

COSMETOLOGIST REGULATION MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark A. Strong

Senate Sponsor: Luz Escamilla

LONG TITLE

General Description:

This bill enacts provisions related to local government regulation of cosmetology.

Highlighted Provisions:

This bill:

- ▶ prohibits a county, municipality, or local health department from:
 - requiring a license or permit to engage in certain cosmetology practices without compensation; and
 - regulating where a person engages in certain cosmetology practices without compensation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26A-1-114, as last amended by Laws of Utah 2022, Chapters 39, 415 and 430

ENACTS:

11-68-101, Utah Code Annotated 1953

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



28 Section 1. Section 11-68-101 is enacted to read:

29 **CHAPTER 68. COSMETOLOGY PRACTICES REGULATION**

30 **11-68-101. Business license exemption for certain uncompensated cosmetology**
31 **practices.**

32 (1) As used in this section, "local government entity" means a county or municipality.

33 (2) A local government entity may not:

34 (a) require a person to obtain a business license or permit from the local government
35 entity to engage in a practice described in Subsection 58-11a-304(5); or

36 (b) prevent or limit a person's ability to engage in a practice described in Subsection
37 58-11a-304(5) by:

38 (i) requiring the person to engage in the practice at a specific location or at a particular
39 type of facility or location; or

40 (ii) enforcing a regulation applicable to a facility or location where the person chooses
41 to engage in the practice.

42 Section 2. Section 26A-1-114 is amended to read:

43 **26A-1-114. Powers and duties of departments.**

44 (1) Subject to Subsections (7), (8), and (11), a local health department may:

45 (a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances,
46 department rules, and local health department standards and regulations relating to public
47 health and sanitation, including the plumbing code administered by the Division of
48 Professional Licensing under Title 15A, Chapter 1, Part 2, State Construction Code
49 Administration Act, and under Title 26, Chapter 15a, Food Safety Manager Certification Act,
50 in all incorporated and unincorporated areas served by the local health department;

51 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical
52 control over property and over individuals as the local health department finds necessary for
53 the protection of the public health;

54 (c) establish and maintain medical, environmental, occupational, and other laboratory
55 services considered necessary or proper for the protection of the public health;

56 (d) establish and operate reasonable health programs or measures not in conflict with
57 state law which:

58 (i) are necessary or desirable for the promotion or protection of the public health and

59 the control of disease; or

60 (ii) may be necessary to ameliorate the major risk factors associated with the major
61 causes of injury, sickness, death, and disability in the state;

62 (e) close theaters, schools, and other public places and prohibit gatherings of people
63 when necessary to protect the public health;

64 (f) abate nuisances or eliminate sources of filth and infectious and communicable
65 diseases affecting the public health and bill the owner or other person in charge of the premises
66 upon which this nuisance occurs for the cost of abatement;

67 (g) make necessary sanitary and health investigations and inspections on the local
68 health department's own initiative or in cooperation with the Department of Health ~~[or]~~ and
69 Human Services or the Department of Environmental Quality, or both, as to any matters
70 affecting the public health;

71 (h) pursuant to county ordinance or interlocal agreement:

72 (i) establish and collect appropriate fees for the performance of services and operation
73 of authorized or required programs and duties;

74 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
75 property, services, or materials for public health purposes; and

76 (iii) make agreements not in conflict with state law which are conditional to receiving a
77 donation or grant;

78 (i) prepare, publish, and disseminate information necessary to inform and advise the
79 public concerning:

80 (i) the health and wellness of the population, specific hazards, and risk factors that may
81 adversely affect the health and wellness of the population; and

82 (ii) specific activities individuals and institutions can engage in to promote and protect
83 the health and wellness of the population;

84 (j) investigate the causes of morbidity and mortality;

85 (k) issue notices and orders necessary to carry out this part;

86 (l) conduct studies to identify injury problems, establish injury control systems,
87 develop standards for the correction and prevention of future occurrences, and provide public
88 information and instruction to special high risk groups;

89 (m) cooperate with boards created under Section [19-1-106](#) to enforce laws and rules

90 within the jurisdiction of the boards;

91 (n) cooperate with the state health department, the Department of Corrections, the
92 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
93 Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders,
94 convicted sexual offenders, and any victims of a sexual offense;

95 (o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

96 (p) provide public health assistance in response to a national, state, or local emergency,
97 a public health emergency as defined in Section 26-23b-102, or a declaration by the President
98 of the United States or other federal official requesting public health-related activities.

99 (2) The local health department shall:

100 (a) establish programs or measures to promote and protect the health and general
101 wellness of the people within the boundaries of the local health department;

102 (b) investigate infectious and other diseases of public health importance and implement
103 measures to control the causes of epidemic and communicable diseases and other conditions
104 significantly affecting the public health which may include involuntary testing of alleged sexual
105 offenders for the HIV infection pursuant to Section 53-10-802 and voluntary testing of victims
106 of sexual offenses for HIV infection pursuant to Section 53-10-803;

107 (c) cooperate with the department in matters pertaining to the public health and in the
108 administration of state health laws; and

109 (d) coordinate implementation of environmental programs to maximize efficient use of
110 resources by developing with the Department of Environmental Quality a Comprehensive
111 Environmental Service Delivery Plan which:

112 (i) recognizes that the Department of Environmental Quality and local health
113 departments are the foundation for providing environmental health programs in the state;

114 (ii) delineates the responsibilities of the department and each local health department
115 for the efficient delivery of environmental programs using federal, state, and local authorities,
116 responsibilities, and resources;

117 (iii) provides for the delegation of authority and pass through of funding to local health
118 departments for environmental programs, to the extent allowed by applicable law, identified in
119 the plan, and requested by the local health department; and

120 (iv) is reviewed and updated annually.

121 (3) The local health department has the following duties regarding public and private
122 schools within the local health department's boundaries:

123 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
124 persons attending public and private schools;

125 (b) exclude from school attendance any person, including teachers, who is suffering
126 from any communicable or infectious disease, whether acute or chronic, if the person is likely
127 to convey the disease to those in attendance; and

128 (c) (i) make regular inspections of the health-related condition of all school buildings
129 and premises;

130 (ii) report the inspections on forms furnished by the department to those responsible for
131 the condition and provide instructions for correction of any conditions that impair or endanger
132 the health or life of those attending the schools; and

133 (iii) provide a copy of the report to the department at the time the report is made.

134 (4) If those responsible for the health-related condition of the school buildings and
135 premises do not carry out any instructions for corrections provided in a report in Subsection
136 (3)(c), the local health board shall cause the conditions to be corrected at the expense of the
137 persons responsible.

138 (5) The local health department may exercise incidental authority as necessary to carry
139 out the provisions and purposes of this part.

140 (6) Nothing in this part may be construed to authorize a local health department to
141 enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon
142 monoxide detector in a residential dwelling against anyone other than the occupant of the
143 dwelling.

144 (7) (a) Except as provided in Subsection (7)(c), a local health department may not
145 declare a public health emergency or issue an order of constraint until the local health
146 department has provided notice of the proposed action to the chief executive officer of the
147 relevant county no later than 24 hours before the local health department issues the order or
148 declaration.

149 (b) The local health department:

150 (i) shall provide the notice required by Subsection (7)(a) using the best available
151 method under the circumstances as determined by the local health department;

152 (ii) may provide the notice required by Subsection (7)(a) in electronic format; and
153 (iii) shall provide the notice in written form, if practicable.

154 (c) (i) Notwithstanding Subsection (7)(a), a local health department may declare a
155 public health emergency or issue an order of constraint without approval of the chief executive
156 officer of the relevant county if the passage of time necessary to obtain approval of the chief
157 executive officer of the relevant county as required in Subsection (7)(a) would substantially
158 increase the likelihood of loss of life due to an imminent threat.

159 (ii) If a local health department declares a public health emergency or issues an order
160 of constraint as described in Subsection (7)(c)(i), the local health department shall notify the
161 chief executive officer of the relevant county before issuing the order of constraint.

162 (iii) The chief executive officer of the relevant county may terminate a declaration of a
163 public health emergency or an order of constraint issued as described in Subsection (7)(c)(i)
164 within 72 hours of declaration of the public health emergency or issuance of the order of
165 constraint.

166 (d) (i) The relevant county governing body may at any time terminate a public health
167 emergency or an order of constraint issued by the local health department by majority vote of
168 the county governing body in response to a declared public health emergency.

169 (ii) A vote by the relevant county governing body to terminate a public health
170 emergency or an order of constraint as described in Subsection (7)(d)(i) is not subject to veto
171 by the relevant chief executive officer.

172 (8) (a) Except as provided in Subsection (8)(b), a public health emergency declared by
173 a local health department expires at the earliest of:

174 (i) the local health department or the chief executive officer of the relevant county
175 finding that the threat or danger has passed or the public health emergency reduced to the
176 extent that emergency conditions no longer exist;

177 (ii) 30 days after the date on which the local health department declared the public
178 health emergency; or

179 (iii) the day on which the public health emergency is terminated by majority vote of the
180 county governing body.

181 (b) (i) The relevant county legislative body, by majority vote, may extend a public
182 health emergency for a time period designated by the county legislative body.

183 (ii) If the county legislative body extends a public health emergency as described in
184 Subsection (8)(b)(i), the public health emergency expires on the date designated by the county
185 legislative body.

186 (c) Except as provided in Subsection (8)(d), if a public health emergency declared by a
187 local health department expires as described in Subsection (8)(a), the local health department
188 may not declare a public health emergency for the same illness or occurrence that precipitated
189 the previous public health emergency declaration.

190 (d) (i) Notwithstanding Subsection (8)(c), subject to Subsection (8)(f), if the local
191 health department finds that exigent circumstances exist, after providing notice to the county
192 legislative body, the department may declare a new public health emergency for the same
193 illness or occurrence that precipitated a previous public health emergency declaration.

194 (ii) A public health emergency declared as described in Subsection (8)(d)(i) expires in
195 accordance with Subsection (8)(a) or (b).

196 (e) For a public health emergency declared by a local health department under this
197 chapter or under Title 26, Chapter 23b, Detection of Public Health Emergencies Act, the
198 Legislature may terminate by joint resolution a public health emergency that was declared
199 based on exigent circumstances or that has been in effect for more than 30 days.

200 (f) If the Legislature or county legislative body terminates a public health emergency
201 declared due to exigent circumstances as described in Subsection (8)(d)(i), the local health
202 department may not declare a new public health emergency for the same illness, occurrence, or
203 exigent circumstances.

204 (9) (a) During a public health emergency declared under this chapter or under Title 26,
205 Chapter 23b, Detection of Public Health Emergencies Act:

206 (i) except as provided in Subsection (9)(b), a local health department may not issue an
207 order of constraint without approval of the chief executive officer of the relevant county;

208 (ii) the Legislature may at any time terminate by joint resolution an order of constraint
209 issued by a local health department in response to a declared public health emergency that has
210 been in effect for more than 30 days; and

211 (iii) a county governing body may at any time terminate by majority vote of the
212 governing body an order of constraint issued by a local health department in response to a
213 declared public health emergency.

214 (b) (i) Notwithstanding Subsection (9)(a)(i), a local health department may issue an
215 order of constraint without approval of the chief executive officer of the relevant county if the
216 passage of time necessary to obtain approval of the chief executive officer of the relevant
217 county as required in Subsection (9)(a)(i) would substantially increase the likelihood of loss of
218 life due to an imminent threat.

219 (ii) If a local health department issues an order of constraint as described in Subsection
220 (9)(b), the local health department shall notify the chief executive officer of the relevant county
221 before issuing the order of constraint.

222 (iii) The chief executive officer of the relevant county may terminate an order of
223 constraint issued as described in Subsection (9)(b) within 72 hours of issuance of the order of
224 constraint.

225 (c) (i) For a local health department that serves more than one county, the approval
226 described in Subsection (9)(a)(i) is required for the chief executive officer for which the order
227 of constraint is applicable.

228 (ii) For a local health department that serves more than one county, a county governing
229 body may only terminate an order of constraint as described in Subsection (9)(a)(iii) for the
230 county served by the county governing body.

231 (10) (a) During a public health emergency declared as described in this title:

232 (i) the department or a local health department may not impose an order of constraint
233 on a religious gathering that is more restrictive than an order of constraint that applies to any
234 other relevantly similar gathering; and

235 (ii) an individual, while acting or purporting to act within the course and scope of the
236 individual's official department or local health department capacity, may not:

237 (A) prevent a religious gathering that is held in a manner consistent with any order of
238 constraint issued pursuant to this title; or

239 (B) impose a penalty for a previous religious gathering that was held in a manner
240 consistent with any order of constraint issued pursuant to this title.

241 (b) Upon proper grounds, a court of competent jurisdiction may grant an injunction to
242 prevent the violation of this Subsection (10).

243 (c) During a public health emergency declared as described in this title, the department
244 or a local health department shall not issue a public health order or impose or implement a

245 regulation that substantially burdens an individual's exercise of religion unless the department
246 or local health department demonstrates that the application of the burden to the individual:

- 247 (i) is in furtherance of a compelling government interest; and
- 248 (ii) is the least restrictive means of furthering that compelling government interest.

249 (d) Notwithstanding Subsections (8)(a) and (c), the department or a local health
250 department shall allow reasonable accommodations for an individual to perform or participate
251 in a religious practice or rite.

252 (11) An order of constraint issued by a local health department pursuant to a declared
253 public health emergency does not apply to a facility, property, or area owned or leased by the
254 state, including the capitol hill complex, as that term is defined in Section [63C-9-102](#).

255 (12) A local health department may not:

256 (a) require a person to obtain an inspection, license, or permit from the local health
257 department to engage in a practice described in Subsection [58-11a-304\(5\)](#); or

258 (b) prevent or limit a person's ability to engage in a practice described in Subsection
259 [58-11a-304\(5\)](#) by:

260 (i) requiring the person to engage in the practice at a specific location or at a particular
261 type of facility or location; or

262 (ii) enforcing a regulation applicable to a facility or location where the person chooses
263 to engage in the practice.