

COMMISSION ON RACE & ACCESS TO OPPORTUNITY

Minutes

September 26, 2023

Call to Order and Roll Call

The fourth meeting of the Commission on Race & Access to Opportunity was held on September 26, 2023, at 1:00 PM in Room 149 of the Capitol Annex. Senator David P. Givens, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator David P. Givens Co-Chair; Senators Karen Berg, Gerald A. Neal, and Whitney Westerfield; Representatives George Brown Jr., Samara Heavrin, and Nima Kulkarni.

Guests: Senator Reginald Thomas; Molinda Soth, Nail Technician; Ponya Soth, Nail Technician; Mike Carter, Retired Nail Technician and Eyelash Artist, Previous Owner of Eyelashes Now and Cosmo Nails; Lianna Nguyen, Licensed Instructor, nail school owner; and Dr. Aleeta M. Powe, Associate Professor, Department of Chemistry, University of Louisville.

LRC Staff: Brandon White and Brett Gillispie.

Nail Technicians

Senator Reginald Thomas; Molinda Soth, Nail Technician; Ponya Soth, Nail Technician; Mike Carter, Retired Nail Technician and Eyelash Artist, Previous Owner of Eyelashes Now and Cosmo Nails; and Lianna Nguyen, Licensed Instructor, nail school owner, presented to the commission on systemic barriers facing nail technicians in Kentucky and proposed legislation to address these issues.

Senator Thomas summarized a proposed bill that he is sponsoring that would reform the Kentucky Board of Cosmetology and its licensure and review processes for nail technicians licensed to operate in Kentucky. This legislation would require the Board of Cosmetology to offer licensure exams in languages other than English, remove caps on retakes, reduce the money charged to prospective technicians to take licensure exams, require state inspectors to have a background in the cosmetology industry, and provide nail technicians representation on the Board of Cosmetology.

Ms. Molinda Soth said that the nail technicians are organizing and advocating for fairer licensure, investigation, and review processes from the Board of Cosmetology. Specifically, they are demanding the ability to take the licensure exam in languages other than English. In particular, the needed languages are Vietnamese, Lao, and Khmer, as the Asian American and Pacific Islander (AAPI) community represents a significant amount of the workforce in the industry. The nail technicians are also asking to end caps on retakes for the licensure exam. Ms. Soth said that many qualified applicants are being denied entrance into the nail technician field in Kentucky due to a lack of accessibility for applicants with limited English proficiency and that this is harming Kentucky's economic competitiveness in the cosmetology field and limiting the Commonwealth's tax base.

Ms. Nguyen said that the nail technicians are demanding transparency and due process for the Kentucky nail industry from the Board of Cosmetology.

Ms. Ponya Soth said that testing workers in a language that they do not speak is forcing them to memorize words in preparation for the licensure exams rather than testing if they understand concepts.

Mr. Carter accused the Kentucky Board of Cosmetology of facilitating racial discrimination against the AAPI community in its regulation of the industry by disadvantaging non-native English speakers. He said that the nail technicians need a voice on the Board of Cosmetology and that a licensed nail technician should be a member of the board. He asked for support for Senator Thomas' bill.

Julie Campbell, Executive Director, Kentucky Board of Cosmetology and Chris Hunt, General Counsel, Kentucky Board of Cosmetology, presented arguments in opposition to the proposed legislation to the Commission.

Ms. Campbell said that the Board of Cosmetology consists of two educators, two salon owners, and a citizen member-at-large. The current licensing base is approximately 24,000 individual licenses, 16 percent of which are licensed nail technicians. She added that of the eight inspectors currently on staff at the Board of Cosmetology, seven are licensed cosmetologists.

Ms. Campbell said that it costs the Board of Cosmetology \$82 to administer a test to an applicant and that the nail technician pass rate for 2020-2021 was 46 percent, while the cosmetology passing rate is in the mid to high 70s. Exam takers are charged \$85 every time they take the exam.

Ms. Campbell said that the exam is written and researched at a national level and given in more than 30 states and that the three year waiting period is important due to changing safety procedures. She added that the exam is offered in several languages but not all, and that the test curriculum is only provided in English or Spanish.

Mr. Hunt and Ms. Campbell discussed the alleged incident at the Louisville nail salon. Senator Westerfield said that the discussion of the individual incident at the nail salon in Louisville is not relevant to the commission. He added that he does not find anything objectionable about the proposed legislation and believes that administering the licensure test in multiple languages is a reasonable request.

In response to a question from Senator Westerfield, Ms. Campbell said that if multiple languages are accessible through the vendor used by the Board of Cosmetology, the board would potentially be open to administering the exam in multiple languages. In response to a follow up question, Mr. Hunt said that the complaints drafted by inspectors and sent to licensees are not offered in languages other than English. Ms. Campbell added that the proposed legislation would require exams to be administered at no greater than \$35 to the taker, which she says the Board of Cosmetology cannot afford. In response to a follow up question, Ms. Campbell said that the exam administered to out-of-state applicants is the same as that administered to in-state applicants. In response to a follow-up question, Ms. Campbell said that four out of the five members of the board are licensed cosmetologists. In response to a follow up question, Ms. Campbell said that the board does not keep racial data on exam takers and

that they are unaware of any data provided at the national level.

Senator Westerfield said that he was insulted that Ms. Campbell and Mr. Hunt would use a photograph of an individual who is a subject of a complaint on the presentation that they brought before the commission as it was inappropriate. He added that it is troubling that the passing rate of the cosmetology exam is significantly higher than that of the nail technician exam, which covers much of the same material, and that he suspects that this is attributable to a language barrier. He said that he believes that the Commonwealth of Kentucky should be allowing individuals who want to work to be successful in the workforce.

In response to a question from Chairman Givens, Ms. Campbell said that an applicant can fail the licensure exam up to five times before the three year waiting period is imposed.

In response to a question from Senator Berg, Mr. Hunt said that he believes that the majority of the 22 emergency closures by the Board of Cosmetology were of nail salons. In response to a follow-up question, Mr. Hunt said that the most egregious alleged violation by the nail salon referenced earlier was that unlicensed individuals were practicing on the premises. In response to a follow-up question, Ms. Campbell said that the board does not know how many licensed cosmetologists or nail technicians were English as a Second Language (ESL) speakers.

Senator Berg commented that she is grateful that the Board of Medicine does not have the same level of animosity with medical providers that exists between the Board of Cosmetology and nail technicians. She said that the mutual animosity speaks to a significant problem. She added that the low licensure exam passing rate for nail technicians needs to be addressed.

In response to a question from Senator Berg, Ms. Campbell said that the Board of Cosmetology is responsible for the quality of cosmetic education provided to applicants but that the schools are not nationally accredited. In response to a follow-up question, Ms. Campbell said that the board performs audits and records verifications as well as trying to visit all schools providing cosmetology education. In response to a follow-up question, Mr. Hunt said that without school accreditation, the board does not have the resources to verify the quality of education at every school.

Senator Berg said that current passing rate is unacceptable and that instruction should accommodate ESL students.

In response to a question from Representative Kulkarni, Ms. Campbell said that the licensing fee for applicants is \$50 in addition to the \$85 exam fee which is paid each time a person sits for an exam. In response to a follow-up question, Ms. Campbell said that the Board of Cosmetology does not have the resources to translate the educational materials or hire translators. In response to a follow-up question, Ms. Campbell said that the board has received letters requesting that exams be provided in languages other than English from Mr. Carter and from nail technicians. In response to a follow-up question, Ms. Campbell said that the board is limited in resources and has not been able to properly review the demands of the nail technicians but is likely open to discussion.

Senator Neal said that a lack of communication and a gap in understanding is creating divisions between the Board of Cosmetology and nail technicians.

In response to a question from Senator Neal, Ms. Campbell said that adding a nail technician to the Board of Cosmetology would complicate the decision making process by having an even number of members on the board, opening up the possibility of tie votes on decisions.

Senator Thomas, Ms. Ngyuen, and Mr. Carter returned to the table to take questions regarding the proposed legislation.

Ms. Nguyen said that the vendor and testing software used by Kentucky is also used by Minnesota which provides unlimited licensure exams in languages including Vietnamese, Khmer, and Spanish and that the test is administered for \$25. Additionally, she said that the vendor can provide interpreters for test takers.

Mr. Carter accused state inspectors from the Board of Cosmetology and Ms. Campbell of racially discriminatory behavior and inappropriate conduct.

Senator Thomas said that there is a significant administrative delay in getting licensees information that is not codified in KRS statute, and he said that having a seat at the table in decision making is important for licensed nail technicians. He added that he voted against the formation of the Commission on Race and Access to Opportunity due to his belief that bodies such as the commission are deliberate and ineffective on issues but hopes that the commission will contradict that view by supporting his proposed legislation as it is consistent with the commission's mission statement.

Chairman Givens said that the commission is not charged with any legislative authority and cannot pass legislation. He added that repairing the relationship between the Board of Cosmetology and nail technicians is a priority and encouraged Senator Thomas to help lead in finding a compromise.

Associated Health Risks of Ethnic Hair Care Products

Dr. Aleeta M. Powe, Associate Professor, Department of Chemistry, University of Louisville, presented to the commission regarding the risks associated with hair care products primarily marketed to Black women.

Dr. Powe said that disulfide bonds are primarily responsible for forming curly hair and that hair straightening products target and break down these bonds. Hair relaxing chemicals target these bonds and break them down, chemically straightening hair. The chemicals used to relax hair are very harsh and permanently destroy the disulfide bonds in the user's hair.

Dr. Powe said that American society idolizes European beauty standards and sets unrealistic standards for non-white Americans, and Black women frequently utilize hair relaxing products in order to have their hair conform to those standards. Studies have demonstrated bias against Black women who wear natural hair styles in the workplace. They are perceived as less professional and polished-looking and are less likely to be offered a job interview. As a result, Black women spend approximately ten times the amount on hair care products as their white counterparts in order to achieve a more "professional" look.

Dr. Powe said that one of the most common types of hair relaxers is called lye relaxers, which contains the same chemicals used in drain and oven cleaners as well as hair removal creams, and they are known to cause chemical burns to the scalp and hair loss. Lye relaxers are almost

exclusively marketed to Black women and are linked to increased risk of breast cancer. Formaldehyde is also used in hair products marketed to Black women in the United States and can cause severe kidney injury. Other hair care products marketed to Black women can cause dry scalp and loss of hair color, respiratory issues, fertility and reproductive issues, obesity, type 2 diabetes, and numerous types of cancer.

Dr. Powe said that Black girls are exposed to these chemical products early and will often be heavy lifelong users of them. However, only 3 percent of beauty products marketed to Black women originate with companies that are Black-owned.

In response to a question from Senator Westerfield, Dr. Powe said that breast cancer is usually found later in Black women despite them being at an elevated risk and that it has a 31 percent mortality rate. She added that the industry is not motivated to change because they believe that Black women will patronize their business regardless of whether the products are toxic, and that they have tried to creatively market their products as safer as more Black women are choosing to wear their hair naturally, but the products remain toxic.

In response to a question from Representative Kulkarni, Dr. Powe said that lye products are marketed exclusively to people with curly and kinky hair. In response to a follow up question, Dr. Powe said that brands are not uniform or clear in the concentrations of certain chemicals in their products. In response to a follow-up question, Dr. Powe said that there is very little regulation on chemical relaxers marketed to Black women, but that L'Oreal is facing a class action lawsuit from customers due to the cancer risks associated with beauty products.

Representative Brown invited Dr. Powe to come back to the General Assembly and participate in the conversation regarding the CROWN Act. He thanked her for her expert testimony and for bringing these issues to the commission's attention.

Adjournment

There being no more business, Chairman Givens adjourned the meeting at 3:15 p.m.