

ACT 153

H.B. NO. 219

A Bill for an Act Relating to Beauty Culture.

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 (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)
- [(6)] Chapter 439 (Board of Cosmetology)
- (7)] (6) Chapter 454 (Mortgage Brokers and Solicitors)
- [(8)] (7) Chapter 454D (Mortgage and Collection Servicing Agents)

(b) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)

(c) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 468K (Travel Agencies)

(d) The following chapters are hereby repealed effective December 31, 1992:

- (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)
- (e) The following chapters are hereby repealed effective December 31, 1993:
 - (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
 - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
 - (3) Chapter 440 (Boxing Commission)
 - (4) Chapter 446 (Debt Adjusters)
 - (5) Chapter 436E (Board of Acupuncture)
- (f) The following sections are hereby repealed effective December 31, 1993:
 - (1) Sections 445-21 to 38 (Auctions)
 - (2) Sections 445-131 to 136 (Pawnbrokers)
 - (3) Sections 445-171 to 172 (Secondhand Dealers)
 - (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
 - (1) Chapter 441 (Cemetery and Funeral Trusts)
 - (2) Chapter 443B (Collection Agencies)
 - (3) Chapter 452 (Board of Massage)
 - (4) Chapter 455 (Board of Examiners in Naturopathy)
 - (5) Chapter 459 (Board of Examiners in Optometry)
 - (6) Chapter 442 (Board of Chiropractic Examiners)
 - (7) Chapter 373 (Commercial Employment Agencies)
 - (8) Chapter 448 (Board of Dental Examiners)
 - (9) Chapter 465 (Board of Psychology)
 - (10) Chapter 468E (Speech Pathology and Audiology)

(h) The following chapter is hereby repealed effective December 31, 1995:
 (1) Chapter 439 (Board of Cosmetology)

1997: (h) (i) The following chapters are hereby repealed effective December 31,

- (1) Chapter 463 (Board of Private Detectives and Guards)
- (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Section 439-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "beauty operator" to read as follows:

" "Beauty operator" means one of the following [certification] licensure categories: cosmetologist; hairdresser; cosmetician; or manicurist."

2. By amending the definition of "cosmetology" to read as follows:

" "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] licensure categories if they are performed on a person's head, face, neck, shoulders, arms, hands, legs, or feet for cosmetic purposes."

3. By amending the definition of "instructor" to read as follows:

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

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SECTION 3. Section 439-2, Hawaii Revised Statutes, is amended to read as follows:

“§439-2 [Registration] License; required. (a) No person shall for commercial purposes [demonstrate any hair or cosmetic preparations or products or] practice as a beauty operator, apprentice, 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 authorizing the person to do so;] licensed as required by this chapter; 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] license of a beauty operator, instructor, [apprentice,] shop, or school and the permit of an apprentice or temporary permittee 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] licensed to practice in this State and only in [registered] licensed beauty shops; provided a [registered] licensed 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 4. Section 439-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Five of the members of the board, at least one of whom shall be from an island other than Oahu, shall be beauty operators who have been [registered] licensed to practice in the State for at least five years and have been actively and continuously engaged in the practice of cosmetology for that period and two shall be public members.”

SECTION 5. Section 439-10, Hawaii Revised Statutes, is amended to read as follows:

“§439-10 Apprentices [and instructor-trainees]. All apprentices [and instructor-trainees] shall be registered upon payment of application and registration fees and submission of evidence satisfactory to the board that the applicant is:

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

SECTION 6. Section 439-12, Hawaii Revised Statutes, is amended to read as follows:

“§439-12 Requisites for admission to examination. (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examinations; provided that the [certification] licensure categories shall be limited to cosmetologist, hairdresser, cosmetician, manicurist, and instructor. The preliminary qualifications for admission to examination shall be as provided in this section.

(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] licensed cosmetologist; or
 - (2) One thousand eight hundred hours of training in a [registered] licensed 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] licensed cosmetologist or hairdresser; or
 - (2) One thousand two hundred fifty hours of training in a [registered] licensed 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] licensed cosmetologist or cosmetician; or
 - (2) Five hundred fifty hours of training in a [registered] licensed 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] licensed cosmetologist, cosmetician, or manicurist; or
 - (2) Three hundred fifty hours of training in a [registered] licensed beauty school.
- (f) An instructor applicant may apply to teach in any of the practices 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 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 as a beauty operator substantially equivalent to those of the State; provided that the board may at its discretion and without regard to the requirements of this section, issue and revoke a temporary permit to any person holding a valid existing instructor's registration in another jurisdiction having standards substantially equivalent to those in force in the State at the time of the registration, for the limited purpose of either:
- (1) Commercially demonstrating in the State, any hair or cosmetic preparations or products identifiable by a trade name or trademark; or
 - (2) Instructing in hairstyling in a 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.] has:
- (1) Completed six hundred hours of a board approved course in the theory and practice of teaching; and
 - (2) Served actively for a period of at least one year as a licensed beauty operator in the State or in another jurisdiction having standards for beauty operators substantially equivalent to those of this State.
- (g) The board shall recognize beauty training obtained in another jurisdiction which is substantially equivalent to the training available in this State. If such training is not equivalent, the board shall make a determination as to whether or not to recognize the training by evaluating the type and duration of the training and the experience required to obtain a license in the other jurisdiction."

SECTION 7. Section 439-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) An applicant who fails an initial examination thereafter may file another application [with the board] for examination with the professional testing service and pay the [application and] examination fee for any subsequent examination.”

SECTION 8. Section 439-15, Hawaii Revised Statutes, is amended by amending its title and subsections (a) to (d) to read as follows:

“**§439-15 [Certificates of registration,] License, fees.** (a) The board shall issue a [certificate of registration] license as 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] license shall state specifically the [certification] licensure category for which the person is [registered] licensed and shall be signed by the chairperson and executive secretary and impressed with the seal of the board.

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

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

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

SECTION 9. Section 439-16, Hawaii Revised Statutes, is amended to read as follows:

“**§439-16 Temporary permits.** The board may issue temporary permits to qualified applicants approved to be examined to practice or teach cosmetology under supervision of a [registered] licensed beauty operator or licensed instructor until the results of the examination [has] have 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] licensure but not for the privilege of temporary permits. The permits may be issued upon application for examination and payment of the required fees. [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 10. Section 439-17, Hawaii Revised Statutes, is amended to read as follows:

“§439-17 Beauty shops. (a) A [certificate of registration of] license for a beauty shop may be secured by filing an application and paying the application and [registration] license 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 department of health, that a [registered] licensed beauty operator in the appropriate [certification] licensure category [is] shall be 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 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] licenses shall expire on December 31 in each odd-numbered year. [Certificates] Licenses may be renewed by payment of a biennial fee prior to the date of expiration. A lapsed [certificate] license may be reinstated upon payment of all delinquent fees and a penalty fee.

(c) Nothing in this chapter shall prohibit [registered] licensed beauty operators within a beauty shop from teaching any of the practices of cosmetology in which the beauty operator is [registered] licensed in the regular course of business; provided that the owners or 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] licensed individuals are performing cosmetology practices in the shop.

(e) Transfer of ownership, change in beauty shop name, and relocation of a beauty shop shall require filing of an application together with required fees.”

SECTION 11. Section 439-18, Hawaii Revised Statutes, is amended to read as follows:

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

(b) No school shall be granted a [certificate of registration] license unless it [attaches to its staff a regularly licensed physician and] employs and maintains a sufficient number of [registered] licensed instructors, and requires a course of training of a proportioned number of hours as approved by the board, for any of the [certification] licensure 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 practice of cosmetology.

(c) All [certificates] licenses shall expire on December 31 [next] following the date of issue, but may be renewed by payment of the annual [registration] license fee prior to the date of expiration. A lapsed [certificate] license may be reinstated upon the payment of all delinquent fees and a penalty fee.

(d) All schools shall have sufficient equipment and adequate facilities as prescribed by the rules of the board.”

SECTION 12. Section 439-19, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"§439-19 Refusal to grant and revocation and suspension of [certificates.] licenses. (a) The board may take disciplinary action against any [certificate or registration] license 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] license for any of the following causes:

- (1) Procuring a [certificate] license through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, or manifest incapacity;
- (3) Permitting an [uncertified] unlicensed person to perform activities which require a [certificate] license 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] license 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."

SECTION 13. Section 439-20, Hawaii Revised Statutes, is amended to read as follows:

"§439-20 Hearing. In every case where it is proposed to revoke or suspend [the exercise of a certificate] a license 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] license 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 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 14. Section 439-22, Hawaii Revised Statutes, is amended to read as follows:

"§439-22 Penalty. Any person who practices cosmetology, maintains a school or a beauty shop, or acts in any capacity wherein a [certificate] license is required, without a [certificate] license 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 a separate offense."

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved June 7, 1989.)