

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

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Julie Fisher**

6 Sheryl L. Allen

7
8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ removes archaic work experience grandfathering provisions dealing with the
15 licensing of estheticians, master estheticians, and nail technicians;
16 ▶ modifies the length of apprenticeship programs for estheticians, master estheticians,
17 and nail technicians;
18 ▶ increases the curriculum requirement for nail technology schools from 200 to 350
19 hours;
20 ▶ increases from 250 to 450 the number of hours of training required for an approved
21 nail technician apprenticeship;
22 ▶ expands the unlawful conduct provision that applies to nail technicians to
23 include the use of methyl methacrylate by a nail technician on a client; and
24 ▶ provides the Division of Occupational and Professional Licensing with authority to
25 issue citations to nail technicians who use methyl methacrylate on their clients.

26 **Monies Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 This bill takes effect on July 1, 2005.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **58-11a-302**, as last amended by Chapter 204, Laws of Utah 2001

33 **58-11a-306**, as last amended by Chapter 204, Laws of Utah 2001

34 **58-11a-502**, as enacted by Chapter 204, Laws of Utah 2001

35 **58-11a-503**, as enacted by Chapter 204, Laws of Utah 2001



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

38 Section 1. Section **58-11a-302** is amended to read:

39 **58-11a-302. Qualifications for licensure.**

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

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

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

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

- 51 (B) having practiced as a licensed cosmetologist/barber for a period of not less than
- 52 4,000 hours; or

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

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

55 (2) Each applicant for licensure as a cosmetologist/barber instructor shall:

- 56 (a) submit an application in a form prescribed by the division;
- 57 (b) pay a fee determined by the department under Section 63-38-3.2;
- 58 (c) provide satisfactory documentation that the applicant is currently licensed as a

- 59 cosmetologist/barber;
- 60 (d) be of good moral character;
- 61 (e) provide satisfactory documentation of completion of:
 - 62 (i) an instructor training program conducted by a cosmetology/barber school consisting
 - 63 of a minimum of 1,000 hours or the equivalent number of credit hours; or
 - 64 (ii) a minimum of 4,000 hours of experience as a cosmetologist/barber; and
 - 65 (f) meet the examination requirement established by rule.
- 66 (3) Each applicant for licensure as a cosmetologist/barber school shall:
 - 67 (a) submit an application in a form prescribed by the division;
 - 68 (b) pay a fee determined by the department under Section 63-38-3.2; and
 - 69 (c) provide satisfactory documentation:
 - 70 (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - 71 (ii) of business licensure from the city, town, or county in which the school is located;
 - 72 (iii) that the applicant's physical facilities comply with the requirements established by
 - 73 rule; and
 - 74 (iv) that the applicant meets the standards for cosmetology/barber schools, including
 - 75 staff and accreditation requirements, established by rule.
 - 76 (4) Each applicant for licensure as an electrologist shall:
 - 77 (a) submit an application in a form prescribed by the division;
 - 78 (b) pay a fee determined by the department under Section 63-38-3.2;
 - 79 (c) be of good moral character;
 - 80 (d) provide satisfactory documentation of having graduated from a licensed or
 - 81 recognized electrology school after completing a curriculum of 500 hours of instruction or the
 - 82 equivalent number of credit hours; and
 - 83 (e) meet the examination requirement established by rule.
 - 84 (5) Each applicant for licensure as an electrologist instructor shall:
 - 85 (a) submit an application in a form prescribed by the division;
 - 86 (b) pay a fee determined by the department under Section 63-38-3.2;
 - 87 (c) provide satisfactory documentation that the applicant is currently licensed as an
 - 88 electrologist;
 - 89 (d) be of good moral character;

- 90 (e) provide satisfactory documentation of completion of:
- 91 (i) an instructor training program conducted by an electrology school consisting of a
- 92 minimum of 175 hours or the equivalent number of credit hours; or
- 93 (ii) a minimum of 1,000 hours of experience as an electrologist; and
- 94 (f) meet the examination requirement established by rule.
- 95 (6) Each applicant for licensure as an electrologist school shall:
- 96 (a) submit an application in a form prescribed by the division;
- 97 (b) pay a fee determined by the department under Section 63-38-3.2; and
- 98 (c) provide satisfactory documentation:
- 99 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 100 (ii) of business licensure from the city, town, or county in which the school is located;
- 101 (iii) that the applicant's facilities comply with the requirements established by rule; and
- 102 (iv) that the applicant meets the standards for electrologist schools, including staff,
- 103 curriculum, and accreditation requirements, established by rule.
- 104 (7) Each applicant for licensure as an esthetician shall:
- 105 (a) submit an application in a form prescribed by the division;
- 106 (b) pay a fee determined by the department under Section 63-38-3.2;
- 107 (c) be of good moral character; and
- 108 (d) provide satisfactory documentation of one of the following:
- 109 (i) (A) graduation from a licensed or recognized esthetic school whose curriculum
- 110 consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the
- 111 equivalent number of credit hours; and
- 112 (B) having met the examination requirement established by division rule;
- 113 (ii) (A) completion of an approved esthetician apprenticeship; and
- 114 (B) having met the examination requirement established by division rule; or
- 115 [~~(iii) being engaged in the practice of esthetics prior to January 1, 2001, with a business~~
- 116 ~~license issued by the city, town, or county where the applicant was practicing esthetics;~~]
- 117 [~~(iv) being engaged in the practice of esthetics prior to January 1, 2001, as an employee~~
- 118 ~~of an employer who meets the requirements of Subsection (7)(d)(iii); or]~~
- 119 [~~(v)~~] (iii) having met the examination requirement established by division rule prior to
- 120 December 31, 2001.

- 121 (8) Each applicant for licensure as a master esthetician shall:
- 122 (a) submit an application in a form prescribed by the division;
- 123 (b) pay a fee determined by the department under Section 63-38-3.2;
- 124 (c) be of good moral character; and
- 125 (d) provide satisfactory documentation of one of the following:
- 126 (i) (A) completion of 1,200 hours of training or the equivalent number of credit hours,
- 127 including 200 hours of training or the equivalent number of credit hours in lymphatic massage,
- 128 at a licensed or recognized esthetics school; and
- 129 (B) having met the examination requirement established by division rule;
- 130 (ii) (A) completion of an approved master esthetician apprenticeship; and
- 131 (B) having met the examination requirement established by division rule; or
- 132 [~~(iii) being engaged in the practice of master-level esthetics prior to January 1, 2001,~~
- 133 ~~with a business license issued by the city, town, or county where the applicant was practicing~~
- 134 ~~esthetics;]~~
- 135 [~~(iv) being engaged in the practice of master-level esthetics prior to January 1, 2001, as~~
- 136 ~~an employee of an employer who meets the requirements of Subsection (8)(d)(iii); or]~~
- 137 [~~(v)~~] (iii) having met the examination requirement established by division rule prior to
- 138 December 31, 2001.
- 139 (9) Each applicant for licensure as an esthetician instructor shall:
- 140 (a) submit an application in a form prescribed by the division;
- 141 (b) pay a fee determined by the department under Section 63-38-3.2;
- 142 (c) provide satisfactory documentation that the applicant is currently licensed as a
- 143 master esthetician;
- 144 (d) be of good moral character;
- 145 (e) provide satisfactory documentation of completion of:
- 146 (i) an instructor training program conducted by a licensed or recognized esthetics
- 147 school consisting of a minimum of 300 hours or the equivalent number of credit hours; or
- 148 (ii) a minimum of 1,000 hours of experience in esthetics; and
- 149 (f) meet the examination requirement established by rule.
- 150 (10) Each applicant for licensure as an esthetics school shall:
- 151 (a) submit an application in a form prescribed by the division;

152 (b) pay a fee determined by the department under Section 63-38-3.2; and
153 (c) provide satisfactory documentation:
154 (i) of appropriate registration with the Division of Corporations and Commercial Code;
155 (ii) of business licensure from the city, town, or county in which the school is located;
156 (iii) that the applicant's physical facilities comply with the requirements established by
157 rule; and

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

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

162 (a) submit an application in a form prescribed by the division;
163 (b) pay a fee determined by the department under Section 63-38-3.2;
164 (c) be of good moral character; and
165 (d) provide satisfactory documentation of one of the following:
166 (i) (A) graduation from a licensed or recognized nail technology school whose
167 curriculum consists of not less than ~~[200]~~ 350 hours or the equivalent number of credit hours of
168 not more than eight hours a day and six days a week during the program; and

169 (B) having met the examination requirement established by division rule;
170 (ii) (A) having completed an approved nail technician apprenticeship; and
171 (B) having met the examination requirement established by division rule; or
172 ~~[(iii) being engaged in the practice of nail technology prior to January 1, 2001, with a~~
173 ~~business license issued by the city, town, or county where the applicant was practicing nail~~
174 ~~technology;]~~

175 ~~[(iv) being engaged in the practice of nail technology prior to January 1, 2001, as an~~
176 ~~employee of an employer who meets the requirements of Subsection (11)(d)(iii); or]~~

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

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

180 (a) submit an application in a form prescribed by the division;
181 (b) pay a fee determined by the department under Section 63-38-3.2;
182 (c) provide satisfactory documentation that the applicant is currently licensed as a nail

183 technician;

184 (d) be of good moral character;

185 (e) provide satisfactory documentation of completion of:

186 (i) an instructor training program conducted by a licensed or recognized nail
187 technology school consisting of a minimum of 100 hours or the equivalent number of credit
188 hours; or

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

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

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

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

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

194 (c) provide satisfactory documentation:

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

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

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

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

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

204 Section 2. Section **58-11a-306** is amended to read:

205 **58-11a-306. Apprenticeship.**

206 (1) An approved cosmetologist/barber apprenticeship shall:

207 (a) consist of not less than 2,500 hours of training in not less than 15 months; and

208 (b) be conducted by a supervisor who:

209 (i) is licensed under this chapter as a cosmetologist/barber instructor; and

210 (ii) provides direct one-on-one supervision of the cosmetologist/barber apprentice
211 during the apprenticeship program.

212 (2) An approved esthetician apprenticeship shall:

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

214 and

215 (b) be conducted by a supervisor who:

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

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

219 (3) An approved master esthetician apprenticeship shall:

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

221 (b) be conducted by a supervisor who:

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

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

225 (4) An approved nail technician apprenticeship shall:

226 (a) consist of not less than [~~250~~] 450 hours of training in not less than six months; and

227 (b) be conducted by a supervisor who:

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

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

231 Section 3. Section **58-11a-502** is amended to read:

232 **58-11a-502. Unlawful conduct.**

233 Unlawful conduct includes:

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

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

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

238 (2) knowingly employing any other person to engage in or practice or attempt to
239 engage in or practice any occupation or profession licensed under this chapter if the employee
240 is not licensed to do so under this chapter or exempt from licensure; [~~and~~]

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

243 (a) the genitals or the anus; or

244 (b) the breast of a female patron, except in cases in which the female patron states to a

245 licensee that the patron requests breast skin procedures and signs a written consent form, which
246 must also include the signature of a parent or legal guardian if the patron is a minor,
247 authorizing the licensee to perform breast skin procedures~~[-]; and~~

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

250 Section 4. Section **58-11a-503** is amended to read:

251 **58-11a-503. Penalties.**

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

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

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

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

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

271 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
272 58-11a-401 may not be assessed through a citation.

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

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

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

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

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

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

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

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

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

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

298 (i) for a first offense [~~handled pursuant to~~] under Subsection (4)(a), a fine of up to
299 \$1,000;

300 (ii) for a second offense [~~handled pursuant to~~] under Subsection (4)(a), a fine of up to
301 \$2,000; and

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

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

306 (A) the division previously issued a final order determining that a person committed a

307 first or second offense in violation of Subsection 58-11a-502(1) ~~[or]~~, (2), or (4); or
308 (B) (I) the division initiated an action for a first or second offense;
309 (II) no final order has been issued by the division in the action initiated under
310 Subsection (4)(i)(i)(B)(I);
311 (III) the division determines during an investigation that occurred after the initiation of
312 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
313 violation of ~~[the provisions of]~~ Subsection 58-11a-502(1) ~~[or]~~, (2), or (4); and
314 (IV) after determining that the person committed a second or subsequent offense under
315 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
316 Subsection (4)(i)(i)(B)(I).
317 (ii) In issuing a final order for a second or subsequent offense under Subsection
318 (4)(i)(i), the division shall comply with the requirements of this section.
319 (5) (a) ~~[Any]~~ A penalty imposed by the director under Subsection (4)(h) shall be
320 deposited into the Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician
321 Education and Enforcement Fund. ~~[Any]~~
322 (b) A penalty which is not paid may be collected by the director by either referring the
323 matter to a collection agency or bringing an action in the district court of the county in which
324 the person against whom the penalty is imposed resides or in the county where the office of the
325 director is located. ~~[Any]~~
326 (c) A county attorney or the attorney general of the state is to provide legal assistance
327 and advice to the director in ~~[any]~~ an action to collect the penalty. ~~[In any action brought to~~
328 ~~enforce the provisions of this section;]~~
329 (d) A court shall award reasonable attorney's fees and costs ~~[shall be awarded]~~ in an
330 action brought to enforce the provisions of this section.
331 Section 5. **Effective date.**
332 This bill takes effect on July 1, 2005.

Legislative Review Note

as of 12-14-04 2:21 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0071

Licensing of Estheticians and Nail Technicians

20-Jan-05

11:03 AM

State Impact

No fiscal impact.

Individual and Business Impact

No business fiscal impact. Increasing the educational requirement for nail technologists to 350 hours and apprenticeship hours to 450 will increase training costs.

Office of the Legislative Fiscal Analyst