

**MINUTES OF THE HOUSE BUSINESS AND LABOR  
STANDING COMMITTEE**  
Room W010, West Office Building, State Capitol Complex  
January 25, 2005

**Members Present:** Rep. Stephen D. Clark, Chair  
Rep. Jim Dunnigan, Vice Chair  
Rep. J. Stuart Adams  
Rep. Jackie Biskupski  
Rep. David Clark  
Rep. Carl W. Duckworth  
Rep. Craig A. Frank  
Rep. Neil A Hansen  
Rep. Todd E. Kiser  
Rep. Michael T. Morley  
Rep. Curtis Oda  
Rep. Gordon E. Snow  
Rep. Scott L. Wyatt

**Staff Present:** Mark Steinagel, Policy Analyst  
Linda Error, Committee Secretary

**Note:** List of visitors and a copy of handouts are filed with committee minutes.

Rep. Dunnigan called the meeting to order at 3:38 p.m.

**MOTION:** Rep. Oda moved to approve the minutes of the January 24, 2005 meeting. The motion passed unanimously, with Rep. Biskupski, Rep. D. Clark, Rep. Frank, Rep. Kiser, Rep. Morley, and Rep. S. Clark absent for the vote.

**H.B. 71      Licensing of Estheticians and Nail Technicians (*Rep. J. Fisher*)**

**MOTION:** Rep. Wyatt moved to amend the bill as follows:

1. *Page 2, Line 31:*

31    AMENDS:

**58-11a-102, as last amended by Chapter 204, Laws of Utah 2001**

2. *Page 2, Line 37:*

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

**Section 1. Section 58-11A-102 is amended to read:**

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

(1) "Approved cosmetologist/barber apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(1)

and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

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

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

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

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

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

(8) "Direct supervision" means that the supervisor of an apprentice or the instructor of a student is immediately available for consultation, advice, instruction, and evaluation.

(9) "Electrologist" means a person who is licensed under this chapter to engage in the practice of electrology.

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

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

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

(13) "Fund" means the Cosmetologist/Barber, Esthetician, Electrologist,

and Nail Technician Education and Enforcement Fund created in Section 58-11a-103.

(14) "Licensed cosmetology/barber school" means a cosmetology/barber school licensed under this chapter.

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

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

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

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

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

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

(21) (a) "Practice of cosmetology/barbering" means:

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

(ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or other appliances;

(iii) arching eyebrows, or tinting eyebrows or eyelashes, or both;

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

(v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces or both on the human head; or

(vi) practicing hair weaving or hair fusing or servicing previously medically implanted hair.

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

(i) the practice of esthetics; and

(ii) the practice of nail technology.

(22) "Practice of cosmetology/barbering instruction" means instructing cosmetology/barbering in a licensed cosmetology/barber school.

(23) "Practice of electrology" means the removal of superfluous hair from the body of a person by the use of electricity.

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

(25) "Practice of esthetics" means any one of the following skin care procedures done on the head, face, neck, torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

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

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

(c) limited chemical exfoliation as defined by rule;

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

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

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

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

(i) any of the following when done for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

(A) body wraps as defined by rule;

(B) hydrotherapy as defined by rule;

(C) chemical exfoliation as defined by rule;

(D) advanced pedicures as defined by rule;

(E) sanding, including microdermabrasion; or

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

(I) the hands; or

(II) a mechanical or electrical apparatus which is approved for use by division rule for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; and

(ii) lymphatic massage by manual or other means.

(b) Notwithstanding the provisions of Subsection (27)(a), a master-level esthetician may perform procedures listed in Subsection (27)(a)(i) for noncosmetic purposes if done under the supervision of a licensed health

care practitioner acting within the scope of his or her license.

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

(28) "Practice of nail technology" means to trim, cut, clean, manicure, shape, massage, or enhance the appearance of the ~~{nails of the}~~ hands ~~{or}~~ . feet , and nails of an individual by the use of hands, mechanical, or electrical preparation, antiseptic, lotions, or creams, including the application and removal of sculptured or artificial nails.

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

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

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

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

(33) "Recognized nail technology school" means a nail technology school in another state,

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

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

(35) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

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

**Renumber remaining sections accordingly.**

3. *Page 8, Lines 227 through 230:*

- 227 (b) be conducted by a supervisor who:  
228 (i) is licensed under this chapter as a nail technician instructor; and  
229 (ii) provides direct one-on- ~~{one}~~ two supervision of the nail technician  
apprentice during the  
230 apprenticeship program.

The motion to amend passed unanimously, with Rep. Biskupski, Rep. D. Clark, Rep. Kiser, Rep. Morley, and Rep. D. Clark absent for the vote.

Rep. Fisher explained the bill with the assistance of Brenda Scharman, owner, Cameo Cosmetology College. (Handout)

MOTION: Rep. Frank moved to pass the bill out favorably as amended. The motion passed unanimously, with Rep. D. Clark, Rep. Morley, and Rep. S. Clark absent for the vote.

**H.B. 66 Naturopathic Physician Amendments (*Rep. J. Ferrin*)**

Rep. Ferrin explained the bill.

Spoke for the bill: Richard Wilson, cancer survivor  
Hans Berger, Former President, German American Society

Spoke against the bill: Ulrich Knorr, President, Utah Association of Naturopathic Physicians (Handout)  
Harry Adelson, Naturopathic Physician

Spoke to the bill: Laura Poe, Assistant Director, Division of Occupational and Professional Licensing

MOTION: Rep. Morley moved to pass the bill out favorably. The motion passed with Rep. Adams, Rep. D. Clark, and Rep. Oda absent for the vote.

**H.B. 47 New Automobile Franchise Act Amendments (*Rep. S. Urquhart*)**

Rep. Urquhart explained the bill with the assistance of Doug Foxley, Utah Manufacturers Association, and Craig Bickmore, Utah Auto Dealers Associations

MOTION: Rep. Frank moved to amend the bill as follows:

1. *Page 1, Lines 11 through 23:*

- 11 This bill:  
12 ▶ defines terms;

- 13           ▶        ~~{expands the prohibition on a franchisor that requires a franchisee to~~  
                  ~~release the~~  
14   ~~franchisor from liability;}~~  
15           ▶        ~~{prohibits a franchisor from controlling of a franchisee's funds without~~  
                  ~~a description~~  
16   ~~of the franchisor's claim to the funds and written approval from the franchisee;~~  
17   ~~—▶— prohibits a franchisor from requiring written approval for the franchisor~~  
                  ~~to control a~~  
18   ~~franchisee's funds as a condition of a franchise agreement or delivery of products~~  
19   ~~and services;}~~  
                  addresses requirements for a franchisor's taking or controlling of a  
                  franchisee's funds;  
                  =  
20           ▶        prohibits a franchisor from conditioning preferential status on the sale of {~~a~~  
                  ~~product~~  
21   ~~originating from a third-party supplier}~~   certain products if the franchisor  
                  receives a financial benefit  
22   from the franchisee's sale of that product; and  
23           ▶        makes technical changes.

2. *Page 5, Lines 126 through 131:*

- 126           (d) require a franchisee to refrain from participating in the management of,  
                  investment  
127   in, or acquisition of any other line of new motor vehicles or related products, if the  
                  franchisee :  
128           (i)   ~~{the franchisee}~~ maintains a reasonable line of credit for each make or line  
                  of  
129   vehicles; and  
130           (ii) ~~{the franchisee}~~ complies with reasonable capital and facilities  
                  requirements of the  
131   franchisor;

3. *Page 5, Lines 134 through 135:*

- 134           (i) relieve a franchisor from any liability ~~{, duty, or responsibility}~~ imposed  
                  ~~{on the~~  
135   ~~franchisor}~~ by this chapter; or

4. *Page 9, Line 274 through Page 10, Line 289:*

- 274            ~~{(gg) take or assert control over funds belonging to a franchisee without:~~  
275        ~~—(i) fully identifying in writing the basis for the franchisor's claim; and~~  
276        ~~—(ii) obtaining the franchisee's written approval for the franchisor taking or~~  
             ~~asserting~~  
277        ~~control over the funds;~~  
278        ~~—(hh) require execution of the written approval required by Subsection (1)(gg)~~  
             ~~by a~~  
279        ~~franchisee or prospective franchisee as a condition precedent to:~~  
280        ~~—(i) a franchise agreement; or~~  
281        ~~—(ii) delivery of a product or service by the franchisor under a franchise~~  
             ~~agreement;~~  
282        ~~—(ii) condition a franchisor's preferential status for the acquisition of a new~~  
             ~~motor~~  
283        ~~vehicle, product, or service upon the franchisee's sale of an aftermarket product if:~~  
284        ~~—(i) the aftermarket product is:~~  
285        ~~—(A) manufactured by the franchisor; or~~  
286        ~~—(B) obtained by the franchisor for resale from a third-party supplier; and~~  
287        ~~—(ii) the franchisor or its affiliate derives a financial benefit from the~~  
             ~~franchisee's sale of~~  
288        ~~the aftermarket product; or }~~  
             (gg) (i) take control over funds owned or under the control of a franchisee  
             based on the findings of a warranty audit or sales incentive audit unless the  
             following conditions are satisfied:  
             (A) the franchisor fully identifies in writing the basis for the franchisor's claim  
             or charge back arising from the audit, including notifying the franchisee that the  
             franchisee has 20 days from the day on which the franchisee receives the  
             franchisor's claim or charge back to assert a protest in writing to the franchisor  
             identifying the basis for the protest;  
             (B) the franchisee's protest shall inform the franchisor that the protest shall be  
             submitted to a mediator in the state who is identified by name and address in the  
             franchisee's notice to the franchisor;  
             (C) if mediation is requested under Subsection (gg)(i)(B), mediation shall occur  
             no later than 30 days after the day on which the franchisor receives the franchisee's  
             protest of a claim or charge back;  
             (D) if mediation does not lead to a resolution of the protest, the protest shall be  
             set for binding arbitration in the same venue in which the mediation occurred;  
             (E) binding arbitration under Subsection (gg)(i)(D) shall be conducted;

(I) by an arbitrator mutually agreed upon by the franchisor and the franchisee;  
and

(II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

(F) this Subsection (1)(gg)(i) applies exclusively to warranty audits and sales incentive audits;

(G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably believes that the amount of the claim or charge back is related to a fraudulent act by the franchisee; and

(H) The costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall be shared equally by the franchisor and the franchisee.

(ii) A franchisor may not require a franchisee to execute a written waiver of the requirements of Subsection (gg)(i);

(hh) coerce, or attempt to coerce a franchisee to purchase or sale an aftermarket product manufactured by the franchisor, or obtained by the franchisor for resale from a third-party supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale or purchase of the aftermarket product as a condition to obtaining preferential status from the franchisor; or

289            ~~{(jj)}~~    (ii) through an affiliate, take any action that would otherwise be prohibited under this

The motion to amend passed unanimously, with Rep. Adams, Rep. D. Clark and Rep. Kiser absent for the vote.

MOTION:    Rep. Morley moved to amend the previously adopted amendment as follows:

1.        Page 3, line 288 (hh)            After "purchase or" delete "sale" and insert "sell"

The motion to amend passed unanimously, with Rep. Adams, Rep. D. Clark, and Rep. Kiser absent for the vote.

MOTION:    Rep. Snow moved to pass the bill out favorably as amended. The motion passed unanimously, with Rep. Adams, Rep. D. Clark, and Rep. Kiser absent for the vote.

**H.B. 193      Deregulation of General Building Contractors (*Rep. G. Hughes*)**

Rep. Hughes explained the bill.

Spoke to the bill:      Craig Jackson, Division of Occupational and Professional Licensing  
                                 Ray Walker, Division of Occupational and Professional Licensing  
                                 Taz Biesinger, Utah Home Builders Association

MOTION:      Rep. Hansen moved to send the bill to interim for further study. The motion failed, with Rep. Biskupski, Rep. Hansen, and Rep. S. Clark voting in favor. Rep. Adams, and Rep. D. Clark were absent for the vote.

MOTION:      Rep. Morley moved to adjourn the meeting. The motion passed, with Rep. Duckworth and Rep. Frank voting in opposition, and Rep. Adams and Rep. D. Clark absent for the vote.

Rep. Dunnigan adjourned the meeting at 5:30 p.m.

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Rep. Stephen D. Clark, Chair