

Senator Todd Weiler proposes the following substitute bill:

NAIL TECHNICIAN PRACTICE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies statewide amendments to the International Mechanical Code and modifies the Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act.

Highlighted Provisions:

This bill:

- ▶ requires that each nail station where a nail technician shaves, sands, drills, or otherwise manipulates an acrylic nail be equipped with a source capture system; and
- ▶ provides that it is unlawful conduct for a salon or school where nail technology is practiced or taught to fail to maintain a source capture system.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2014.

Utah Code Sections Affected:

AMENDS:

15A-3-401, as last amended by Laws of Utah 2013, Chapter 297

58-11a-502, as last amended by Laws of Utah 2013, Chapter 13



26 **58-11a-503**, as last amended by Laws of Utah 2013, Chapter 13

27

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

29 Section 1. Section **15A-3-401** is amended to read:

30 **15A-3-401. General provisions.**

31 The following are adopted as amendments to the IMC to be applicable statewide:

32 (1) In IMC, Section 202, the definition for "CONDITIONED SPACE" is deleted and
 33 replaced with the following: "CONDITIONED SPACE. An area, room, or space enclosed
 34 within the building thermal envelope that is directly heated or cooled, or indirectly heated or
 35 cooled by any of the following means:

- 36 1. Openings directly into an adjacent conditioned space.
- 37 2. An un-insulated floor, ceiling or wall adjacent to a conditioned space.
- 38 3. Un-insulated duct, piping or other heat or cooling source within the space."

39 (2) In IMC, Section 403.2.1, Item 3, is deleted and replaced with the following:

40 "Except as provided in Table 403.3, Note h, where mechanical exhaust is required by Note b in
 41 Table 403.3, recirculation of air from such spaces is prohibited. All air supplied to such spaces
 42 shall be exhausted, including any air in excess of that required by Table 403.3."

43 (3) In IMC, Table 403.3, Note b, is deleted and replaced with the following: "Except as
 44 provided in Note h, mechanical exhaust required and the recirculation of air from such spaces
 45 is prohibited (see Section 403.2.1, Item 3)."

46 (4) In IMC, Table 403.3, Note h is deleted and replaced with the following: "1. For a
 47 nail salon where a nail technician files or shapes an acrylic nail, ~~§~~→ **as defined by rule by the**
 47a **Division of Occupational and Professional Licensing, in accordance with Title 63G, Chapter 3,**
 47b **Utah Administrative Rulemaking Act, ~~§~~← each nail station where a nail**
 48 technician files or shapes an acrylic nail shall be provided with:

49 a. a source capture system capable of filtering and recirculating air to inside space not
 50 less than 50 cfm per station; or

51 b. a source capture system capable of exhausting not less than 50 cfm per station." ~~§~~→ **2.**

51a **Except as provided in paragraph 3, the requirements described in paragraph 1 apply**
 51b **beginning on July 1, 2020.**

51c **3. The requirements described in paragraph 1 apply beginning on July 1, 2014 if the**
 51d **nail salon is under or begins new construction or remodeling on or after July 1, 2014. ~~§~~←**

52 [(2)] (5) In IMC, Section 403, a new Section 403.8 is added as follows: "Retrospective
 53 effect. Removal, alteration, or abandonment shall not be required, and continued use and

54 maintenance shall be allowed, for a ventilation system within an existing installation that
55 complies with the requirements of this Section 403 regardless of whether the ventilation system
56 satisfied the minimum ventilation rate requirements of prior law."

57 [~~(3)~~] (6) In IMC, Table 603.4, in the section "Round ducts and enclosed rectangular
58 ducts", the word "enclosed" is deleted; the words "14 inches or less" are deleted and replaced
59 with "over 8 inches but less than 15 inches"; the wording "8 inches or less" under duct size,
60 "0.013" under minimum thickness (in.), "30" under equivalent gage no., and "0.0159" under
61 aluminum minimum thickness (in.), are added; and the section "Exposed rectangular ducts" is
62 deleted.

63 [~~(4)~~] (7) In IMC, Section 1004.2, the first sentence is deleted and replaced with the
64 following: "Boilers and pressure vessels in Utah are regulated by the Utah Labor Commission,
65 Division of Boiler, Elevator and Coal Mine Safety, except those located in private residences
66 or in apartment houses of less than five family units. Boilers shall be installed in accordance
67 with their listing and labeling, with minimum clearances as prescribed by the manufacturer's
68 installation instructions."

69 [~~(5)~~] (8) In IMC, Section 1004.3.1, the word "unlisted" is inserted before the word
70 "boilers".

71 [~~(6)~~] (9) IMC, Section 1101.10, is deleted.

72 Section 2. Section **58-11a-502** is amended to read:

73 **58-11a-502. Unlawful conduct.**

74 Unlawful conduct includes:

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

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

78 (b) an exemption in Section [58-1-307](#) or [58-11a-304](#) applies;

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

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

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

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

92 (4) using or possessing ~~§~~ → [as a nail technician] ← ~~§~~ a solution composed of at least 10%
 92a methyl
 93 methacrylate on a client;

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

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

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

101 (b) the attendee is required to obtain licensure under this chapter before performing the
 102 service for compensation[-]; or

103 (7) failing as a salon or school where nail technology is practiced or taught to maintain
 104 a source capture system required under Section 15A-3-401, including failing to maintain and
 105 clean a source capture system's air filter according to the manufacturer's instructions.

106 Section 3. Section 58-11a-503 is amended to read:

107 **58-11a-503. Penalties.**

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

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

113 (3) Grounds for immediate suspension of a licensee's license by the division include
 114 the issuance of a citation for violation of Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7).

115 (4) (a) If upon inspection or investigation, the division concludes that a person has
 116 violated the provisions of Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7), or a rule or
 117 order issued with respect to Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7), and that
 118 disciplinary action is appropriate, the director or the director's designee from within the

119 division shall promptly issue a citation to the person according to this chapter and any pertinent
120 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an
121 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

122 (i) A person who is in violation of Subsection 58-11a-502(1), (2), (4), (5), ~~or~~ (6), or
123 (7), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation
124 in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may,
125 in addition to or in lieu of, be ordered to cease and desist from violating Subsection
126 58-11a-502(1), (2), (4), (5), ~~or~~ (6), or (7).

127 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
128 58-11a-401 may not be assessed through a citation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

160 (A) the division previously issued a final order determining that a person committed a
161 first or second offense in violation of Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7); or

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

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

165 (III) the division determines during an investigation that occurred after the initiation of
166 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
167 violation of Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7); and

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

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

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

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

180 (c) A county attorney or the attorney general of the state is to provide legal assistance

181 and advice to the director in an action to collect the penalty.

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

184 Section 4. **Effective date.**

185 This bill takes effect on July 1, 2014.