

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1838

H. P. 1639

House of Representatives, June 2, 1977

Reported by Ms. Clark from the Committee on Business Legislation and printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Revise the Laws Relating to Barbers and Cosmetologists.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 32 MRSA § 301, sub-§ 1, 1st ¶ is amended to read:

1. The practice of barbering. "The practice of barbering" shall mean any one or any combination of the following practices, when done, for hire or reward, upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

Sec. 2. 32 MRSA § 301, sub-§ 3 is repealed.

Sec. 3. 32 MRSA § 302 is repealed and the following enacted in its place:

§ 302. Exemptions; exceptions

1. Exemptions. The prohibitions and penalties of this chapter shall not apply to the following persons when acting within the scope of their profession or occupation:

A. Persons authorized by law of this State to practice medicine and surgery;

B. Commissioned medical officers of the United States army, navy or marine hospital service;

C. Registered nurses, licensed practical nurses and nurse's aides; and

D. Persons who cut the hair of members of their immediate families or of persons residing in the same household and who receive no payment for such cutting.

2. Exceptions. The practice of barbering shall be carried on only by persons duly registered to practice barbering in this State and only in a licensed barber shop, except as provided in this subsection. A duly registered barber may practice barbering:

- A. Upon patients in hospitals or nursing homes;
- B. Upon residents of summer camps;
- C. Upon inmates or residents of institutions of the Department of Mental Health and Corrections;
- D. Upon an invalid or handicapped person in that person's place of residence;
- E. Upon a resident of a nursing home;
- F. Upon a hotel or motel occupant in that person's hotel or motel room; and
- G. Upon a person in that person's residence, when done for the usual fees.

3. Intrastate commerce. This chapter applies only to those cosmetic preparations and apparatus sold or offered for sale in intrastate commerce.

Sec. 4. 32 MRSA § 303, as last amended by PL 1975, c. 144, § 1, is repealed and the following enacted in its place:

§ 303. Schools

1. Approval. Schools of barbering shall be approved both by the board and by the Department of Educational and Cultural Services. The Department of Educational and Cultural Services may assess the board for any costs actually and necessarily incurred as part of its approval of such schools.

2. Schools of barbering.

A. No school of barbering shall be approved until it provides for instruction to be given to all its students by lectures or demonstrations on subjects of sanitation, sterilization, general anatomy and diseases.

No school of barbering shall be approved unless it has a minimum requirement of a course of study of 1,500 hours distributed over a term of not less than 9 months, including practical demonstrations, written or oral tests and theoretical and practical instructions in fundamentals of sanitation for barbering, hygiene, histology of the hair, skin, face and neck, diseases of the skin, hair, glands and nails, massaging and manipulating the muscles of the upper body, hair cutting, shaving and arranging, dressing, coloring, bleaching, tinting the hair, sterilization and the use of antiseptics, cosmetics and electrical appliances customarily used in the practice of barbering.

B. The fee for a certificate of approval shall be \$100. The certificate shall be valid for 2 years from the date issued, unless sooner suspended. The certificate may, so long as the school continues to meet the approval of the board and the Department of Educational and Cultural Services, be

renewed from every other year upon payment of a fee of \$100 for each renewal.

A branch or division of a school in another location shall be approved in the same manner as a new school.

C. No person shall be engaged to instruct in any practice of barbering as defined in section 301 unless the instructor has a certificate to practice barbering under this chapter, excepting those persons instructing in the subjects of sanitation, sterilization, general anatomy and diseases, and unless the person has in addition obtained an instructor's license, requirements of which shall be prescribed by the board and the Department of Educational and Cultural Services. The holder of an instructor's license shall pay to the secretary of the board the sum of \$10 in the first instance and \$10 for each biennial renewal thereof. The license shall run from the first day of January for 2 years.

3. License; refusal to issue or renew; suspension; revocation. The board shall investigate or cause to be investigated all complaints involving a school or an instructor and all cases of noncompliance with or violation of this section. The board shall have the authority, after hearing, to refuse to issue or renew a certificate, or to suspend a certificate until the complaint can be heard by the Administrative Court Judge. The Administrative Court Judge shall have the power to suspend or revoke the certificate of any school or instructor found guilty of violating any provision of this section or of violating any lawful order, rule or regulation rendered or adopted by the board.

Sec. 5. ~~32 MRSA § 304, as amended by PL 1973, c. 373, § 3, is repealed and the following enacted in its place:~~

§ 304. Penalties

Any person engaged in the practice of barbering in this State without having obtained a certificate of registration as provided by this chapter or employing a person to practice barbering who does not have such a certificate, unless the person is an apprentice within the meaning of this chapter, or falsely pretending to be qualified to practice barbering under this chapter or violating any of the provisions of this chapter shall be deemed guilty of a Class E crime. Every such person shall be deemed guilty of a separate and distinct offense for each month or part thereof during which such practice or employment shall be repeated or continued after prosecution has been begun against any such person for the violation of any of the provisions of this chapter.

Sec. 6. ~~32 MRSA § 305 is enacted to read:~~

§ 305. Practicing in same shops

In any licensed barber shop in which all the registered barbers are also licensed as cosmetologists pursuant to chapter 23, both practices may be carried on in that shop. Partitions between or separate rooms for the 2 practices shall not be required in any such shop.

Sec. 7. ~~32 MRSA § 351, as last amended by PL 1975, c. 575, § 8 and c. 771, §§ 334 and 335, is repealed and the following enacted in its place:~~

§ 351. Board

1. **Membership.** The State Board of Barbers, as heretofore established and in this chapter designated as the "board", shall consist of 5 members who shall be citizens of this State, 3 of whom shall have been engaged in the practice of barbering for at least 3 years immediately prior to their appointment and one of whom shall be a representative of the public. The 5th member of the board shall be the Director of Health who shall have no board vote.

The 4 voting members of the board shall be appointed by the Governor and their terms shall be for 3 years. None of them shall be eligible to serve more than 3 consecutive 3-year terms. The barber members shall at all times be registered barbers.

Any vacancy in the board shall be filled by the appointment by the Governor of a person to hold office during the unexpired term. The person appointed shall be qualified in the same manner as the board member being replaced. No person operating or employed by a school of barbering shall be appointed as a member of the board. If any member of the board, after appointment, shall become affiliated in any way with any such school, that person's membership on the board shall immediately terminate and the unexpired term of that member shall be filled by the Governor.

2. **Meetings; chairman; quorum.** The board, in its first meeting each year, shall elect a chairman. The chairman shall serve for a term of one year or until a successor is elected. At least one additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairman or the written request of any 2 board members. All meetings of the board shall be open to the public, except that the board may hold closed sessions to prepare, approve, grade or administer examinations, or upon request of an applicant who fails an examination to prepare a response indicating any reason for the applicant's failure. Three members of the board shall constitute a quorum for all purposes.

3. **Employees.** The board shall employ, subject to the Personnel Law, an executive secretary. The salary of the executive secretary shall be determined by the State Personnel Board and shall be paid from funds received under this chapter. The executive secretary of the board shall keep a record of all proceedings, issue all notices, except those required to be issued by the Administrative Court Judge under Title 5, chapters 301 to 307, certificates of registration and licenses, attest all such papers and orders as the board shall direct, make sanitary inspections at least twice a year of shops and other establishments subject to a license under this chapter as directed by the board, and shall report annually to the Governor giving a full statement of all receipts and expenditures and a statement of the work performed by the board during the year, together with such recommendations as deemed necessary. The board shall employ, subject to the Personnel Law, inspectors who may be registered barbers and who shall, under the direction of the executive secretary, make inspections of shops and other establishments subject to license. The salary of such inspectors shall be determined by the State Personnel Board and shall be paid from funds received under this chapter. The

board shall have the right to dismiss, for cause, the executive secretary or the inspectors.

4. Compensation. The members of the board shall receive as compensation for their services \$35 per day for no more than 18 days per calendar year, or, in the case of the chairman for no more than 25 days per calendar year, and in addition thereto all necessary expenses incurred in the discharge of their duties whether or not compensated for those services. Expenses as related to duties out of the State shall be reimbursable for no more than 5 calendar days per calendar year unless approved in advance by the Governor.

Sec. 8. 43 MRSA § 352, as last amended by PL 1975, c. 293, § 4, is repealed and the following enacted in its place:

§ 352. Powers and duties

The board shall have the powers and duties set forth in this section.

1. Board to administer, coordinate and enforce. The board shall administer, coordinate and enforce this chapter, evaluate the qualifications and supervise the examinations of applicants for registration under this chapter and shall, at its discretion, investigate allegations of violations of this chapter.

Any member or employee of the board shall have the power to enter and make reasonable examination of any approved school or any barber shop during business hours for the purpose of ascertaining whether or not the rules and regulations are being observed.

2. Rules and regulations. The board shall make rules and regulations commensurate with this chapter, subject to Title 5, chapters 301 to 307, except as otherwise provided in this subsection, and subject to the approval of the Commissioner of Human Services.

The rules and regulations shall include rules and regulations concerning the proper use of appliances, apparatus and electrical machines used in any establishment for or in connection with any of the practices defined in section 301, and prescribing the sanitary requirements to be observed by proprietors of barber shops and schools and by persons engaged in this practice and shall make regulations not contrary to law relative to the applications for licenses and certificates of registration. The board shall cause such rules and regulations to be printed in suitable form and a copy thereof to be sent to the proprietors of such shops, which copy shall be kept posted in a conspicuous place in such shops so as to be easily read by customers.

The rules and regulations shall include rules and regulations prescribing the requirements for the construction, operation, maintenance and sanitation of any school of barbering, subject to a license under this chapter.

The rules and regulations in effect on the effective date of this section shall be considered temporary rules and regulations to be in effect for no longer than 6 months after that date. Thereafter, the board may adopt rules and regulations only after sending, at least 14 days before a public hearing, to all persons licensed under this chapter, a copy of all proposed rules and

regulations and a written notice of and agenda for a public hearing and only after holding such a public hearing. A copy of all rules and regulations which are adopted by vote of the board after such hearing and which are approved by the Commissioner of Human Services shall be sent forthwith to all persons licensed under this chapter and shall not take effect until 30 days after the date of such vote.

3. Hearings. The board shall conduct such hearings and keep such records and minutes as are necessary to the ordinary dispatch of its functions. The board shall provide written notice of the time, place and subject of a hearing to all parties whose interests are to be dealt with at the hearing at least 7 days in advance of the hearing, except as provided in subsection 2.

4. Diseases. No person shall give service in any barber shop or school who has a disease in a communicable stage. The board shall have the right to require the physical examination of any person employed in any such barber shop or school suspected of having any contagious or infectious disease. Failure to submit to such an examination shall be grounds for suspension or revocation.

Sec. 9. 32 MRSA c. 7, sub-c. III, as amended, is repealed and the following enacted in its place:

SUBCHAPTER III REGISTRATION

§ 401. Registration and licenses

No person shall practice barbering in this State unless that person shall first have obtained a certificate of registration as provided in this chapter or unless that person shall be acting within the scope of employment as an apprentice.

An apprentice barber may not independently practice barbering but may, as an apprentice, do any or all acts constituting the practice of barbering under the immediate personal supervision of a registered barber. Only one such apprentice shall be employed in any licensed shop.

No person, firm or corporation shall operate or cause to be operated a shop where barbering is practiced unless that shop or establishment has been duly licensed. The fee for a license to operate a barber shop and the biennial renewal thereof shall be \$30. Shop licenses that require a special inspection, such as new barber shops, change of barber shop location and change of barber shop ownership, shall be \$35 in the first instance including the license, and \$30 for each biennial renewal thereof. The license shall run from the first day of January in every other year for 2 years and the fee shall be payable to the board.

Each student upon enrollment in an approved school of barbering shall make written application for a student permit therefor on a form prescribed and supplied by the board. The application shall contain satisfactory evidence of the qualifications required of the applicant under this

chapter and shall be notarized. The applicant shall pay to the secretary of the board a fee of \$2 and the permit shall expire with termination of the school course for which the permit was obtained. No permit shall be issued to a person who has not attained 17 years of age.

§ 402. Qualifications; examination

Any person shall be eligible to obtain a certificate of registration under this chapter for the practice of barbering:

1. Age. Who is at least 17 years of age;
2. Education. Who has completed the 10th grade in a secondary school or its equivalent;
3. Training. Who has satisfactorily completed a course of instruction of 1,500 hours in not less than 9 months in a school of barbering approved by the board, or in lieu thereof has had a total experience as an apprentice in the practice of barbering of 2,500 hours distributed over a period of at least 18 months; and
4. Examination. Who has satisfactorily passed an examination conducted by the board to determine his fitness to receive such a certificate.

Any person licensed as a cosmetologist pursuant to chapter 23 shall be entitled to take the examination, upon payment of the fees prescribed in this section.

Each applicant for an examination shall make written application therefor on a form prescribed and supplied by the board. The application shall contain satisfactory evidence of the qualifications required of the applicant under this chapter and shall be sworn to by the applicant.

The applications shall be filed with the secretary of the board and shall be accompanied by an examination fee of \$20. If the examination is satisfactory, the applicant shall pay a fee of from \$10 to \$15 to receive a first license, which shall be valid until the next renewal period. The board shall determine the exact amount of this fee. If not successful, the applicant shall have the privilege of taking a 2nd examination by payment of a fee of \$20 at any subsequent examination held by the board within a period of one year. Any applicant, who has failed a 2nd examination, may take a further examination at a time to be determined by the board upon payment of a \$20 fee for each subsequent examination.

The board shall hold at least 2 public examinations each year, and at such times and places as it shall designate. Additional examinations may be held at the discretion of the board. Notice of all examinations shall be given by publication at least 10 days before the holding of any such examination in a daily newspaper printed and published in the county in which such examination shall be held.

§ 403. Temporary permit

If any applicant to practice barbering qualifies for examination, the board may issue to such an applicant, until the results of the applicant's examination

have been given, a permit to practice barbering under the supervision of a person registered to practice barbering. The permit shall terminate with the examination following applicant's qualification. If the applicant fails the first examination following qualification, the applicant may renew his permit to practice barbering under supervision of a person registered to practice barbering until the results of the next consecutive examination have been given, at which time the permit expires and shall not be renewable. The applicant shall not be considered an apprentice. The applicant shall pay to the board a fee of \$5.

§ 404. Reciprocity with other states

The board may waive the examination and grant registration to any applicant who shall present proof of current registration or licensure in another state, other jurisdiction of the United States or another country which grants similar privileges to persons registered under this chapter. Such an applicant shall pay the same fee as provided in section 407.

The board may allow an applicant to take the examination who presents proof of training or experience, of an amount at least equal to that required under section 402, subsection 8, in another state, other jurisdiction of the United States or another country which maintains standards considered by the board to be equivalent to those set forth in this chapter. Such an applicant shall pay the examination fee as provided in section 402.

§ 405. Apprentices

The board shall furnish to each registered apprentice a certificate of registration of apprenticeship.

Every apprentice in order to avail himself of this chapter to practice barbering shall, before entering upon his apprenticeship, file with the board the name and place of business of his employer, the date of commencement of the apprenticeship and the full name and age of the apprentice, which age shall not be less than 17 years. Any such apprentice who shall change his place of employment shall promptly notify the board of the name and place of business of the new employer and the date of the change.

Each apprentice shall make application on a form supplied by the board for certificates of registration. The application shall be filed with the secretary of the board and shall be accompanied by a registration fee of \$10. The certificate of registration shall expire 18 months from date of issue and shall be renewable. The certificate shall be displayed as provided for barbers' certificates in section 407. The term "apprentice" shall appear in conspicuous print upon the certificate.

Every apprentice, after serving an apprenticeship of 18 months, shall file application for examination at the next examination held by the board in accordance with the requirements of section 402.

Any apprentice may take courses or instruction in a school of barbering without having to register as a student as provided in section 401.

§ 406. Technicians

Every barber technician, in order to avail himself of this chapter, shall, before entering employment as a barber technician, file with the secretary of the board, on forms which shall be provided by the board, the name and place of business of the employer, the date on which employment will be commenced and the barber technician's full name and age. That age shall not be less than 17 years. The forms shall be accompanied by a registration fee of \$5. Any barber technician who shall change his place of employment shall promptly notify the board and furnish it with the name and place of business of the new employer and the date of the change.

The board shall furnish to each barber technician a certificate of registration in the form prescribed by the board, bearing the seal of the board, certifying that the holder is a barber technician. It shall be the duty of the holder of such a certificate of registration to post it in a conspicuous place where it may readily be seen by all persons, on or before the first day of January in each year. The fee for such a certificate shall be \$10 in the first instance and \$10 for each biennial renewal thereof. The certificate shall run from the first day of January of each biennium.

A barber technician shall not be considered an apprentice nor shall any time which he has been registered and been employed as a barber technician count toward training for eligibility to obtain a certificate of registration as a barber.

§ 407. Certificates; renewal; fees

The board shall furnish to each registered barber a certificate of registration bearing the seal of the board and the names of all of its members, certifying that the holder thereof is entitled to practice barbering in this State. It shall be the duty of the holder of such certificate of registration to post it in a conspicuous place where it may be readily seen by all persons served.

The certificate of registration shall be renewed on or before the first day of January biennially, and the holder of the certificate of registration shall pay the sum of \$40 for each biennial renewal.

Any registered person who fails to renew his certificate of registration during any period in subsequent bienniums may renew his certificate of registration upon payment of the biennial fee.

§ 408. Suspension, revocation and refusal to issue or to renew registration or license

The board shall investigate or cause to be investigated all complaints made to it and all cases of noncompliance with or violation of this chapter. The board shall have the authority, after hearing, to refuse to issue or renew a registration or license or to suspend a registration or license until the complaint can be heard by the Administrative Court Judge. The Administrative Court Judge shall have the power to suspend or revoke the registration or license of any person registered under this chapter who is guilty of:

1. Obtaining registration or license by fraud. Obtaining registration or license by means of fraud, misrepresentation or concealment of material facts;

2. Violation of any lawful order, rule. Violating any lawful order, rule or regulation rendered and adopted by the board;

3. Violations. Violating any provision of this chapter.

4. Conviction of a crime. Being convicted of a crime in any court of the United States if the acts for which the person is convicted are found by the board to have a direct bearing on whether the person should be entrusted to serve the public in a capacity which is subject to license or registration under this chapter; or

5. Certain conduct. Repeated acts or continued conduct while serving customers which is dangerous or injurious, or potentially so, to customers.

The board may reissue a license or registration to any person whose license or registration has been revoked, if 3 or more members of the board vote in favor of such reissuance.

Sec. 10. 32 MRSA c. 23, as amended, is repealed and the following enacted in its place:

CHAPTER 23
COSMETOLOGY
SUBCHAPTER I
GENERAL PROVISIONS

§ 155I. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Beauty shop or cosmetology shop. "Beauty shop" or "cosmetology shop" means any shop or establishment where the practice of cosmetology is carried on.

2. Board. "Board" shall mean the State Board of Cosmetology.

3. Demonstrator. "Demonstrator" shall mean any person who engages on behalf of a manufacturer, wholesaler, retailer or distributor in demonstrating the use of any machine or other article pertaining to cosmetology without charge to the person who is subject to the demonstration. The term "demonstrator" shall not include one who performs such a demonstration for the benefit of persons who have a certificate to practice cosmetology under this chapter or under the licensing provisions of any other state.

4. Practice of cosmetology or practice of hairdressing and beauty culture. "The practice of, teaching of or demonstration of cosmetology" or "the practice of, teaching of, demonstration of hairdressing and beauty culture" shall mean the engaging by any person for hire or reward in any one or more of the following practices:

A. Applying the hands or mechanical or electrical apparatus with or without cosmetic preparations, tonics, lotions, creams, antiseptics or clays to

massage, cleanse, stimulate, manipulate, exercise or otherwise to improve or to beautify the scalp, face, neck, shoulders, arms, hands or to manicure the fingernails of any person ;

B. Arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring or similarly treating the hair of any person ;

C. Arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring or similarly treating a wig, wiglet or hair piece made of human hair, animal hair or synthetics ; or

D. Applying electrical equipment for the removal of hair from the body. Such electrical equipment or its application shall not involve the use of needles or the penetration of the skin.

5. Student or apprentice cosmetologist. "Student or apprentice cosmetologist" shall mean any person who is engaged in learning and acquiring a knowledge of the practice of cosmetology under the direction and supervision of a person duly authorized under this chapter to teach cosmetology and under the rules and regulations of the board relating to students and apprentices.

1. Exemptions. The prohibitions and penalties of this chapter shall not apply to the following persons when acting within the scope of their profession or occupation :

A. Practice medicine and surgery. Persons authorized by law of this State to practice medicine and surgery ;

B. United States medical officers. Commissioned medical officers of the United States army, navy or marine hospital service ;

C. Registered nurses. Registered nurses, licensed practical nurses and nurse's aides ; and

D. Persons who practice cosmetology upon members of their immediate families or on persons residing in the same household and who receive no payment for such practice.

2. Exceptions. The practice of cosmetology shall be carried on only by persons duly registered to practice in this State and only in a licensed beauty shop, except as provided in this subsection. A duly registered cosmetologist may practice cosmetology :

A. Upon patients in hospitals or nursing homes ;

B. Upon residents of summer camps ;

C. Upon inmates or residents of institutions of the Department of Mental Health and Corrections ;

D. Upon an invalid or handicapped person in that person's place of residence ;

E. Upon a resident of a nursing home ;

F. Upon a hotel or motel occupant in that person's hotel or motel room; and

G. Upon a person in the person's residence, when done for the usual fees.

3. Intrastate commerce. This chapter applies only to those cosmetic preparations and apparatus sold or offered for sale in intrastate commerce.

§ 1553. Schools

1. Approval. Schools of cosmetology shall be approved both by the board and by the Department of Educational and Cultural Services. The Department of Educational and Cultural Services may assess the board for any costs actually and necessarily incurred as part of its approval of such schools.

2. Schools of Cosmetology.

A. Curriculum. No school of cosmetology shall be approved unless it provides for instruction to be given to all its students by lectures or demonstrations on subjects of sanitation, sterilization, general anatomy and diseases and unless it shall attach to its staff a physician duly licensed to practice medicine in this State and familiar with the installation and use of electrical appliances adapted to the practice of cosmetology.

No school of cosmetology shall be approved unless it has a minimum requirement of a continuous course of study of 1,500 hours distributed over a term of not less than 9 months, including practical demonstrations, written or oral tests and theoretical and practical instruction in sanitation, sterilization and the use of antiseptics, cosmetics and electrical appliances. Practical demonstrations shall include supervised practice which shall consist of rendering service to persons other than fellow students; such practice shall be of a clinical nature and under the direct supervision of a duly licensed instructor. Time spent in any out-of-state school of cosmetology may be credited in full or in part against said 1,500 hours, subject to the approval of the board.

B. Fees, renewal. The fee for a certificate of approval shall be \$200. Such certificate shall be valid for one year from the date issued, unless suspended. The certificate may, so long as the school continues to meet the approval of the board and the Department of Educational and Cultural Services, be renewed from year to year upon payment of a fee for each renewal.

A branch or division of a school in another location shall be approved in the same manner as a new school.

C. Instructors. No person shall be engaged to instruct in any of the branches of cosmetology unless such instructor has a certificate to practice cosmetology under this chapter, excepting physicians as specified.

The board and the Department of Educational and Cultural Services shall make rules and regulations for the examination of applicants for certificates of registration as instructors of cosmetology. Examination applications shall be furnished by the board. The application shall be filed with the sec-

retary of the board and shall be accompanied by an examination fee of \$50 which shall include registration, if examination is satisfactory. All certificates of registration as instructors shall expire June 30th biennially. The renewal fee for instructors shall be \$16 biennially.

D. Students. Students to be accepted shall have reached at least the age of 16 and have completed the 10th grade in a secondary school. An enrollment record of each new student admitted to a school shall be sent to the secretary of the board on the first day of each month, accompanied by a registration fee of \$5 for each new student. The board shall furnish each student registered a certificate of registration as a student. The certificate of registration shall expire 12 months from date of issue.

4. License; refusal to issue or renew; suspension; revocation. The board shall investigate or cause to be investigated all complaints involving a school or an instructor and all cases of noncompliance with or violation of this section. The board shall have the authority, after hearing, to refuse to issue or renew a certificate, or to suspend a certificate until the complaint can be heard by the Administrative Court Judge. The Administrative Court Judge shall have the power to suspend or revoke the certificate of any school instructor found guilty of violating any provision of this section or of violating any lawful order, rule or regulation rendered or adopted by the board.

§ 1554. Electrolysis

The use of electrolysis for the removal of hair is not a part of the practice of cosmetology, except as provided in section 1551, subsection 4, paragraph D, and is prohibited, except under the direction of a licensed physician.

§ 1555. Penalties

Any person engaged in the practice of cosmetology in this State without having obtained a certificate of registration as provided by this chapter or employing a person to practice cosmetology who does not have such a certificate, unless the person is an apprentice within the meaning of this chapter, or falsely pretending to be qualified to practice cosmetology under this chapter shall be deemed guilty of a Class E crime. Every such person shall be deemed guilty of a separate and distinct offense for each month or part thereof during which such practice or employment shall be repeated or continued after prosecution has been begun against any such person for the violation of any of the provisions of this chapter.

§ 1556. Practicing in same shops

In any licensed beauty shop in which all the registered cosmetologists are also licensed as barbers pursuant to chapter 7, both practices may be carried on in that shop. Partitions between or separate rooms for the 2 practices shall not be required in any such shop.

SUBCHAPTER II

STATE BOARD OF COSMETOLOGY

§ 1601. Board

1. Membership. The State Board of Cosmetology, as heretofore established and in this chapter designated as the "board," shall consist of 7 mem-

bers who shall be citizens of this State, 5 of whom shall have been engaged in the practice of cosmetology for at least 3 years immediately prior to their appointment and one of whom shall be a representative of the public. The 7th member of the board shall be the Director of Health who shall have no board vote.

The 6 voting members of the board shall be appointed by the Governor and their terms shall be for 3 years. None of them shall be eligible to serve more than 3 consecutive 3-year terms or to serve more than 9 years consecutively. The cosmetologist members shall at all times be registered cosmetologists and shall be actively engaged in the practice during their membership on the board.

Any vacancy in the board shall be filled by the appointment by the Governor of a person, qualified as was the board member being replaced, to hold office during the unexpired term of the member whose place is thus filled.

No person operating or employed by a school of cosmetology shall be appointed as a member of the board. If any member of the board, after appointment, shall become affiliated in any way with any such school, that person's membership on the board shall immediately terminate and the unexpired term of that member shall be filled by the Governor.

2. Meetings; chairman; quorum. The board shall meet during the first month of each calendar year to select a chairman and for other appropriate purposes. At least one additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairman or the written request of any 2 board members. All meetings of the board shall be open to the public, except that the board may hold closed sessions to prepare, approve, grade or administer examinations, or upon request of an applicant who fails an examination to prepare a response indicating any reason for the applicant's failure. Four members of the board shall constitute a quorum for all purposes.

3. Employees. The board shall employ, subject to the Personnel Law, an executive secretary. The salary of the executive secretary shall be determined by the State Personnel Board and shall be paid from funds received under this chapter. The executive secretary of the board shall keep a record of all proceedings, issue all notices, except those required to be issued by the Administrative Court Judge under Title 5, chapters 301 to 307, certificates of registration and licenses, attest all such papers and orders as the board shall direct, make sanitary inspections at least twice a year of shops and other establishments subject to a license under this chapter as directed by the board, and shall report annually to the Governor giving a full statement of all receipts and expenditures and a statement of the work performed by the board during the year, together with such recommendations as deemed necessary. The board shall employ, subject to the Personnel Law, inspectors who may be registered cosmetologists and who shall, under the direction of the executive secretary, make inspections of shops and other establishments subject to license. The salary of such inspectors shall be determined by the State Personnel Board and shall be paid from funds received under this chapter. The

board shall have the right to dismiss, for cause, the executive secretary or the inspectors.

4. Compensation. The members of the board shall receive as compensation for their services \$35 per day for no more than 18 days per calendar year, or, in the case of the chairman, for no more than 25 days per calendar year, and in addition thereto all necessary expenses incurred in the discharge of their duties whether or not compensated for said services. Expenses as related to duties out of the State shall be reimbursable for no more than 5 calendar days per calendar year unless approved in advance by the Governor.

§ 1602. Powers and duties

The board shall have the powers and duties set forth in this section.

1. Board to administer, coordinate and enforce. The board shall administer, coordinate and enforce this chapter, evaluate the qualifications and supervise the examinations of applicants for registration under this chapter and shall, at its discretion, investigate allegations of violations of this chapter.

Any member or employee of the board shall have the power to enter and make reasonable examination of any approved school or any beauty shop during business hours for the purpose of ascertaining whether or not the rules and regulations are being observed.

2. Rules and regulations. The board shall make rules and regulations commensurate with this chapter, subject to Title 5, chapters 301 to 307, except as otherwise provided in this subsection, and subject to the approval of the Commissioner of Human Services.

The rules and regulations shall include rules and regulations concerning the proper use of appliances, apparatus and electrical machines used in any establishment for or in connection with the practice of cosmetology, and prescribing the sanitary requirements to be observed by proprietors of beauty shops and schools of cosmetology and by persons engaged in this practice and shall make regulations not contrary to law relative to the applications for licenses and certificates of registration. The board shall cause such rules and regulations to be printed in suitable form and a copy thereof to be sent to the proprietors of such shops, which copy shall be kept posted in a conspicuous place in such shops so as to be easily read by customers.

The rules and regulations shall include rules and regulations prescribing the requirements for the construction, operation, maintenance and sanitation of any school of cosmetology, subject to a license under this chapter.

The rules and regulations in effect on the effective date of this Act shall be considered temporary rules and regulations to be in effect for no longer than 6 months after that date. Thereafter, the board may adopt rules and regulations only after sending, at least 14 days before a public hearing, to all persons licensed under this chapter, a copy of all proposed rules and regulations and a written notice of and agenda for a public hearing and only after holding such a public hearing. A copy of all rules and regulations which are adopted by vote of the board after such hearing and which are approved by the Com-

missioner of Human Services shall be sent forthwith to all persons licensed under this chapter and shall not take effect until 30 days after the date of such vote.

3. Hearings. The board shall conduct such hearings and keep such records and minutes as are necessary to the ordinary dispatch of its functions. The board shall provide written notice of the time, place and subject of a hearing to all parties whose interests are to be dealt with at the hearing at least 7 days in advance of the hearing, except as provided in subsection 2.

4. Diseases. No person shall give service in any beauty shop or school of cosmetology who has a disease in a communicable stage. The board shall have the right to require the physical examination of any person employed in any such beauty shop or school suspected of having any contagious or infectious disease. Failure to submit to such an examination shall be grounds for suspension or revocation.

§ 1603. Register of names

The board shall keep a register in which shall be entered the names of all persons to whom certificates are issued under this chapter and said register shall be at all times open to public inspection.

§ 1604. Disposal of fees

The fees received by the board under this chapter shall be paid to the Treasurer of State. Fees received under this chapter shall be used for carrying out the purposes of this chapter.

SUBCHAPTER III REGISTRATION

§ 1651. Registration and licenses

No person shall practice cosmetology in this State unless that person shall first have obtained a certificate of registration as provided in this chapter or unless that person shall be acting within the scope of employment as an apprentice.

An apprentice cosmetologist may not independently practice cosmetology but may, as an apprentice, do any or all acts constituting the practice of cosmetology under the immediate personal supervision of a registered cosmetologist. Only one such apprentice shall be employed in any licensed beauty shop.

No person, firm or corporation shall operate or cause to be operated a shop where cosmetology is practiced unless that shop has been duly licensed. The fee for a license to operate a beauty shop shall be \$30 for a new shop or change in location or ownership and \$20 but not exceeding \$35 for each biennial renewal thereof. The license shall run from the first day of July biennially and the fee shall be payable to the board. Booths, attached to or within a beauty shop that are operated independently thereof, shall be subject to license fees in the same manner as an independent shop.

§ 1652. Qualifications

Any prson shall be eligible to obtain a certificate of registration under this chapter for the practice of cosmetology:

1. Age. Who is at least 17 years of age;
2. Education. Who has completed the 10th grade in a secondary school or its equivalent;
3. Training. Who has satisfactorily completed a course of instruction in a school of cosmetology approved by the board, or in lieu thereof has had a total experience in the practice of cosmetology or as an apprentice of 2,500 hours distributed over a period of at least 18 months; and
4. Examination. Who has satisfactorily passed an examination conducted by the board to determine his fitness to receive such certificate.

Any person licensed as a barber pursuant to chapter 7 shall be entitled to take the examination, upon payment of the fees prescribed in this section.

Each applicant for an examination shall make written application therefor on a form prescribed and supplied by the board. The application shall contain satisfactory evidence of the qualifications required of the applicant under this chapter and shall be sworn to by the applicant.

The applications shall be filed with the secretary of the board and shall be accompanied by an examination fee of \$15. If the examination is satisfactory, the applicant shall pay a fee of from \$10 to \$15 to receive a first license, which shall be valid until the next renewal period. The board shall determine the exact amount of this fee. If not successful, the applicant shall have the privilege of taking a 2nd examination by payment of a fee of \$10 at any subsequent examination held by the board within a period of one year. Any applicant, who has failed a 2nd examination, may take a further examination at a time to be determined by the board upon payment of a \$10 fee for each subsequent examination.

The board shall hold at least 2 public examinations each year, and at such times and places as it shall designate. Additional examinations may be held at the discretion of the board. Notice of all examinations shall be given by publication at least 10 days before the holding of any such examination in a daily newspaper printed and published in the county in which such examinations shall be held.

§ 1653. Temporary permit

If any applicant to practice cosmetology qualifies for examination, the board may issue to such an applicant, until the results of the applicant's examination have been given, a permit to practice cosmetology under the supervision of a person registered to practice cosmetology. The permit shall terminate with the issuance of the results of the examination following the applicant's qualification. If the applicant fails the first examination following qualification, the applicant may renew his permit to practice cosmetology, until the results of the next consecutive examination have been given, at which time

the permit expires and shall not be renewable. The applicant shall not be considered an apprentice. The applicant shall pay to the board a fee of \$5.

§ 1654. Reciprocity with other states

The board may waive the examination and grant registration to any applicant who shall present proof of current registration or licensure in another state, other jurisdiction of the United States or another country which grants similar privileges to persons registered under this chapter. Such an applicant shall pay the same fee as provided in section 1657.

The board may allow an applicant to take the examination who presents proof of training or experience, of an amount at least equal to that required under section 1652, subsection 3, in another state, other jurisdiction of the United States or another country which maintains standards considered by the board to be equivalent to those set forth in this chapter. Such an applicant shall pay the same fee as provided in section 1652.

§ 1655. Apprentices

The board shall furnish to each registered apprentice a certificate of registration of apprenticeship.

Every apprentice in order to avail himself of this chapter to practice cosmetology shall, before entering upon his apprenticeship, file with the board the name and place of business of his employer, the date of commencement of the apprenticeship and the full name and age of the apprentice, which age shall not be less than 17 years. Any such apprentice who shall change his place of employment shall promptly notify the board of the name and place of business of the new employer and the date of the change.

Each apprentice shall make application on a form supplied by the board for certificates of registration. The application shall be filed with the secretary of the board and shall be accompanied by a registration fee of \$10. The certificate of registration shall expire 18 months from date of issue and shall be renewable. The certificate shall be displayed as provided for certificates in section 1652. The term "apprentice" shall appear in conspicuous print upon the certificate.

Every apprentice, after serving an apprenticeship of 18 months, shall file application for examination at the next examination held by the board in accordance with the requirements of section 1652.

Any apprentice may take courses or instruction in a school of cosmetology without having to register as a student as provided in section 1553.

§ 1656. Demonstrations; manicuring

1. Demonstrators. Any person registered to practice cosmetology may apply to the board of registration as a demonstrator. A certificate of registration limited to demonstrations only may be issued upon complying with such requirements as may be determined by the board and upon payment of the fee of \$25. Certificates shall be renewed on or before July 1st each year by paying a renewal fee of \$30 biennially.

2. **Manicuring.** A certificate of registration limited to manicuring only may be issued upon complying with such examination requirements as may be determined by the board and upon payment of the fees as provided by this chapter.

§ 1657. **Certificates; renewal; fees**

The board shall furnish to each registered cosmetologist a certificate of registration bearing the seal of the board and the names of all of its members, certifying that the holder thereof is entitled to practice cosmetology in this State. It shall be the duty of the holder of such certificate of registration to post it in a conspicuous place where it may be readily seen by all persons served.

The certificate of registration shall be renewed on or before the first day of July biennially. The holder of the certificate of registration shall pay the board for the biennial renewal a sum between \$20 and \$35, as determined by the board.

Any registered person who fails to renew his certificate of registration during any license period in subsequent bienniums may renew his certificate of registration upon payment of the biennial fee.

§ 1658. **Suspension, revocation and refusal to issue or to renew registration or license**

The board shall investigate or cause to be investigated all complaints made to it and all cases of noncompliance with or violation of this chapter. The board shall have the authority, after hearing, to refuse to issue or renew a registration or license or to suspend a registration or license until the complaint can be heard by the Administrative Court Judge. The Administrative Court Judge shall have the power to suspend or revoke the registration or license of any person registered under this chapter who is guilty of:

1. **Obtaining registration or license by fraud.** Obtaining registration or license by means of fraud, misrepresentation or concealment of material facts;
2. **Violation of any lawful order, rule.** Violating any lawful order, rule or regulation rendered and adopted by the board;
3. **Violations.** Violating any provision of this chapter.
4. **Conviction of a crime.** Being convicted of a crime in any court of the United States, if the acts for which the person is convicted are found by the board to have a direct bearing on whether the person should be entrusted to serve the public in a capacity which is subject to license or registration under this chapter; or
5. **Certain conduct.** Repeated acts or continued conduct while serving customers which is dangerous or injurious, or potentially so, to customers.

The board may reissue a license or registration to any person whose license or registration has been revoked, if 4 or more members of the board vote in favor of such reissuance.

Sec. 11. Transitional provisions. Any barber member of the State Board of Barbers, serving as of the effective date of this Act, who has served more than 3 consecutive 3-year terms may complete the term being served at that time.

STATEMENT OF FACT

The new draft removes one of the major features of the original bill, the consolidation of the State Board of Barbers and the State Board of Cosmetology into a single board. The new draft leaves them as two separate boards, but it retains many of the other features of the bill, which was the result of a study by the Joint Standing Committee on Business Legislation of the 107th Legislature.

The bill makes the powers and duties of the two boards clearer and more consistent than in the present law. The rule-making authority of the boards is limited. No new rules could be adopted without sending a copy of the proposed rules to all licensed persons in advance of a required public hearing.

Schools of barbering and cosmetology would have to be approved by the Department of Educational and Cultural Services as well as by the board. This will help to improve the quality of education at these schools. The department's costs for this service will be paid by an assessment of the boards.

Reciprocity of licenses with other states is strengthened.

Under the new draft, a licensed barber may take the examination for cosmetology and be licensed as a cosmetologist, and vice versa. In any shop in which all the practitioners hold both licenses, both practices can be carried on. The restriction in the present rules would be eliminated in these cases.

The new draft also generally clarifies and re-organizes the language of the present law.