

ACT 154

H.B. NO. 520

A Bill for an Act Relating to Beauty Culture.

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

SECTION 1. Chapter 439, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

SECTION 2. Chapter 439, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§439- Cumulative remedies.** 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 3. Section 439-1, Hawaii Revised Statutes, is amended to read as follows:

**“§439-1 Definitions.** As used in this chapter:

“Apprentice” means a person who is engaged in a beauty shop in learning to be [an] a beauty operator and while so doing assists in any of the practices of [a hairdresser or cosmetician.] cosmetology.

“Beauty operator” means one of the following certification categories: cosmetologist; hairdresser; cosmetician; or manicurist.

“Beauty shop” means any establishment or place of business wherein the practice of [hairdressing or] cosmetology is engaged or carried on and is the primary purpose of that establishment or business[.]; provided that the practice of barbering is allowed in that establishment or business.

“Board” means the board of cosmetology of the State.

[“Classified occupations” mean the occupations of hairdresser and cosmetician.

“Classified practice” means any of the practices referred to in the definitions of “hairdresser” and “cosmetician”.]

“Cosmetician” means any person who, with hands or mechanical or electrical apparatus or appliances, or by use of cosmetic preparations, antiseptics, tonics, lotions, or creams, engages for compensation in any one or any combination of the following practices: massaging, cleansing, stimulating, manipulating, exercising, beautifying, or doing similar work upon, the scalp, the face, neck, arms, bust, or upper part of the body, or manicuring the nails, or removing of superfluous hair about the body of any person by means other than electrolysis[.]; provided that mechanical or electrical apparatus or appliances do not include those apparatus or appliances considered to be medical prescription devices.

“Cosmetologist” means a person who engages in the practices of a hairdresser and a cosmetician for compensation.

“Cosmetology”, also known as beauty culture, means the art and science of beauty care of the skin, hair, scalp, and nails, and includes any one or a combination of the certification categories if they are performed on a person’s head, face, neck, shoulders, arms, hands, legs, or feet for cosmetic purposes.

“Department” means the department of commerce and consumer affairs.

“Hairdresser” means any person who for compensation engages in any one or any combination of the following practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of another person.

“Instructor” means a person who teaches any of the [classified practices;] certification categories; provided that the term shall not be taken to include an operator who teaches apprentices in a beauty shop.

“Manicurist” means any person who for compensation engages in the practice of cutting, trimming, polishing, coloring, cleansing, or otherwise treating a person’s fingernails and toenails; applying artificial fingernails and toenails; and massaging and cleansing a person’s hands, arms, legs, and feet.

“Junior operator” has the meaning set forth in section 439-12(1).

“Operator” means a hairdresser or cosmetician.]

“School”, unless the context clearly indicates otherwise, means a school engaged in teaching [any of the classified practices.] cosmetology.

“Student” means a person who is engaged in a school in learning to be [an] a beauty operator and while so doing does or assists in doing any act

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involved in [any of] the [practices of a hairdresser or cosmetician.] practice of cosmetology.

"Temporary permit" means a permit issued to a qualified applicant practicing as a beauty operator or instructor until the results of the examination have been published; provided that a temporary permit shall be effective for no longer than two years from the date of issuance."

SECTION 4. Section 439-2, Hawaii Revised Statutes, is amended to read as follows:

**"§439-2 Registration required.** (a) No person shall for commercial purposes demonstrate any hair or cosmetic preparations or products or practice as a [cosmetologist,] beauty operator, apprentice, [student,] or instructor or operate a school or beauty shop or announce or advertise as being prepared or qualified to do so unless the person is registered with and holds a certificate from the board [of cosmetology] authorizing the person to do so; provided that this chapter shall not affect the right of any person licensed by the State to engage in any other occupation from doing any of the acts properly authorized by the person's license. The certificate of a [cosmetologist,] beauty operator, instructor, apprentice, shop, or school shall be displayed in a conspicuous place in the office, place of business or employment, or school of the holder thereof.

(b) The practice of cosmetology shall be carried on only by persons duly registered to practice in this State and only in registered beauty shops; provided a registered beauty operator may practice cosmetology at any place for educational purposes or upon persons at a health care, nursing, mental, or correctional facility, at a barber shop, and at a charitable event."

SECTION 5. Section 439-3, Hawaii Revised Statutes, is amended to read as follows:

**"§439-3 Cosmetology board; appointment; qualifications; terms.** (a) [Appointment and removal.] There shall be a board of cosmetology consisting of seven members, who shall be appointed, and may be removed, by the governor in the manner provided in section 26-34.

(b) [Qualifications of members.] Five of the members of the board shall be beauty operators who have been registered to practice in the State for at least five years and have been actively and continuously engaged in [either or both of the classified occupations] the practice of cosmetology for [such] that period and two shall be public members. [None of them shall be members of nor affiliated with any school teaching any of the classified occupations.]

(c) Board members affiliated with any school teaching any of the classified occupations shall disclose that affiliation and shall at all times adhere to the provisions of chapter 84 and the interpretations of that chapter by the state ethics commission."

SECTION 6. Section 439-4, Hawaii Revised Statutes, is amended to read as follows:

**"§439-4 Officers of the board.** The board [of cosmetology] shall select a [chairman] chairperson annually. An executive secretary, assigned by the department [of commerce and consumer affairs], shall service the board.

The [chairman] chairperson of the board shall preside at all meetings and in the [chairman's] chairperson's absence the members present shall select a [chairman] chairperson pro tem."

SECTION 7. Section 439-5, Hawaii Revised Statutes, is amended to read as follows:

**"§439-5 Meetings.** The board [of cosmetology] shall hold meetings at times as it deems necessary. A majority of the board shall constitute a quorum and the concurrence of a majority of the members present shall be necessary to make any action of the board valid."

SECTION 8. Section 439-6, Hawaii Revised Statutes, is amended to read as follows:

**"§439-6 Power to investigate.** The [board of cosmetology or any member thereof,] department or any person designated by the [board] department for the purpose, may investigate any violation or suspected violation of this chapter. [Each member of the board may administer oaths in connection with any investigation.]"

SECTION 9. Section 439-7, Hawaii Revised Statutes, is amended to read as follows:

**"§439-7 Rules.** The board [of cosmetology] may [make,] adopt, amend, and repeal rules as it deems proper to fully effectuate and carry out the purpose of this chapter which is declared to be the protection of the general public in its dealings with [hairstylists, cosmeticians, and cosmetologists.] practitioners of cosmetology or those training the practitioners. The rules shall be [made] adopted subject to chapter 91 and [shall be approved by the governor and the director of commerce and consumer affairs. They] shall have the force and effect of law."

SECTION 10. Section 439-10, Hawaii Revised Statutes, is amended to read as follows:

**"§439-10 Apprentices[, students,] and instructor-trainees.** [An apprentice, student, or instructor-trainee] All apprentices and instructor-trainees shall be registered [and given a certificate to that effect] upon payment of application and registration fees and submission of evidence satisfactory to the board [of cosmetology] that the applicant is [at least]:

- (1) At least sixteen years of age[, is] and possessed of an education equivalent to the completion of [four years of] high school; and[, in]
- (2) In the case of an instructor-trainee, has the required three years of experience as a registered beauty operator."

SECTION 11. Section 439-11, Hawaii Revised Statutes, is amended to read as follows:

**"§439-11 Application for examination.** Each person who desires to practice or instruct [in any of the classified practices or occupations] as a beauty operator or instructor shall file with the board [of cosmetology] a written application, under oath, on a form prescribed and supplied by the board and shall submit satisfactory proof of the required age and [educational] qualifications specified in section 439-12 and pay the required application and examination fees."

SECTION 12. Section 439-12, Hawaii Revised Statutes, is amended to read as follows:

**"§439-12 Requisites for admission to examination [and registration].** (a) The executive secretary of the board [of cosmetology] shall determine the sufficiency of the preliminary qualifications of applicants for admission to

examinations [and registration]; provided that [there shall be only nine] the certification categories[, excluding apprentice, student, instructor-trainee, temporary operator, junior operator, temporary instructor, and technician certification; and provided further that the board may modify the number of categories only if approved by a two-thirds vote of the board.] shall be limited to cosmetologist, hairdresser, cosmetician, manicurist, and instructor. The [following] preliminary qualifications for admission to examination shall be [sufficient:] as provided in this section.

- (1) An operator may be registered in any of the classified practices or occupations under this chapter upon the payment of application, examination, and registration fees for each of the practices or occupations or any one or any combination of the practices or occupations, provided the operator has an education equivalent to the completion of four years of high school and has either (A) served the required time as an apprentice under the supervision of a registered operator or instructor, as determined by the board for any one or combination of the practices but not less than one year including two thousand hours for each of the two classified occupations; or (B) has acquired the equivalent training in a registered school, and has passed the prescribed examination or examinations to the satisfaction of the board; and provided further that an applicant may be registered solely in the classified practice of a manicurist and an applicant so registered may engage in a classified practice in a barber shop, a beauty shop, or in the applicant's own shop upon serving seven hundred hours of time as an apprentice under the supervision of a registered operator or instructor or three hundred fifty hours of training in a registered school and upon satisfying all the other requirements of this section; and provided further that an applicant may be registered solely as a "Hair Cosmetician" in the classified occupation of a cosmetician upon serving one thousand two hundred hours of time as an apprentice under the supervision of a registered operator or instructor or six hundred hours of training in a registered school and upon satisfying all the other requirements of this section. Any applicant who fails an initial examination shall thereafter pay the examination fee for any subsequent examination.

Any person who has taken but has not successfully passed the examination or examinations prescribed by the board for any one or any combination of the practices or occupations but who has satisfied all the other requirements of this section may be registered as a "Junior Operator" and may work in a beauty shop under the supervision of a licensed operator in the practices or occupations in which the person has been examined so long as the person continues to take the prescribed examination or examinations in good faith. Failure or refusal on the part of a "Junior Operator" to take any prescribed examination or examinations shall be sufficient reason for the revocation of the registration by the board.]

(b) A cosmetologist applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) Three thousand six hundred hours of training as an apprentice under the supervision of a registered cosmetologist; or
- (2) One thousand eight hundred hours of training in a registered beauty school.

(c) A hairdresser applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) Two thousand five hundred hours of training as an apprentice under the supervision of a registered cosmetologist or hairdresser; or
- (2) One thousand two hundred fifty hours of training in a registered beauty school.

(d) A cosmetician applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) One thousand one hundred hours of training as an apprentice under the supervision of a registered cosmetologist or cosmetician; or
- (2) Five hundred fifty hours of training in a registered beauty school.

(e) A manicurist applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) Seven hundred hours of training as an apprentice under the supervision of a registered cosmetologist, cosmetician, or manicurist; or
- (2) Three hundred fifty hours of training in a registered beauty school.

[(2) Instructors] (f) An instructor applicant may [be registered] apply in any of the [classified] practices [or occupations upon the payment of application, examination, and registration fees, provided the instructors have] of cosmetology if the applicant has completed a course satisfactory to the board in the theory and practice of education in cosmetology consisting of six hundred hours and [have] has served actively for a period of at least three years as a registered beauty operator in the State or in another jurisdiction having standards for registration [in the particular practice or occupation] as a beauty operator substantially equivalent to those of the State [and have passed an examination satisfactory to the board]; provided that the board may at its discretion and without regard to the requirements of this section, issue and revoke a temporary [certificate] permit to any person holding a valid existing instructor's [license] registration in another [territory, county, or state] jurisdiction having standards substantially equivalent to those in force in the State at the time of the registration, for the limited purpose of either [(A) commercially]:

- (1) Commercially demonstrating in the State, any hair or cosmetic preparations or products identifiable by a trade name or trademark; or [(B) instructing]
- (2) Instructing in hairstyling in a [registered] school or under the sponsorship of any organization approved by the board until the next following instructor's examination given by the board. Instructors duly registered under chapter 453, need not be holders of instructors certificates."

SECTION 13. Section 439-13, Hawaii Revised Statutes, is amended to read as follows:

**"§439-13 Admission to examination.** If the board [of cosmetology] finds that the applicant has [obtained the credentials] met the qualifications necessary for admission to the examination, the board shall admit the applicant to examination[, or registration]."

SECTION 14. Section 439-14, Hawaii Revised Statutes, is amended to read as follows:

**"§439-14 Examination.** (a) The board shall contract with [the same] a professional testing service [as the board of barbers] to have the testing service prepare and provide examinations for applicants as may be required for the purposes of this chapter. The examinations shall not be confined to any specific system or method, and the examinations shall be consistent with the practical and theoretical requirements of the occupations as provided by this chapter[; provided that the practical examination for waving and hair coloring shall be the same as the practical examination administered to barbers]. The examinations shall[, be given on a regular basis or whenever is appropriate, and be updated and revised based on the current job analysis surveys and other data and information relevant to the practice of cosmetology.

(b) 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 or the examinee or deposited with the director of finance to the credit of the general fund.

(c) An applicant who fails an initial examination thereafter may file another application with the board and pay the application and examination fees for any subsequent examination.

(d) A temporary permit may be issued upon request, to an applicant required to be examined as prescribed in section 439-16."

SECTION 15. Section 439-15, Hawaii Revised Statutes, is amended to read as follows:

**"§439-15 Certificates of registration, fees.** (a) The board [of cosmetology] shall issue a certificate of registration as [apprentice, student, instructor-trainee,] a beauty operator, or instructor, as the case may be, to each person who passes the required examination, pays the proper fees, and meets all of the other requirements of this chapter. The certificate shall state specifically the [occupation] certification category for which the person is registered and shall be signed by the [chairman] chairperson and executive secretary and impressed with the seal of the board.

(b) All certificates issued by the board expire on December 31 of each odd-numbered year.

(c) Every registered beauty operator and instructor shall pay to the board [between] by December [1 and] 31 of each odd-numbered year a biennial renewal fee. The payment of the renewal fee shall entitle the registrant to renewal of the certificate.

(d) Failure or refusal to renew the certificate by December 31 of each odd-numbered year shall constitute a forfeiture of the certificate. The certificate [of an apprentice, operator, or instructor] shall be reinstated upon payment of all delinquent fees and a penalty fee if application is made within three years after lapse.

(e) All fees required by this chapter shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91."

SECTION 16. Section 439-16, Hawaii Revised Statutes, is amended to read as follows:

**"§439-16 Temporary [certificates.] permits.** The board [of cosmetology] may issue temporary [certificates authorizing the person concerned] permits to qualified applicants approved to be examined to practice [as an operator] cosmetology under supervision of a registered beauty operator until the results of the [next examinations have] examination has been

published. Applicants who have not successfully passed the examination as prescribed by the board but continue to satisfy the requirements of section 439-14(c) may be issued temporary permits; provided that applicants shall pass the third examination as consecutively scheduled by the board. After failing to pass the third examination, applicants that satisfy the requirements of section 439-14(c) shall continue to qualify for examination and registration but not for the privilege of temporary permits. The [certificate] permits may be issued upon application [only to a person who has paid the usual application and examination] for examination and payment of the required fees [and]. In addition to those applicants who satisfy the requirements of section 439-14(c), an applicant who possesses one of the following qualifications:] may be issued a temporary permit:

- (1) Is a graduate of a school and course which meet the standards established for schools in the State;
- (2) Has been, for three out of the four years immediately preceding the date of the application, lawfully engaged in another state, territory, or country in the occupation covered by the certificate sought; or
- (3) Holds a valid and existing license to engage in the occupation covered by the certificate sought in a state, territory, or country having standards for registration substantially equivalent to those in force in the State at the time of the application."

SECTION 17. Section 439-17, Hawaii Revised Statutes, is amended to read as follows:

**"§439-17 Beauty shops.** (a) A certificate of registration of a beauty shop may be secured by filing an application [therefor] and paying the application and registration fees and showing that the shop has been inspected not more than one year before the application was filed and meets the standards of sanitation required by the [rules of the] department of health, that a registered [managing] beauty operator [who has practiced as a registered operator in the State for at least one year] in the appropriate certification category is in charge of the shop, and that it is adequately equipped for the practices in which it engages. The board may waive the requirement that the registered managing operator [have] has practiced in the State, for at least one year, upon a showing that the person has had other experience as a managing operator equivalent to one year's practice in this State and upon further showing that the aforesaid requirement creates undue hardship on the shop.

(b) All certificates shall expire on December 31 in each odd-numbered year. Certificates may be renewed by payment of a biennial fee prior to the date of expiration. A lapsed certificate may be [reissued] reinstated upon payment of [the renewal fee] all delinquent fees and a penalty fee.

(c) Nothing in this chapter shall prohibit registered beauty operators within a beauty shop from teaching any of the practices of [the classified occupations] cosmetology in which the beauty operator is registered in the regular course of business; provided that the owners or [managers] beauty operators do not hold themselves out as a school, and do not hire or employ or teach, regularly, at any one time, more than one apprentice unless there is one beauty operator regularly employed in the business for each apprentice.

(d) The beauty shop owner shall be responsible for all operations of the shop and shall be responsible to see that only currently registered individuals are performing cosmetology practices in the shop."



SECTION 18. Section 439-18, Hawaii Revised Statutes, is amended to read as follows:

**"§439-18 Schools.** (a) Any person may apply to the board [of cosmetology] for a certificate of registration as a school [of any of the practices of the classified occupations,] in the practice of cosmetology, upon the payment [to the board] of application and initial registration fees [for the first year of the registration]. Thereafter an annual registration fee shall be based on student enrollment.

(b) No school shall be granted a certificate of registration unless it attaches to its staff a regularly licensed physician and employs and maintains a sufficient number of registered instructors, and requires a course of training of a proportioned number of hours as approved by the board, for any of the [classified practices, provided the total shall not be less than eighteen hundred hours,] certification categories, to include both practical demonstrations, written and oral tests, and practical instruction in sanitation, sterilization, and the use of antiseptics consistent with the practical and theoretical requirements applicable to the [classified occupations.] practice of cosmetology.

All certificates shall expire on December 31 next following the date of issue, but may be renewed by payment of the annual registration fee prior to the date of expiration. A lapsed certificate may be [reissued] reinstated upon the<sup>1</sup> payment [of the renewal fee and a penalty of the same amount as the required annual registration fee.] of all delinquent fees and a penalty fee."

SECTION 19. Section 439-19, Hawaii Revised Statutes, is amended to read as follows:

**"§439-19 Refusal to grant and revocation and suspension of certificates.** (a) The board [of cosmetology may refuse to grant, renew, reinstate, or restore any certificate required under this chapter, whether covering the registration of an apprentice, student, cosmetologist, operator, instructor, school, or shop, for any cause which would be grounds for revocation of a certificate under this section. The board may, nevertheless, renew, reinstate, or restore any certificate when it determines that action is just and may be done consistently with the accomplishment of the purpose of this chapter.

(b) The board may revoke or suspend any certificate, whether covering the registration of an apprentice, student, cosmetologist, operator, instructor, school, or shop, for any of the following causes:

- (1) Professional misconduct, gross carelessness, or manifest incapacity;
- (2) Violation of any of the provisions of this chapter or the rules adopted pursuant thereto or any other law which applies to the person in the occupation covered by the certificate;
- (3) Making any false representation or promise through advertising or otherwise or in any manner dealing fraudulently or dishonestly in the occupation covered by the certificate;
- (4) Habitual intemperance in use of alcoholic beverages or addiction to the use of narcotic drugs; or
- (5) Failing to display the certificate as provided in this chapter.

No certificate shall be suspended for longer than two years.] may take disciplinary action against any certificate or registration issued under this chapter, including but not limited to revocation, suspension, fine, or a combination thereof, or refuse to grant or renew any certificate or registration for any of the following causes:

- (1) Procuring a certificate through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, 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) Failing 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."

SECTION 20. Section 439-20, Hawaii Revised Statutes, is amended to read as follows:

**"§439-20 Hearing.** In every case where it is proposed [to refuse to grant, renew, reinstate, or restore a certificate or] to revoke or suspend the exercise of [one] a certificate for any of the causes enumerated in section 439-19, the person concerned shall be given notice and opportunity for hearing in conformity with chapter 91. Any person aggrieved by the denial or refusal of a certificate by the board, shall submit a request for a hearing pursuant to chapter 91 within sixty days of the date of the denial or refusal. The notice of hearing shall be given at least five days before the hearing.

In all proceedings before it, the board [of cosmetology] and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the board, or any member thereof, or of any subpoena issued by it, or any member, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the board, or any member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein."

SECTION 21. Section 439-21, Hawaii Revised Statutes, is amended to read as follows:

**"§439-21 Board to aid prosecution.** The board [of cosmetology] shall aid prosecuting officers in the prosecution of persons charged with violations of this chapter."

SECTION 22. Section 439-22, Hawaii Revised Statutes, is amended to read as follows:

**"§439-22 Penalty.** Any person who practices [any of the occupations,] cosmetology, maintains a school or a beauty shop, or acts in any capacity wherein a certificate is required, without a certificate as provided in this chapter, shall be fined not more than \$100, or imprisoned not more than ninety days, or both. Each and every day of violation shall be [construed] a separate offense."

SECTION 23. Section 439-8, Hawaii Revised Statutes, is repealed.

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**SECTION 24.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 25.** This Act shall take effect upon its approval.

(Approved June 5, 1987.)

### **Notes**

1. "The" should be underscored.
2. Edited pursuant to HRS §23G-16.5.