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1 **LICENSURE OF ESTHETICIANS AND NAIL**
2 **TECHNICIANS**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Sheryl L. Allen**

6 **This act modifies the Cosmetologist/Barber Licensing Act by adding estheticians and nail**
7 **technicians to the scope of the act. The act renames and amends the cosmetology/barbering**
8 **licensing board. The act sets forth qualifications for licensure and provides exemptions from**
9 **licensure. The act defines unprofessional and unlawful conduct. The act creates the**
10 **Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and**
11 **Enforcement Fund. The act provides for citation authority. The act provides an effective**
12 **date.**

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15 **58-11a-101**, as enacted by Chapter 96, Laws of Utah 1996

16 **58-11a-102**, as enacted by Chapter 96, Laws of Utah 1996

17 **58-11a-201**, as enacted by Chapter 96, Laws of Utah 1996

18 **58-11a-301**, as enacted by Chapter 96, Laws of Utah 1996

19 **58-11a-302**, as enacted by Chapter 96, Laws of Utah 1996

20 **58-11a-303**, as enacted by Chapter 96, Laws of Utah 1996

21 **58-11a-304**, as last amended by Chapter 180, Laws of Utah 2000

22 **58-11a-305**, as enacted by Chapter 96, Laws of Utah 1996

23 **58-11a-306**, as enacted by Chapter 96, Laws of Utah 1996

24 **58-11a-501**, as enacted by Chapter 96, Laws of Utah 1996

25 ENACTS:

26 **58-11a-103**, Utah Code Annotated 1953

27 **58-11a-502**, Utah Code Annotated 1953

HB0105

28 **58-11a-503**, Utah Code Annotated 1953

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **58-11a-101** is amended to read:

31 **CHAPTER 11a. COSMETOLOGIST/BARBER, ESTHETICIAN,**
32 **ELECTROLOGIST, AND NAIL TECHNICIAN LICENSING ACT**

33 **58-11a-101. Title.**

34 This chapter is known as the "Cosmetologist/Barber, Esthetician, Electrologist, and Nail
35 Technician Licensing Act."

36 Section 2. Section **58-11a-102** is amended to read:

37 **58-11a-102. Definitions.**

38 (1) "Approved cosmetologist/barber apprenticeship" means an apprenticeship that meets
39 the requirements of ~~[Section]~~ Subsection 58-11a-306(1) and the requirements established by rule
40 by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah
41 Administrative Rulemaking Act.

42 (2) "Approved esthetician apprenticeship" means an apprenticeship that meets the
43 requirements of Subsection 58-11a-306(2) and the requirements established by rule by the division
44 in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative
45 Rulemaking Act.

46 (3) "Approved master esthetician apprenticeship" means an apprenticeship that meets the
47 requirements of Subsection 58-11a-306(3) and the requirements established by rule by the division
48 in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative
49 Rulemaking Act.

50 (4) "Approved nail technician apprenticeship" means an apprenticeship that meets the
51 requirements of Subsection 58-11a-306(4) and the requirements established by rule by the division
52 in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative
53 Rulemaking Act.

54 ~~[(2)]~~ (5) "Board" means the Cosmetology/Barbering, Esthetics, Electrology, and Nail
55 Technology Licensing Board created in Section 58-11a-201.

56 ~~[(3)]~~ (6) "Cosmetologist/barber" means a person who is licensed under this chapter to
57 engage in the practice of cosmetology/barbering.

58 ~~[(4)]~~ "Cosmetologist/barber apprentice" means a person who is licensed under this chapter

59 to engage in the practice of cosmetology/barbering in an approved cosmetologist/barber
60 apprenticeship.]

61 ~~[(5)]~~ (7) "Cosmetologist/barber instructor" means a cosmetologist/barber who is licensed
62 under this chapter to teach cosmetology/barbering at a licensed cosmetology/barber school.

63 ~~[(6)]~~ "Cosmetology/barber shop" means a place, shop, or establishment in which
64 cosmetology, barbering, or both, are practiced.]

65 ~~[(7)]~~ (8) "Direct supervision" means that the supervisor of [~~the cosmetology/barber~~] an
66 apprentice or the instructor of a [~~cosmetology/barber~~] student is immediately available for
67 consultation, advice, instruction, and evaluation.

68 ~~[(8)]~~ (9) "Electrologist" means a person who is licensed under this chapter to engage in the
69 practice of electrology.

70 (10) "Electrologist instructor" means an electrologist who is licensed under this chapter
71 to teach electrology at a licensed electrology school.

72 (11) "Esthetician" means a person who is licensed under this chapter to engage in the
73 practice of esthetics.

74 (12) "Esthetician instructor" means a master esthetician who is licensed under this chapter
75 to teach the practice of esthetics and the practice of master-level esthetics at a licensed esthetics
76 school.

77 (13) "Fund" means the Cosmetologist/Barber, Esthetician, Electrologist, and Nail
78 Technician Education and Enforcement Fund created in Section 58-11a-103.

79 ~~[(9)]~~ (14) "Licensed cosmetology/barber school" means a cosmetology/barber school
80 licensed under this chapter.

81 (15) "Licensed electrology school" means an electrology school licensed under this
82 chapter.

83 (16) "Licensed esthetics school" means an esthetics school licensed under this chapter.

84 (17) "Licensed nail technology school" means a nail technology school licensed under this
85 chapter.

86 (18) "Master esthetician" means an individual who is licensed under this chapter to engage
87 in the practice of master-level esthetics.

88 (19) "Nail technician" means an individual who is licensed under this chapter to engage
89 in the practice of nail technology.

90 (20) "Nail technician instructor" means a nail technician licensed under this chapter to
91 teach the practice of nail technology in a licensed nail technology school.

92 [~~(10)~~] (21) (a) "Practice of cosmetology/barbering" means:

93 [~~(a)~~] (i) styling, arranging, dressing, curling, waving, permanent waving, cleansing,
94 singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;

95 [~~(b)~~] (ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or
96 other appliances;

97 [~~(c)~~] (iii) arching eyebrows, or tinting eyebrows or eyelashes, or both;

98 [~~(d)~~] (iv) removing hair from the face, neck, shoulders, arms, back, bikini line, or legs of
99 a person by the use of depilatories, waxing, or shaving equipment;

100 [~~(e)~~] (v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces
101 or both on the human head; or

102 [~~(f)~~] (vi) practicing hair weaving or hair fusing or servicing previously medically implanted
103 hair.

104 (b) The term "practice of cosmetology/barbering" includes:

105 (i) the practice of esthetics; and

106 (ii) the practice of nail technology.

107 [~~(H)~~] (22) "Practice of cosmetology/barbering instruction" means instructing
108 cosmetology/barbering in a licensed cosmetology/barber school.

109 [~~(12)~~] (23) "Practice of electrology" means the removal of superfluous hair from the body
110 of a person by the use of electricity.

111 (24) "Practice of electrology instruction" means instructing electrology in a licensed
112 electrology school.

113 (25) "Practice of esthetics" means any one of the following skin care procedures done on
114 the head, face, neck, torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes:

115 (a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or
116 masks, extraction, depilatories, waxes, tweezing, natural nail manicures or pedicures, or callous
117 removal by buffing or filing;

118 (b) manual lymphatic massage of the face and neck;

119 (c) limited chemical exfoliation as defined by rule;

120 (d) removing superfluous hair by means other than electrolysis or laser procedures; or

121 (e) other esthetic preparations or procedures with the use of the hands, a high-frequency
 122 or galvanic electrical apparatus, or a heat lamp for beautifying or similar work performed on the
 123 body for cosmetic purposes and not for the treatment of medical, physical, or mental ailments.

124 (26) "Practice of esthetics instruction" means instructing esthetics or master-level esthetics
 125 in a licensed esthetics school.

126 (27) (a) "Practice of master-level esthetics" means:

127 (i) body wraps as defined by rule;

128 (ii) hydrotherapy as defined by rule;

129 (iii) lymphatic massage by manual or other means;

130 (iv) chemical exfoliation as defined by rule;

131 (v) advanced pedicures as defined by rule;

132 (vi) sanding, including microdermabrasion; and

133 (vii) other esthetic preparations or procedures with the use of:

134 (A) the hands; or

135 (B) a mechanical or electrical apparatus which is:

136 (I) approved for use by division rule for beautifying or similar work performed on the body
 137 for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; or

138 (II) used under the direction, as defined by rule, of a licensed health care practitioner acting
 139 within the scope of his or her license.

140 (b) The term "practice of master-level esthetics" includes the practice of esthetics.

141 (28) "Practice of nail technology" means to cut, clean, manicure, shape, massage, or
 142 enhance the appearance of the nails of the hands or feet of an individual including the application
 143 and removal of sculptured or artificial nails.

144 (29) "Practice of nail technology instruction" means instructing nail technology in a
 145 licensed nail technician school.

146 ~~[(13)]~~ (30) "Recognized cosmetology/barber school" means a cosmetology/barber school
 147 located in another state, whose students, upon graduation, are recognized as having completed the
 148 educational requirements for licensure in that state.

149 ~~[(14)]~~ (31) "Recognized electrology school" means an electrology school~~[: (a) located in~~
 150 ~~this state whose curriculum consists of 500 hours of instruction approved by rule; or (b)]~~ located
 151 in another state~~[: (i) whose curriculum consists of 500 hours of instruction; and (ii)], whose~~

152 students, upon graduation, are recognized as having completed the educational requirements for
153 licensure in that state.

154 (32) "Recognized esthetics school" means an esthetics school located in another state,
155 whose students, upon graduation, are recognized as having completed the educational requirements
156 for licensure in that state.

157 (33) "Recognized nail technology school" means a nail technology school in another state,
158 whose students, upon graduation, are recognized as having completed the educational requirements
159 for licensure in that state.

160 (34) "Salon" means a place, shop, or establishment in which cosmetology/barbering,
161 esthetics, electrology, or nail technology is practiced.

162 ~~[(15)]~~ (35) "Unlawful conduct" is as defined in [Section] Sections 58-1-501 and
163 58-11a-502.

164 ~~[(16)]~~ (36) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501
165 and as may be further defined by rule by the division in collaboration with the board in accordance
166 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

167 Section 3. Section **58-11a-103** is enacted to read:

168 **58-11a-103. Education and enforcement fund.**

169 (1) There is created a special revenue fund known as the "Cosmetologist/Barber,
170 Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund."

171 (2) The fund consists of monies from administrative penalties collected pursuant to this
172 chapter.

173 (3) The fund shall earn interest and all interest earned on fund monies shall be deposited
174 into the fund.

175 (4) The director may, with concurrence of the board, make distributions from the fund for
176 the following purposes:

177 (a) education and training of licensees under this chapter;

178 (b) education and training of the public or other interested persons in matters concerning
179 the laws governing the practices licensed under this chapter; and

180 (c) enforcement of this chapter by:

181 (i) investigating unprofessional or unlawful conduct; and

182 (ii) providing legal representation to the division when the division takes legal action

183 against a person engaging in unprofessional or unlawful conduct.

184 (5) The division shall report annually to the appropriate appropriations subcommittee of
185 the Legislature concerning the fund.

186 Section 4. Section **58-11a-201** is amended to read:

187 **58-11a-201. Board.**

188 (1) There is created the Cosmetology/Barbering, Esthetics, Electrology, and Nail
189 Technology Licensing Board consisting of nine members as follows:

190 (a) [~~three cosmetologists/barbers~~] one cosmetologist/barber;

191 (b) (i) one cosmetologist/barber instructor; or

192 [~~(c)~~] (ii) one representative of a licensed cosmetology/barber school;

193 (c) one master esthetician;

194 (d) (i) one esthetician instructor; or

195 (ii) one representative of a licensed esthetics school;

196 (e) one nail technician;

197 (f) (i) one nail technician instructor; or

198 (ii) one representative of a licensed nail technician school;

199 [~~(d)~~] (g) one electrologist; and

200 [~~(e) one member~~] (h) two members from the general public.

201 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

202 (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202

203 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating
204 basis to:

205 (a) assist the division in reviewing complaints concerning the unlawful or unprofessional
206 conduct of a licensee; and

207 (b) advise the division in its investigation of these complaints.

208 (4) A board member who has, under Subsection (3), reviewed a complaint or advised in
209 its investigation may be disqualified from participating with the board when the board serves as
210 a presiding officer in an adjudicative proceeding concerning the complaint.

211 Section 5. Section **58-11a-301** is amended to read:

212 **58-11a-301. Licensure required -- License classifications.**

213 (1) Except as specifically provided in Section 58-1-307 or [~~58-11a-305~~] 58-11a-304, a

214 license is required to:

- 215 (a) engage in the practice of:
- 216 [~~(a)~~] (i) cosmetology/ barbering;
- 217 [~~(b)~~] (ii) cosmetology/barbering instruction; or
- 218 [~~(c)~~] (iii) electrology[-]; or
- 219 (b) operate a cosmetology/barbering school.

220 (2) Beginning October 1, 2001, except as specifically provided in Section 58-1-307 or
221 58-11a-304, a license is required to:

- 222 (a) engage in the practice of:
- 223 (i) electrology instruction;
- 224 (ii) esthetics;
- 225 (iii) master-level esthetics;
- 226 (iv) esthetics instruction;
- 227 (v) nail technology; or
- 228 (vi) nail technology instruction; or
- 229 (b) operate:
- 230 (i) an electrology school;
- 231 (ii) an esthetics school; or
- 232 (iii) a nail technology school.

233 [~~(2)~~] (3) The division shall issue to a person who qualifies under this chapter a license in
234 the following classifications:

- 235 (a) cosmetologist/barber;
- 236 [~~(b) cosmetologist/barber apprentice;~~]
- 237 [~~(c)~~] (b) cosmetologist/barber instructor;
- 238 [~~(d)~~] (c) cosmetology/barber school[-];
- 239 (d) electrologist; [~~and~~]
- 240 (e) electrologist instructor;
- 241 (f) electrology school;
- 242 (g) esthetician;
- 243 (h) master esthetician;
- 244 (i) esthetician instructor;

- 245 (j) esthetics school;
- 246 (k) nail technology;
- 247 (l) nail technology instructor; and
- 248 (m) nail technology school.

249 Section 6. Section **58-11a-302** is amended to read:

250 **58-11a-302. Qualifications for licensure.**

251 (1) Each applicant for licensure as a cosmetologist/barber shall:

- 252 (a) submit an application in a form prescribed by the division;
- 253 (b) pay a fee determined by the department under Section 63-38-3.2;
- 254 (c) be of good moral character;
- 255 (d) provide satisfactory documentation of:

256 (i) graduation from a licensed or recognized cosmetology/barber school whose curriculum
257 consists of a minimum of 2,000 hours of instruction over a period of not less than 12 months;

258 (ii) (A) having graduated from a recognized cosmetology/barber school whose curriculum
259 consists of less than 2,000 hours of instruction; and

260 (B) having practiced as a licensed cosmetologist/barber for a period of not less than 4,000
261 hours; or

262 (iii) having completed an approved cosmetology/barber apprenticeship; and

263 (e) meet the examination requirement established by rule.

264 ~~[(2) Each applicant for licensure as a cosmetologist/barber apprentice shall:]~~

265 ~~[(a) submit an application in a form prescribed by the division;]~~

266 ~~[(b) pay a fee determined by the department under Section 63-38-3.2;]~~

267 ~~[(c) be of good moral character;]~~

268 ~~[(d) meet the examination requirement established by rule; and]~~

269 ~~[(e) provide satisfactory documentation of having enrolled in an approved
270 cosmetology/barber apprenticeship.]~~

271 ~~[(3)]~~ (2) Each applicant for licensure as a cosmetologist/barber instructor shall:

- 272 (a) submit an application in a form prescribed by the division;
- 273 (b) pay a fee determined by the department under Section 63-38-3.2;
- 274 (c) provide satisfactory documentation that the applicant is currently licensed as a
275 cosmetologist/barber;

- 276 (d) be of good moral character;
- 277 (e) provide satisfactory documentation of completion of:
 - 278 (i) an instructor training program conducted by a cosmetology/barber school consisting
 - 279 of a minimum of 1,000 hours; or
 - 280 (ii) a minimum of 4,000 hours of experience as a cosmetologist/barber; and
 - 281 (f) meet the examination requirement established by rule.
- 282 (3) Each applicant for licensure as a cosmetologist/barber school shall:
 - 283 (a) submit an application in a form prescribed by the division;
 - 284 (b) pay a fee determined by the department under Section 63-38-3.2; and
 - 285 (c) provide satisfactory documentation:
 - 286 (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - 287 (ii) of business licensure from the city, town, or county in which the school is located;
 - 288 (iii) that the applicant’s physical facilities comply with the requirements established by
 - 289 rule; and
 - 290 (iv) that the applicant meets the standards for cosmetology/barber schools, including staff
 - 291 and accreditation requirements, established by rule.
 - 292 (4) Each applicant for licensure as an electrologist shall:
 - 293 (a) submit an application in a form prescribed by the division;
 - 294 (b) pay a fee determined by the department under Section 63-38-3.2;
 - 295 (c) be of good moral character;
 - 296 (d) provide satisfactory documentation of having graduated from a licensed or recognized
 - 297 electrology school after completing a curriculum of 500 hours of instruction [approved by rule];
 - 298 and
 - 299 (e) meet the examination requirement established by rule.
 - 300 [~~(5) Each applicant for licensure as a cosmetologist/barber school shall:~~]
 - 301 [~~(a) submit an application in a form prescribed by the division;~~]
 - 302 [~~(b) pay a fee determined by the department under Section 63-38-3.2; and~~]
 - 303 [~~(c) provide satisfactory documentation:~~]
 - 304 [~~(i) of appropriate registration with the Division of Corporations and Commercial Code;~~]
 - 305 [~~(ii) of business licensure from the city, town, or county in which the school is located;~~]
 - 306 [~~(iii) that the applicant’s physical facilities comply with the requirements established by~~]

307 rule; and]

308 ~~[(iv) that the applicant meets the standards for cosmetology/barber schools, including staff~~
309 ~~and accreditation requirements, established by rule.]~~

310 (5) Each applicant for licensure as an electrologist instructor shall:

311 (a) submit an application in a form prescribed by the division;

312 (b) pay a fee determined by the department under Section 63-38-3.2;

313 (c) provide satisfactory documentation that the applicant is currently licensed as an
314 electrologist;

315 (d) be of good moral character;

316 (e) provide satisfactory documentation of completion of:

317 (i) an instructor training program conducted by an electrology school consisting of a
318 minimum of 175 hours; or

319 (ii) a minimum of 1,000 hours as an electrologist; and

320 (f) meet the examination requirement established by rule.

321 (6) Each applicant for licensure as a electrologist school shall:

322 (a) submit an application in a form prescribed by the division;

323 (b) pay a fee determined by the department under Section 63-38-3.2; and

324 (c) provide satisfactory documentation:

325 (i) of appropriate registration with the Division of Corporations and Commercial Code;

326 (ii) of business licensure from the city, town, or county in which the school is located;

327 (iii) that the applicant's facilities comply with the requirements established by rule; and

328 (iv) that the applicant meets the standards for electrologist schools, including staff,
329 curriculum, and accreditation requirements, established by rule.

330 (7) Each applicant for licensure as an esthetician shall:

331 (a) submit an application in a form prescribed by the division;

332 (b) pay a fee determined by the department under Section 63-38-3.2;

333 (c) be of good moral character; and

334 (d) provide satisfactory documentation of one of the following:

335 (i) (A) graduation from a licensed or recognized esthetic school whose curriculum consists
336 of not less than 15 weeks of esthetic instruction with a minimum of 600 hours; and

337 (B) having met the examination requirement established by division rule;

- 338 (ii) (A) completion of an approved esthetician apprenticeship; and
- 339 (B) having met the examination requirement established by division rule;
- 340 (iii) being engaged in the practice of esthetics prior to January 1, 2001, with a business
- 341 license issued by the city, town, or county where the applicant was practicing esthetics;
- 342 (iv) being engaged in the practice of esthetics prior to January 1, 2001, as an employee of
- 343 an employer who meets the requirements of Subsection (7)(d)(iii); or
- 344 (v) having met the examination requirement established by division rule prior to December
- 345 31, 2001.
- 346 (8) Each applicant for licensure as a master esthetician shall:
- 347 (a) submit an application in a form prescribed by the division;
- 348 (b) pay a fee determined by the department under Section 63-38-3.2;
- 349 (c) be of good moral character; and
- 350 (d) provide satisfactory documentation of one of the following:
- 351 (i) (A) completion of 1,200 hours of training, including 200 hours of training in lymphatic
- 352 massage, at a licensed or recognized esthetics school; and
- 353 (B) having met the examination requirement established by division rule;
- 354 (ii) (A) completion of an approved master esthetician apprenticeship; and
- 355 (B) having met the examination requirement established by division rule;
- 356 (iii) being engaged in the practice of master-level esthetics prior to January 1, 2001, with
- 357 a business license issued by the city, town, or county where the applicant was practicing esthetics;
- 358 (iv) being engaged in the practice of master-level esthetics prior to January 1, 2001, as an
- 359 employee of an employer who meets the requirements of Subsection (8)(d)(iii); or
- 360 (v) having met the examination requirement established by division rule prior to December
- 361 31, 2001.
- 362 (9) Each applicant for licensure as an esthetician instructor shall:
- 363 (a) submit an application in a form prescribed by the division;
- 364 (b) pay a fee determined by the department under Section 63-38-3.2;
- 365 (c) provide satisfactory documentation that the applicant is currently licensed as a master
- 366 esthetician;
- 367 (d) be of good moral character;
- 368 (e) provide satisfactory documentation of completion of:

369 (i) an instructor training program conducted by a licensed or recognized esthetics school
370 consisting of a minimum of 300 hours; or

371 (ii) a minimum of 1,000 hours of experience in esthetics; and

372 (f) meet the examination requirement established by rule.

373 (10) Each applicant for licensure as an esthetics school shall:

374 (a) submit an application in a form prescribed by the division;

375 (b) pay a fee determined by the department under Section 63-38-3.2; and

376 (c) provide satisfactory documentation:

377 (i) of appropriate registration with the Division of Corporations and Commercial Code;

378 (ii) of business licensure from the city, town, or county in which the school is located;

379 (iii) that the applicant's physical facilities comply with the requirements established by

380 rule; and

381 (iv) that the applicant meets the standards for esthetics schools, including staff, curriculum,
382 and accreditation requirements, established by division rule made in collaboration with the board.

383 (11) Each applicant for licensure as a nail technician shall:

384 (a) submit an application in a form prescribed by the division;

385 (b) pay a fee determined by the department under Section 63-38-3.2;

386 (c) be of good moral character; and

387 (d) provide satisfactory documentation of one of the following:

388 (i) (A) graduation from a licensed or recognized nail technology school whose curriculum
389 consists of not less than 200 hours of not more than eight hours a day and six days a week during
390 the program; and

391 (B) having met the examination requirement established by division rule;

392 (ii) (A) having completed an approved nail technician apprenticeship; and

393 (B) having met the examination requirement established by division rule;

394 (iii) being engaged in the practice of nail technology prior to January 1, 2001, with a
395 business license issued by the city, town, or county where the applicant was practicing nail
396 technology;

397 (iv) being engaged in the practice of nail technology prior to January 1, 2001, as an
398 employee of an employer who meets the requirements of Subsection (12)(d)(iii); or

399 (v) having met the examination requirement established by division rule prior to December

400 31, 2001.

401 (12) Each applicant for licensure as a nail technician instructor shall:

402 (a) submit an application in a form prescribed by the division;

403 (b) pay a fee determined by the department under Section 63-38-3.2;

404 (c) provide satisfactory documentation that the applicant is currently licensed as a nail
405 technician;

406 (d) be of good moral character;

407 (e) provide satisfactory documentation of completion of:

408 (i) an instructor training program conducted by a licensed or recognized nail technology
409 school consisting of a minimum of 100 hours; or

410 (ii) a minimum of 400 hours of experience in nail technology; and

411 (f) meet the examination requirement established by rule.

412 (13) Each applicant for licensure as a nail technology school shall:

413 (a) submit an application in a form prescribed by the division;

414 (b) pay a fee determined by the department under Section 63-38-3.2; and

415 (c) provide satisfactory documentation:

416 (i) of appropriate registration with the Division of Corporations and Commercial Code;

417 (ii) of business licensure from the city, town, or county in which the school is located;

418 (iii) that the applicant's facilities comply with the requirements established by rule; and

419 (iv) that the applicant meets the standards for nail technology schools, including staff,
420 curriculum, and accreditation requirements, established by rule.

421 (14) Each applicant for licensure under this chapter whose education in the field for which
422 a license is sought was completed at a foreign school may satisfy the educational requirement for
423 licensure by demonstrating, to the satisfaction of the division, the educational equivalency of the
424 foreign school education with a licensed school under this chapter.

425 Section 7. Section **58-11a-303** is amended to read:

426 **58-11a-303. Terms of license -- Expiration -- Renewal.**

427 (1) (a) The division shall issue each license under this chapter in accordance with a
428 two-year renewal cycle established by rule, except that [~~a cosmetology/barber~~] an instructor license
429 is a one-time certificate and does not expire unless the licensee fails to [maintain a] keep current
430 [cosmetology/barber] the license that qualified the licensee to be an instructor under Section

431 58-11a-302.

432 (b) The division may by rule extend or shorten a renewal period by as much as one year
433 to stagger the renewal cycles it administers.

434 (2) At the time of renewal, a [~~cosmetology/barber~~] licensed school shall[~~:(a)~~] show
435 satisfactory evidence [~~of accreditation with the National Accrediting Commission of Cosmetology~~
436 ~~Arts and Sciences or other accrediting commissions recognized by the State Board of Regents for~~
437 ~~postsecondary schools; and~~] that the school meets the standards for that type of school, including
438 staff, curriculum, and accreditation requirements, established by rule.

439 [~~(b) provide satisfactory documentation that the applicant meets the standards for~~
440 ~~cosmetology/barber schools established by rule.]~~

441 (3) Each license expires on the expiration date shown on the license unless the licensee
442 renews it in accordance with Section 58-1-308.

443 Section 8. Section **58-11a-304** is amended to read:

444 **58-11a-304. Exemptions from licensure.**

445 In addition to the exemptions from licensure in Section 58-1-307, the following persons
446 may engage in the practice of cosmetology/barbering, esthetics, master-level esthetics, electrology,
447 or nail technology without being licensed under this chapter:

448 (1) persons licensed under the laws of this state to engage in the practice of medicine,
449 surgery, osteopathy, or chiropractic when engaged in the practice of the profession for which they
450 are licensed;

451 (2) commissioned physicians and surgeons serving in the armed forces of the United States
452 or another federal agency;

453 (3) registered nurses, undertakers, and morticians licensed under the laws of this state
454 when engaged in the practice of the profession for which they are licensed;

455 (4) persons who visit the state to engage in instructional seminars, advanced classes, trade
456 shows, or competitions of a limited duration;

457 (5) persons who engage in the practice of cosmetology/barbering, esthetics, master-level
458 esthetics, electrology, or nail technology without compensation;

459 (6) persons instructing adult education classes and other educational programs directed
460 toward persons who are not licensed [~~in cosmetology/barbering~~] under this chapter and that are not
461 intended to train persons to become licensed [~~to engage in cosmetology/barbering~~] under this

462 chapter, provided:

463 ~~[(a) each instructor is licensed as a cosmetologist/barber; and]~~

464 ~~[(b)]~~ (a) attendees receive no credit toward the educational requirement for licensure under
465 this chapter; and

466 (b) (i) the instructor is properly licensed; or

467 (ii) the instructor receives no compensation;

468 (7) persons instructing in workshops, seminars, training meetings, and other educational
469 programs whose purpose is to provide continuing professional development to licensed

470 cosmetologist/barbers, estheticians, master estheticians, nail technicians, or electrologists; ~~[and]~~

471 (8) persons currently enrolled in a licensed cosmetology/barber school ~~[may participate]~~

472 when participating in an on the job training internship under the direct supervision of a licensed

473 cosmetologist/barber upon completion of a basic program under the standards established by rule

474 by the division in collaboration with the board[-];

475 (9) persons enrolled in an approved apprenticeship pursuant to Section 58-11a-306; and

476 (10) employees of a company which is primarily engaged in the business of selling

477 products used in the practice of cosmetology/barbering, esthetics, master-level esthetics,

478 electrology, or nail technology when demonstrating the company's products to potential customers.

479 Section 9. Section **58-11a-305** is amended to read:

480 **58-11a-305. Requirement to display license.**

481 Each licensee under this chapter shall prominently display the licensee's license at the

482 location where the licensee ~~[is engaged]~~ engages in the practice ~~[of cosmetology/barbering,~~

483 electrology, or cosmetology/barbering instruction] for which that license is issued under this

484 chapter.

485 Section 10. Section **58-11a-306** is amended to read:

486 **58-11a-306. Apprenticeship.**

487 ~~[A]~~ (1) An approved cosmetologist/barber apprenticeship shall:

488 ~~[(1)]~~ (a) consist of not less than 2,500 hours of training in not less than 15 months; and

489 ~~[(2)]~~ (b) be conducted by a supervisor who:

490 ~~[(a)]~~ (i) is licensed under this chapter as a cosmetologist/barber instructor; and

491 ~~[(b)]~~ (ii) provides direct supervision of the cosmetologist/barber apprentice during the

492 apprenticeship program.

493 (2) An approved esthetician apprenticeship shall:
 494 (a) consist of not less than 800 hours of training in not less than nine months; and
 495 (b) be conducted by a supervisor who:
 496 (i) is licensed under this chapter as an esthetician instructor; and
 497 (ii) provides direct supervision of the esthetician apprentice during the apprenticeship
 498 program.

499 (3) An approved master esthetician apprenticeship shall:
 500 (a) consist of not less than 1,500 hours of training in not less than 18 months; and
 501 (b) be conducted by a supervisor who:
 502 (i) is licensed under this chapter as a master-level esthetician instructor; and
 503 (ii) provides direct supervision of the master esthetician apprentice during the
 504 apprenticeship program.

505 (4) An approved nail technician apprenticeship shall:
 506 (a) consist of not less than 250 hours of training in not less than six months; and
 507 (b) be conducted by a supervisor who:
 508 (i) is licensed under this chapter as a nail technician instructor; and
 509 (ii) provides direct supervision of the nail technician apprentice during the apprenticeship
 510 program.

511 Section 11. Section **58-11a-501** is amended to read:

512 **58-11a-501. Unprofessional conduct.**

513 Unprofessional conduct includes:

514 (1) failing as a [~~cosmetology/barber~~] licensed school to obtain or maintain accreditation
 515 [~~as a cosmetology/barber school~~] as required by rule;

516 (2) failing as a [~~cosmetology/barber~~] licensed school to comply with the standards of
 517 accreditation applicable to [~~cosmetology/barber~~] such schools;

518 (3) failing as a [~~cosmetology/barber~~] licensed school to provide adequate instruction to
 519 enrolled students;

520 (4) failing as [~~a cosmetology/barber~~] an apprentice supervisor to provide direct supervision
 521 to the apprentice;

522 (5) failing as [~~a cosmetology/barber~~] an instructor to provide direct supervision to
 523 [~~cosmetology/barber or cosmetology/barber instructor~~] students under their instruction;

- 524 ~~[(6) failing as a cosmetology/barber apprentice or supervisor to comply with the~~
525 ~~apprentice's or supervisor's requirements under an approved apprenticeship program;]~~
- 526 (6) failing as an apprentice supervisor to comply with division rules relating to
527 apprenticeship programs under this chapter;
- 528 (7) keeping a [~~shop~~] salon or school, its furnishing, tools, utensils, linen, or appliances in
529 an unsanitary condition;
- 530 (8) failing to comply with Title 26, Utah Health Code; [~~and~~]
- 531 (9) failing to display licenses or certificates as required under Section 58-11a-305[-];
- 532 (10) failing to comply with physical facility requirements established by rule;
- 533 (11) failing to maintain mechanical or electrical equipment in safe operating condition;
- 534 (12) failing to adequately monitor patrons using steam rooms, dry heat rooms, baths,
535 showers, or saunas;
- 536 (13) prescribing or administering prescription drugs;
- 537 (14) failing to comply with all applicable state and local health or sanitation laws;
- 538 (15) engaging in any act or practice in a professional capacity that is outside the applicable
539 scope of practice;
- 540 (16) engaging in any act or practice in a professional capacity which the licensee is not
541 competent to perform through education or training;
- 542 (17) in connection with the use of a chemical exfoliant, unless under the direct supervision
543 of a licensed health care practitioner acting within the scope of his or her license:
- 544 (a) using any acid, concentration of an acid, or combination of treatments which violates
545 the standards established by rule;
- 546 (b) removing any layer of skin deeper than the stratum corneum of the epidermis; or
- 547 (c) using an exfoliant that contains phenol, TCA acid, or BCA acid; or
- 548 (18) using as a cosmetologist/barber, esthetician, master esthetician, or nail technician any
549 laser procedure or intense, pulsed light source that alters, transforms, or destroys tissue.
- 550 Section 12. Section **58-11a-502** is enacted to read:
- 551 **58-11a-502. Unlawful conduct.**
- 552 Unlawful conduct includes:
- 553 (1) practicing or engaging in, or attempting to practice or engage in activity for which a
554 license is required under this chapter unless:

555 (a) the person holds the appropriate license under this chapter; or
556 (b) an exemption in Section 58-1-307 or 58-11a-304 applies;
557 (2) knowingly employing any other person to engage in or practice or attempt to engage
558 in or practice any occupation or profession licensed under this chapter if the employee is not
559 licensed to do so under this chapter or exempt from licensure; and

560 (3) touching, or applying an instrument or device to the following areas of a client's body:

561 (a) the genitals or the anus; or

562 (b) the breast of a female patron, except in cases in which the female patron states to a
563 licensee that the patron requests breast skin procedures and signs a written consent form, which
564 must also include the signature of a parent or legal guardian if the patron is a minor, authorizing
565 the licensee to perform breast skin procedures.

566 Section 13. Section **58-11a-503** is enacted to read:

567 **58-11a-503. Penalties.**

568 (1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct
569 under Section 58-11a-502 or who fails to comply with a citation issued under this section after it
570 is final is guilty of a class A misdemeanor.

571 (2) Sexual conduct that violates Section 58-11a-502 and Title 76, Criminal Code, shall be
572 subject to the applicable penalties in Title 76.

573 (3) Grounds for immediate suspension of a licensee's license by the division include the
574 issuance of a citation for violation of Subsection 58-11a-501(1) or (2).

575 (4) (a) If upon inspection or investigation, the division concludes that a person has violated
576 the provisions of Subsection 58-11a-501(1) or (2) or any rule or order issued with respect to
577 Subsection 58-11a-501(1) or (2), and that disciplinary action is appropriate, the director or his
578 designee from within the division shall promptly issue a citation to the person according to this
579 chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person
580 to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative
581 Procedures Act.

582 (i) Any person who is in violation of the provisions of Subsection 58-11a-501(1) or (2),
583 as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an
584 adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in
585 addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-11a-501(1)

586 or (2).

587 (ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-11a-401
588 may not be assessed through a citation.

589 (b) Each citation shall be in writing and describe with particularity the nature of the
590 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
591 violated. The citation shall clearly state that the recipient must notify the division in writing within
592 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
593 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
594 explain the consequences of failure to timely contest the citation or to make payment of any fines
595 assessed by the citation within the time specified in the citation.

596 (c) Each citation issued under this section, or a copy of each citation, may be served upon
597 any person upon whom a summons may be served in accordance with the Utah Rules of Civil
598 Procedure and may be made personally or upon his agent by a division investigator or by any
599 person specially designated by the director or by mail.

600 (d) If within 20 calendar days from the service of a citation, the person to whom the
601 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
602 order of the division and is not subject to further agency review. The period to contest a citation
603 may be extended by the division for cause.

604 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the
605 license of a licensee who fails to comply with a citation after it becomes final.

606 (f) The failure of an applicant for licensure to comply with a citation after it becomes final
607 is a ground for denial of license.

608 (g) No citation may be issued under this section after the expiration of six months
609 following the occurrence of any violation.

610 (h) Fines shall be assessed by the director or his designee according to the following:

611 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

612 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000; and

613 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
614 \$2,000 for each day of continued offense.

615 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
616 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

617 (A) the division previously issued a final order determining that a person committed a first
618 or second offense in violation of Subsection 58-11a-501(1) or (2); or

619 (B) (I) the division initiated an action for a first or second offense;

620 (II) no final order has been issued by the division in the action initiated under Subsection
621 (4)(i)(i)(B)(I);

622 (III) the division determines during an investigation that occurred after the initiation of the
623 action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation
624 of the provisions of Subsection 58-11a-501(1) or (2); and

625 (IV) after determining that the person committed a second or subsequent offense under
626 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection
627 (4)(i)(i)(B)(I).

628 (ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i),
629 the division shall comply with the requirements of this section.

630 (5) Any penalty imposed by the director under Subsection (4)(h) shall be deposited into
631 the Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and
632 Enforcement Fund. Any penalty which is not paid may be collected by the director by either
633 referring the matter to a collection agency or bringing an action in the district court of the county
634 in which the person against whom the penalty is imposed resides or in the county where the office
635 of the director is located. Any county attorney or the attorney general of the state is to provide
636 legal assistance and advice to the director in any action to collect the penalty. In any action
637 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be
638 awarded.

639 **Section 14. Effective date.**

640 This act takes effect on April 29, 2001, except that Section 58-11a-201 takes effect on
641 October 1, 2001.

Legislative Review Note

as of 1-15-01 11:10 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel