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HOUSE BILL NO. 2510**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Health, Welfare, and Institutions)

(Patron Prior to Substitute—Delegate Welch)

House Amendments in [] - February 3, 2005

A BILL to amend and reenact §§ 54.1-700 through 54.1-703 and 54.1-704.1 through 54.1-706 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-703.3, relating to the Department of Professional and Occupational Regulation; Board for Barbers and Cosmetology; regulation of estheticians.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-700 through 54.1-703 and 54.1-704.1 through 54.1-706 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-703.3 as follows:

§ 54.1-700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Barber" means any person who shaves, shapes or trims the beard; cuts, singes, shampoos or dyes the hair or applies lotions thereto; applies, treats or massages the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays or other preparations in connection with shaving, cutting or trimming the hair or beard, and practices barbering for compensation and when such services are not performed for the treatment of disease.

"Barbering" means any one or any combination of the following acts, when done on the human body for compensation and not for the treatment of disease, shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair or applying lotions thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays, or other preparations in connection with shaving, cutting or trimming the hair or a beard. The term "barbering" shall not apply to the acts described hereinabove when performed by any person in his home if such service is not offered to the public.

"Barber instructor" means any person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of barbering.

"Barbershop" means any establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers.

"Board" means the Board for Barbers and Cosmetology.

"Body-piercer" means any person who for remuneration penetrates the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing" means the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing salon" means any place in which a fee is charged for the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing school" means a place or establishment licensed by the Board to accept and train students in body-piercing.

"Braiding salon" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein hair braiding is offered or practiced on a regular basis for compensation.

"Braiding school" means a place or establishment licensed by the Board to accept and train students and which offers a hair braiding curriculum approved by the Board.

"Cosmetologist" means any person who administers cosmetic treatments; manicures or pedicures the nails of any person; arranges, braids, dresses, curls, waves, cleanses, cuts, shapes, singes, waxes, tweezes, shaves, bleaches, colors, relaxes, straightens, or performs similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances unless such acts as adjusting, combing, or brushing prestyled wigs or hairpieces do not alter the prestyled nature of the wig or hairpiece, and practices cosmetology for compensation.

"Cosmetology" includes, but is not limited to, the following practices: administering cosmetic treatments; manicuring or pedicuring the nails of any person; arranging, braiding, dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, or similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances, but shall not include such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece.

"Cosmetology instructor" means a person who has been certified by the Board as having completed

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60 an approved curriculum and who meets the competency standards of the Board as an instructor of
61 cosmetology.

62 "Cosmetology salon" means any commercial establishment, residence, vehicle or other establishment,
63 place or event wherein cosmetology is offered or practiced on a regular basis for compensation and may
64 include the training of apprentices under regulations of the Board.

65 "Esthetician" means a person who engages in the practice of esthetics for compensation.

66 "Esthetics" includes, but is not limited to, the following practices of administering cosmetic
67 treatments to enhance or improve the appearance of the skin: cleansing, toning, performing effleurage
68 or other related movements, stimulating, exfoliating, or performing any other similar procedure on the
69 skin of the human body or scalp by means of cosmetic preparations, treatments, any nonlaser device,
70 electrical, mechanical, or manual, for care of the skin; applying make-up or eyelashes to any person,
71 tinting or perming eyelashes and eyebrows, and lightening hair on the body except the scalp; and
72 removing unwanted hair from the body of any person by the use of tweezing, [electrolysis,] chemical,
73 or mechanical means. However, "esthetics" is not a healing art and shall not include any practice,
74 activity, or treatment that constitutes the practice of medicine, osteopathic medicine, or chiropractic. The
75 terms "healing arts," "practice of medicine," "practice of osteopathic medicine," and "practice of
76 chiropractic" shall mean the same as those terms are defined in § 54.1-2900.

77 "Esthetics instructor" means a licensed esthetician who has been certified by the Board as having
78 completed an approved curriculum and who meets the competency standards of the Board as an
79 instructor of esthetics.

80 "Esthetics spa" means any commercial establishment, residence, vehicle, or other establishment,
81 place, or event wherein esthetics is offered or practiced on a regular basis for compensation under
82 regulations of the Board.

83 "Hair braider" means a person who engages in the practice of hair braiding on a regular basis for
84 compensation.

85 "Hair braiding" means the braiding, twisting, wrapping, weaving, extending, or locking of natural
86 human hair by hand or mechanical device, provided that the service does not include hair cutting or the
87 application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to
88 straighten, curl, or alter the structure of the hair.

89 "Master esthetician" means a licensed esthetician who, in addition to the practice of esthetics, offers
90 to the public for compensation, without the use of laser technology, lymphatic drainage, chemical
91 exfoliation, or microdermabrasion, and who has met such additional requirements as determined by the
92 Board to practice lymphatic drainage, chemical exfoliation with products other than Schedules II
93 through VI controlled substances as defined in the Drug Control Act (§ 54.1-3400 et seq.), and
94 microdermabrasion of the epidermis.

95 "Nail care" means manicuring or pedicuring natural nails or performing artificial nail services.

96 "Nail salon" means any commercial establishment, residence, vehicle or other establishment, place or
97 event wherein nail care is offered or practiced on a regular basis for compensation and may include the
98 training of apprentices under regulations of the Board.

99 "Nail school" means a place or establishment licensed by the board to accept and train students in
100 nail care.

101 "Nail technician" means any person who for compensation manicures or pedicures natural nails, or
102 who performs artificial nail services for compensation, or any combination thereof.

103 "Nail technician instructor" means a licensed nail technician who has been certified by the Board as
104 having completed an approved curriculum and who meets the competency standards of the Board as an
105 instructor of nail care.

106 "Physical (wax) depilatory" means the wax depilatory product or substance used to remove
107 superfluous hair.

108 "School of cosmetology" means a place or establishment licensed by the Board to accept and train
109 students and which offers a cosmetology curriculum approved by the Board.

110 "School of esthetics" means a place or establishment licensed by the Board to accept and train
111 students and which offers an esthetics curriculum approved by the Board.

112 "Tattoo parlor" means any place in which tattooing is offered or practiced.

113 "Tattoo school" means a place or establishment licensed by the Board to accept and train students in
114 tattooing.

115 "Tattooer" means any person who for remuneration practices tattooing.

116 "Tattooing" means the placing of designs, letters, scrolls, figures, symbols or any other marks upon
117 or under the skin of any person with ink or any other substance, resulting in the permanent coloration of
118 the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other
119 instrument designed to touch or puncture the skin.

120 "Wax technician" means any person licensed by the Board who removes hair from the hair follicle
121 using a physical (wax) depilatory or by tweezing.

"Wax technician instructor" means a licensed wax technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of waxing.

"Waxing" means the temporary removal of superfluous hair from the hair follicle on any area of the human body through the use of a physical (wax) depilatory or by tweezing.

"Waxing salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein waxing is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Waxing school" means a place or establishment licensed by the Board to accept and train students in waxing.

§ 54.1-701. Exemptions.

The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of the Commonwealth to practice medicine and surgery or osteopathy or chiropractic;

2. Registered nurses licensed to practice in the Commonwealth;

3. Persons employed in state or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of the mentally ill or mentally deficient or for care and treatment of geriatric patients, as barbers, cosmetologists, wax technicians, nail technicians, hair braiders, *estheticians*, barber instructors, cosmetology instructors, wax technician instructors ~~or~~, nail technician instructors, *or esthetics instructors* who practice only on inmates of or patients in such sanatoria or institutions;

4. Persons licensed as funeral directors or embalmers in the Commonwealth;

5. Gratuitous services as a barber, nail technician, cosmetologist, wax technician, hair braider, tattooer, ~~or~~ body-piercer, *or esthetician*;

6. Students enrolled in an approved school taking a course in barbering, nail care, cosmetology, waxing, hair braiding, tattooing, ~~or~~ body-piercing, *or esthetics*;

7. Persons working in a cosmetology salon whose duties are expressly confined to hair braiding or the shampooing and cleansing of human hair under the direct supervision of a cosmetologist or barber;

8. Apprentices serving in a barbershop, nail salon, waxing salon, cosmetology salon, ~~or~~ hair braiding salon, *or esthetics spa* licensed by the Board in accordance with the Board's regulations; ~~and~~

9. Schools of barbering, nail care, waxing, cosmetology, or hair braiding in public schools; *and*

10. *Persons whose activities are confined solely to applying make-up, including such activities that are ancillary to applying make-up.*

§ 54.1-702. Board for Barbers and Cosmetology; membership; officers; quorum.

A. The Board for Barbers and Cosmetology shall be composed of ~~eight~~ 10 members, ~~of whom as follows:~~ two members shall be licensed barbers, one of whom may be an owner or operator of a barber school; two members shall be licensed cosmetologists, at least one of whom shall be a salon owner and one of whom may be an owner or operator of a cosmetology school; ~~and~~ one member shall be a licensed nail technician or a licensed cosmetologist engaged primarily in the practice of nail care, each of whom shall have been licensed in their respective professions for at least three years immediately prior to appointment; one member ~~who~~ shall be either a licensed tattooer or a licensed body-piercer; *two members shall be licensed estheticians, at least one of whom shall be an esthetics salon owner and one of whom may be an owner, operator, or designated representative of a licensed esthetics school;* and two citizen members. The terms of Board members shall be four years. No member shall serve for more than two full successive terms. The Board shall elect a chairman and a vice-chairman. A majority of the Board shall constitute a quorum.

B. *The Governor shall appoint to the Board two estheticians who have practiced as an esthetician for at least five consecutive years immediately prior to appointment, effective July 1, 2005. The esthetician members shall not vote on any matters before the Board, except matters related to esthetics, until July 1, 2007.*

Of the esthetician members initially appointed to the Board, one shall be appointed for a term of two years. Thereafter, all such appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms.

§ 54.1-703. License required.

No person shall offer to engage in or engage in barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~or~~ body-piercing, *or esthetics* without a valid license issued by the Board, except as provided in § 54.1-701.

§ 54.1-703.3. Waiver of examination; estheticians.

The Board shall waive the examination requirements for licensure as an esthetician or master esthetician for any individual who (i) makes application for licensure between July 1, 2007, and July 1, 2008; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of

183 *the following conditions:*

184 1. *Has at least three years of documented work experience as an esthetician or a master esthetician*
185 *that is deemed satisfactory by the Board;*

186 2. *Has completed a training program that is deemed satisfactory by the Board; or*

187 3. *Holds an unexpired certificate of registration, certification, or license as an esthetician or a*
188 *master esthetician issued to him on the basis of comparable requirements by a proper authority of a*
189 *state, territory, or possession of the United States, or the District of Columbia.*

190 § 54.1-704.1. License required for barbershop, cosmetology salon, nail care salon, waxing salon, hair
191 braiding salon, tattoo parlor, body-piercing salon, and esthetics spa.

192 No individual or entity shall operate a barbershop, cosmetology salon, nail care salon, waxing salon,
193 hair braiding salon, tattoo parlor, ~~or~~ body-piercing salon, *or esthetics spa* without a valid license issued
194 by the Board.

195 The provisions of this section shall not apply to a licensed barber, cosmetologist, nail technician,
196 waxing technician, tattooer, ~~or~~ body-piercer, *or esthetician* who does not have an ownership interest in a
197 licensed barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor,
198 ~~or~~ body-piercing salon, *or esthetics spa* in which he is employed.

199 § 54.1-704.2. License required for schools of barbering, cosmetology, nail care, waxing, hair braiding,
200 tattooing, body-piercing, or esthetics.

201 Except as provided in § 54.1-701, no person, firm or corporation shall operate or attempt to operate a
202 school of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~or~~ body-piercing, *or*
203 *esthetics* unless licensed by the Board pursuant to its regulations.

204 § 54.1-705. Inspections.

205 A. Inspectors and sanitarians of the State Department of Health, or an affiliated local health
206 department, may inspect each barbershop, cosmetology salon, waxing salon, nail care salon, hair
207 braiding salon, tattoo parlor, ~~and~~ body-piercing salon, *and esthetics spa* in the Commonwealth regularly.
208 Any infractions shall be immediately reported to the Health Department and the Director of the
209 Department of Professional and Occupational Regulation for disciplinary action.

210 B. The Board may inspect barbershops, barber schools, cosmetology salons and schools, waxing
211 salons and schools, nail care salons and schools, hair braiding salons and schools, tattoo parlors and
212 schools, ~~and~~ body-piercing salons and schools, *and esthetics spas and schools* for compliance with
213 regulations promulgated by the Board.

214 C. The Board shall specify procedures for enforcement of compliance with the disease control and
215 disclosure requirements of § 18.2-371.3, including unannounced inspections by appropriate personnel.

216 D. The Board or the Virginia Department of Health, or an affiliated local health department, may
217 regulate the sanitary condition of the personnel, equipment and premises of tattoo parlors and
218 body-piercing salons.

219 § 54.1-706. Different requirements for licensure.

220 The Board shall have the discretion to impose different requirements for licensure for the practice of
221 barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~and~~ body-piercing, *and esthetics*.

222 2. **That the provisions of this act shall become effective on July 1, 2007, except that § 54.1-702 of**
223 **this act shall become effective on July 1, 2005.**

224 3. **That the Board for Barbers and Cosmetology shall adopt final regulations to implement the**
225 **provisions of this act to be effective on or before July 1, 2007.**