

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

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

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

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.
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- 37 2. An un-insulated floor, ceiling or wall adjacent to a conditioned space.
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- 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:47 "1. For a nail salon where a nail technician files or shapes an acrylic nail, as defined by
48 rule by the Division of Occupational and Professional Licensing, in accordance with Title 63G,
49 Chapter 3, Utah Administrative Rulemaking Act, each nail station where a nail technician files
50 or shapes an acrylic nail shall be provided with:51 a. a source capture system capable of filtering and recirculating air to inside space not
52 less than 50 cfm per station; or53 b. a source capture system capable of exhausting not less than 50 cfm per station."54 2. Except as provided in paragraph 3, the requirements described in paragraph 1 apply
55 beginning on July 1, 2020.56 3. The requirements described in paragraph 1 apply beginning on July 1, 2014 if the
57 nail salon is under or begins new construction or remodeling on or after July 1, 2014.

58 [~~(2)~~] (5) In IMC, Section 403, a new Section 403.8 is added as follows: "Retrospective
59 effect. Removal, alteration, or abandonment shall not be required, and continued use and
60 maintenance shall be allowed, for a ventilation system within an existing installation that
61 complies with the requirements of this Section 403 regardless of whether the ventilation system
62 satisfied the minimum ventilation rate requirements of prior law."

63 [~~(3)~~] (6) In IMC, Table 603.4, in the section "Round ducts and enclosed rectangular
64 ducts", the word "enclosed" is deleted; the words "14 inches or less" are deleted and replaced
65 with "over 8 inches but less than 15 inches"; the wording "8 inches or less" under duct size,
66 "0.013" under minimum thickness (in.), "30" under equivalent gage no., and "0.0159" under
67 aluminum minimum thickness (in.), are added; and the section "Exposed rectangular ducts" is
68 deleted.

69 [~~(4)~~] (7) In IMC, Section 1004.2, the first sentence is deleted and replaced with the
70 following: "Boilers and pressure vessels in Utah are regulated by the Utah Labor Commission,
71 Division of Boiler, Elevator and Coal Mine Safety, except those located in private residences
72 or in apartment houses of less than five family units. Boilers shall be installed in accordance
73 with their listing and labeling, with minimum clearances as prescribed by the manufacturer's
74 installation instructions."

75 [~~(5)~~] (8) In IMC, Section 1004.3.1, the word "unlisted" is inserted before the word
76 "boilers".

77 [~~(6)~~] (9) IMC, Section 1101.10, is deleted.

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

79 **58-11a-502. Unlawful conduct.**

80 Unlawful conduct includes:

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

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

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

85 (2) knowingly employing any other person to engage in or practice or attempt to

86 engage in or practice any occupation or profession licensed under this chapter if the employee
87 is not licensed to do so under this chapter or exempt from licensure;

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

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

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

98 (4) using or possessing [~~as a nail technician~~] a solution composed of at least 10%
99 methyl methacrylate on a client;

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

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

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

107 (b) the attendee is required to obtain licensure under this chapter before performing the
108 service for compensation[~~;~~]; or

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

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

113 **58-11a-503. Penalties.**

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

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

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

121 (4) (a) If upon inspection or investigation, the division concludes that a person has
122 violated the provisions of Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7), or a rule or
123 order issued with respect to Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7), and that
124 disciplinary action is appropriate, the director or the director's designee from within the
125 division shall promptly issue a citation to the person according to this chapter and any pertinent
126 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an
127 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

128 (i) A person who is in violation of Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or
129 (7), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation
130 in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may,
131 in addition to or in lieu of, be ordered to cease and desist from violating Subsection
132 58-11a-502(1), (2), (4), (5), [or] (6), or (7).

133 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
134 58-11a-401 may not be assessed through a citation.

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

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

141 (iii) The citation shall clearly explain the consequences of failure to timely contest the

142 citation or to make payment of a fine assessed by the citation within the time specified in the
143 citation.

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

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

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

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

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

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

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

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

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

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

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

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

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

169 (II) no final order has been issued by the division in the action initiated under

170 Subsection (4)(i)(i)(B)(I);

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

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

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

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

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

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

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

190 **Section 4. Effective date.**

191 This bill takes effect on July 1, 2014.