

House Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 99

HOUSE BILL 2440

AN ACT

AMENDING SECTIONS 32-503, 32-506, 32-573 AND 32-574, ARIZONA REVISED
STATUTES; RELATING TO COSMETOLOGY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 32-503, Arizona Revised Statutes, is amended to
3 read:
4 32-503. Organization; meetings; personnel; compensation
5 A. The board shall annually elect a chairman, vice-chairman and
6 secretary-treasurer from among its membership.
7 B. The board shall hold at least one regular meeting monthly and may
8 hold other meetings at times and places it designates.
9 C. The board may employ the following personnel as it deems necessary
10 to carry out the purposes of this chapter and designate their duties:
11 1. An executive director who shall have been a licensed cosmetologist
12 for at least one of the five years immediately preceding employment.
13 2. A supervisor of examinations who is an instructor licensed pursuant
14 to this chapter and has worked at least two of the five years immediately
15 preceding employment as an instructor in a school licensed pursuant to this
16 chapter.
17 3. Examiners who shall not be employed as instructors in any school
18 licensed pursuant to this chapter.
19 4. PERSONS TO PROVIDE INVESTIGATIVE, PROFESSIONAL AND CLERICAL
20 ASSISTANCE AS THE BOARD DEEMS NECESSARY AND MAY HIRE CONSULTANTS TO ASSIST
21 THE BOARD IN THE PERFORMANCE OF ITS DUTIES.
22 ~~4-~~ 5. Other permanent or temporary personnel.
23 D. Members of the board are eligible to receive compensation as
24 determined pursuant to section 38-611 for each day of actual service in the
25 business of the board. The board shall compensate its executive director and
26 other permanent and temporary personnel as determined pursuant to section
27 38-611.
28 Sec. 2. Section 32-506, Arizona Revised Statutes, is amended to read:
29 32-506. Nonapplicability of chapter
30 This chapter does not apply to the following persons while in the
31 proper discharge of their professional duties:
32 1. Practices done for the treatment of physical or mental ailments or
33 disease by medical practitioners licensed pursuant to this title.
34 2. Commissioned physicians and surgeons serving in the armed forces of
35 the United States or other federal agencies.
36 3. Persons licensed pursuant to chapter 3 or 12 of this title.
37 4. Students attending schools licensed pursuant to this chapter while
38 they are on school premises during school hours.
39 5. Persons employed by theatrical groups who apply makeup, oils and
40 cosmetics.
41 6. Persons who sell makeup, oils and cosmetics and who apply such
42 products during the process of selling such products.
43 7. Shampoo assistants who shampoo hair under the direction of a
44 cosmetologist licensed pursuant to this chapter.

1 8. Services performed by and for persons in the custody of the state
2 department of corrections.

3 9. Persons who apply makeup, oils and cosmetics to patients in a
4 hospital, nursing home or ~~supervisory care home~~ RESIDENTIAL CARE INSTITUTION
5 with the consent of the patient and the hospital, nursing home or ~~supervisory~~
6 ~~care home~~ RESIDENTIAL CARE INSTITUTION.

7 10. Persons who provide a service that results in tension on hair
8 strands or roots by twisting, wrapping, weaving, extending, locking or
9 braiding, if the service does not include the application of dyes, reactive
10 chemicals or other preparations to alter the color of the hair or to
11 straighten, curl or alter the structure of the hair.

12 11. PERSONS WHO PROVIDE TANNING SERVICES BY MEANS OF AIR BRUSHING,
13 TANNING BEDS OR SPRAY TANNING.

14 Sec. 3. Section 32-573, Arizona Revised Statutes, is amended to read:
15 32-573. Procedure for disciplinary action; appeal

16 A. The board on its own motion may investigate any information ~~which~~
17 THAT appears to show the existence of any of the causes set forth in section
18 32-572. The board shall investigate the report of any person ~~which~~ THAT
19 appears to show the existence of any of the causes set forth in section
20 32-572. A person who reports pursuant to this section and who provides the
21 information in good faith is not subject to liability for civil damages as a
22 result.

23 B. If, after completing its investigation, the board finds that the
24 evidence is not of sufficient seriousness to merit direct action against a
25 license, it may take either of the following actions:

26 1. Dismiss if, in the opinion of the board, the evidence is without
27 merit.

28 2. File a letter of concern if, in the opinion of the board, while
29 there is insufficient evidence to support direct action against the license
30 there is sufficient evidence for the board to notify the licensee that
31 continuation of the activities ~~which~~ THAT led to the information or report
32 being made to the board may result in action against the licensee's license.

33 C. If, in the opinion of the board, it appears the information or
34 report is or may be true, the board shall request an informal interview with
35 the licensee concerned. The interview shall be requested by the board in
36 writing, stating the reasons for the interview and setting a date not less
37 than ten days from the date of the notice for conducting the interview.

38 D. If, after an informal interview, the board finds that the evidence
39 warrants suspension or revocation of a license issued pursuant to this
40 chapter, imposition of a civil penalty or public reproof or if the licensee
41 under investigation refuses to attend the informal interview, a complaint
42 shall be issued and formal proceedings shall be initiated. All proceedings
43 pursuant to this subsection shall be conducted in accordance with title 41,
44 chapter 6, article 10.

1 E. A licensee who has been notified pursuant to subsection D of this
2 section of charges pending against the licensee shall file with the board an
3 answer in writing to the charges not more than thirty days after the licensee
4 receives the complaint. If the licensee fails to answer in writing within
5 this time, it is deemed an admission by the licensee of the acts charged in
6 the complaint and the board may take disciplinary action allowed by this
7 chapter without a hearing.

8 F. If the board finds that the evidence is not of sufficient
9 seriousness to merit suspension or revocation of a license issued pursuant to
10 this chapter, imposition of a civil penalty or public reproof it may take the
11 following actions:

12 1. Dismiss if, in the opinion of the board, the evidence is without
13 merit.

14 2. File a letter of concern if, in the opinion of the board, while
15 there is insufficient evidence to support direct action against the license
16 there is sufficient evidence for the board to notify the licensee that
17 continuation of the activities which led to the information or report being
18 made to the board may result in action against the licensee's license.

19 3. Impose probation requirements.

20 G. If a licensee violates this chapter or a rule adopted pursuant to
21 this chapter, the board may assess the licensee with the board's reasonable
22 costs and expenses, INCLUDING ATTORNEY FEES, incurred in conducting the
23 investigation and administrative hearing. All monies collected pursuant to
24 this subsection shall be deposited, pursuant to sections 35-146 and 35-147,
25 in a separate account in the board of cosmetology fund established by section
26 32-505. The board may only use these monies to defray its expenses in
27 connection with an investigation and an RELATED TRAINING AND EDUCATION,
28 DISCIPLINARY INVESTIGATIONS AND ALL COSTS RELATED TO administrative hearing
29 HEARINGS. Notwithstanding section 35-143.01 the separate account monies may
30 be spent without legislative appropriation.

31 H. Except as provided in section 41-1092.08, subsection H, final
32 decisions of the board are subject to judicial review pursuant to title 12,
33 chapter 7, article 6.

34 Sec. 4. Section 32-574, Arizona Revised Statutes, is amended to read:
35 32-574. Unlawful acts; violation; classification

36 A. A person shall not:

37 1. Perform or attempt to perform cosmetology, aesthetics or nail
38 technology without a license in that category issued pursuant to this
39 chapter, or practice in a category in which the person does not hold a
40 license.

41 2. Operate a salon unless it is at all times under the direct
42 supervision and management of a person who is licensed pursuant to this
43 chapter as a cosmetologist, aesthetician, nail technician, or instructor and
44 who is working as a licensee in the salon.

- 1 3. Display a sign or in any way advertise or hold oneself out as a
2 cosmetologist, aesthetician or nail technician or as being engaged in the
3 practice or business of cosmetology, aesthetics or nail technology without
4 being licensed pursuant to this chapter.
- 5 4. Knowingly make a false statement on an application for a license
6 pursuant to this chapter.
- 7 5. Permit an employee or another person under the person's supervision
8 or control to perform cosmetology, aesthetics or nail technology without a
9 license issued pursuant to this chapter.
- 10 6. Practice or attempt to practice cosmetology, aesthetics or nail
11 technology in any place other than in a salon licensed pursuant to this
12 chapter unless the person is requested by a customer to go to a place other
13 than a salon licensed pursuant to this chapter and is sent to the customer
14 from the salon, EXCEPT THAT A PERSON WHO IS LICENSED PURSUANT TO THIS CHAPTER
15 MAY PRACTICE, WITHOUT THE SALON'S REQUEST, COSMETOLOGY, AESTHETICS OR NAIL
16 TECHNOLOGY IN A HEALTH CARE FACILITY, HOSPITAL, RESIDENTIAL CARE INSTITUTION,
17 NURSING HOME OR RESIDENCE OF A PERSON REQUIRING HOME CARE BECAUSE OF AN
18 ILLNESS, INFIRMITY OR DISABILITY.
- 19 7. Obtain or attempt to obtain a license by the use of money other
20 than the prescribed fees or any other thing of value or by fraudulent
21 misrepresentation.
- 22 8. Provide any service to a person having a visible disease,
23 pediculosis or open sores suggesting a communicable disease until the person
24 furnishes a statement signed by a physician licensed pursuant to chapter 13
25 or 17 of this title stating that the disease or condition is not in an
26 infectious, contagious or communicable stage.
- 27 9. Operate a salon or school without being licensed pursuant to this
28 chapter.
- 29 10. Violate any provision of this chapter or any rule adopted pursuant
30 to this chapter.
- 31 11. Ignore or fail to comply with a board subpoena.
- 32 12. Use the title of "aesthetician", "cosmetologist" or "nail
33 technician" or any other title or term likely to be confused with
34 "aesthetician", "cosmetologist" or "nail technician" in any advertisement,
35 statement or publication unless that person is licensed pursuant to this
36 chapter.
- 37 B. An instructor shall not render cosmetology, aesthetics or nail
38 technology services in a school unless the services are directly incidental
39 to the instruction of students.
- 40 C. A person who violates this section is guilty of a class 1
41 misdemeanor.

APPROVED BY THE GOVERNOR MARCH 27, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 27, 2012.

Passed the House February 27, 2012

Passed the Senate March 21, 2012

by the following vote: 57 Ayes,

by the following vote: 26 Ayes,

0 Nays, 2 Not Voting
1 vacant

0 Nays, 4 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill received by the Secretary of State

this _____ day of _____, 20____

at _____ o'clock _____ M.

Secretary of State

H.B. 2440

Passed the House _____, 20____

Passed the Senate _____, 20____

by the following vote: _____ Ayes,

by the following vote: _____ Ayes,

_____ Nays, _____ Not Voting

_____ Nays, _____ Not Voting

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

26 day of March, 2012

at 3:30 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 27th day of

March

at 3:30 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 27th day of March, 2012

at 5:12 o'clock P M.

[Signature]
Secretary of State

H.B. 2440