

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 181

Introduced by Assembly Member Bonilla
(Principal coauthor: Senator Hill)

January 26, 2015

An act to amend Sections 7303, 7303.2, 7313, 7395.1, 7401, 7404, and 7407 of, to add Sections 7314.3 and 7402.5 to, and to repeal ~~Section~~ *Sections 7304 and 7308* of, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 181, as amended, Bonilla. Professions and vocations: barbering and cosmetology.

The Barbering and Cosmetology Act provides for the licensure and regulation, including inspection, of barbers and cosmetologists by the State Board of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law requires that the board consist of certain members, and authorizes the board to appoint an executive officer. Under existing law, these provisions are repealed on January 1, 2016.

This bill would extend the operation of ~~these provisions until the board and the executive officer~~ to January 1, 2020.

Existing law also requires the board to conduct specified reviews and reports by various dates in the past.

This bill would delete those requirements and would require the board, no later than November 1, 2018, to conduct specified reviews regarding

training and examinations and report its findings to specified committees of the Legislature. The bill would require the board to establish a protocol for inspecting establishments when an inspector has difficulty understanding or communicating with the owner, manager, or employees of the establishment due to language barriers, and to evaluate the protocol every two years to ensure that it remains current. The bill would require the board to establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board. The bill would also require the board to issue regulations for a personal service permit, as defined, that, among other things, may require an applicant for a personal service permit to have proof of liability insurance, and would authorize fees for the issuance and renewal of a personal service permit. The bill would require the board to report to the Legislature, on or before July 1, 2017, as specified, regarding the regulatory process and the issuance of personal service permits. The bill would also make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 7303 of the Business and Professions
2 Code is amended to read:
3 7303. (a) Notwithstanding Article 8 (commencing with Section
4 9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the
5 Government Code, there is in the Department of Consumer Affairs
6 the State Board of Barbering and Cosmetology in which the
7 administration of this chapter is vested.
8 (b) The board shall consist of nine members. Five members
9 shall be public members, and four members shall represent the
10 professions. The Governor shall appoint three of the public
11 members and the four professional members. The Senate
12 Committee on Rules and the Speaker of the Assembly shall each
13 appoint one public member. Members of the board shall be
14 appointed for a term of four years, except that of the members
15 appointed by the Governor, two of the public members and two
16 of the professions members shall be appointed for an initial term
17 of two years. No board member may serve longer than two
18 consecutive terms.

1 (c) The board may appoint an executive officer who is exempt
2 from civil service. The executive officer shall exercise the powers
3 and perform the duties delegated by the board and vested in him
4 or her by this chapter. The appointment of the executive officer is
5 subject to the approval of the director. In the event that a newly
6 authorized board replaces an existing or previous bureau, the
7 director may appoint an interim executive officer for the board
8 who shall serve temporarily until the new board appoints a
9 permanent executive officer.

10 (d) The executive officer shall provide examiners, inspectors,
11 and other personnel necessary to carry out the provisions of this
12 chapter.

13 (e) This section shall remain in effect only until January 1, 2020,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2020, deletes or extends that date.
16 Notwithstanding any other law, the repeal of this section renders
17 the board subject to review by the appropriate policy committees
18 of the Legislature.

19 SEC. 2. Section 7303.2 of the Business and Professions Code
20 is amended to read:

21 7303.2. The board shall conduct the following reviews, and
22 shall report its findings and recommendations to the Assembly
23 Committee on Business and Professions and the Senate Committee
24 on Business, Professions, and Economic Development no later
25 than November 1, 2018:

26 (a) The board, pursuant to Section ~~139~~ and under the oversight
27 ~~of the Office of Professional Examination Services of the~~
28 ~~department, 139~~, shall review the 1,600-hour training requirement
29 for cosmetologists, conduct an occupational analysis of the
30 cosmetology profession in California, and conduct a review of the
31 national written examination for cosmetologists and of the
32 ~~California~~ practical examination, in order to evaluate whether both
33 examinations assess critical competencies for California
34 cosmetologists and meet professional testing standards.

35 (b) The board shall review the Spanish language examination
36 ~~and curriculum requirements to determine~~ if, by January 1, 2016,
37 the pass rate for Spanish speakers did not increase to the average
38 pass rate for all other language examinations during the two-year
39 period prior to January 1, 2016.

1 *SEC. 3. Section 7304 of the Business and Professions Code is*
2 *repealed.*

3 ~~7304. The board shall be subject to review pursuant to Division~~
4 ~~1.2 (commencing with Section 473).~~

5 ~~SEC. 3.~~

6 *SEC. 4. Section 7308 of the Business and Professions Code is*
7 *repealed.*

8 ~~SEC. 4.~~

9 *SEC. 5. Section 7313 of the Business and Professions Code is*
10 *amended to read:*

11 7313. (a) (1) To ensure compliance with the laws and
12 regulations of this chapter, the board's executive officer and
13 authorized representatives shall, except as provided by Section
14 159.5, have access to, and shall inspect, any establishment or
15 mobile unit during business hours or at any time in which
16 barbering, cosmetology, or electrolysis are being performed. It is
17 the intent of the Legislature that inspections be conducted on
18 Saturdays and Sundays as well as weekdays, if collective
19 bargaining agreements and civil service provisions permit.

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

33 (b) To ensure compliance with health and safety requirements
34 adopted by the board, the executive officer and authorized
35 representatives shall, except as provided in Section 159.5, have
36 access to, and shall inspect the premises of, all schools in which
37 the practice of barbering, cosmetology, or electrolysis is performed
38 on the public. Notices of violation shall be issued to schools for
39 violations of regulations governing conditions related to the health
40 and safety of patrons. Each notice shall specify the section violated

1 and a timespan within which the violation must be corrected. A
2 copy of the notice of violation shall be provided to the Bureau for
3 Private Postsecondary Education.

4 (c) With prior written authorization from the board or its
5 executive officer, any member of the board may enter and visit,
6 in his or her capacity as a board member, any establishment, during
7 business hours or at any time when barbering, cosmetology, or
8 electrolysis is being performed. The visitation by a board member
9 shall be for the purpose of conducting official board business, but
10 shall not be used as a basis for any licensing disciplinary action
11 by the board.

12 (d) The board shall adopt a protocol for inspecting
13 establishments when an inspector has difficulty understanding or
14 communicating with the owner, manager, or employees of the
15 establishment due to language barriers. The board shall evaluate
16 the protocol every two years to ensure the protocol remains current.

17 ~~SEC. 5.~~

18 *SEC. 6.* Section 7314.3 is added to the Business and Professions
19 Code, to read:

20 7314.3. The board shall establish a Health and Safety Advisory
21 Committee to provide the board with advice and recommendations
22 on health and safety issues before the board.

23 ~~SEC. 6.~~

24 *SEC. 7.* Section 7395.1 of the Business and Professions Code
25 is amended to read:

26 7395.1. (a) A student who is enrolled in a school of
27 cosmetology approved by the Bureau for Private Postsecondary
28 Education in a course approved by the board may, upon completion
29 of a minimum of 60 percent of the clock hours required for
30 graduation in the course, work as an unpaid extern in a cosmetology
31 establishment participating in the educational program of the school
32 of cosmetology.

33 (b) A person working as an extern shall receive clock hour credit
34 toward graduation, but that credit shall not exceed eight hours per
35 week and shall not exceed 10 percent of the total clock hours
36 required for completion of the course.

37 (c) The externship program shall be conducted in cosmetology
38 establishments meeting all of the following criteria:

39 (1) The establishment is licensed by the board.

1 (2) The establishment has a minimum of four licensees working
2 at the establishment, including employees and owners or managers.

3 (3) All licensees at the establishment are in good standing with
4 the board.

5 (4) Licensees working at the establishment work for salaries or
6 commissions rather than on a space rental basis.

7 (5) No more than one extern shall work in an establishment for
8 every four licensees working in the establishment. No regularly
9 employed licensee shall be displaced or have his or her work hours
10 reduced or altered to accommodate the placement of an extern in
11 an establishment. Prior to placement of the extern, the
12 establishment shall agree in writing sent to the school and to all
13 affected licensees that no reduction or alteration of any licensee's
14 current work schedule shall occur. This shall not prevent a licensee
15 from voluntarily reducing or altering his or her work schedule.

16 (6) Externs shall wear conspicuous school identification at all
17 times while working in the establishment, and shall carry a school
18 laminated identification, that includes a picture, in a form approved
19 by the board.

20 ~~(d) (1) A school participating in the externship program shall~~
21 ~~provide the participating establishment and the extern with a~~
22 ~~syllabus containing applicable information specified in Section~~
23 ~~73880 of Title 5 of the California Code of Regulations. The extern,~~
24 ~~the school, and the establishment shall agree to the terms of and~~
25 ~~sign the syllabus prior to the extern beginning work at the~~
26 ~~establishment. No less than 90 percent of the responsibilities and~~
27 ~~duties of the extern shall consist of the acts included within the~~
28 ~~practice of cosmetology as defined in Section 7316.~~

29 (2) The establishment shall consult with the assigning school
30 regarding the extern's progress during the unpaid externship. The
31 owner or manager of the establishment shall monitor and report
32 on the student's progress to the school on a regular basis, with
33 assistance from supervising licensees.

34 (3) A participating school shall assess the extern's learning
35 outcome from the externship program. The school shall maintain
36 accurate records of the extern's educational experience in the
37 externship program and records that indicate how the extern's
38 learning outcome translates into course credit.

1 (e) Participation in an externship program made available by a
2 school shall be voluntary, may be terminated by the student at any
3 time, and shall not be a prerequisite for graduation.

4 (f) The cosmetology establishment that chooses to utilize the
5 extern is liable for the extern's general liability insurance, as well
6 as cosmetology malpractice liability insurance, and shall furnish
7 proof to the participating school that the establishment is covered
8 by both forms of liability insurance and that the extern is covered
9 under that insurance.

10 (g) (1) It is the purpose of the externship program authorized
11 by this section to provide students with skills, knowledge, and
12 attitudes necessary to acquire employment in the field for which
13 they are being trained, and to extend formalized classroom
14 instruction.

15 (2) Instruction shall be based on skills, knowledge, attitudes,
16 and performance levels in the area of cosmetology for which the
17 instruction is conducted.

18 (3) An extern may perform only acts listed within the definition
19 of the practice of cosmetology as provided in Section 7316, if a
20 licensee directly supervises those acts, except that an extern may
21 not use or apply chemical treatments unless the extern has received
22 appropriate training in application of those treatments from an
23 approved cosmetology school. An extern may work on a paying
24 client only in an assisting capacity and only with the direct and
25 immediate supervision of a licensee.

26 (4) The extern shall not perform any work in a manner that
27 would violate law.

28 ~~SEC. 7.~~

29 *SEC. 8.* Section 7401 of the Business and Professions Code is
30 amended to read:

31 7401. (a) An individual licensed pursuant to Section 7396
32 shall report to the board at the time of license renewal, his or her
33 practice status, designated as one of the following:

- 34 (1) Full-time practice in California.
35 (2) Full-time practice outside of California.
36 (3) Part-time practice in California.
37 (4) Not working in the industry.
38 (5) Retired.
39 (6) Other practice status, as may be further defined by the board.

(b) An individual licensed pursuant to Section 7396 shall, at the time of license renewal, identify himself or herself on the application as one of the following:

- (1) Employee.
- (2) Independent contractor or booth renter.
- (3) Salon owner.

(c) An individual licensed pursuant to Section 7347 shall report to the board at the time of license renewal, whether either of the following is applicable to him or her:

- (1) He or she has a booth renter operating in the establishment.
- (2) He or she has an independent contractor operating in the establishment.

~~SEC. 8.~~

SEC. 9. Section 7402.5 is added to the Business and Professions Code, to read:

7402.5. (a) For purposes of this section, a “personal service permit” means a permit that authorizes an individual to perform professional services, for which he or she holds a license pursuant to this chapter, outside of an establishment, as defined in Section 7346, in accordance with the regulations established by the board.

(b) The board may issue a personal service permit to an individual who meets the criteria for a personal service permit set forth in regulation.

(c) The board shall issue regulations regarding a personal service permit. In establishing the regulations, the board shall hold, at a minimum, two stakeholder meetings.

(1) The board shall determine the appropriate licensing categories that may apply for a personal service permit in order to protect consumer safety.

(2) The board shall authorize a personal service permit holder to perform services outside of a licensed establishment.

(3) The board shall not exempt a personal service permit holder from any of the board’s existing regulations or requirements on health and safety.

(4) The board shall not require a personal service permit holder to be employed by an establishment, unless the board determines that it would be necessary in order to maintain consumer safety.

(5) The regulations may require an applicant for a personal service permit to have proof of liability insurance and to pass a criminal background clearance.

1 (d) A personal service permit shall be valid for two years and
2 shall be renewed prior to expiration. The fee for a personal service
3 permit shall be no greater than fifty dollars (\$50). The fee for the
4 renewal of a personal service permit shall be no greater than ~~eighty~~
5 *fifty* dollars ~~(\$80); (\$50)~~. The delinquency fee shall be 50 percent
6 of the renewal fee in effect on the date of the renewal.

7 (e) The board shall report on the progress of the regulatory
8 process and issuance of personal service permits to the Legislature
9 on or before July 1, 2017.

10 (1) The report shall be submitted in compliance with Section
11 9795 of the Government Code.

12 (2) The requirement to report to the Legislature under this
13 subdivision is inoperative on July 1, 2021, pursuant to Section
14 10231.5 of the Government Code.

15 ~~SEC. 9.~~

16 *SEC. 10.* Section 7404 of the Business and Professions Code
17 is amended to read:

18 7404. The grounds for disciplinary action are as follows:

19 (a) Unprofessional conduct which includes, but is not limited
20 to, any of the following:

21 (1) Incompetence or gross negligence, including failure to
22 comply with generally accepted standards for the practice of
23 barbering, cosmetology, or electrology or disregard for the health
24 and safety of patrons.

25 (2) Repeated similar negligent acts.

26 (3) Conviction of any crime substantially related to the
27 qualifications, functions, or duties of the licenseholder, in which
28 case, the records of conviction or a certified copy shall be
29 conclusive evidence thereof.

30 (4) Advertising by means of knowingly false or deceptive
31 statements.

32 (b) Failure to comply with the requirements of this chapter.

33 (c) Failure to comply with the rules governing health and safety
34 adopted by the board and approved by the State Department of
35 Public Health, for the regulation of establishments, or any practice
36 licensed and regulated under this chapter.

37 (d) Failure to comply with the rules adopted by the board for
38 the regulation of establishments, or any practice licensed and
39 regulated under this chapter.

1 (e) Continued practice by a person knowingly having an
2 infectious or contagious disease.

3 (f) Habitual drunkenness, habitual use of or addiction to the use
4 of any controlled substance.

5 (g) Obtaining or attempting to obtain practice in any occupation
6 licensed and regulated under this chapter, or money, or
7 compensation in any form, by fraudulent misrepresentation.

8 (h) Failure to display the license or health and safety rules and
9 regulations in a conspicuous place.

10 (i) Engaging, outside of a licensed establishment and for
11 compensation in any form whatever, in any practice for which a
12 license is required under this chapter, except that when the service
13 is provided because of illness or other physical or mental
14 incapacitation of the recipient of the service and when performed
15 by a licensee obtained for the purpose from a licensed
16 establishment.

17 (j) Permitting a license to be used where the holder is not
18 personally, actively, and continuously engaged in business.

19 (k) The making of any false statement as to a material matter
20 in any oath or affidavit, which is required by the provisions of this
21 chapter.

22 (l) Refusal to permit or interference with an inspection
23 authorized under this chapter.

24 (m) Any action or conduct which would have warranted the
25 denial of a license.

26 (n) Failure to surrender a license that was issued in error or by
27 mistake.

28 ~~SEC. 10.~~

29 *SEC. 11.* Section 7407 of the Business and Professions Code
30 is amended to read:

31 7407. The board shall establish by regulation a schedule of
32 administrative fines for violations of this chapter. All moneys
33 collected under this section shall be deposited in the board's
34 contingent fund.

35 The schedule shall indicate for each type of violation whether,
36 in the board's discretion, the violation can be corrected. The board
37 shall ensure that it and the Bureau for Private Postsecondary
38 Education do not issue citations for the same violation.

O