

ACT 138

H.B. NO. 1945-86

A Bill for an Act Relating to Barbering.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. [](a)[] The following chapters are hereby repealed effective December 31, 1986:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)

- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 460J (Pest Control Board)
- (5) Chapter 438 (Board of Barbers)
- (6) (5) Chapter 439 (Board of Cosmetology)

31, 1987: [[(b)[]] The following chapters are hereby repealed effective December

- (1) Chapter 458 (Board of Dispensing Opticians)
- (2) Chapter 459 (Board of Examiners in Optometry)
- (3) Chapter 452 (Board of Massage)
- (4) Chapter 471 (Board of Veterinary Examiners)
- (5) Chapter 441 (Cemeteries and Mortuaries)
- (6) Chapter 463 (Board of Detectives and Guards)
- (7) Chapter 455 (Board of Examiners in Naturopathy)

31, 1988: [[(c)[]] The following chapters are hereby repealed effective December

- (1) Chapter 465 (Board of Psychology)
- (2) Chapter 468E (Board of Speech Pathology and Audiology)
- (3) Chapter 359L (Factory Built Housing Advisory Board)
- (4) Chapter 468B (Solar Energy Device Dealers)
- (5) Chapter 468K (Travel Agencies)
- (6) Chapter 373 (Commercial Employment Agencies)
- (7) Chapter 442 (Board of Chiropractic Examiners)
- (8) Chapter 448 (Board of Dental Examiners)
- (9) Chapter 436E (Board of Acupuncture)

31, 1989: [[(d)[]] The following chapters are hereby repealed effective December

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)

31, 1990: [[(e)[]] The following chapters are hereby repealed effective December

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 462A (Pilotage)
- (5) Chapter 438 (Board of Barbers)

December 31, 1991: [[(f)[]] The following [[]chapters are[]] hereby repealed effective

- [[(1) []] Chapter 448H (Elevator Mechanics Licensing Board)
- [[(2) []] Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- [[(3) []] Chapter 457B (Board of Examiners of Nursing Home Administrators)
- [[(4) []] Chapter 460 (Board of Osteopathic Examiners)
- [[(5) []] Chapter 461 (Board of Pharmacy)
- [[(6) []] Chapter 461J (Board of Physical Therapy)
- [[(7) []] Chapter 463E (Podiatry).”

SECTION 2. Section 438-1, Hawaii Revised Statutes, is amended to read as follows:

“§438-1 Definitions. For the purpose of this chapter:

[(1)] “Practice of barbering” means any combination of the following practices for remuneration: shaving, cutting, trimming, singeing, shampooing, arranging, dressing, curling, [or] waving [(other than permanent waving)], or coloring the hair or beard or applying tonics or other preparation thereto; massaging, cleansing, or applying oils, creams, lotions, or other preparation to the face, scalp, or neck, either by hand or by mechanical appliances; provided that nothing in this chapter shall be construed as applicable to those persons licensed under chapter 439 to practice the occupations named therein[;].

[(2)] “Barber shop” [embraces] means any establishment or place of business wherein the practice of barbering is engaged or carried on[;] and is the primary purpose of that establishment or business.

[(3)] “Apprentice” is a person who is engaged in learning or acquiring within a barbering establishment or school, and while learning assists in, any of the practices mentioned herein under the immediate direction and supervision of a barber or instructor[;].

[(4)] “Barber” is a person, not an apprentice, who engages in and follows any of such practices[;].

[(5)] “Board” means the board of barbers created under this chapter.”

SECTION 3. Section 438-7, Hawaii Revised Statutes, is amended to read as follows:

“§438-7 Applications. Each person who desires to practice as a barber or as an apprentice barber shall file with the board [of barbers] a written application, under oath, on a form prescribed and supplied by the board, shall submit satisfactory proof of the required age[, good moral character,] and freedom from infectious or contagious diseases, and shall deposit with the board the required fees and two photographs of the applicant of a size to be determined by the board.”

SECTION 4. Section 438-8, Hawaii Revised Statutes, is amended to read as follows:

“§438-8 Requisites for admission to examinations and registration. The executive secretary of the board of barbers shall determine the sufficiency of the preliminary qualifications of applicants for admission to examinations and registration. The following preliminary qualifications shall be sufficient:

- (1) Apprentices shall be at least [sixteen] seventeen years of age.
- (2) Barbers shall be at least [eighteen] seventeen years of age and have practiced as a barber or an apprentice for a period of at least six months under the immediate personal supervision of a barber.

[The examination of applicants for certificates to practice shall be conducted under rules prescribed by the board, and] The board shall contract with the same professional testing service as the board of cosmetology to have the testing service prepare and provide examinations for applicants as may be required for the purposes of this chapter. The examinations shall include practical demonstrations; provided that the practical examination for waving and hair coloring shall be the same as the practical examination administered to cosmetologists; and written, or in prescribed circumstances, oral tests.

Every applicant who is required by the board to be examined shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91. The examination fee may be paid directly to the professional testing service by the director of the examinee or deposited with the director of finance to the credit of the general fund.”

SECTION 5. Chapter 438, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§438- Disciplinary actions. (a) The board may take disciplinary action against any person to whom a certificate has been issued under this chapter, including but not limited to revocation of the certificate, suspension, fine, or a combination thereof, or refuse to grant or renew any certificate for any of the following causes:

- (1) Procuring a certificate through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross negligence, or manifest incapacity;
- (3) Permitting an uncertified person to perform activities which require a certificate under this chapter;
- (4) Violation of this chapter or the rules adopted pursuant thereto;
- (5) Making any false representation or promise through advertising or otherwise;
- (6) Failing to display the certificate as provided in this chapter;
- (7) Any other conduct constituting fraudulent or dishonest dealings;
- (8) Failure to comply with a board order; or
- (9) Making a false statement on any document submitted or required to be filed by this chapter.

(b) Any person who violates this chapter or the rules adopted pursuant thereto shall be fined not less than \$100 nor more than \$1,000 for each violation.

(c) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 6. Chapter 438, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§438- Right of injunction. The department of commerce and consumer affairs may, in addition to any other remedies available, apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter.”

SECTION 7. Section 438-5, Hawaii Revised Statutes, is amended to read as follows:

“§438-5 Powers and duties of the board. (a) The board of barbers may give examinations for the issuance of certificates of registration to practice barbering; grant, revoke, or suspend [such] certificates; establish, subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, rules governing the practice of barbering which shall have the force and effect of law.

(b) The board may suspend or revoke a certificate of a person guilty of fraud in passing the examination or at any time guilty of grossly unprofessional or dishonest conduct, or addicted to liquor or drugs to such a degree as to render the person unfit to practice any of the occupations classified under this chapter, or knowingly advertising by means of false or deceptive statements, or failing to display the certificates as provided in section 438-9.

(c) (b) The board may require the attendance of witnesses and the production of [such] books, records, and papers as it or any person involved may desire at any hearing of any matter which the board has authority to investigate, and for the purpose may require the executive secretary to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers directed to the sheriff or chief of police of the county where [such] the witness resides or is found which shall be served and returned in the

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same manner as a subpoena in a criminal case. Fees and mileage shall be paid from the funds in the state treasury for the use of the board in the same manner as other expenses of the board.

[(d)] (c) Any investigation, inquiry, or hearing which the board is empowered by law to hold or undertake may be held or undertaken by or before any member or members of the board or an appointed hearings officer and the finding or order of that member, members, or hearings officer shall be deemed to be the finding or order of the board when approved and confirmed by it."

SECTION 8. Chapter 438, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§438- Medical clearance. The board, at its discretion may request any barber to submit to such medical clearance tests, including blood tests, as the board deems appropriate to protect the public health."

SECTION 9. The board of barbers shall report to the legislature on progress made in improving the examination process prior to the convening of the regular session of 1987. Any other developments which occur subsequent to the 1987 report shall be included in a report to the legislature prior to the convening of the regular session of 1988.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved May 12, 1986.)

Note

1. Edited pursuant to HRS §23G-16.5.