

**LICENSING OF ESTHETICIANS AND NAIL
TECHNICIANS**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Chief Sponsor: Julie Fisher

Senate Sponsor: Dan R. Eastman

Sheryl L. Allen

LONG TITLE

General Description:

This bill modifies provisions of the Occupations and Professions Code related to the licensing of estheticians and nail technicians.

Highlighted Provisions:

This bill:

- ▶ removes archaic work experience grandfathering provisions dealing with the licensing of estheticians, master estheticians, and nail technicians;
- ▶ modifies the length of apprenticeship programs for estheticians, master estheticians, and nail technicians;
- ▶ increases the curriculum requirement for nail technology schools from 200 to 300 hours;
- ▶ increases from 250 to 375 the number of hours of training required for an approved nail technician apprenticeship;
- ▶ expands the unlawful conduct provision that applies to nail technicians to include the use of methyl methacrylate by a nail technician on a client; and
- ▶ provides the Division of Occupational and Professional Licensing with authority to issue citations to nail technicians who use methyl methacrylate on their clients.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on December 31, 2005.

Utah Code Sections Affected:

AMENDS:

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

58-11a-302, as last amended by Chapter 204, Laws of Utah 2001

58-11a-306, as last amended by Chapter 204, Laws of Utah 2001

58-11a-502, as enacted by Chapter 204, Laws of Utah 2001

58-11a-503, as enacted by Chapter 204, Laws of Utah 2001

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

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

58-11a-102. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the practice of esthetics; and

(ii) the practice of nail technology.

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

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

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

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

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

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

(c) limited chemical exfoliation as defined by rule;

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

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

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

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

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

(A) body wraps as defined by rule;

(B) hydrotherapy as defined by rule;

(C) chemical exfoliation as defined by rule;

(D) advanced pedicures as defined by rule;

(E) sanding, including microdermabrasion; or

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

(I) the hands; or

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

(ii) lymphatic massage by manual or other means.

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

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

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

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

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

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

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

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

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

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

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

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

58-11a-302. Qualifications for licensure.

- (1) Each applicant for licensure as a cosmetologist/barber shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) be of good moral character;
 - (d) provide satisfactory documentation of:
 - (i) graduation from a licensed or recognized cosmetology/barber school whose curriculum consists of a minimum of 2,000 hours of instruction or the equivalent number of credit hours over a period of not less than 12 months;
 - (ii) (A) having graduated from a recognized cosmetology/barber school whose curriculum consists of less than 2,000 hours of instruction or the equivalent number of credit hours; and
 - (B) having practiced as a licensed cosmetologist/barber for a period of not less than 4,000 hours; or
 - (iii) having completed an approved cosmetology/barber apprenticeship; and
 - (e) meet the examination requirement established by rule.
- (2) Each applicant for licensure as a cosmetologist/barber instructor shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) provide satisfactory documentation that the applicant is currently licensed as a cosmetologist/barber;
 - (d) be of good moral character;
 - (e) provide satisfactory documentation of completion of:
 - (i) an instructor training program conducted by a cosmetology/barber school consisting of a minimum of 1,000 hours or the equivalent number of credit hours; or
 - (ii) a minimum of 4,000 hours of experience as a cosmetologist/barber; and
 - (f) meet the examination requirement established by rule.
- (3) Each applicant for licensure as a cosmetologist/barber school shall:
 - (a) submit an application in a form prescribed by the division;

- (b) pay a fee determined by the department under Section 63-38-3.2; and
 - (c) provide satisfactory documentation:
 - (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - (ii) of business licensure from the city, town, or county in which the school is located;
 - (iii) that the applicant's physical facilities comply with the requirements established by rule; and
 - (iv) that the applicant meets the standards for cosmetology/barber schools, including staff and accreditation requirements, established by rule.
- (4) Each applicant for licensure as an electrologist shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) be of good moral character;
 - (d) provide satisfactory documentation of having graduated from a licensed or recognized electrology school after completing a curriculum of 500 hours of instruction or the equivalent number of credit hours; and
 - (e) meet the examination requirement established by rule.
- (5) Each applicant for licensure as an electrologist instructor shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) provide satisfactory documentation that the applicant is currently licensed as an electrologist;
 - (d) be of good moral character;
 - (e) provide satisfactory documentation of completion of:
 - (i) an instructor training program conducted by an electrology school consisting of a minimum of 175 hours or the equivalent number of credit hours; or
 - (ii) a minimum of 1,000 hours of experience as an electrologist; and
 - (f) meet the examination requirement established by rule.
- (6) Each applicant for licensure as an electrologist school shall:

- (a) submit an application in a form prescribed by the division;
- (b) pay a fee determined by the department under Section 63-38-3.2; and
- (c) provide satisfactory documentation:
 - (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - (ii) of business licensure from the city, town, or county in which the school is located;
 - (iii) that the applicant's facilities comply with the requirements established by rule; and
 - (iv) that the applicant meets the standards for electrologist schools, including staff, curriculum, and accreditation requirements, established by rule.

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

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

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

- (a) submit an application in a form prescribed by the division;
- (b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character; and
(d) provide satisfactory documentation of one of the following:
(i) (A) completion of 1,200 hours of training or the equivalent number of credit hours, including 200 hours of training or the equivalent number of credit hours in lymphatic massage, at a licensed or recognized esthetics school; and

(B) having met the examination requirement established by division rule;
(ii) (A) completion of an approved master esthetician apprenticeship; and
(B) having met the examination requirement established by division rule; or
~~[(iii) being engaged in the practice of master-level esthetics prior to January 1, 2001, with a business license issued by the city, town, or county where the applicant was practicing esthetics;]~~

~~[(iv) being engaged in the practice of master-level esthetics prior to January 1, 2001, as an employee of an employer who meets the requirements of Subsection (8)(d)(iii); or]~~

~~[(v)]~~ (iii) having met the examination requirement established by division rule prior to December 31, 2001.

(9) Each applicant for licensure as an esthetician instructor shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63-38-3.2;
(c) provide satisfactory documentation that the applicant is currently licensed as a master esthetician;

(d) be of good moral character;
(e) provide satisfactory documentation of completion of:
(i) an instructor training program conducted by a licensed or recognized esthetics school consisting of a minimum of 300 hours or the equivalent number of credit hours; or
(ii) a minimum of 1,000 hours of experience in esthetics; and
(f) meet the examination requirement established by rule.

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

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

- (b) pay a fee determined by the department under Section 63-38-3.2; and
- (c) provide satisfactory documentation:
 - (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - (ii) of business licensure from the city, town, or county in which the school is located;
 - (iii) that the applicant's physical facilities comply with the requirements established by rule; and
- (iv) that the applicant meets the standards for esthetics schools, including staff, curriculum, and accreditation requirements, established by division rule made in collaboration with the board.

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

- (a) submit an application in a form prescribed by the division;
- (b) pay a fee determined by the department under Section 63-38-3.2;
- (c) be of good moral character; and
- (d) provide satisfactory documentation of one of the following:
 - (i) (A) graduation from a licensed or recognized nail technology school whose curriculum consists of not less than ~~[200]~~ 300 hours or the equivalent number of credit hours of not more than eight hours a day and six days a week during the program; and
 - (B) having met the examination requirement established by division rule;
 - (ii) (A) having completed an approved nail technician apprenticeship; and
 - (B) having met the examination requirement established by division rule; or
 - ~~[(iii) being engaged in the practice of nail technology prior to January 1, 2001, with a business license issued by the city, town, or county where the applicant was practicing nail technology;]~~
 - ~~[(iv) being engaged in the practice of nail technology prior to January 1, 2001, as an employee of an employer who meets the requirements of Subsection (11)(d)(iii); or]~~
 - ~~[(v) (iii) having met the examination requirement established by division rule prior to December 31, 2001.~~

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

- (a) submit an application in a form prescribed by the division;
- (b) pay a fee determined by the department under Section 63-38-3.2;
- (c) provide satisfactory documentation that the applicant is currently licensed as a nail technician;
- (d) be of good moral character;
- (e) provide satisfactory documentation of completion of:
 - (i) an instructor training program conducted by a licensed or recognized nail technology school consisting of a minimum of 100 hours or the equivalent number of credit hours; or
 - (ii) a minimum of 400 hours of experience in nail technology; and
- (f) meet the examination requirement established by rule.

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

- (a) submit an application in a form prescribed by the division;
- (b) pay a fee determined by the department under Section 63-38-3.2; and
- (c) provide satisfactory documentation:
 - (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - (ii) of business licensure from the city, town, or county in which the school is located;
 - (iii) that the applicant's facilities comply with the requirements established by rule; and
 - (iv) that the applicant meets the standards for nail technology schools, including staff, curriculum, and accreditation requirements, established by rule.

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

Section 3. Section **58-11a-306** is amended to read:

58-11a-306. Apprenticeship.

- (1) An approved cosmetologist/barber apprenticeship shall:
 - (a) consist of not less than 2,500 hours of training in not less than 15 months; and
 - (b) be conducted by a supervisor who:

(i) is licensed under this chapter as a cosmetologist/barber instructor; and
(ii) provides direct one-on-one supervision of the cosmetologist/barber apprentice during the apprenticeship program.

(2) An approved esthetician apprenticeship shall:

(a) consist of not less than 800 hours of training in not less than [~~nine~~] five months; and

(b) be conducted by a supervisor who:

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

(ii) provides direct one-on-one supervision of the esthetician apprentice during the apprenticeship program.

(3) An approved master esthetician apprenticeship shall:

(a) consist of not less than 1,500 hours of training in not less than [~~18~~] ten months; and

(b) be conducted by a supervisor who:

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

(ii) provides direct one-on-one supervision of the master esthetician apprentice during the apprenticeship program.

(4) An approved nail technician apprenticeship shall:

(a) consist of not less than [~~250~~] 375 hours of training in not less than [~~six~~] three months;
and

(b) be conducted by a supervisor who:

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

(ii) provides direct one-on-two supervision of the nail technician apprentice during the apprenticeship program.

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

58-11a-502. Unlawful conduct.

Unlawful conduct includes:

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

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

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

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

- (a) the genitals or the anus; or
- (b) the breast of a female patron, except in cases in which the female patron states to a licensee that the patron requests breast skin procedures and signs a written consent form, which must also include the signature of a parent or legal guardian if the patron is a minor, authorizing the licensee to perform breast skin procedures~~[-]; and~~

(4) using as a nail technician a solution composed of at least 10% methyl methacrylate on a client.

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

58-11a-503. Penalties.

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

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

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

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-11a-502(1) ~~[or], (2), or (4),~~ or ~~[any]~~ a rule or order issued with respect to Subsection 58-11a-502(1) ~~[or], (2), or (4),~~ and that disciplinary action is appropriate, the director or ~~[his]~~ the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding

conducted under Title 63, Chapter 46b, Administrative Procedures Act.

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

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

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

(ii) The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(iii) The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of ~~[any fines]~~ a fine assessed by the citation within the time specified in the citation.

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

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

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

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

(f) The failure of an applicant for licensure to comply with a citation after it becomes

final is a ground for denial of license.

(g) No citation may be issued under this section after the expiration of six months following the occurrence of ~~[any]~~ a violation.

(h) Fines shall be assessed by the director or ~~[his]~~ the director's designee according to the following:

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

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

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

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

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

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

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

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

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

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

(5) (a) ~~[Any]~~ A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician

Education and Enforcement Fund. [~~Any~~]

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

(c) A county attorney or the attorney general of the state is to provide legal assistance and advice to the director in [~~any~~] an action to collect the penalty. [~~In any action brought to enforce the provisions of this section,~~]

(d) A court shall award reasonable attorney's fees and costs [~~shall be awarded~~] in an action brought to enforce the provisions of this section.

Section 6. Effective date.

This bill takes effect on December 31, 2005.