

# SB0143S01 compared with SB0143

~~{deleted text}~~ shows text that was in SB0143 but was deleted in SB0143S01.

inserted text shows text that was not in SB0143 but was inserted into SB0143S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{STATE BUILDING CODE}~~ Senate Bill Weiler proposes the following substitute bill:

## NAIL TECHNICIAN PRACTICE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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### 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:

- ▶ ~~{repeals a requirement}~~ requires that each nail ~~{salon}~~ station where a nail technician shaves, sands, drills, or otherwise manipulates an acrylic nail be equipped with a ~~{ventilation system that:~~ captures contaminants and odors at the source of the contaminants

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and odors; and is  
capable of  
exhausting a  
minimum of 50  
cubic feet per  
minute, per station;  
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- ▶ 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

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

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

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

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

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

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

(2) In IMC, ~~{Table 403.3, footnote}~~ Section 403.2.1, Item 3, is deleted and replaced with the following: "Except as provided in Table 403.3, Note h, where mechanical exhaust is required by Note b in Table 403.3, recirculation of air from such spaces is prohibited. All air supplied to such spaces shall be exhausted, including any air in excess of that required by Table 403.3."

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

(4) In IMC, Table 403.3, Note h is deleted and replaced with the following: "1. For a nail salon where a nail technician files or shapes an acrylic nail, each nail station where a nail technician files or shapes an acrylic nail shall be provided with:

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

b. a source capture system capable of exhausting not less than 50 cfm per station."

~~(2)~~ ~~(4)~~ ~~(5)~~ In IMC, Section 403, a new Section 403.8 is added as follows:

"Retrospective effect. Removal, alteration, or abandonment shall not be required, and continued use and maintenance shall be allowed, for a ventilation system within an existing installation that complies with the requirements of this Section 403 regardless of whether the ventilation system satisfied the minimum ventilation rate requirements of prior law."

~~(3)~~ ~~(4)~~ ~~(6)~~ In IMC, Table 603.4, in the section "Round ducts and enclosed rectangular ducts", the word "enclosed" is deleted; the words "14 inches or less" are deleted and replaced

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with "over 8 inches but less than 15 inches"; the wording "8 inches or less" under duct size, "0.013" under minimum thickness (in.), "30" under equivalent gage no., and "0.0159" under aluminum minimum thickness (in.), are added; and the section "Exposed rectangular ducts" is deleted.

~~[(4)]~~ ~~(157)~~ In IMC, Section 1004.2, the first sentence is deleted and replaced with the following: "Boilers and pressure vessels in Utah are regulated by the Utah Labor Commission, Division of Boiler, Elevator and Coal Mine Safety, except those located in private residences or in apartment houses of less than five family units. Boilers shall be installed in accordance with their listing and labeling, with minimum clearances as prescribed by the manufacturer's installation instructions."

~~[(5)]~~ ~~(168)~~ In IMC, Section 1004.3.1, the word "unlisted" is inserted before the word "boilers".

~~[(6)]~~ ~~(179)~~ IMC, Section 1101.10, is deleted.

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

### 58-11a-502. Unlawful conduct.

Unlawful conduct includes:

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

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

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

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

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

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

(b) the breast of a female patron, except in cases in which the female patron states to a licensee that the patron requests breast skin procedures and signs a written consent form, which

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must also include the witnessed signature of a parent or legal guardian if the patron is a minor, authorizing the licensee to perform breast skin procedures:

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

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

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

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

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

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

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

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

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

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

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

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7), or a rule or order issued with respect to Subsection 58-11a-502(1), (2), (4), (5), [or] (6), or (7), and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an

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adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A court shall award reasonable attorney fees and costs in an action brought to

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enforce the provisions of this section.

Section 4. **Effective date.**

This bill takes effect on July 1, 2014.

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~~Legislative Review Note as of 1-10-14 4:23 PM~~

~~Office of Legislative Research and General Counsel~~