

Representative Sheryl L. Allen proposes to substitute the following bill:

**LICENSURE OF ESTHETICIANS AND NAIL
TECHNICIANS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

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

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

AMENDS:

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

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

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

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

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

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

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

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

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

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

ENACTS:



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

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

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 ~~[(I2)]~~ (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 for
115 cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

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

- 119 (b) manual lymphatic massage of the face and neck;
- 120 (c) limited chemical exfoliation as defined by rule;
- 121 (d) removing superfluous hair by means other than electrolysis or laser procedures; or
- 122 (e) other esthetic preparations or procedures with the use of the hands, a high-frequency
- 123 or galvanic electrical apparatus, or a heat lamp for beautifying or similar work performed on the
- 124 body for cosmetic purposes and not for the treatment of medical, physical, or mental ailments.

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

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

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

130 (A) body wraps as defined by rule;

131 (B) hydrotherapy as defined by rule;

132 (C) chemical exfoliation as defined by rule;

133 (D) advanced pedicures as defined by rule;

134 (E) sanding, including microdermabrasion; or

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

136 (I) the hands; or

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

140 (ii) lymphatic massage by manual or other means.

141 (b) Notwithstanding the provisions of Subsection (27)(a), a master-level esthetician may
142 perform procedures listed in Subsection (27)(a)(i) for non-cosmetic purposes if done under the
143 supervision of a licensed health care practitioner acting within the scope of his or her license.

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

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

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

150 ~~[(13)]~~ (30) "Recognized cosmetology/barber school" means a cosmetology/barber school
151 located in another state, whose students, upon graduation, are recognized as having completed the
152 educational requirements for licensure in that state.

153 ~~[(14)]~~ (31) "Recognized electrology school" means an electrology school~~[- (a) located in~~
154 ~~this state whose curriculum consists of 500 hours of instruction approved by rule; or - (b)]~~ located
155 in another state~~[- (i) whose curriculum consists of 500 hours of instruction; and - (ii)]~~, whose
156 students, upon graduation, are recognized as having completed the educational requirements for
157 licensure in that state.

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

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

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

166 ~~[(15)]~~ (35) "Unlawful conduct" is as defined in ~~[Section]~~ Sections 58-1-501 and
167 58-11a-502.

168 ~~[(16)]~~ (36) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501
169 and as may be further defined by rule by the division in collaboration with the board in accordance
170 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

172 **58-11a-103. Education and enforcement fund.**

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

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

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

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

- 181 (a) education and training of licensees under this chapter;
 182 (b) education and training of the public or other interested persons in matters concerning
 183 the laws governing the practices licensed under this chapter; and
 184 (c) enforcement of this chapter by:
 185 (i) investigating unprofessional or unlawful conduct; and
 186 (ii) providing legal representation to the division when the division takes legal action
 187 against a person engaging in unprofessional or unlawful conduct.
 188 (5) The division shall report annually to the appropriate appropriations subcommittee of
 189 the Legislature concerning the fund.

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

191 **58-11a-201. Board.**

- 192 (1) There is created the Cosmetology/Barbering, Esthetics, Electrology, and Nail
 193 Technology Licensing Board consisting of nine members as follows:
 194 (a) ~~[three cosmetologists/barbers]~~ one cosmetologist/barber;
 195 (b) (i) one cosmetologist/barber instructor; or
 196 ~~[(c)]~~ (ii) one representative of a licensed cosmetology/barber school;
 197 (c) one master esthetician;
 198 (d) (i) one esthetician instructor; or
 199 (ii) one representative of a licensed esthetics school;
 200 (e) one nail technician;
 201 (f) (i) one nail technician instructor; or
 202 (ii) one representative of a licensed nail technician school;
 203 ~~[(d)]~~ (g) one electrologist; and
 204 ~~[(e) one member]~~ (h) two members from the general public.
 205 (2) ~~§ (a) h~~ (The board shall be appointed and serve in accordance with Section 58-1-201.
 205a **§ (b)(i) AT LEAST ONE OF THE MEMBERS OF THE BOARD APPOINTED UNDER SUBSECTIONS**
 205b **(1)(b), (d), AND (f) SHALL BE AN INSTRUCTOR AT OR A REPRESENTATIVE OF A PUBLIC SCHOOL.**
 205c **(ii) AT LEAST ONE OF THE MEMBERS OF THE BOARD APPOINTED UNDER SUBSECTIONS**
 205d **(1)(b), (d), AND (f) SHALL BE AN INSTRUCTOR AT OR A REPRESENTATIVE OF A PRIVATE SCHOOL. h**
 206 (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202
 207 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating
 208 basis to:
 209 (a) assist the division in reviewing complaints concerning the unlawful or unprofessional
 210 conduct of a licensee; and

211

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

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

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

216 **58-11a-301. Licensure required -- License classifications.**

217 (1) Except as specifically provided in Section 58-1-307 or [~~58-11a-305~~] 58-11a-304, a
218 license is required to:

219 (a) engage in the practice of:

220 [~~(a)~~] (i) cosmetology/ barbering;

221 [~~(b)~~] (ii) cosmetology/barbering instruction; or

222 [~~(c)~~] (iii) electrology[-]; or

223 (b) operate a cosmetology/barbering school.

224 (2) Beginning October 1, 2001, except as specifically provided in Section 58-1-307 or
225 58-11a-304, a license is required to:

226 (a) engage in the practice of:

227 (i) electrology instruction;

228 (ii) esthetics;

229 (iii) master-level esthetics;

230 (iv) esthetics instruction;

231 (v) nail technology; or

232 (vi) nail technology instruction; or

233 (b) operate:

234 (i) an electrology school;

235 (ii) an esthetics school; or

236 (iii) a nail technology school.

237 [~~(2)~~] (3) The division shall issue to a person who qualifies under this chapter a license in
238 the following classifications:

239 (a) cosmetologist/barber;

240 [~~(b) cosmetologist/barber apprentice;~~]

241 [~~(c)~~] (b) cosmetologist/barber instructor;

242 [~~(d)~~] (c) cosmetology/barber school[-];

- 243 (d) electrologist; ~~and~~
- 244 (e) electrologist instructor;
- 245 (f) electrology school;
- 246 (g) esthetician;
- 247 (h) master esthetician;
- 248 (i) esthetician instructor;
- 249 (j) esthetics school;
- 250 (k) nail technology;
- 251 (l) nail technology instructor; and
- 252 (m) nail technology school.

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

254 **58-11a-302. Qualifications for licensure.**

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

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

260 (i) graduation from a licensed or recognized cosmetology/barber school whose curriculum
261 consists of a minimum of 2,000 hours of instruction or the equivalent number of credit hours over
262 a period of not less than 12 months;

263 (ii) (A) having graduated from a recognized cosmetology/barber school whose curriculum
264 consists of less than 2,000 hours of instruction or the equivalent number of credit hours; and

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

- 267 (iii) having completed an approved cosmetology/barber apprenticeship; and
- 268 (e) meet the examination requirement established by rule.

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

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

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

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

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

- 274 ~~[(e) provide satisfactory documentation of having enrolled in an approved~~
275 ~~cosmetology/barber apprenticeship.]~~
- 276 ~~[(3)]~~ (2) Each applicant for licensure as a cosmetologist/barber instructor shall:
- 277 (a) submit an application in a form prescribed by the division;
- 278 (b) pay a fee determined by the department under Section 63-38-3.2;
- 279 (c) provide satisfactory documentation that the applicant is currently licensed as a
280 cosmetologist/barber;
- 281 (d) be of good moral character;
- 282 (e) provide satisfactory documentation of completion of:
- 283 (i) an instructor training program conducted by a cosmetology/barber school consisting
284 of a minimum of 1,000 hours or the equivalent number of credit hours; or
- 285 (ii) a minimum of 4,000 hours of experience as a cosmetologist/barber; and
- 286 (f) meet the examination requirement established by rule.
- 287 (3) Each applicant for licensure as a cosmetologist/barber school shall:
- 288 (a) submit an application in a form prescribed by the division;
- 289 (b) pay a fee determined by the department under Section 63-38-3.2; and
- 290 (c) provide satisfactory documentation:
- 291 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 292 (ii) of business licensure from the city, town, or county in which the school is located;
- 293 (iii) that the applicant's physical facilities comply with the requirements established by
294 rule; and
- 295 (iv) that the applicant meets the standards for cosmetology/barber schools, including staff
296 and accreditation requirements, established by rule.
- 297 (4) Each applicant for licensure as an electrologist shall:
- 298 (a) submit an application in a form prescribed by the division;
- 299 (b) pay a fee determined by the department under Section 63-38-3.2;
- 300 (c) be of good moral character;
- 301 (d) provide satisfactory documentation of having graduated from a licensed or recognized
302 electrology school after completing a curriculum of 500 hours of instruction ~~[approved by rule]~~
303 or the equivalent number of credit hours; and
- 304 (e) meet the examination requirement established by rule.

- 305 ~~[(5) Each applicant for licensure as a cosmetologist/barber school shall:]~~
306 ~~[(a) submit an application in a form prescribed by the division;]~~
307 ~~[(b) pay a fee determined by the department under Section 63-38-3.2; and]~~
308 ~~[(c) provide satisfactory documentation:]~~
309 ~~[(i) of appropriate registration with the Division of Corporations and Commercial Code;]~~
310 ~~[(ii) of business licensure from the city, town, or county in which the school is located;]~~
311 ~~[(iii) that the applicant's physical facilities comply with the requirements established by~~
312 ~~rule; and]~~
313 ~~[(iv) that the applicant meets the standards for cosmetology/barber schools, including staff~~
314 ~~and accreditation requirements, established by rule.]~~
315 (5) Each applicant for licensure as an electrologist instructor shall:
316 (a) submit an application in a form prescribed by the division;
317 (b) pay a fee determined by the department under Section 63-38-3.2;
318 (c) provide satisfactory documentation that the applicant is currently licensed as an
319 electrologist;
320 (d) be of good moral character;
321 (e) provide satisfactory documentation of completion of:
322 (i) an instructor training program conducted by an electrology school consisting of a
323 minimum of 175 hours or the equivalent number of credit hours; or
324 (ii) a minimum of 1,000 hours of experience as an electrologist; and
325 (f) meet the examination requirement established by rule.
326 (6) Each applicant for licensure as a electrologist 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 63-38-3.2; 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 facilities comply with the requirements established by rule; and
333 (iv) that the applicant meets the standards for electrologist schools, including staff,
334 curriculum, and accreditation requirements, established by rule.
335 (7) Each applicant for licensure as an esthetician shall:

336 (a) submit an application in a form prescribed by the division;
 337 (b) pay a fee determined by the department under Section 63-38-3.2;
 338 (c) be of good moral character; and
 339 (d) provide satisfactory documentation of one of the following:
 340 (i) (A) graduation from a licensed or recognized esthetic school whose curriculum consists
 341 of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the equivalent
 342 number of credit hours; and
 343 (B) having met the examination requirement established by division rule;
 344 (ii) (A) completion of an approved esthetician apprenticeship; and
 345 (B) having met the examination requirement established by division rule;
 346 **§ h [†] (iii) being engaged in the practice of esthetics prior to January 1, 2001, with a business**
 347 **license issued by the city, town, or county where the applicant was practicing esthetics;**
 348 **(iv) being engaged in the practice of esthetics prior to January 1, 2001, as an employee of**
 349 **an employer who meets the requirements of Subsection (7)(d)(iii); [†] h h or**
 350 **§ h [†] (v) [†(iii)] h h having met the examination requirement established by division**
 350-1a rule prior to
 350a December
 351 31, 2001.

352 (8) Each applicant for licensure as a master esthetician shall:
 353 (a) submit an application in a form prescribed by the division;
 354 (b) pay a fee determined by the department under Section 63-38-3.2;
 355 (c) be of good moral character; and
 356 (d) provide satisfactory documentation of one of the following:
 357 (i) (A) completion of 1,200 hours of training or the equivalent number of credit hours,
 358 including 200 hours of training or the equivalent number of credit hours in lymphatic massage, at
 359 a licensed or recognized esthetics school; and
 360 (B) having met the examination requirement established by division rule;
 361 (ii) (A) completion of an approved master esthetician apprenticeship; and
 362 (B) having met the examination requirement established by division rule;
 363 **§ h [†] (iii) being engaged in the practice of master-level esthetics prior to January 1, 2001,**
 363a **with**
 364 **a business license issued by the city, town, or county where the applicant was practicing esthetics;**
 365 **(iv) being engaged in the practice of master-level esthetics prior to January 1, 2001, as an**
 366 **employee of an employer who meets the requirements of Subsection (8)(d)(iii); [†] h h or**

367 § ~~h-f~~ (v) ~~-(iii)~~ ~~h h~~ having met the examination requirement established by division rule
 367-1a prior to
 367a December
 368 31, 2001.

369 (9) Each applicant for licensure as an esthetician instructor shall:

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

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

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

374 (d) be of good moral character;

375 (e) provide satisfactory documentation of completion of:

376 (i) an instructor training program conducted by a licensed or recognized esthetics school
 377 consisting of a minimum of 300 hours or the equivalent number of credit hours; or

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

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

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

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

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

383 (c) provide satisfactory documentation:

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

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

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

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

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

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

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

393 (c) be of good moral character; and

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

395 (i) (A) graduation from a licensed or recognized nail technology school whose curriculum
 396 consists of not less than 200 hours or the equivalent number of credit hours of not more than eight
 397 hours a day and six days a week during the program; and

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

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

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

401 **§ h** [+] (iii) being engaged in the practice of nail technology prior to January 1, 2001, with a

402 business license issued by the city, town, or county where the applicant was practicing nail

403 technology;

404 (iv) being engaged in the practice of nail technology prior to January 1, 2001, as an

405 employee of an employer who meets the requirements of Subsection h [(12)(d)(iii);(11)(d)(iii) [+] h h

405a or

406 **h** § [+] (v) [++(iii)] h h having met the examination requirement established by division

406-1a rule prior to

406a December

407 31, 2001.

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

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

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

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

412 technician;

413 (d) be of good moral character;

414 (e) provide satisfactory documentation of completion of:

415 (i) an instructor training program conducted by a licensed or recognized nail technology

416 school consisting of a minimum of 100 hours or the equivalent number of credit hours; or

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

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

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

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

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

422 (c) provide satisfactory documentation:

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

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

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

426 (iv) that the applicant meets the standards for nail technology schools, including staff,

427 curriculum, and accreditation requirements, established by rule.

428 (14) Each applicant for licensure under this chapter whose education in the field for which

429 a license is sought was completed at a foreign school may satisfy the educational requirement for
430 licensure by demonstrating, to the satisfaction of the division, the educational equivalency of the
431 foreign school education with a licensed school under this chapter.

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

433 **58-11a-303. Terms of license -- Expiration -- Renewal.**

434 (1) (a) The division shall issue each license under this chapter in accordance with a
435 two-year renewal cycle established by rule, except that ~~[a cosmetology/barber]~~ an instructor license
436 is a one-time certificate and does not expire unless the licensee fails to ~~[maintain a]~~ keep current
437 ~~[cosmetology/barber]~~ the license that qualified the licensee to be an instructor under Section
438 58-11a-302.

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

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

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

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

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

451 **58-11a-304. Exemptions from licensure.**

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

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

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

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

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

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

466 (6) persons instructing adult education classes and other educational programs directed
467 toward persons who are not licensed [~~in cosmetology/barbering~~] under this chapter and that are not
468 intended to train persons to become licensed [~~to engage in cosmetology/barbering~~] under this
469 chapter, provided:

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

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

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

474 (ii) the instructor receives no compensation;

475 (7) persons instructing in workshops, seminars, training meetings, and other educational
476 programs whose purpose is to provide continuing professional development to licensed
477 cosmetologist/barbers, estheticians, master estheticians, nail technicians, or electrologists; [~~and~~]

478 (8) persons currently enrolled in a licensed cosmetology/barber school [~~may participate~~]
479 when participating in an on the job training internship under the direct supervision of a licensed
480 cosmetologist/barber upon completion of a basic program under the standards established by rule
481 by the division in collaboration with the board[-];

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

483 (10) employees of a company which is primarily engaged in the business of selling
484 products used in the practice of cosmetology/barbering, esthetics, master-level esthetics,
485 electrology, or nail technology when demonstrating the company's products to potential customers.

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

487 **58-11a-305. Requirement to display license.**

488 Each licensee under this chapter shall prominently display the licensee's license at the
489 location where the licensee [~~is engaged~~] engages in the practice [~~of cosmetology/barbering,~~
490 ~~electrology, or cosmetology/barbering instruction~~] for which that license is issued under this

491 chapter.

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

493 **58-11a-306. Apprenticeship.**

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

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

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

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

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

499 apprenticeship program.

500 (2) An approved esthetician apprenticeship shall:

501 (a) consist of not less than 800 hours of training in not less than nine months; and

502 (b) be conducted by a supervisor who:

503 (i) is licensed under this chapter as an esthetician instructor; and

504 (ii) provides direct supervision of the esthetician apprentice during the apprenticeship

505 program.

506 (3) An approved master esthetician apprenticeship shall:

507 (a) consist of not less than 1,500 hours of training in not less than 18 months; and

508 (b) be conducted by a supervisor who:

509 (i) is licensed under this chapter as a master-level esthetician instructor; and

510 (ii) provides direct supervision of the master esthetician apprentice during the

511 apprenticeship program.

512 (4) An approved nail technician apprenticeship shall:

513 (a) consist of not less than 250 hours of training in not less than six months; and

514 (b) be conducted by a supervisor who:

515 (i) is licensed under this chapter as a nail technician instructor; and

516 (ii) provides direct supervision of the nail technician apprentice during the apprenticeship

517 program.

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

519 **58-11a-501. Unprofessional conduct.**

520 Unprofessional conduct includes:

521 (1) failing as a [~~cosmetology/barber~~] licensed school to obtain or maintain accreditation

522 [~~as a cosmetology/barber school~~] as required by rule;

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

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

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

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

531 [~~(6) failing as a cosmetology/barber apprentice or supervisor to comply with the~~
532 ~~apprentice's or supervisor's requirements under an approved apprenticeship program;~~]

533 (6) failing as an apprentice supervisor to comply with division rules relating to
534 apprenticeship programs under this chapter;

535 (7) keeping a [~~shop~~] salon or school, its furnishing, tools, utensils, linen, or appliances in
536 an unsanitary condition;

537 (8) failing to comply with Title 26, Utah Health Code; [~~and~~]

538 (9) failing to display licenses or certificates as required under Section 58-11a-305[-];

539 (10) failing to comply with physical facility requirements established by rule;

540 (11) failing to maintain mechanical or electrical equipment in safe operating condition;

541 (12) failing to adequately monitor patrons using steam rooms, dry heat rooms, baths,
542 showers, or saunas;

543 (13) prescribing or administering prescription drugs;

544 (14) failing to comply with all applicable state and local health or sanitation laws;

545 (15) engaging in any act or practice in a professional capacity that is outside the applicable
546 scope of practice;

547 (16) engaging in any act or practice in a professional capacity which the licensee is not
548 competent to perform through education or training;

549 (17) in connection with the use of a chemical exfoliant, unless under the supervision of
550 a licensed health care practitioner acting within the scope of his or her license;

551 (a) using any acid, concentration of an acid, or combination of treatments which violates
552 the standards established by rule;

- 553 (b) removing any layer of skin deeper than the stratum corneum of the epidermis; or
- 554 (c) using an exfoliant that contains phenol, TCA acid, or BCA acid;
- 555 (18) in connection with the sanding of the skin, unless under the supervision of a licensed
- 556 health care practitioner acting within the scope of his or her license, removing any layer of skin
- 557 deeper than the stratum corneum of the epidermis; or
- 558 (19) using as a cosmetologist/barber, esthetician, master esthetician, or nail technician any
- 559 laser procedure or intense, pulsed light source.

560 Section 12. Section **58-11a-502** is enacted to read:

561 **58-11a-502. Unlawful conduct.**

562 Unlawful conduct includes:

- 563 (1) practicing or engaging in, or attempting to practice or engage in activity for which a
- 564 license is required under this chapter unless:
- 565 (a) the person holds the appropriate license under this chapter; or
- 566 (b) an exemption in Section 58-1-307 or 58-11a-304 applies;
- 567 (2) knowingly employing any other person to engage in or practice or attempt to engage
- 568 in or practice any occupation or profession licensed under this chapter if the employee is not
- 569 licensed to do so under this chapter or exempt from licensure; and
- 570 (3) touching, or applying an instrument or device to the following areas of a client's body:
- 571 (a) the genitals or the anus; or
- 572 (b) the breast of a female patron, except in cases in which the female patron states to a
- 573 licensee that the patron requests breast skin procedures and signs a written consent form, which
- 574 must also include the signature of a parent or legal guardian if the patron is a minor, authorizing
- 575 the licensee to perform breast skin procedures.

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

577 **58-11a-503. Penalties.**

- 578 (1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct
- 579 under Section 58-11a-502 or who fails to comply with a citation issued under this section after it
- 580 is final is guilty of a class A misdemeanor.
- 581 (2) Sexual conduct that violates Section 58-11a-502 and Title 76, Criminal Code, shall be
- 582 subject to the applicable penalties in Title 76.
- 583 (3) Grounds for immediate suspension of a licensee's license by the division include the

584 issuance of a citation for violation of Subsection ~~h [58-11a-501(1)] 58-11a-502(1) h~~ or (2).

585 (4) (a) If upon inspection or investigation, the division concludes that a person has violated
586 the provisions of Subsection ~~h [58-11a-501(1)] 58-11a-502(1) h~~ or (2) or any rule or order issued with
586a respect to
587 Subsection ~~h [58-11a-501(1)] 58-11a-502(1) h~~ or (2), and that disciplinary action is appropriate, the
587a director or his
588 designee from within the division shall promptly issue a citation to the person according to this
589 chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person
590 to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative
591 Procedures Act.

592 (i) Any person who is in violation of the provisions of Subsection ~~h [58-11a-501(1)]~~
592a ~~58-11a-502(1) h~~ or (2),
593 as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an
594 adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in
595 addition to or in lieu of, be ordered to cease and desist from violating Subsection ~~h [58-11a-501(1)]~~
595a ~~58-11a-502(1) h~~
596 or (2).

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

599 (b) Each citation shall be in writing and describe with particularity the nature of the
600 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
601 violated. The citation shall clearly state that the recipient must notify the division in writing within
602 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
603 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
604 explain the consequences of failure to timely contest the citation or to make payment of any fines
605 assessed by the citation within the time specified in the citation.

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

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

614 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the

615 license of a licensee who fails to comply with a citation after it becomes final.

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

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

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

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

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

623 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
624 \$2,000 for each day of continued offense.

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

627 (A) the division previously issued a final order determining that a person committed a first
628 or second offense in violation of Subsection ~~h [58-11a-501(1)] 58-11a-502(1) h~~ or (2); or

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

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

632 (III) the division determines during an investigation that occurred after the initiation of the
633 action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation
634 of the provisions of Subsection ~~h [58-11a-501(1)] 58-11a-502(1) h~~ or (2); and

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

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

640 (5) Any penalty imposed by the director under Subsection (4)(h) shall be deposited into
641 the Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and
642 Enforcement Fund. Any penalty which is not paid may be collected by the director by either
643 referring the matter to a collection agency or bringing an action in the district court of the county
644 in which the person against whom the penalty is imposed resides or in the county where the office
645 of the director is located. Any county attorney or the attorney general of the state is to provide

646 legal assistance and advice to the director in any action to collect the penalty. In any action
647 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be
648 awarded.

649 Section 14. **Effective date.**

650 This act takes effect on April 30, 2001, except that Section 58-11a-201 takes effect on
651 October 1, 2001.