

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 812

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WASSON.

2001L.01P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 328.030, 328.040, 328.050, 328.060, 328.115, 328.140, 328.150, 328.160, 329.180, 329.190, 329.191, 329.200, 329.210 329.220, 329.230, and 329.240, RSMo, and to enact in lieu thereof three new sections relating to barber licensure, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 328.030, 328.040, 328.050, 328.060, 328.115, 328.140, 328.150, 2 328.160, 329.180, 329.190, 329.191, 329.200, 329.210 329.220, 329.230, and 329.240, RSMo, 3 are repealed and three new sections enacted in lieu thereof, to be known as sections 328.115, 4 328.150, and 328.160, to read as follows:

328.115. 1. The owner of every [shop or] establishment in which the occupation of 2 barbering is practiced shall obtain a license for such shop or establishment issued by the board 3 before barbering is practiced therein. A new license shall be obtained for a barber establishment 4 within forty-five days when the establishment changes ownership or location. The state 5 inspector shall inspect the sanitary conditions required for licensure, established under subsection 6 2 of this section, for an establishment that has changed ownership or location without requiring 7 the owner to close business or deviate in any way from the establishment's regular hours of 8 operation.

9 2. The board shall issue a license for a [shop or] establishment upon receipt of the license 10 fee from the applicant if the board finds that the [shop or] establishment complies with the 11 sanitary regulations adopted pursuant to section 328.060. All barber establishments shall

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 continue to comply with the sanitary regulations. Failure of a barber establishment to comply
13 with the sanitary regulations shall be grounds for the board to file a complaint with the
14 administrative hearing commission to revoke, suspend, or censure the establishment's license or
15 place the establishment's license on probation.

16 3. The license for a barber establishment shall be renewable. The applicant for renewal
17 of the license shall on or before the renewal date submit the completed renewal application
18 accompanied by the required renewal fee. If the renewal application and fee are not submitted
19 within thirty days following the renewal date, a penalty fee plus the renewal fee shall be paid to
20 renew the license. If a new establishment opens any time during the licensing period and does
21 not register a license before opening, there shall be a delinquent fee in addition to the regular fee.
22 The license shall be kept posted in plain view within the barber establishment at all times.

328.150. 1. The board may refuse to issue any certificate of registration or authority,
2 permit or license required pursuant to this chapter for one or any combination of causes stated
3 in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for
4 the refusal and shall advise the applicant of his right to file a complaint with the administrative
5 hearing commission as provided by chapter 621, RSMo.

6 2. The board may cause a complaint to be filed with the administrative hearing
7 commission as provided by chapter [161] **621**, RSMo, against any holder of any certificate of
8 registration or authority, permit or license required by this chapter or any person who has failed
9 to renew or has surrendered his certificate of registration or authority, permit or license for any
10 one or any combination of the following causes:

11 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic
12 beverage to an extent that such use impairs a person's ability to perform the work of any
13 profession licensed or regulated by this chapter;

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
15 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,
16 for any offense reasonably related to the qualifications, functions or duties of any profession
17 licensed or regulated under this chapter, for any offense an essential element of which is fraud,
18 dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not
19 sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of
21 registration or authority, permit or license issued pursuant to this chapter or in obtaining
22 permission to take any examination given or required pursuant to this chapter;

23 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
24 fraud, deception or misrepresentation;

25 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
26 in the performance of the functions or duties of any profession licensed or regulated by this
27 chapter;

28 (6) Violation of, or assisting or enabling any person to violate, any provision of this
29 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

30 (7) Impersonation of any person holding a certificate of registration or authority, permit
31 or license or allowing any person to use his or her certificate of registration or authority, permit,
32 license or diploma from any school;

33 (8) Disciplinary action against the holder of a license or other right to practice any
34 profession regulated by this chapter granted by another state, territory, federal agency or country
35 upon grounds for which revocation or suspension is authorized in this state;

36 (9) A person is finally adjudged insane or incompetent by a court of competent
37 jurisdiction;

38 (10) Assisting or enabling any person to practice or offer to practice any profession
39 licensed or regulated by this chapter who is not registered and currently eligible to practice under
40 this chapter;

41 (11) Issuance of a certificate of registration or authority, permit or license based upon
42 a material mistake of fact;

43 (12) Failure to display a valid certificate or license if so required by this chapter or any
44 rule promulgated hereunder;

45 (13) Violation of any professional trust or confidence;

46 (14) Use of any advertisement or solicitation which is false, misleading or deceptive to
47 the general public or persons to whom the advertisement or solicitation is primarily directed;

48 (15) Failure or refusal to properly guard against contagious, infectious or communicable
49 diseases or the spread thereof.

50 3. After the filing of such complaint, the proceedings shall be conducted in accordance
51 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing
52 commission that the grounds, provided in subsection 2, for disciplinary action are met, the board
53 may, singly or in combination, censure or place the person named in the complaint on probation
54 on such terms and conditions as the board deems appropriate for a period not to exceed five
55 years, or may suspend, for a period not to exceed three years, or revoke the license, certificate,
56 or permit.

328.160. Any person practicing the occupation of barbering without having obtained a
2 license as provided in this chapter, or willfully employing a barber who does not hold a valid
3 license issued by the board, managing or conducting a barber school or college without first
4 securing a license from the board, or falsely pretending to be qualified to practice as a barber or

5 instructor or teacher of such occupation under this chapter, or failing to keep any license required
6 by this chapter properly displayed or for any extortion or overcharge practiced, and any barber
7 college, firm, corporation or person operating or conducting a barber college without first having
8 secured the license required by this chapter, or failing to comply with such sanitary rules as the
9 board[, in conjunction with the department of health and senior services,] prescribes, or for the
10 violation of any of the provisions of this chapter, shall be deemed guilty of a class C
11 misdemeanor. Prosecutions under this chapter shall be initiated and carried on in the same
12 manner as other prosecutions for misdemeanors in this state.

2 [328.030. A board of examiners consisting of four members, including
3 one voting public member, shall be appointed by the governor, by and with the
4 advice and consent of the senate. Each member of the board shall be a United
5 States citizen, shall have been a resident of Missouri for one year and, except for
6 the public member, shall have been a registered and practicing barber for the five
7 years immediately preceding his or her initial appointment. The public member
8 shall be a registered voter and a person who is not and never was a member of
9 any profession licensed or regulated pursuant to this chapter or the spouse of such
10 person; and a person who does not have and never has had a material, financial
11 interest in either the providing of the professional services regulated by this
12 chapter, or an activity or organization directly related to any profession licensed
13 or regulated pursuant to this chapter. All members, including public members,
14 shall be chosen from lists submitted by the director of the division of professional
15 registration. The duties of the public member shall not include the determination
16 of the technical requirements to be met for licensure or whether any person meets
17 such technical requirements or of the technical competence or technical judgment
18 of a licensee or a candidate for licensure. Each member shall serve for a term of
19 four years and until his or her successor is appointed and qualified, except that
20 the successors to the members whose terms expire in 1981 shall consist of one
21 member whose term shall be for two years, one member whose term shall be for
22 three years, and one member whose term shall be for four years. Each member
23 shall take the oath provided by law for public officers. Vacancies on the board
24 shall be filled by appointment by the governor.]

2 [328.040. The board shall annually elect from its number a president,
3 vice president, and secretary-treasurer, shall have its headquarters in Jefferson
4 City, Missouri, may employ such board personnel, as defined in subdivision (4)
5 of subsection 16 of section 620.010, RSMo, as it shall deem necessary within the
6 appropriation therefor. The board shall not create any expense exceeding the sum
7 received from time to time as fees as provided by law, shall have a common seal,
8 and the president and vice president shall have the power to administer oaths. A
9 majority of the board, in meeting duly assembled, may perform the duties and
10 exercise the powers devolving upon the board under the provisions of this
chapter.]

2 [328.050. 1. Each member of the board shall receive as compensation
3 an amount set by the board not to exceed fifty dollars for each day devoted to the
4 affairs of the board, and shall be entitled to reimbursement of his expenses
5 necessarily incurred in the discharge of his official duties. All money payable
6 under this chapter shall be collected by the division of professional registration
7 in the department of insurance, financial institutions and professional registration
8 which shall transmit them to the department of revenue for deposit in the state
9 treasury to the credit of a "Board of Barbers Fund". Warrants shall be drawn
10 upon the treasurer out of this fund only for the payment of the salaries, office and
11 other necessary expenses of the board. A detailed statement of the expenses
12 incurred by the board, approved by the secretary-treasurer of the board, shall be
13 filed with the commissioner of administration before warrants are drawn for their
14 payment.

15 2. The provisions of section 33.080, RSMo, to the contrary
16 notwithstanding, money in this fund shall not be transferred and placed to the
17 credit of general revenue until the amount in the fund at the end of the biennium
18 exceeds two times the amount of the appropriation from the board's funds for the
19 preceding fiscal year or, if the board requires by rule permit renewal less
20 frequently than yearly, then three times the appropriation from the board's funds
21 for the preceding fiscal year. The amount, if any, in the fund which shall lapse
22 is that amount in the fund which exceeds the appropriate multiple of the
23 appropriations from the board's funds for the preceding fiscal year.]

2 [328.060. 1. The board shall set the amount of the fees which this
3 chapter authorizes and requires by rules and regulations promulgated pursuant to
4 section 536.021, RSMo. The fees shall be set at a level to produce revenue which
5 shall not substantially exceed the cost and expense of administering this chapter.

6 2. The board shall, with the approval of the department of health and
7 senior services, prescribe such sanitary rules as it may deem necessary to prevent
8 the creation and spread of infectious and contagious diseases. A copy of such
9 rules shall be posted in a conspicuous place in every barber shop and barber
10 school or college in this state.]

2 [328.140. There shall be kept a register, in which shall be entered the
3 names of all persons to whom certificates are issued, and to whom permits for
4 serving apprenticeship, or as students, under this chapter, and said register shall,
5 at all reasonable times, be open to the public inspection.]

2 [329.180. There is hereby created and established a "State Board of
3 Cosmetology" for the purpose of licensing all persons engaged in the practice of
4 hair dressing, cosmetology and manicuring in this state. The board shall have
5 control and supervision of the licensed occupations, and enforcement of the terms
and provisions of this chapter.]

2 [329.190. 1. The state board of cosmetology shall be composed of seven
3 members, including one voting public member and one member who is a licensed
4 school owner pursuant to subsection 1 of section 329.040, appointed by the
5 governor with the advice and consent of the senate. The term of office of each
6 member shall be four years.

7 2. The members of the board shall receive as compensation for their
8 services the sum set by the board not to exceed fifty dollars for each day actually
9 spent in attendance at meetings of the board, within the state, not to exceed
10 forty-eight days in any calendar year, and in addition thereto they shall be
11 reimbursed for all necessary expenses incurred in the performance of their duties
12 as members of the board.

13 3. All members, except the public member, shall be cosmetologists and
14 manicurists duly registered as such and licensed pursuant to the laws of this state,
15 and shall be United States citizens and shall have been residents of this state for
16 at least one year next preceding their appointments and shall have been actively
17 engaged in the lawful practice of cosmetology for a period of at least five years.
18 The public member shall be at the time of the person's appointment a citizen of
19 the United States; a resident of this state for a period of one year and a registered
20 voter; a person who is not and never was a member of any profession licensed or
21 regulated pursuant to this chapter or the spouse of such person; and a person who
22 does not have and never has had a material, financial interest in either the
23 providing of the professional services regulated by this chapter, or an activity or
24 organization directly related to any profession licensed or regulated pursuant to
25 this chapter. All members, including public members, shall be chosen from lists
26 submitted by the director of the division of professional registration. The duties
27 of the public member shall not include the determination of the technical
28 requirements to be met for licensure or whether any person meets such technical
29 requirements or of the technical competence or technical judgment of a licensee
30 or a candidate for licensure. Any member who is a school owner shall not be
31 allowed access to the testing and examination materials nor to attend the
32 administration of the examinations, except when such member is being examined
33 for licensure.]

2 [329.191. Notwithstanding the provisions of section 329.190, to the
3 contrary, compensation of the state board of cosmetology shall not exceed
4 seventy dollars for each day actually spent in attendance at meetings plus actual
5 and necessary expenses.]

2 [329.200. The governor shall, by and with the advice and consent of the
3 senate, fill any vacancies caused by the expiration of the term of office of any
4 member of the board, and the governor shall also fill any vacancy caused by
5 death, resignation or removal which may occur when the general assembly is not
in session, but all such appointees shall continue in office only until the meeting

6 of the general assembly next following such appointment and until their
7 successors shall be appointed and qualified. All vacancies which may exist at or
8 during the meeting of the general assembly caused by death, resignation or
9 removal shall be filled in like manner as those created by the expiration of
10 official terms and shall be only for the unexpired term of the person whose
11 vacancy is to be filled.]
12

[329.210. 1. The board shall have power to:

2 (1) Prescribe by rule for the examinations of applicants for licensure to
3 practice the classified occupation of cosmetology and issue licenses;

4 (2) Prescribe by rule for the inspection of cosmetology establishments
5 and schools and appoint the necessary inspectors and examining assistants;

6 (3) Prescribe by rule for the inspection of establishments and schools of
7 cosmetology as to their sanitary conditions and to appoint the necessary
8 inspectors and, if necessary, examining assistants; and set the amount of the fees
9 which this chapter authorizes and requires, by rules and regulations promulgated
10 pursuant to section 536.021, RSMo. The fees shall be set at a level sufficient to
11 produce revenue which shall not substantially exceed the cost and expense of
12 administering this chapter;

13 (4) Employ and remove board personnel, as defined in subdivision (4)
14 of subsection 10 of section 324.001, RSMo, as may be necessary for the efficient
15 operation of the board, within the limitations of its appropriation;

16 (5) Elect one of its members president, one vice president and one
17 secretary;

18 (6) Determine the sufficiency of the qualifications of applicants; and

19 (7) Prescribe by rule the minimum standards and methods of
20 accountability for the schools of cosmetology licensed pursuant to this chapter.

21 2. The board shall create no expense exceeding the sum received from
22 time to time from fees imposed pursuant to this chapter.

23 3. Any rule or portion of a rule, as that term is defined in section 536.010,
24 RSMo, that is created under the authority delegated in this chapter shall become
25 effective only if it complies with and is subject to all of the provisions of chapter
26 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
27 536, RSMo, are nonseverable and if any of the powers vested with the general
28 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date
29 or to disapprove and annul a rule are subsequently held unconstitutional, then the
30 grant of rulemaking authority and any rule proposed or adopted after August 28,
31 2001, shall be invalid and void.]
32

2 [329.220. At all meetings of the board two members shall be necessary
3 to constitute a quorum for the transaction of business but no official action may
4 be taken unless a majority of the whole board may vote therefor.]

2 [329.230. The board shall elect one of its members president, one vice
3 president and one secretary, and shall have power to employ and remove such
4 board personnel, as defined in subdivision (4) of subsection 16 of section
5 620.010, RSMo, as may be necessary for the efficient operation of the board,
6 within the limitations of its appropriation, and to formulate rules and regulations
7 governing its actions; provided, however, the board shall create no expense
8 exceeding the sum received from time to time as fees as provided by law.]

2 [329.240. 1. All fees provided for in this chapter shall be payable to the
3 director of the division of professional registration in the department of economic
4 development who shall keep a record of the account showing the total payments
5 received and shall immediately thereafter transmit them to the department of
6 revenue for deposit in the state treasury to the credit of a fund to be known as the
7 "State Board of Cosmetology Fund". All the salaries and expenses for the
8 operation of the board shall be appropriated and paid from such fund.

9 2. The provisions of section 33.080, RSMo, to the contrary
10 notwithstanding, money in this fund shall not be transferred and placed to the
11 credit of general revenue until the amount in the fund at the end of the biennium
12 exceeds two times the amount of the appropriation from the board's funds for the
13 preceding fiscal year or, if the board requires by rule permit renewal less
14 frequently than yearly, then three times the appropriation from the board's funds
15 for the preceding fiscal year. The amount, if any, in the fund which shall lapse
16 is that amount in the fund which exceeds the appropriate multiple of the
 appropriations from the board's funds for the preceding fiscal year.]

✓