

Senate Bill No. 1957

Passed the Senate August 30, 2002

Secretary of the Senate

Passed the Assembly August 29, 2002

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2002, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 7301, 7313, 7335, 7353, 7362, 7400, 7403, 7408, 7410, 7411, 7424, and 7426.5 of, to add Section 7403.5 to, and to repeal Section 7315 of, the Business and Professions Code, relating to barbering and cosmetology.

LEGISLATIVE COUNSEL'S DIGEST

SB 1957, Polanco. Barbering and cosmetology.

The Barbering and Cosmetology Act establishes the Bureau of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law requires the licensure of a person by the bureau to practice barbering, cosmetology, or electrolysis. Existing law provides that an apprentice shall not work more than 3 months after completing the required training without applying for and taking the examination for licensure.

The bill would delete the provision that would allow an apprentice to continue to work after 3 months if the apprentice applies and takes the examination.

Existing law requires the bureau to inspect an establishment within 90 days after the bureau issues an establishment license.

The bill would also authorize the bureau to inspect the premises prior to the issuance of the license.

Existing law requires a licensed barber, cosmetologist, or electrologist to notify the bureau within 30 days of a change of address.

The bill would authorize a licensee to provide the bureau with an alternate address if the bureau's address of record is the licensee's residence address.

Existing law authorizes an administrative law judge to order a person to pay the bureau reasonable costs for the investigation and adjudication in a proceeding to revoke, suspend, or deny a license.

The bill would provide that a person who fails to pay costs would not be issued a license or allowed to renew a license until the costs are paid.

The bill would become operative only if SB 1050 of the 2001–02 Regular Session is enacted, and is effective on or before January 1, 2003.



The people of the State of California do enact as follows:

SECTION 1. Section 7301 of the Business and Professions Code is amended to read:

7301. This chapter constitutes the chapter on hair, skin, nail care, and electrolysis and may be known and cited as the Barbering and Cosmetology Act.

SEC. 2. Section 7313 of the Business and Professions Code is amended to read:

7313. (a) (1) To ensure compliance with the laws and regulations of this chapter, the bureau chief and authorized representatives shall, except as provided by Section 159.5, have access to, and shall inspect, any establishment or mobile unit during business hours or at any time in which barbering, cosmetology, or electrolysis are being performed. It is the intent of the Legislature that inspections be conducted on Saturdays and Sundays as well as weekdays, if collective bargaining agreements and civil service provisions permit.

(2) The bureau shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. The bureau or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement. The bureau shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.

(b) To ensure compliance with health and safety requirements adopted by the bureau, the bureau chief and authorized representatives shall, except as provided in Section 159.5, have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. Citations shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. A copy of the citation shall be provided to the Bureau for Private Postsecondary and Vocational Education.



SEC. 3. Section 7315 of the Business and Professions Code is repealed.

SEC. 4. Section 7335 of the Business and Professions Code is amended to read:

7335. (a) The license of an apprentice shall expire two years from the date the license was issued, or on the date the apprentice is issued a license following the license examination, or if the apprentice fails the license examination twice, on the date the results of the second examination are issued, whichever occurs first.

(b) An apprentice holding a valid, unexpired license may work not more than three months after completing the required training.

(c) The bureau may extend the two-year or three-month period described in subdivisions (a) and (b) upon a showing of good cause which shall include, but not be limited to, delays in applying for and taking the examination caused by the illness of, or accident to, the apprentice, or service in the Armed Forces of the United States.

SEC. 5. Section 7353 of the Business and Professions Code is amended to read:

7353. (a) (1) Within 90 days after issuance of the establishment license, the bureau or its agents or assistants shall inspect the establishment for compliance with the applicable requirements of this chapter and the applicable rules and regulations of the bureau adopted pursuant to this chapter.

(2) The bureau may inspect the establishment for which a license application has been made prior to the issuance of the license.

(b) The bureau shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments.

(c) The bureau or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement.

(d) The bureau shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years



allocated to those inspection and investigation purposes to other purposes.

SEC. 6. Section 7362 of the Business and Professions Code is amended to read:

7362. (a) A school approved by the bureau is one which is licensed by the Bureau for Private Postsecondary and Vocational Education, or a public school in this state, and provides a course of instruction approved by the bureau.

(b) The bureau shall determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum hours of technical instruction and minimum number of practical operations for each subject, and shall determine how much training is required before a student may begin performing services on paying patrons.

SEC. 7. Section 7400 of the Business and Professions Code is amended to read:

7400. Every licensee of the bureau, except establishments shall, within 30 days after a change of address, notify the bureau of the new address, and, upon receipt of the notification, the bureau shall make the necessary changes in the register. If the address of record is the licensee's residence address, the licensee may provide the bureau with an alternate address to disclose to the public.

SEC. 8. Section 7403 of the Business and Professions Code is amended to read:

7403. (a) The bureau may revoke, suspend, or deny at any time any license required by this chapter on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the bureau shall have all the powers granted therein.

(b) In any case in which the administrative law judge recommends that the bureau revoke, suspend or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee to pay the bureau the reasonable costs of the investigation and adjudication of the case. For purposes of this section, "costs" include charges by the bureau for investigating the case, charges incurred by the office of the Attorney General for investigating and presenting the case, and charges incurred by the



Office of Administrative Hearings for hearing the case and issuing a proposed decision.

(c) The costs to be assessed shall be fixed by the administrative law judge and shall not, in any event, be increased by the bureau. When the bureau does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(d) Persons who fail to pay costs shall not be issued a license or allowed to renew a license issued to them until all costs are paid.

(e) The bureau may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the bureau may have as to any licensee directed to pay costs.

(f) In any judicial action for the recovery of costs, proof of the bureau's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the bureau's contingent fund as a scheduled reimbursement in the fiscal year in which the costs are actually recovered.

SEC. 9. Section 7403.5 is added to the Business and Professions Code, to read:

7403.5. (a) In addition to the authority provided by Sections 494 and 7403, the bureau chief, in his or her discretion, may upon written notice immediately close any establishment which, upon completion of an inspection, is found to have health and safety violations of such a severe nature as to pose an immediate threat to public health and safety.

(b) The bureau chief shall issue a written notice of suspension of the establishment license including the grounds therefor and a notice of closure. The notice of closure shall be posted at the establishment so as to be clearly visible to the general public and to patrons.

(c) Upon issuance of the written notice of suspension of the establishment license, the establishment shall immediately close to the general public and to patrons and shall discontinue all operations until the suspension has been vacated by the bureau chief, the suspension expires, is superseded by an order issued



under the authority of Section 494, or until the establishment no longer operates under this chapter.

(d) (1) Before issuing a suspension order under this section, the bureau chief shall, if practical, give the establishment notice and an opportunity to be heard. If no hearing is provided prior to the issuance of the suspension order, the establishment may request one after the suspension has been issued.

(2) Notice and hearing under this section may be oral or written, including notice and hearing by telephone, facsimile transmission, or other electronic means as the circumstances permit.

(e) Upon correction of violations the establishment may request that the written notice of suspension be terminated. The bureau chief shall conduct an inspection within 48 hours to determine whether the written notice of suspension may be terminated. If the written notice of suspension is not terminated upon inspection for failure of the establishment to correct violations, a charge of one hundred dollars (\$100) shall be imposed for each subsequent inspection under this section.

(f) The notice of suspension shall remain posted until removed by the bureau chief, but shall be in effect for no longer than 30 days. Removal of the notice of suspension by any person other than the bureau chief or designated representative, or the refusal of an establishment to close upon issuance of the written notice of suspension of the establishment license is a violation of this chapter and may result in any sanctions authorized by this chapter.

SEC. 10. Section 7408 of the Business and Professions Code is amended to read:

7408. The bureau, through its duly authorized representatives, shall issue a citation with respect to any violation for which an administrative fine may be assessed. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the specific provision alleged to have been violated. The administrative fine, if any, shall attach at the time the citation is written. The citation shall include an order to correct any condition or violation which lends itself to correction, as determined by the bureau pursuant to Section 7409.

SEC. 11. Section 7410 of the Business and Professions Code is amended to read:



7410. Persons to whom a citation is issued and an administrative fine assessed may appeal the citation to a disciplinary review committee established by regulation by the director. All appeals shall be submitted in writing to the bureau within 30 days of the date the citation was issued. Appeals of citations that are not submitted in a timely manner shall be rejected.

After a timely appeal has been filed with the bureau, the administrative fine, if any, shall be stayed until the appeal has been adjudicated.

Persons appealing a citation, or their appointed representatives, shall appear in person before the disciplinary review committee. The appellant may present written or oral evidence relating to the facts and circumstances relating to the citation that was issued. Following an appeal before a disciplinary review committee, the disciplinary review committee shall issue a decision, based on findings of fact, which may affirm, reduce, dismiss, or alter any charges filed in the citation. In no event shall the administrative fine be increased. The appellant shall be provided with a written copy of the disciplinary review committee's decision relating to the appeal.

SEC. 12. Section 7411 of the Business and Professions Code is amended to read:

7411. Persons receiving a decision from a disciplinary review committee may appeal the decision by filing a written request, within 30 days after receipt of the decision, to the bureau chief. Following a hearing to appeal the decision of a disciplinary review committee, the director shall thereafter issue a decision, based on findings of fact, affirming, modifying or vacating the citation or penalty, or directing other appropriate relief. In no event shall the administrative fine be increased. The hearing to contest the decision of a disciplinary review committee shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all powers granted therein.

SEC. 13. Section 7424 of the Business and Professions Code is amended to read:

7424. The amounts of the fees payable under this chapter relating to licenses to operate an establishment are as follows:



(a) The application and initial license fee shall be not more than eighty dollars (\$80).

(b) The renewal fee shall be not more than forty dollars (\$40).

(c) The delinquency fee is 50 percent of the renewal fee in effect on the date of renewal.

(d) Any application and initial license fee for the change of ownership of an existing establishment may be established by the bureau in an amount less than the fee prescribed for a new establishment, but sufficient to cover the costs of processing the application and issuing the license.

SEC. 14. Section 7426.5 of the Business and Professions Code is amended to read:

7426.5. The bureau may, by regulation, divide the fees payable under this chapter relating to licenses into separate categories based upon processing functions, such as application review, examination administration, or license issuance, provided that the combined fees for those processing functions do not exceed the maximum amount prescribed by the license category.

The bureau may, by regulation, establish procedures whereby some or all of a fee submitted in connection with an application for licensure would be forfeited by an applicant who has withdrawn his or her application, fails to appear for an examination, or is required to retake an examination.

SEC. 15. This act shall become operative only if SB 1050 of the 2001–02 Regular Session is enacted and becomes effective on or before January 1, 2003.



Approved _____, 2002

Governor

