

1 **COSMETOLOGIST/BARBER, ESTHETICIAN,**
2 **ELECTROLOGIST, AND NAIL TECHNICIAN**
3 **LICENSING ACT AMENDMENTS**

4 2007 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Stephen D. Clark**

7 Senate Sponsor: John W. Hickman

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Cosmetologist/Barber, Esthetician, Electrologist, and Nail
12 Technician Licensing Act to provide a stand-alone barbering license.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides for stand-alone barber licensing and apprenticeships, and licensing and
16 apprenticeship requirements, that are separate from cosmetology/barber licensing
17 and apprenticeship requirements;
- 18 ▶ modifies the unprofessional and unlawful conduct provisions;
- 19 ▶ removes the 200 hours of training or an equivalent number of credit hours in
20 lymphatic massage required for licensure as a master esthetician; and
- 21 ▶ makes technical corrections.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **58-11a-101**, as last amended by Chapter 204, Laws of Utah 2001
- 29 **58-11a-102**, as last amended by Chapter 222, Laws of Utah 2005
- 30 **58-11a-103**, as last amended by Chapter 256, Laws of Utah 2002
- 31 **58-11a-201**, as last amended by Chapter 204, Laws of Utah 2001
- 32 **58-11a-301**, as last amended by Chapter 204, Laws of Utah 2001
- 33 **58-11a-302**, as last amended by Chapter 222, Laws of Utah 2005
- 34 **58-11a-304**, as last amended by Chapter 204, Laws of Utah 2001
- 35 **58-11a-306**, as last amended by Chapter 222, Laws of Utah 2005
- 36 **58-11a-501**, as last amended by Chapter 204, Laws of Utah 2001
- 37 **58-11a-502**, as last amended by Chapter 222, Laws of Utah 2005
- 38 **58-11a-503**, as last amended by Chapter 222, Laws of Utah 2005

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

41 Section 1. Section **58-11a-101** is amended to read:

42 **CHAPTER 11a. BARBER, COSMETOLOGIST/BARBER, ESTHETICIAN,**
43 **ELECTROLOGIST, AND NAIL TECHNICIAN LICENSING ACT**

44 **58-11a-101. Title.**

45 This chapter is known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist,
46 and Nail Technician Licensing Act."

47 Section 2. Section **58-11a-102** is amended to read:

48 **58-11a-102. Definitions.**

49 (1) "Approved barber or cosmetologist/barber apprenticeship" means an apprenticeship
50 that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection
51 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the
52 division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah
53 Administrative Rulemaking Act.

54 (2) "Approved esthetician apprenticeship" means an apprenticeship that meets the
55 requirements of Subsection 58-11a-306[~~(2)~~](3) and the requirements established by rule by the
56 division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah
57 Administrative Rulemaking Act.

58 (3) "Approved master esthetician apprenticeship" means an apprenticeship that meets

59 the requirements of Subsection 58-11a-306~~(3)~~(4) and the requirements established by rule by
60 the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah
61 Administrative Rulemaking Act.

62 (4) "Approved nail technician apprenticeship" means an apprenticeship that meets the
63 requirements of Subsection 58-11a-306~~(4)~~(5) and the requirements established by rule by the
64 division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah
65 Administrative Rulemaking Act.

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

68 (6) "Barber instructor" means a barber who is licensed under this chapter to teach
69 barbering at a licensed barber school.

70 ~~(5)~~ (7) "Board" means the Barber, Cosmetology/Barbering, Esthetics, Electrology,
71 and Nail Technology Licensing Board created in Section 58-11a-201.

72 ~~(6)~~ (8) "Cosmetologist/barber" means a person who is licensed under this chapter to
73 engage in the practice of cosmetology/barbering.

74 ~~(7)~~ (9) "Cosmetologist/barber instructor" means a cosmetologist/barber who is
75 licensed under this chapter to teach cosmetology/barbering at a licensed cosmetology/barber
76 school.

77 ~~(8)~~ (10) "Direct supervision" means that the supervisor of an apprentice or the
78 instructor of a student is immediately available for consultation, advice, instruction, and
79 evaluation.

80 ~~(9)~~ (11) "Electrologist" means a person who is licensed under this chapter to engage
81 in the practice of electrology.

82 ~~(10)~~ (12) "Electrologist instructor" means an electrologist who is licensed under this
83 chapter to teach electrology at a licensed electrology school.

84 ~~(11)~~ (13) "Esthetician" means a person who is licensed under this chapter to engage
85 in the practice of esthetics.

86 ~~(12)~~ (14) "Esthetician instructor" means a master esthetician who is licensed under
87 this chapter to teach the practice of esthetics and the practice of master-level esthetics at a
88 licensed esthetics school.

89 ~~(13)~~ (15) "Fund" means the Barber, Cosmetologist/Barber, Esthetician, Electrologist,

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

91 ~~[(14)]~~ (16) "Licensed barber or cosmetology/barber school" means a barber or
 92 cosmetology/barber school licensed under this chapter.

93 ~~[(15)]~~ (17) "Licensed electrology school" means an electrology school licensed under
 94 this chapter.

95 ~~[(16)]~~ (18) "Licensed esthetics school" means an esthetics school licensed under this
 96 chapter.

97 ~~[(17)]~~ (19) "Licensed nail technology school" means a nail technology school licensed
 98 under this chapter.

99 ~~[(18)]~~ (20) "Master esthetician" means an individual who is licensed under this chapter
 100 to engage in the practice of master-level esthetics.

101 ~~[(19)]~~ (21) "Nail technician" means an individual who is licensed under this chapter to
 102 engage in the practice of nail technology.

103 ~~[(20)]~~ (22) "Nail technician instructor" means a nail technician licensed under this
 104 chapter to teach the practice of nail technology in a licensed nail technology school.

105 (23) "Practice of barbering" means:

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

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

109 (24) "Practice of barbering instruction" means instructing barbering in a licensed
 110 barber school.

111 ~~[(25)]~~ (25) "Practice of basic esthetics" means any one of the following skin care
 112 procedures done on the head, face, neck, [~~torso, abdomen, back,~~] arms, hands, legs, feet,
 113 eyebrows, or eyelashes for cosmetic purposes and not for the treatment of medical, physical, or
 114 mental ailments:

115 (a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or
 116 masks, ~~Ĥ~~→ **manual** ←~~Ĥ~~ extraction ~~Ĥ~~→, **including a comedone extractor** ←~~Ĥ~~, depilatories,
 116a waxes, tweezing, natural nail manicures or pedicures, or callous
 117 removal by buffing or filing;

118 ~~[(b) manual lymphatic massage of the face and neck;]~~

119 ~~[(c)]~~ (b) limited chemical exfoliation as defined by rule;

120 ~~[(d)]~~ (c) removing superfluous hair by means other than electrolysis or laser

121 procedures; or

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

126 ~~[(21)]~~ (26) (a) "Practice of cosmetology/barbering" means:

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

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

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

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

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

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

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

140 (i) the practice of basic esthetics; and

141 (ii) the practice of nail technology.

142 ~~[(22)]~~ (27) "Practice of cosmetology/barbering instruction" means instructing
 143 cosmetology/barbering in a licensed cosmetology/barber school.

144 ~~[(23)]~~ (28) "Practice of electrology" means the removal of superfluous hair from the
 145 body of a person by the use of electricity.

146 ~~[(24)]~~ (29) "Practice of electrology instruction" means instructing electrology in a
 147 licensed electrology school.

148 ~~[(26)]~~ (30) "Practice of esthetics instruction" means instructing esthetics or
 149 master-level esthetics in a licensed esthetics school.

150 ~~[(27)]~~ (31) (a) "Practice of master-level esthetics" means:

151 (i) any of the following when done for cosmetic purposes **Ĥ→ on the head, face, neck,**
 151a **torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes ←Ĥ** and not for the
 151b treatment of

152 medical, physical, or mental ailments:

153 (A) body wraps as defined by rule;

154 (B) hydrotherapy as defined by rule;

155 (C) chemical exfoliation as defined by rule;

156 (D) advanced pedicures as defined by rule;

157 (E) sanding, including microdermabrasion; ~~H~~→ [or]

157a **(F) advanced extraction; or**

158 ~~(F)~~ **(G)** ←~~H~~ other esthetic preparations or procedures with the use of:

159 (I) the hands; or

160 (II) a mechanical or electrical apparatus which is approved for use by division rule for

161 beautifying or similar work performed on the body for cosmetic purposes and not for the

162 treatment of a medical, physical, or mental ailment; and

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

164 (b) Notwithstanding the provisions of Subsection ~~[(27)]~~ (31)(a), a master-level

165 esthetician may perform procedures listed in Subsection ~~[(27)]~~ (31)(a)(i) for noncosmetic

166 purposes if done under the supervision of a licensed health care practitioner acting within the

167 scope of his or her license.

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

169 ~~[(28)]~~ (32) "Practice of nail technology" means to trim, cut, clean, manicure, shape,

170 massage, or enhance the appearance of the hands, feet, and nails of an individual by the use of

171 hands, mechanical, or electrical preparation, antiseptic, lotions, or creams, including the

172 application and removal of sculptured or artificial nails.

173 ~~[(29)]~~ (33) "Practice of nail technology instruction" means instructing nail technology

174 in a licensed nail technician school.

175 (34) "Recognized barber school" means a barber school located in a state other than

176 Utah, whose students, upon graduation, are recognized as having completed the educational

177 requirements for licensure in that state.

178 ~~[(30)]~~ (35) "Recognized cosmetology/barber school" means a cosmetology/barber

179 school located in ~~[another]~~ a state other than Utah, whose students, upon graduation, are

180 recognized as having completed the educational requirements for licensure in that state.

181 ~~[(31)]~~ (36) "Recognized electrology school" means an electrology school located in

182 ~~[another]~~ a state other than Utah, whose students, upon graduation, are recognized as having

183 completed the educational requirements for licensure in that state.

184 [~~(32)~~] (37) "Recognized esthetics school" means an esthetics school located in
185 [~~another~~] a state other than Utah, whose students, upon graduation, are recognized as having
186 completed the educational requirements for licensure in that state.

187 [~~(33)~~] (38) "Recognized nail technology school" means a nail technology school
188 located in [~~another~~] a state other than Utah, whose students, upon graduation, are recognized as
189 having completed the educational requirements for licensure in that state.

190 [~~(34)~~] (39) "Salon" means a place, shop, or establishment in which
191 cosmetology/barbering, esthetics, electrology, or nail technology is practiced.

192 [~~(35)~~] (40) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

193 [~~(36)~~] (41) "Unprofessional conduct" is as defined in Sections 58-1-501 and
194 58-11a-501 and as may be further defined by rule by the division in collaboration with the
195 board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

196 Section 3. Section **58-11a-103** is amended to read:

197 **58-11a-103. Education and enforcement fund.**

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

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

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

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

207 (a) education and training of licensees under this chapter;

208 (b) education and training of the public or other interested persons in matters
209 concerning the laws governing the practices licensed under this chapter; and

210 (c) enforcement of this chapter by:

211 (i) investigating unprofessional or unlawful conduct; and

212 (ii) providing legal representation to the division when the division takes legal action
213 against a person engaging in unprofessional or unlawful conduct.

214 (5) The division shall report annually to the appropriate appropriations subcommittee
215 of the Legislature concerning the fund.

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

217 **58-11a-201. Board.**

218 (1) There is created the Barbering, Cosmetology/Barbering , Esthetics, Electrology, and
219 Nail Technology Licensing Board consisting of nine members as follows:

220 (a) one barber or cosmetologist/barber;

221 (b) (i) one barber or cosmetologist/barber instructor; or

222 (ii) one representative of a licensed barber or cosmetology/barber school;

223 (c) one master esthetician;

224 (d) (i) one esthetician instructor; or

225 (ii) one representative of a licensed esthetics school;

226 (e) one nail technician;

227 (f) (i) one nail technician instructor; or

228 (ii) one representative of a licensed nail technician school;

229 (g) one electrologist; and

230 (h) two members from the general public.

231 (2) (a) The board shall be appointed and serve in accordance with Section 58-1-201.

232 (b) (i) At least one of the members of the board appointed under Subsections (1)(b),
233 (d), and (f) shall be an instructor at or a representative of a public school.

234 (ii) At least one of the members of the board appointed under Subsections (1)(b), (d),
235 and (f) shall be an instructor at or a representative of a private school.

236 (3) The duties and responsibilities of the board are in accordance with Sections
237 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a
238 permanent or rotating basis to:

239 (a) assist the division in reviewing complaints concerning the unlawful or
240 unprofessional conduct of a licensee; and

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

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

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

246 **58-11a-301. Licensure required -- License classifications.**

247 (1) Except as specifically provided in Section 58-1-307 or 58-11a-304, a license is
248 required to:

249 (a) engage in the practice of:

250 (i) barbering;

251 (ii) barbering instruction;

252 (iii) operating a barbering school;

253 [~~(iv)~~] (iv) cosmetology/barbering;

254 [~~(v)~~] (v) cosmetology/barbering instruction; or

255 [~~(vi)~~] (vi) electrology; or

256 (b) operate a cosmetology/barbering school.

257 (2) Beginning October 1, 2001, except as specifically provided in Section 58-1-307 or
258 58-11a-304, a license is required to:

259 (a) engage in the practice of:

260 (i) electrology instruction;

261 (ii) esthetics;

262 (iii) master-level esthetics;

263 (iv) esthetics instruction;

264 (v) nail technology; or

265 (vi) nail technology instruction; or

266 (b) operate:

267 (i) an electrology school;

268 (ii) an esthetics school; or

269 (iii) a nail technology school.

270 (3) The division shall issue to a person who qualifies under this chapter a license in the
271 following classifications:

272 (a) barber;

273 (b) barber instructor;

274 (c) barber school;

275 [~~(d)~~] (d) cosmetologist/barber;

276 ~~[(b)]~~ (e) cosmetologist/barber instructor;
 277 ~~[(c)]~~ (f) cosmetology/barber school;
 278 ~~[(d)]~~ (g) electrologist;
 279 ~~[(e)]~~ (h) electrologist instructor;
 280 ~~[(f)]~~ (i) electrology school;
 281 ~~[(g)]~~ (j) esthetician;
 282 ~~[(h)]~~ (k) master esthetician;
 283 ~~[(i)]~~ (l) esthetician instructor;
 284 ~~[(j)]~~ (m) esthetics school;
 285 ~~[(k)]~~ (n) nail technology;
 286 ~~[(l)]~~ (o) nail technology instructor; and
 287 ~~[(m)]~~ (p) nail technology school.

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

289 **58-11a-302. Qualifications for licensure.**

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

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

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

293 (c) be of good moral character;

294 (d) provide satisfactory documentation of:

295 (i) graduation from a licensed or recognized barber school whose curriculum consists
 296 of a minimum of 1,000 hours of instruction or the equivalent number of credit hours over a
 297 period of not less than ~~8~~ **[eight]** ~~6~~ **six** ~~8~~ months;

298 (ii) (A) having graduated from a recognized barber school whose curriculum consists
 299 of less than 1,000 hours of instruction or the equivalent number of credit hours; and

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

301 (iii) having completed an approved barber apprenticeship; and

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

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

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

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

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

307 barber;

308 (d) be of good moral character;

309 (e) provide satisfactory documentation of completion of:

310 (i) an instructor training program conducted by a barber school consisting of a

311 minimum of 500 hours or the equivalent number of credit hours; or

312 (ii) a minimum of ~~1,000~~ 2,000 ~~←1~~ hours of experience as a barber; and

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

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

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

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

317 (c) provide satisfactory documentation:

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

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

320 (iii) that the applicant's physical facilities comply with the requirements established by

321 rule; and

322 (iv) that the applicant meets the standards for barber schools, including staff and

323 accreditation requirements, established by rule.

324 ~~(+)~~ (4) Each applicant for licensure as a cosmetologist/barber shall:

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

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

327 (c) be of good moral character;

328 (d) provide satisfactory documentation of:

329 (i) graduation from a licensed or recognized cosmetology/barber school whose

330 curriculum consists of a minimum of 2,000 hours of instruction with full flexibility within the

331 2,000 hours, or the equivalent number of credit hours over a period of not less than 12 months;

332 (ii) (A) having graduated from a recognized cosmetology/barber school whose

333 curriculum consists of less than 2,000 hours of instruction, with full flexibility within the 2,000

334 hours, or the equivalent number of credit hours; and

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

336 4,000 hours; or

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

- 338 (e) meet the examination requirement established by rule.
- 339 [~~(2)~~] (5) Each applicant for licensure as a cosmetologist/barber instructor shall:
- 340 (a) submit an application in a form prescribed by the division;
- 341 (b) pay a fee determined by the department under Section 63-38-3.2;
- 342 (c) provide satisfactory documentation that the applicant is currently licensed as a
- 343 cosmetologist/barber;
- 344 (d) be of good moral character;
- 345 (e) provide satisfactory documentation of completion of:
- 346 (i) an instructor training program conducted by a cosmetology/barber school consisting
- 347 of a minimum of 1,000 hours or the equivalent number of credit hours; or
- 348 (ii) a minimum of 4,000 hours of experience as a cosmetologist/barber; and
- 349 (f) meet the examination requirement established by rule.
- 350 [~~(3)~~] (6) Each applicant for licensure as a cosmetologist/barber school shall:
- 351 (a) submit an application in a form prescribed by the division;
- 352 (b) pay a fee determined by the department under Section 63-38-3.2; and
- 353 (c) provide satisfactory documentation:
- 354 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 355 (ii) of business licensure from the city, town, or county in which the school is located;
- 356 (iii) that the applicant’s physical facilities comply with the requirements established by
- 357 rule; and
- 358 (iv) that the applicant meets the standards for [~~cosmetology/barber~~] cosmetology
- 359 schools, including staff and accreditation requirements, established by rule.
- 360 [~~(4)~~] (7) Each applicant for licensure as an electrologist shall:
- 361 (a) submit an application in a form prescribed by the division;
- 362 (b) pay a fee determined by the department under Section 63-38-3.2;
- 363 (c) be of good moral character;
- 364 (d) provide satisfactory documentation of having graduated from a licensed or
- 365 recognized electrology school after completing a curriculum of [~~500~~] 600 hours of instruction
- 366 or the equivalent number of credit hours; and
- 367 (e) meet the examination requirement established by rule.
- 368 [~~(5)~~] (8) Each applicant for licensure as an electrologist instructor shall:

- 369 (a) submit an application in a form prescribed by the division;
- 370 (b) pay a fee determined by the department under Section 63-38-3.2;
- 371 (c) provide satisfactory documentation that the applicant is currently licensed as an
- 372 electrologist;
- 373 (d) be of good moral character;
- 374 (e) provide satisfactory documentation of completion of:
- 375 (i) an instructor training program conducted by an electrology school consisting of a
- 376 minimum of 175 hours or the equivalent number of credit hours; or
- 377 (ii) a minimum of 1,000 hours of experience as an electrologist; and
- 378 (f) meet the examination requirement established by rule.

379 ~~[(6)]~~ (9) Each applicant for licensure as an electrologist school shall:

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

388 ~~[(7)]~~ (10) Each applicant for licensure as an esthetician shall:

- 389 (a) submit an application in a form prescribed by the division;
- 390 (b) pay a fee determined by the department under Section 63-38-3.2;
- 391 (c) be of good moral character; and
- 392 (d) provide satisfactory documentation of one of the following:
- 393 (i) (A) graduation from a licensed or recognized esthetic school whose curriculum
- 394 consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the
- 395 equivalent number of credit hours; and
- 396 (B) having met the examination requirement established by division rule;
- 397 (ii) (A) completion of an approved esthetician apprenticeship; and
- 398 (B) having met the examination requirement established by division rule; or
- 399 (iii) having met the examination requirement established by division rule prior to

400 December 31, 2001.

401 ~~[(8)]~~ (11) Each applicant for licensure as a master esthetician shall:

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

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

404 (c) be of good moral character; and

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

406 (i) (A) completion of 1,200 hours of training or the equivalent number of credit hours[;

407 ~~including 200 hours of training or the equivalent number of credit hours in lymphatic massage;~~

408 at a licensed or recognized esthetics school; ~~H~~→ [and] ←~~H~~

409 (B) having met the examination requirement established by division rule; ~~H~~→ and

409a (C) for practice of lymphatic massage, provide satisfactory documentation to show

409b completion of 200 hours of training or equivalent number of credit hours in lymphatic

409c massage; ←~~H~~

410 (ii) (A) completion of an approved master esthetician apprenticeship; and

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

412 (iii) having met the examination requirement established by division rule prior to

413 December 31, 2001.

414 ~~[(9)]~~ (12) Each applicant for licensure as an esthetician instructor shall:

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

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

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

419 (d) be of good moral character;

420 (e) provide satisfactory documentation of completion of:

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

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

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

425 ~~[(10)]~~ (13) Each applicant for licensure as an esthetics school shall:

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

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

428 (c) provide satisfactory documentation:

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

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

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

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

436 [~~(11)~~] (14) Each applicant for licensure as a nail technician shall:

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

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

439 (c) be of good moral character; and

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

441 (i) (A) graduation from a licensed or recognized nail technology school whose
442 curriculum consists of not less than 300 hours or the equivalent number of credit hours of not
443 more than eight hours a day and six days a week during the program; and

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

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

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

447 (iii) having met the examination requirement established by division rule prior to
448 December 31, 2001.

449 [~~(12)~~] (15) Each applicant for licensure as a nail technician instructor shall:

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

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

452 (c) provide satisfactory documentation that the applicant is currently licensed as a nail
453 technician;

454 (d) be of good moral character;

455 (e) provide satisfactory documentation of completion of:

456 (i) an instructor training program conducted by a licensed or recognized nail
457 technology school consisting of a minimum of ~~100~~ **150** ~~100~~ hours or the equivalent number
457a of credit
458 hours; or

459 (ii) a minimum of ~~400~~ **600** ~~400~~ hours of experience in nail technology; and

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

461 [~~(13)~~] (16) Each applicant for licensure as a nail technology school shall:

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

470 ~~[(14)]~~ (17) Each applicant for licensure under this chapter whose education in the field
471 for which a license is sought was completed at a foreign school may satisfy the educational
472 requirement for licensure by demonstrating, to the satisfaction of the division, the educational
473 equivalency of the foreign school education with a licensed school under this chapter.

474 Section 7. Section **58-11a-304** is amended to read:

475 **58-11a-304. Exemptions from licensure.**

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

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

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

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

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

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

490 (6) persons instructing adult education classes and other educational programs directed
491 toward persons who are not licensed under this chapter and that are not intended to train
492 persons to become licensed under this chapter, provided:

493 (a) attendees receive no credit toward the educational requirement for licensure under
494 this chapter; and

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

496 (ii) the instructor receives no compensation;

497 (7) persons instructing in workshops, seminars, training meetings, and other
498 educational programs whose purpose is to provide continuing professional development to
499 licensed barbers, cosmetologist/barbers, estheticians, master estheticians, nail technicians, or
500 electrologists;

501 (8) persons currently enrolled in a licensed barber or cosmetology/barber school when
502 participating in an on the job training internship under the direct supervision of a licensed
503 barber or cosmetologist/barber upon completion of a basic program under the standards
504 established by rule by the division in collaboration with the board;

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

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

511 Section 8. Section **58-11a-306** is amended to read:

512 **58-11a-306. Apprenticeship.**

513 (1) An approved barber apprenticeship shall:

514 (a) consist of not less than 1,250 hours of training in not less than eight months; and

515 (b) be conducted by a supervisor who:

516 (i) is licensed under this chapter as a barber instructor; and

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

519 [~~1~~] (2) An approved cosmetologist/barber apprenticeship shall:

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

521 (b) be conducted by a supervisor who:

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

523 (ii) provides direct one-on-one supervision of the cosmetologist/barber apprentice

524 during the apprenticeship program.

525 [~~(2)~~] (3) An approved esthetician apprenticeship shall:

526 (a) consist of not less than 800 hours of training in not less than five months; and

527 (b) be conducted by a supervisor who:

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

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

531 [~~(3)~~] (4) An approved master esthetician apprenticeship shall:

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

533 (b) be conducted by a supervisor who:

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

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

537 [~~(4)~~] (5) An approved nail technician apprenticeship shall:

538 (a) consist of not less than 375 hours of training in not less than three months; and

539 (b) be conducted by a supervisor who:

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

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

543 Section 9. Section **58-11a-501** is amended to read:

544 **58-11a-501. Unprofessional conduct.**

545 Unprofessional conduct includes:

546 (1) failing as a licensed school to obtain or maintain accreditation as required by rule;

547 (2) failing as a licensed school to comply with the standards of accreditation applicable
548 to such schools;

549 (3) failing as a licensed school to provide adequate instruction to enrolled students;

550 (4) failing as an apprentice supervisor to provide direct supervision to the apprentice;

551 (5) failing as an instructor to provide direct supervision to students under their
552 instruction;

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

- 555 (7) keeping a salon or school, its furnishing, tools, utensils, linen, or appliances in an
556 unsanitary condition;
- 557 (8) failing to comply with Title 26, Utah Health Code;
- 558 (9) failing to display licenses or certificates as required under Section 58-11a-305;
- 559 (10) failing to comply with physical facility requirements established by rule;
- 560 (11) failing to maintain mechanical or electrical equipment in safe operating condition;
- 561 (12) failing to adequately monitor patrons using steam rooms, dry heat rooms, baths,
562 showers, or saunas;
- 563 (13) prescribing or administering prescription drugs;
- 564 (14) failing to comply with all applicable state and local health or sanitation laws;
- 565 (15) engaging in any act or practice in a professional capacity that is outside the
566 applicable scope of practice;
- 567 (16) engaging in any act or practice in a professional capacity which the licensee is not
568 competent to perform through education or training;
- 569 (17) in connection with the use of a chemical exfoliant, unless under the supervision of
570 a licensed health care practitioner acting within the scope of his or her license:
- 571 (a) using any acid, concentration of an acid, or combination of treatments which
572 violates the standards established by rule;
- 573 (b) removing any layer of skin deeper than the stratum corneum of the epidermis; or
- 574 (c) using an exfoliant that contains phenol, TCA acid of over 15%, or BCA acid;
- 575 (18) in connection with the sanding of the skin, unless under the supervision of a
576 licensed health care practitioner acting within the scope of his or her license, removing any
577 layer of skin deeper than the stratum corneum of the epidermis; or
- 578 (19) using as a barber, cosmetologist/barber, esthetician, master esthetician, or nail
579 technician any laser procedure or intense, pulsed light source.
- 580 Section 10. Section **58-11a-502** is amended to read:
- 581 **58-11a-502. Unlawful conduct.**
- 582 Unlawful conduct includes:
- 583 (1) practicing or engaging in, or attempting to practice or engage in activity for which a
584 license is required under this chapter unless:
- 585 (a) the person holds the appropriate license under this chapter; or

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

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

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

592 (a) the genitals or the anus ~~it~~, **except in cases where the patron states to a licensee that**
592a **the patron requests a hair removal procedure and signs a written consent form, which must**
592b **also include the witnessed signature of a legal guardian if the patron is a minor, authorizing**
592c **the licensee to perform a hair removal procedure** ~~it~~; or

593 (b) the breast of a female patron, except in cases in which ~~it~~ [f] the female [f]
593a [any] ~~it~~ patron

594 states to a licensee that the patron requests ~~it~~ [f] breast [f] [a-cosmetic] ~~it~~ skin
594a ~~it~~ [f] procedures [f] [procedure] ~~it~~ and

595 signs a written consent form, which must also include the witnessed signature of a parent or
596 legal guardian if the patron is a minor, authorizing the licensee to perform ~~it~~ [f] breast [f] [any
597 cosmetic] ~~it~~ skin ~~it~~ [f] procedures [f] [procedure] ~~it~~; and

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

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

601 **58-11a-503. Penalties.**

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

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

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

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

616 (i) A person who is in violation of Subsection 58-11a-502(1), (2), or (4), as evidenced

617 by an uncontested citation, a stipulated settlement, or by a finding of violation in an
618 adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in
619 addition to or in lieu of, be ordered to cease and desist from violating Subsection
620 58-11a-502(1), (2), or (4).

621 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
622 58-11a-401 may not be assessed through a citation.

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

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

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

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

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

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

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

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

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

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

648 (i) for a first offense under Subsection (4)(a), a fine of up to \$1,000;
649 (ii) for a second offense under Subsection (4)(a), a fine of up to \$2,000; and
650 (iii) for any subsequent offense under Subsection (4)(a), a fine of up to \$2,000 for each
651 day of continued offense.

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 2-7-07 9:06 AM

Office of Legislative Research and General Counsel

Fiscal Note**H.B. 419 - Cosmetologist/barber, Esthetician, Electrologist, and Nail
Technician Licensing Act Amendments**

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Local cosmetology schools will be required to pay a one time \$900 fee to their national accreditation provider. Individuals preparing for a barber license will see some savings as this bill provides some reductions in training requirements.
