, shampooing, or waving the hair of any person.

FISCAL EFFECT: Unknown. This bill is keyed “fiscal” by Legislative Counsel.

COMMENTS:

1. **Purpose.** This bill is sponsored by the R Street Institute. According to the Author, “The average amount spent on licensing fees in California is \$486, with an average education requirement of 827 days, and two examinations. Included in the list of occupations licensed are questionable jobs that reasonably should not require a license. However, thanks to the influence of industry lobbyists and powerful boards that have monopolized their respective industries via licensing requirements, attempts to reform ridiculous license requirements continue to fail.” The Author states that “An ideal example of California’s unnecessary occupational licensing is the requirement for shampooing. Currently classified under the barbering license, in

order to professionally shampoo, individuals are required to have over 1500 hours of training, pass a written and practical examination, and pay up to \$125 in fees. This occupation is unlicensed with no reportedly detrimental effects in other states, yet California continues to restrict entry into this field with the claim that it is in the interest of public health and safety. In reality, this license requirement disproportionately affects low to middle-income entrepreneurs and labor market newcomers. They are forced to navigate an expensive and unnecessary occupational licensing process in order to be employed or to work as a shampooer.”

According to the Author, “existing laws regarding shampoo licensure in other states are becoming much less stringent. While a majority of the 37 states that license Barbering and Cosmetology include shampooing within these requirements, an increasing number of states over the last five years have carved out or outrightly exempted shampooing. Since 2012, three states (Nevada, South Carolina and West Virginia) have specifically removed shampooing from their Barbering and Cosmetology code sections and have created separate licensure requirements. Cumulatively, six states have created licenses exclusively for shampooing. One state, Tennessee, even eliminated its shampooing licensure requirement following a lawsuit that the requirement limited competition and violated the Tennessee Constitution's ban on monopolies. The case for the lawsuit was made easier considering Tennessee's onerous requirements: 300 hours of shampooing training with a tuition cost approaching \$3,000.”

The Author states that “A recent wave of deregulation regarding the shampooing license requirement has swept across the country. Along with Tennessee, Florida and Texas have repealed the shampooing license requirement. Arizona's legislature is also working on a bill that would achieve the same goal, and it has successfully passed through committee and will hopefully be enacted this session.”

2. **Background on BBC.** The BBC licenses and regulates over 550,000 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 specific curriculum applicants are required to complete. 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.

BBC's Enforcement Program opens cases based on complaints or issues submitted internally by staff, consumers, agencies, or any outside entity. To ensure the health and safety of consumers, all cases are investigated. Investigations may include an inspection of the establishment, requests for additional information from the

consumer or licensee, assistance from the Division of Investigation (DOI) within the DCA, or an evaluation by an expert. Complaint cases are closed after the investigation has revealed insufficient evidence to proceed, compliance with the BBC's rules and regulations has been demonstrated, or disciplinary action has been taken against the licensee. To ensure compliance with the BBC's health and safety and licensing regulations, random and targeted inspections of establishments are conducted.

Unlicensed activity violations are considered a high priority by both the DCA and the BBC. As the result of an inspection, owners who are operating unlicensed establishments and owners who employ unlicensed individuals are fined up to \$1,000. Each unlicensed individual is also cited and fined \$1,000. Cases involving licensed owners who have been repeatedly cited for employing unlicensed individuals are forwarded to the AG for discipline including, license suspension, probation, or revocation.

BBC currently licenses 29,554 barbers and 314,552 cosmetologists.

3. **Requirements for Licensure as a Barber and Cosmetologist.**

To become a licensed barber, an applicant must submit proof of completion to BBC of 1500 training hours covering all practices of a barber, 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 and; 60 hours of bleaching including the use of semi-permanent, demi-permanent and temporary colors, hair analysis, predisposition and strand tests, safety precautions, formula mixing, tinting, bleaching, high and low lights, and the use of dye removers; 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 and practical training in shaving – The subject of Preparation and Performance shall include, but is not limited to the following techniques and procedures: Preparing the client's hair for shaving, assessing the condition of the client's skin, performing shaving techniques, applying after-shave antiseptic following facial services, massaging the client's face, rolling cream massages
- 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 training in chemicals and health in establishments, material safety data sheets, protection from hazardous chemicals and preventing chemical injuries, health and safety laws and agencies, bacteriology and preventing communicable diseases including HIV/AIDS and Hepatitis B; 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.

- 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.

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.

4. **Little Hoover Commission Report on 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.

5. **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 are receiving 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 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.

In the BBC's report to the Legislature providing an update on the progress of the PSP regulation, BBC summarized the various viewpoints of stakeholder meeting attendees, including that not all services should be authorized under a PSP, liability insurance should be required, and licensees should be in good standing. BBC's Licensing and Examination Committee determined the following for a proposed PSP:

- The PSP will be limited to cutting and styling hair

- The PSP will be tied to a licensed, working, brick-and-mortar establishment.
- The licensed establishment and PSP holder will provide proof of liability insurance.
- The number of PSP holders per establishment will be limited.
- A criminal background check will be part of the PSP process.
- The regulations will stipulate how tools will be disinfected and transported. The clean, closed container language can be used and the PSP holder will also be required to carry a soiled container to bring back to the establishment to disinfect later.
- Spray-on disinfectants and wipes will be permitted in the field.
- The PSP holder will post their PSP and establishment licenses on any advertisement.
- A notice will be posted on the website to direct consumers to check license numbers online and verify the connection to an establishment.
- The PSP holder will be required to have a photo I.D. to show that they match the license number advertised.

The BBC's report also noted additional requests from industry representatives to require PSP holders to demonstrate, while at the licensed establishment, protocols used when in someone's home or place of business; to require minimum liability insurance of \$1 million; to limit the geographical boundary of a PSP holder so that person can only practice a certain distance from the licensed establishment and; to make PSP holders employees of the establishment they are tied to.

While the BBC has not promulgated a PSP, limitations on the types of services offered by a PSP holder and requirements to remain affiliated with a licensed establishment appear counter to the intention of flexibility and allowing BBC to better recognize trends in the beautification services industry.

6. **Arguments in Support.** The R Street Institute, sponsor of this bill, believes that SB 999 will reduce some of California's onerous occupational licensing requirements for people who would like to be involved in basic hair-care work such as shampooing, arranging, dressing, curling, and waving. R Street Institute writes "we understand the need for licensing in some fields, but California's basic hair-care licensing requirements are out of proportion to the task at hand. In this case, the regulations harm job prospects for low-income Californians and mainly serve to limit competition." According to R Street Institute, the bill "could help salon owners and workers. There are no safety issues here. Indeed washing and preparing hair is something all of us do virtually every day. The bill can also encourage the expansion of a new, entrepreneurial web-based industry of at-home hair care,

something that is particularly beneficial to elderly and infirm people.” The Sponsor calls this bill a simple solution that will remove an obstacle for people who want to climb the financial ladder.

TechNet writes in support of this bill, noting that member companies face outmoded regulatory hurdles that stall productivity and maintain a status quo, without providing an actual benefit. TechNet believes that “it is critical that any legal or regulatory requirements should be tailored to the new product, directly tied to an identified harm, limited to gaps in existing coverage, focused on bad actors, and narrowly tailored to avoid conflicts or discrepancies in the law and unintended consequences. TechNet believes that this is a “field ripe for innovation to create more work opportunities while also providing consumers more services” and also believes in making room for innovation and opportunity which this bill will do by removing unnecessary barriers for a very narrow range of activities.

7. **Proposed Author’s Amendment.** The Author has proposed expanding the list of services that are not included in the practice of barbering to include “Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.”

On page 2, strike lines 13-14

~~(5) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.~~

SUPPORT AND OPPOSITION:

Support:

R Street Institute (Sponsor)
TechNet

Opposition:

None on file as of April 10, 2018.

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