

COSMETOLOGY AND HAIR BRAIDING

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ reduces the curriculum requirement for being licensed as a cosmetologist from 2,000 hours to 1,600 hours;
- ▶ reduces the experience requirement for certain licensure applicants;
- ▶ adds an exemption from licensure for a person who engages in hair braiding and does not engage in other activity requiring licensure;
- ▶ adds certain eyelash and eyebrow treatments to the practice of basic esthetics;
- ▶ modifies what constitutes unlawful conduct under the act; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:



- 28 **58-11a-102**, as last amended by Laws of Utah 2012, Chapter 362
- 29 **58-11a-302**, as last amended by Laws of Utah 2010, Chapter 145
- 30 **58-11a-304**, as last amended by Laws of Utah 2012, Chapter 110
- 31 **58-11a-502**, as last amended by Laws of Utah 2012, Chapter 362
- 32 **58-11a-503**, as last amended by Laws of Utah 2008, Chapter 382

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

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

36 **58-11a-102. Definitions.**

37 As used in this chapter:

38 (1) "Approved barber or cosmetologist/barber apprenticeship" means an apprenticeship
 39 that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection
 40 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the
 41 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
 42 Administrative Rulemaking Act.

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

47 (3) "Approved master esthetician apprenticeship" means an apprenticeship that meets
 48 the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the
 49 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
 50 Administrative Rulemaking Act.

51 (4) "Approved nail technician apprenticeship" means an apprenticeship that meets the
 52 requirements of Subsection 58-11a-306(5) and the requirements established by rule by the
 53 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
 54 Administrative Rulemaking Act.

55 (5) "Barber" means a person who is licensed under this chapter to engage in the
 56 practice of barbering.

57 (6) "Barber instructor" means a barber who is licensed under this chapter to teach
 58 barbering at a licensed barber school or in an apprenticeship program as defined in Section

59 58-11a-306.

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

62 (8) "Cosmetic laser procedure" includes a nonablative procedure as defined in Section
63 58-67-102.

64 (9) "Cosmetic supervisor" means a supervisor as defined in Section 58-1-505.

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

67 (11) "Cosmetologist/barber instructor" means a cosmetologist/barber who is licensed
68 under this chapter to teach cosmetology/barbering at a licensed cosmetology/barber school,
69 licensed barber school, licensed nail technology school, or in an apprenticeship program as
70 defined in Subsection 58-11a-306(2).

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

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

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

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

79 (16) "Esthetician instructor" means a master esthetician who is licensed under this
80 chapter to teach the practice of esthetics and the practice of master-level esthetics at a licensed
81 esthetics school, a licensed cosmetology/barber school, or in an apprenticeship program as
82 defined in Subsection 58-11a-306(3).

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

85 (18) (a) "Hair braiding" means the twisting, weaving, or interweaving of a person's
86 natural human hair.

87 (b) "Hair braiding" includes the following methods or styles:

88 (i) African-style braiding;

89 (ii) box braids;

- 90 (iii) cornrows;
- 91 (iv) dreadlocks;
- 92 (v) french braids;
- 93 (vi) invisible braids;
- 94 (vii) micro braids;
- 95 (viii) single braids;
- 96 (ix) single plaits;
- 97 (x) twists;
- 98 (xi) visible braids;
- 99 (xii) the use of lock braids; and
- 100 (xiii) the use of decorative beads, accessories, and nonhair extensions.
- 101 (c) "Hair braiding" does not include:
- 102 (i) the use of:
- 103 (A) wefts;
- 104 (B) synthetic tape;
- 105 (C) synthetic glue;
- 106 (D) keratin bonds;
- 107 (E) fusion bonds; or
- 108 (F) heat tools;
- 109 (ii) the cutting of human hair; or
- 110 (iii) the application of heat, dye, a reactive chemical, or other preparation to:
- 111 (A) alter the color of the hair; or
- 112 (B) straighten, curl, or alter the structure of the hair.
- 113 ~~[(18)]~~ (19) "Licensed barber or cosmetology/barber school" means a barber or
- 114 cosmetology/barber school licensed under this chapter.
- 115 ~~[(19)]~~ (20) "Licensed electrology school" means an electrology school licensed under
- 116 this chapter.
- 117 ~~[(20)]~~ (21) "Licensed esthetics school" means an esthetics school licensed under this
- 118 chapter.
- 119 ~~[(21)]~~ (22) "Licensed nail technology school" means a nail technology school licensed
- 120 under this chapter.

121 ~~[(22)]~~ (23) "Master esthetician" means an individual who is licensed under this chapter
122 to engage in the practice of master-level esthetics.

123 ~~[(23)]~~ (24) "Nail technician" means an individual who is licensed under this chapter to
124 engage in the practice of nail technology.

125 ~~[(24)]~~ (25) "Nail technician instructor" means a nail technician licensed under this
126 chapter to teach the practice of nail technology in a licensed nail technology school, a licensed
127 cosmetology/barber school, or in an apprenticeship program as defined in Subsection
128 58-11a-306(5).

129 ~~[(25)]~~ (26) "Practice of barbering" means:

130 (a) cutting, clipping, or trimming the hair of the head of any person by the use of
131 scissors, shears, clippers, or other appliances;

132 (b) draping, shampooing, scalp treatments, basic wet styling, and blow drying; and

133 (c) removing hair from the face or neck of a person by the use of shaving equipment.

134 ~~[(26)]~~ (27) "Practice of barbering instruction" means instructing barbering in a licensed
135 barber school, licensed cosmetology/barber school, or in an apprenticeship program as defined
136 in Subsection 58-11a-306(1).

137 ~~[(27)]~~ (28) "Practice of basic esthetics" means any one of the following skin care
138 procedures done on the head, face, neck, arms, hands, legs, feet, eyebrows, or eyelashes for
139 cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

140 (a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or
141 masks, manual extraction, including a comedone extractor, depilatories, waxes, tweezing, the
142 application of eyelash extensions, natural nail manicures or pedicures, or callous removal by
143 buffing or filing;

144 (b) limited chemical exfoliation as defined by rule;

145 (c) removing superfluous hair by means other than electrolysis, except that an
146 individual is not required to be licensed as an esthetician to engage in the practice of threading;

147 (d) other esthetic preparations or procedures with the use of the hands, a
148 high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not
149 for the treatment of medical, physical, or mental ailments; [or]

150 ~~(e) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, applying~~
151 ~~eyelash extensions, or a combination of these procedures; or~~

152 [~~(e)~~] (f) except as provided in Subsection [~~(27)(e)~~] (28)(f)(i), cosmetic laser procedures
153 under the direct cosmetic medical procedure supervision of a cosmetic supervisor limited to the
154 following:

- 155 (i) superfluous hair removal which shall be under indirect supervision;
- 156 (ii) anti-aging resurfacing enhancements;
- 157 (iii) photo rejuvenation; or
- 158 (iv) tattoo removal.

159 [~~(28)~~] (29) (a) "Practice of cosmetology/barbering" means:

- 160 (i) styling, arranging, dressing, curling, waving, permanent waving, cleansing,
161 singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a
162 person;
- 163 (ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or
164 other appliances;
- 165 (iii) arching eyebrows, [~~or~~] tinting eyebrows or eyelashes, perming eyelashes, applying
166 eyelash extensions, or [~~any~~] a combination of these procedures;
- 167 (iv) removing hair from the face, neck, shoulders, arms, back, torso, feet, bikini line, or
168 legs of a person by the use of depilatories, waxing, or shaving equipment;
- 169 (v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces
170 or both on the human head; or
- 171 (vi) practicing hair weaving or hair fusing or servicing previously medically implanted
172 hair.
- 173 (b) The term "practice of cosmetology/barbering" includes:
 - 174 (i) the practice of basic esthetics; and
 - 175 (ii) the practice of nail technology.
- 176 (c) An individual is not required to be licensed as a cosmetologist/barber to engage in
177 the practice of threading.

178 [~~(29)~~] (30) "Practice of cosmetology/barbering instruction" means instructing
179 cosmetology/barbering as defined in Subsection [~~(28)~~] (29) in a licensed cosmetology/barber
180 school or in an apprenticeship program as defined in Subsection 58-11a-306(2).

181 [~~(30)~~] (31) "Practice of electrology" means:

- 182 (a) the removal of superfluous hair from the body of a person by the use of electricity,

183 waxing, shaving, or tweezing; or

184 (b) cosmetic laser procedures under the supervision of a cosmetic supervisor limited to
185 superfluous hair removal.

186 [~~(31)~~] (32) "Practice of electrology instruction" means instructing electrology in a
187 licensed electrology school.

188 [~~(32)~~] (33) "Practice of esthetics instruction" means instructing esthetics in a licensed
189 esthetics school, a licensed cosmetology/barber school, or instructing master-level esthetics in a
190 licensed esthetics school or in an apprenticeship program as defined in Subsections
191 58-11a-306(2), (3), and (4).

192 [~~(33)~~] (34) (a) "Practice of master-level esthetics" means:

193 (i) any of the following when done for cosmetic purposes on the head, face, neck,
194 torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes and not for the treatment
195 of medical, physical, or mental ailments:

- 196 (A) body wraps as defined by rule;
- 197 (B) hydrotherapy as defined by rule;
- 198 (C) chemical exfoliation as defined by rule;
- 199 (D) advanced pedicures as defined by rule;
- 200 (E) sanding, including microdermabrasion;
- 201 (F) advanced extraction;
- 202 (G) other esthetic preparations or procedures with the use of:

203 (I) the hands; or

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

207 (H) cosmetic laser procedures under the supervision of a cosmetic supervisor with a
208 physician's evaluation before the procedure, as needed, unless specifically required under
209 Section 58-1-506, and limited to the following:

- 210 (I) superfluous hair removal;
- 211 (II) anti-aging resurfacing enhancements;
- 212 (III) photo rejuvenation; or
- 213 (IV) tattoo removal with a physician's evaluation before the tattoo removal procedure;

214 and

215 (ii) lymphatic massage by manual or other means as defined by rule.

216 (b) Notwithstanding the provisions of Subsection [~~(33)~~] (34)(a), a master-level
217 esthetician may perform procedures listed in Subsection [~~(33)~~] (34)(a)(i)(H) if done under the
218 supervision of a cosmetic supervisor acting within the scope of the cosmetic supervisor license.

219 (c) The term "practice of master-level esthetics" includes the practice of esthetics, but
220 an individual is not required to be licensed as an esthetician or master-level esthetician to
221 engage in the practice of threading.

222 [~~(34)~~] (35) "Practice of nail technology" means to trim, cut, clean, manicure, shape,
223 massage, or enhance the appearance of the hands, feet, and nails of an individual by the use of
224 hands, mechanical, or electrical preparation, antiseptic, lotions, or creams, including the
225 application and removal of sculptured or artificial nails.

226 [~~(35)~~] (36) "Practice of nail technology instruction" means instructing nail technology
227 in a licensed nail technician school, licensed cosmetology/barber school, or in an
228 apprenticeship program as defined in Subsection 58-11a-306(5).

229 [~~(36)~~] (37) "Recognized barber school" means a barber school located in a state other
230 than Utah, whose students, upon graduation, are recognized as having completed the
231 educational requirements for licensure in that state.

232 [~~(37)~~] (38) "Recognized cosmetology/barber school" means a cosmetology/barber
233 school located in a state other than Utah, whose students, upon graduation, are recognized as
234 having completed the educational requirements for licensure in that state.

235 [~~(38)~~] (39) "Recognized electrology school" means an electrology school located in a
236 state other than Utah, whose students, upon graduation, are recognized as having completed the
237 educational requirements for licensure in that state.

238 [~~(39)~~] (40) "Recognized esthetics school" means an esthetics school located in a state
239 other than Utah, whose students, upon graduation, are recognized as having completed the
240 educational requirements for licensure in that state.

241 [~~(40)~~] (41) "Recognized nail technology school" means a nail technology school
242 located in a state other than Utah, whose students, upon graduation, are recognized as having
243 completed the educational requirements for licensure in that state.

244 [~~(41)~~] (42) "Salon" means a place, shop, or establishment in which

245 cosmetology/barbering, esthetics, electrology, or nail technology is practiced.

246 ~~[(42)]~~ (43) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

247 ~~[(43)]~~ (44) "Unprofessional conduct" is as defined in Sections 58-1-501 and

248 58-11a-501 and as may be further defined by rule by the division in collaboration with the

249 board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

250 Section 2. Section **58-11a-302** is amended to read:

251 **58-11a-302. Qualifications for licensure.**

252 (1) Each applicant for licensure as a barber shall:

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

254 (b) pay a fee determined by the department under Section 63J-1-504;

255 (c) be of good moral character;

256 (d) provide satisfactory documentation of:

257 (i) graduation from a licensed or recognized barber school, or a licensed or recognized

258 cosmetology/barber school, whose curriculum consists of a minimum of 1,000 hours of

259 instruction, or the equivalent number of credit hours, over a period of not less than 25 weeks;

260 (ii) (A) ~~[having graduated]~~ graduation from a recognized barber school located in a

261 state other than Utah whose curriculum consists of less than 1,000 hours of instruction or the

262 equivalent number of credit hours; and

263 ~~[(B) having practiced as a licensed barber for a period of not less than 2,000 hours; or]~~

264 (B) practice as a licensed barber in a state other than Utah for not less than the number

265 of hours required to equal 1,000 total hours when added to the hours of instruction described in

266 Subsection (1)(ii)(A); or

267 (iii) ~~[having completed]~~ completion of an approved barber apprenticeship; and

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

269 (2) Each applicant for licensure as a barber instructor shall:

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

271 (b) pay a fee determined by the department under Section 63J-1-504;

272 (c) provide satisfactory documentation that the applicant is currently licensed as a

273 barber;

274 (d) be of good moral character;

275 (e) provide satisfactory documentation of completion of:

276 (i) an instructor training program conducted by a licensed or recognized school as
277 defined by rule consisting of a minimum of 500 hours or the equivalent number of credit hours;
278 or

279 (ii) a minimum of 2,000 hours of experience as a barber; and

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

281 (3) Each applicant for licensure as a barber school shall:

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

283 (b) pay a fee determined by the department under Section 63J-1-504; and

284 (c) provide satisfactory documentation:

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

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

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

289 (iv) that the applicant meets the standards for barber schools, including staff and
290 accreditation requirements, established by rule.

291 (4) Each applicant for licensure as a cosmetologist/barber shall:

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

293 (b) pay a fee determined by the department under Section 63J-1-504;

294 (c) be of good moral character;

295 (d) provide satisfactory documentation of:

296 (i) graduation from a licensed or recognized cosmetology/barber school whose
297 curriculum consists of a minimum of ~~[2,000 hours of instruction, with full flexibility within the~~
298 ~~2,000 hours, or the equivalent number of credit hours over a period of not less than 50 weeks]~~
299 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within
300 those hours;

301 (ii) (A) ~~[having graduated]~~ graduation from a recognized cosmetology/barber school
302 located in a state other than Utah whose curriculum consists of less than ~~[2,000 hours of~~
303 ~~instruction, with full flexibility within the 2,000 hours, or the equivalent number of credit~~
304 ~~hours]~~ 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility
305 within those hours; and

306 ~~[(B) having practiced as a licensed cosmetologist/barber for a period of not less than~~

- 307 ~~4,000 hours; or]~~
- 308 (B) practice as a licensed cosmetologist/barber in a state other than Utah for not less
- 309 than the number of hours required to equal 1,600 total hours when added to the hours of
- 310 instruction described in Subsection (4)(ii)(A); or
- 311 (iii) ~~[having completed]~~ completion of an approved cosmetology/barber
- 312 apprenticeship; and
- 313 (e) meet the examination requirement established by rule.
- 314 (5) Each applicant for licensure as a cosmetologist/barber instructor shall:
- 315 (a) submit an application in a form prescribed by the division;
- 316 (b) pay a fee determined by the department under Section 63J-1-504;
- 317 (c) provide satisfactory documentation that the applicant is currently licensed as a
- 318 cosmetologist/barber;
- 319 (d) be of good moral character;
- 320 (e) provide satisfactory documentation of completion of:
- 321 (i) an instructor training program conducted by a licensed or recognized school as
- 322 defined by rule consisting of a minimum of 1,000 hours or the equivalent number of credit
- 323 hours; or
- 324 (ii) a minimum of ~~[4,000]~~ 3,000 hours of experience as a cosmetologist/barber; and
- 325 (f) meet the examination requirement established by rule.
- 326 (6) Each applicant for licensure as a cosmetologist/barber school shall:
- 327 (a) submit an application in a form prescribed by the division;
- 328 (b) pay a fee determined by the department under Section 63J-1-504; and
- 329 (c) provide satisfactory documentation:
- 330 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 331 (ii) of business licensure from the city, town, or county in which the school is located;
- 332 (iii) that the applicant's physical facilities comply with the requirements established by
- 333 rule; and
- 334 (iv) that the applicant meets the standards for cosmetology schools, including staff and
- 335 accreditation requirements, established by rule.
- 336 (7) Each applicant for licensure as an electrologist shall:
- 337 (a) submit an application in a form prescribed by the division;

- 338 (b) pay a fee determined by the department under Section 63J-1-504;
- 339 (c) be of good moral character;
- 340 (d) provide satisfactory documentation of having graduated from a licensed or
- 341 recognized electrology school after completing a curriculum of 600 hours of instruction or the
- 342 equivalent number of credit hours; and
- 343 (e) meet the examination requirement established by rule.
- 344 (8) Each applicant for licensure as an electrologist instructor shall:
- 345 (a) submit an application in a form prescribed by the division;
- 346 (b) pay a fee determined by the department under Section 63J-1-504;
- 347 (c) provide satisfactory documentation that the applicant is currently licensed as an
- 348 electrologist;
- 349 (d) be of good moral character;
- 350 (e) provide satisfactory documentation of completion of:
- 351 (i) an instructor training program conducted by a licensed or recognized school as
- 352 defined by rule consisting of a minimum of 175 hours or the equivalent number of credit hours;
- 353 or
- 354 (ii) a minimum of 1,000 hours of experience as an electrologist; and
- 355 (f) meet the examination requirement established by rule.
- 356 (9) Each applicant for licensure as an electrologist school shall:
- 357 (a) submit an application in a form prescribed by the division;
- 358 (b) pay a fee determined by the department under Section 63J-1-504; and
- 359 (c) provide satisfactory documentation:
- 360 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 361 (ii) of business licensure from the city, town, or county in which the school is located;
- 362 (iii) that the applicant's facilities comply with the requirements established by rule; and
- 363 (iv) that the applicant meets the standards for electrologist schools, including staff,
- 364 curriculum, and accreditation requirements, established by rule.
- 365 (10) Each applicant for licensure as an esthetician shall:
- 366 (a) submit an application in a form prescribed by the division;
- 367 (b) pay a fee determined by the department under Section 63J-1-504;
- 368 (c) be of good moral character;

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

370 (i) graduation from a licensed or recognized esthetic school or a licensed or recognized
371 cosmetology/barber school whose curriculum consists of not less than 15 weeks of esthetic
372 instruction with a minimum of 600 hours or the equivalent number of credit hours;

373 (ii) completion of an approved esthetician apprenticeship; or

374 (iii) (A) ~~[having graduated]~~ graduation from a recognized cosmetology/barber school
375 located in a state other than Utah whose curriculum consists of less than ~~[2,000 hours of~~
376 ~~instruction with full flexibility within the 2,000 hours or the equivalent number of credit hours]~~
377 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within
378 those hours; and

379 ~~[(B) having practiced as a licensed cosmetologist/barber for a period of not less than~~
380 ~~4,000 hours; and]~~

381 (B) practice as a licensed cosmetologist/barber for not less than the number of hours
382 required to equal 1,600 total hours when added to the hours of instruction described in
383 Subsection (10)(iii)(A); and

384 (e) meet the examination requirement established by division rule.

385 (11) Each applicant for licensure as a master esthetician shall:

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

387 (b) pay a fee determined by the department under Section 63J-1-504;

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

389 (d) provide satisfactory documentation of ~~[one of the following]:~~

390 (i) ~~[(A)]~~ completion of at least 1,200 hours of training, or the equivalent number of
391 credit hours ~~[over a period of not less than 30 weeks]~~, at a licensed or recognized esthetics
392 school~~;~~ except that up to 600 hours toward the 1,200 hours may have been completed:

393 ~~[(B) accepting up to 600 hours or credit hours towards the 1,200 hours of training or~~
394 ~~equivalent number of credit hours from an applicant who has graduated from a licensed or~~
395 ~~recognized cosmetology/barbering school whose curriculum consists of a minimum of 2,000~~
396 ~~hours of instruction with full flexibility within the 2,000 hours, or the equivalent number of~~
397 ~~credit hours; and]~~

398 ~~[(C) for practice of lymphatic massage, provide satisfactory documentation to show~~
399 ~~completion of 200 hours of training or equivalent number of credit hours in lymphatic massage~~

400 as defined by division rule; or]

401 (A) at a licensed or recognized cosmetology/barbering school, if the applicant
402 graduated from the school and its curriculum consisted of at least 1,600 hours of instruction, or
403 the equivalent number of credit hours, with full flexibility within those hours; or

404 (B) at a licensed or recognized cosmetology/barber school located in a state other than
405 Utah, if the applicant graduated from the school and its curriculum contained full flexibility
406 within its hours of instruction; or

407 (ii) completion of an approved master esthetician apprenticeship;

408 ~~[(iii) accepting up to 600 hours or credit hours towards the 1,200 hours of training or~~
409 ~~equivalent number of credit hours from a recognized cosmetology/barber school located in a~~
410 ~~state other than Utah whose curriculum consists of less than 2,000 hours of instruction or the~~
411 ~~equivalent number of credit hours; or]~~

412 ~~[(iv) (A) having graduated from a recognized master esthetics school located in a state~~
413 ~~other than Utah whose curriculum consists of less than 1,200 hours of instruction, with full~~
414 ~~flexibility within the 1,200 hours or the equivalent number of credit hours; and]~~

415 ~~[(B) having practiced as a licensed master esthetician for a period of not less than~~
416 ~~4,000 hours; and]~~

417 (e) if the applicant will practice lymphatic massage, provide satisfactory documentation
418 to show completion of 200 hours of training, or the equivalent number of credit hours, in
419 lymphatic massage as defined by division rule; and

420 ~~[(e)]~~ (f) meet the examination requirement established by division rule.

421 (12) Each applicant for licensure as an esthetician instructor shall:

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

423 (b) pay a fee determined by the department under Section 63J-1-504;

424 (c) provide satisfactory documentation that the applicant is currently licensed as a
425 master esthetician;

426 (d) be of good moral character;

427 (e) provide satisfactory documentation of completion of:

428 (i) an instructor training program conducted by a licensed or recognized school as
429 defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit
430 hours; or

- 431 (ii) a minimum of 1,000 hours of experience in esthetics; and
 432 (f) meet the examination requirement established by rule.
- 433 (13) Each applicant for licensure as an esthetics school shall:
 434 (a) submit an application in a form prescribed by the division;
 435 (b) pay a fee determined by the department under Section 63J-1-504; and
 436 (c) provide satisfactory documentation:
 437 (i) of appropriate registration with the Division of Corporations and Commercial Code;
 438 (ii) of business licensure from the city, town, or county in which the school is located;
 439 (iii) that the applicant's physical facilities comply with the requirements established by
 440 rule; and
- 441 (iv) that the applicant meets the standards for esthetics schools, including staff,
 442 curriculum, and accreditation requirements, established by division rule made in collaboration
 443 with the board.
- 444 (14) Each applicant for licensure as a nail technician shall:
 445 (a) submit an application in a form prescribed by the division;
 446 (b) pay a fee determined by the department under Section 63J-1-504;
 447 (c) be of good moral character; ~~[and]~~
 448 (d) provide satisfactory documentation of:
 449 (i) graduation from a licensed or recognized nail technology school, or a licensed or
 450 recognized cosmetology/barber school, whose curriculum consists of not less than 300 hours of
 451 instruction, or the equivalent number of credit hours ~~[of not more than eight hours a day and~~
 452 ~~six days a week during the program];~~
 453 (ii) (A) ~~[having graduated]~~ graduation from a recognized nail technology school
 454 located in a state other than Utah whose curriculum consists of less than 300 hours of
 455 instruction or the equivalent number of credit hours; and
 456 ~~[(B) having practiced as a licensed nail technician for a period of not less than 1,000~~
 457 ~~hours; or]~~
 458 (B) practice as a licensed nail technician in a state other than Utah for not less than the
 459 number of hours required to equal 300 total hours when added to the hours of instruction
 460 described in Subsection (14)(d)(ii)(A); or
 461 (iii) ~~[having completed]~~ completion of an approved nail technician apprenticeship; and

- 462 (e) meet the examination requirement established by division rule.
- 463 (15) Each applicant for licensure as a nail technician instructor shall:
- 464 (a) submit an application in a form prescribed by the division;
- 465 (b) pay a fee determined by the department under Section 63J-1-504;
- 466 (c) provide satisfactory documentation that the applicant is currently licensed as a nail
- 467 technician;
- 468 (d) be of good moral character;
- 469 (e) provide satisfactory documentation of completion of:
- 470 (i) an instructor training program conducted by a licensed or recognized school as
- 471 defined by rule consisting of a minimum of 150 hours or the equivalent number of credit hours;
- 472 or
- 473 (ii) a minimum of 600 hours of experience in nail technology; and
- 474 (f) meet the examination requirement established by rule.
- 475 (16) Each applicant for licensure as a nail technology school shall:
- 476 (a) submit an application in a form prescribed by the division;
- 477 (b) pay a fee determined by the department under Section 63J-1-504; and
- 478 (c) provide satisfactory documentation:
- 479 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 480 (ii) of business licensure from the city, town, or county in which the school is located;
- 481 (iii) that the applicant's facilities comply with the requirements established by rule; and
- 482 (iv) that the applicant meets the standards for nail technology schools, including staff,
- 483 curriculum, and accreditation requirements, established by rule.
- 484 (17) Each applicant for licensure under this chapter whose education in the field for
- 485 which a license is sought was completed at a foreign school may satisfy the educational
- 486 requirement for licensure by demonstrating, to the satisfaction of the division, the educational
- 487 equivalency of the foreign school education with a licensed school under this chapter.
- 488 (18) (a) A licensed or recognized school under this section may accept credit hours
- 489 towards graduation for any profession listed in this section.
- 490 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
- 491 consistent with this section, the division may make rules governing the acceptance of credit
- 492 hours under Subsection (18)(a).

493 Section 3. Section **58-11a-304** is amended to read:

494 **58-11a-304. Exemptions from licensure.**

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

498 (1) ~~[persons]~~ a person licensed under the laws of this state to engage in the practice of
499 medicine, surgery, osteopathy, or chiropractic when engaged in the practice of the profession
500 for which they are licensed;

501 (2) a commissioned ~~[physicians and surgeons]~~ physician or surgeon serving in the
502 armed forces of the United States or another federal agency;

503 (3) a registered ~~[nurses, undertakers, and morticians]~~ nurse, undertaker, or mortician
504 licensed under the laws of this state when engaged in the practice of the profession for which
505 ~~[they are]~~ the person is licensed;

506 (4) ~~[persons]~~ a person who ~~[visit]~~ visits the state to engage in instructional seminars,
507 advanced classes, trade shows, or competitions of a limited duration;

508 (5) ~~[persons who engage]~~ a person who engages in the practice of barbering,
509 cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology without
510 compensation;

511 (6) ~~[persons]~~ a person instructing an adult education ~~[classes and]~~ class or other
512 educational ~~[programs]~~ program directed toward persons who are not licensed under this
513 chapter and that ~~[are]~~ is not intended to train persons to become licensed under this chapter,
514 provided:

515 (a) ~~[attendees receive]~~ an attendee receives no credit toward ~~[the]~~ educational
516 ~~[requirement]~~ requirements for licensure under this chapter; ~~[and]~~

517 (b) the instructor informs each attendee in writing that taking such a class or program
518 will not certify or qualify the attendee to perform a service for compensation that requires
519 licensure under this chapter; and

520 ~~[(b)]~~ (c) (i) the instructor is properly licensed; or

521 (ii) the instructor receives no compensation;

522 (7) ~~[persons instructing]~~ a person providing instruction in workshops, seminars,
523 training meetings, ~~[and]~~ or other educational programs whose purpose is to provide continuing

524 professional development to licensed barbers, [~~cosmetologist/barbers~~] cosmetologists/barbers,
525 estheticians, master estheticians, electrologists, or nail technicians[-~~or electrologists~~];

526 (8) [~~persons currently~~] a person enrolled in a licensed barber or cosmetology/barber
527 school when participating in an on the job training internship under the direct supervision of a
528 licensed barber or cosmetologist/barber upon completion of a basic program under the
529 standards established by rule by the division in collaboration with the board;

530 (9) [~~persons~~] a person enrolled in an approved apprenticeship pursuant to Section
531 58-11a-306;

532 (10) [~~employees~~] an employee of a company [~~which~~] that is primarily engaged in the
533 business of selling products used in the practice of barbering, cosmetology/barbering, esthetics,
534 master-level esthetics, electrology, or nail technology when demonstrating the company's
535 products to a potential [~~customers; or~~] customer, provided the employee makes no
536 representation to a potential customer that attending such a demonstration will certify or
537 qualify the attendee to perform a service for compensation that requires licensure under this
538 chapter;

539 (11) a person who:

540 (a) is qualified to engage in the practice of barbering, cosmetology/barbering, esthetics,
541 master-level esthetics, electrology, or nail technology in another jurisdiction as evidenced by
542 licensure, certification, or lawful practice in the other jurisdiction;

543 (b) is employed by, or under contract with, a motion picture company; and

544 (c) engages in the practice of barbering, cosmetology/barbering, esthetics, master-level
545 esthetics, electrology, or nail technology in the state:

546 (i) solely to assist in the production of a motion picture; and

547 (ii) for no more than 120 days per calendar year[-]; and

548 (12) a person who:

549 (a) engages in hair braiding; and

550 (b) unless it is expressly exempted under this section or Section 58-1-307, does not
551 engage in other activity requiring licensure under this chapter.

552 Section 4. Section **58-11a-502** is amended to read:

553 **58-11a-502. Unlawful conduct.**

554 Unlawful conduct includes:

555 (1) practicing or engaging in, or attempting to practice or engage in activity for which a
556 license is required under this chapter unless:

557 (a) the person holds the appropriate license under this chapter; or

558 (b) an exemption in Section 58-1-307 or 58-11a-304 applies;

559 (2) knowingly employing any other person to engage in or practice or attempt to
560 engage in or practice any occupation or profession licensed under this chapter if the employee
561 is not licensed to do so under this chapter or exempt from licensure;

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

564 (a) the genitals or the anus, except in cases where the patron states to a licensee that the
565 patron requests a hair removal procedure and signs a written consent form, which must also
566 include the witnessed signature of a legal guardian if the patron is a minor, authorizing the
567 licensee to perform a hair removal procedure; or

568 (b) the breast of a female patron, except in cases in which the female patron states to a
569 licensee that the patron requests breast skin procedures and signs a written consent form, which
570 must also include the witnessed signature of a parent or legal guardian if the patron is a minor,
571 authorizing the licensee to perform breast skin procedures;

572 (4) using or possessing as a nail technician a solution composed of at least 10% methyl
573 methacrylate on a client; [or]

574 (5) performing an ablative procedure as defined in Section 58-67-102[-]; or

575 (6) when acting as an instructor regarding a service requiring licensure under this
576 chapter, for a class or education program where attendees are not licensed under this chapter,
577 failing to inform each attendee in writing that:

578 (a) taking the class or program without completing the requirements for licensure under
579 this chapter is insufficient to certify or qualify the attendee to perform a service for
580 compensation that requires licensure under this chapter; and

581 (b) the attendee is required to obtain licensure under this chapter before performing the
582 service for compensation.

583 Section 5. Section **58-11a-503** is amended to read:

584 **58-11a-503. Penalties.**

585 (1) Unless Subsection (2) applies, an individual who commits an act of unlawful

586 conduct under Section 58-11a-502 or who fails to comply with a citation issued under this
587 section after it is final is guilty of a class A misdemeanor.

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

590 (3) Grounds for immediate suspension of a licensee's license by the division include
591 the issuance of a citation for violation of Subsection 58-11a-502(1), (2), ~~(4), (5), or (6)~~.

592 (4) (a) If upon inspection or investigation, the division concludes that a person has
593 violated the provisions of Subsection 58-11a-502(1), (2), ~~(4), (5), or (6)~~, or a rule or order
594 issued with respect to Subsection 58-11a-502(1), (2), ~~(4), (5), or (6)~~, and that disciplinary
595 action is appropriate, the director or the director's designee from within the division shall
596 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
597 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
598 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

599 (i) A person who is in violation of Subsection 58-11a-502(1), (2), ~~(4), (5), or (6)~~,
600 as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in
601 an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in
602 addition to or in lieu of, be ordered to cease and desist from violating Subsection
603 58-11a-502(1), (2), ~~(4), (5), or (6)~~.

604 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
605 58-11a-401 may not be assessed through a citation.

606 (b) (i) Each citation shall be in writing and describe with particularity the nature of the
607 violation, including a reference to the provision of the chapter, rule, or order alleged to have
608 been violated.

609 (ii) The citation shall clearly state that the recipient must notify the division in writing
610 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
611 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

612 (iii) The citation shall clearly explain the consequences of failure to timely contest the
613 citation or to make payment of a fine assessed by the citation within the time specified in the
614 citation.

615 (c) Each citation issued under this section, or a copy of each citation, may be served
616 upon a person upon whom a summons may be served in accordance with the Utah Rules of

617 Civil Procedure and may be made personally or upon the person's agent by a division
618 investigator or by a person specially designated by the director or by mail.

619 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the
620 citation was issued fails to request a hearing to contest the citation, the citation becomes the
621 final order of the division and is not subject to further agency review.

622 (ii) The period to contest a citation may be extended by the division for cause.

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

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

627 (g) No citation may be issued under this section after the expiration of six months
628 following the occurrence of a violation.

629 (h) Fines shall be assessed by the director or the director's designee according to the
630 following:

631 (i) for a first offense under Subsection (4)(a), a fine of up to \$1,000;

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

633 (iii) for any subsequent offense under Subsection (4)(a), a fine of up to \$2,000 for each
634 day of continued offense.

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

637 (A) the division previously issued a final order determining that a person committed a
638 first or second offense in violation of Subsection 58-11a-502(1), (2), [or] (4), (5), or (6); or

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

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

642 (III) the division determines during an investigation that occurred after the initiation of
643 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
644 violation of Subsection 58-11a-502(1), (2), [or] (4), (5), or (6); and

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

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

650 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
651 into the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician
652 Education and Enforcement Fund.

653 (b) A penalty which is not paid may be collected by the director by either referring the
654 matter to a collection agency or bringing an action in the district court of the county in which
655 the person against whom the penalty is imposed resides or in the county where the office of the
656 director is located.

657 (c) A county attorney or the attorney general of the state is to provide legal assistance
658 and advice to the director in an action to collect the penalty.

659 (d) A court shall award reasonable attorney fees and costs in an action brought to
660 enforce the provisions of this section.

661 **Section 6. Effective date.**

662 If approved by two-thirds of all the members elected to each house, this bill takes effect
663 upon approval by the governor, or the day following the constitutional time limit of Utah
664 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
665 the date of veto override.

Legislative Review Note
as of 2-12-13 8:38 AM

Office of Legislative Research and General Counsel