

**CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY**



**AUGUST 12, 2019
Board Meeting**

**Hilton Garden Inn
401 South San Fernando Boulevard
Burbank, CA 91502**



**CALIFORNIA BOARD
OF
BARBERING AND COSMETOLOGY**



MEMBERS OF THE BOARD

Lisa Thong, President
Andrew Drabkin, Vice President
Jacquelyn Crabtree
Steve Weeks
Dr. Kari Williams

BOARD MEETING

August 12, 2019

**Hilton Garden Inn Burbank
401 S. San Fernando Blvd
Burbank, CA 91502**

*Action may be taken on
any item listed on the
agenda.*

AGENDA

10:00 A. M.

UNTIL COMPLETION OF BUSINESS

OPEN SESSION:

1. Board President's Opening Remarks (**Lisa Thong**)
2. Board Member Remarks – Informational only
3. Public Comment on Items Not on the Agenda
Note: The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 1125.7(a))
4. Executive Officer's Report (**Kristy Underwood**)
 - a. Licensing Statistics
 - b. Examination Statistics
 - c. Disciplinary Review Committee Statistics
 - d. Enforcement Statistics
 - e. Budget Updates
 - f. Outreach Updates
 - g. Practice Status Survey Results
5. Approval of April 29, 2019 Board Meeting Minutes
6. Update and Possible Action Regarding Health and Safety Advisory Committee
7. Update and Discussion Regarding Spanish Language Examination Pass Rates

8. Legislative Update:

Discussion and Possible Action on Proposed Bills:

- a. AB 5 (Gonzalez) - Worker Status: Independent Contractors
- b. AB 496 (Low) - Business & Professions Changes
- c. AB 613 (Low) - Regulatory Fees
- d. AB 1271 (Diep) - Licensing Examination Reports
- e. AB 1607 (Boerner Horvath) - Gender Discrimination Notification
- f. SB 188 (Mitchell) - Discrimination: Hairstyles
- g. SB 606 (Glazer) - Sunset Extension
- h. SB 607 (Glazer) - Health and Safety Advisory Committee

9. Proposed Regulations:

Discussion and Possible Action of Proposed Regulatory Changes:

- a. Title 16, CCR Section 904 (Definition of Access)
- b. Title 16, CCR Section 950.10 (Transfer of Credit or Training)
- c. Title 16, CCR Section 961 (Instructional Materials-NIC Guides)
- d. Title 16, CCR Sections 962, 962.1 and 962.2 (Externs)
- e. Title 16, CCR Section 965.2 (Personal Service Permit)
- f. Title 16, CCR Section 970, 971 (Substantial Relationship Criteria, Criteria for Rehabilitation)
- g. Title 16, CCR Section 972 (Disciplinary Guidelines)
- h. Title 16, CCR Section 974 & 974.3 (Fine Schedule and Payment Plan)

10. Agenda Items for the Next Meeting

11. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. Note: This meeting will be Webcast, provided there are no unforeseen technical difficulties or limitations. To view the Webcast, please visit <https://thedcapage.wordpress.com/webcasts/>. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

**Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).*

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting may make a request by contacting: Marcene Melliza at (916) 575-7121, email: marcene.melliza@dca.ca.gov, or send a written request to the Board of Barbering and Cosmetology, PO Box 944226, Sacramento, CA 94244. Providing your request is a least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.

**Quarterly Barbering and Cosmetology
Licensing Statistics
Fiscal Year 18-19**

Applications Received

License Type	Jul-Sept	Oct-Dec	Jan-Mar	Apr-June	YTD
Establishment	1,556	1,739	2,121	2,147	7,563
Mobile Unit	--	--	3	2	5
Barber					
Pre-App	212	236	293	289	1,030
Initial Application	327	313	403	450	1,493
Re-Exam	426	666	763	693	2,548
Sub-Total	965	1,215	1,459	1,432	5,071
Reciprocity	39	37	52	41	169
Apprentice	179	208	265	195	847
Cosmetology					
Pre-App	740	798	834	924	3,296
Initial Application	710	805	902	884	3,301
Re-Exam	1,301	1,302	1,418	1,299	5,320
Sub-Total	2,751	2,905	3,154	3,107	11,917
Reciprocity	323	252	345	331	1,251
Apprentice	136	204	244	260	844
Electrology					
Pre-App	5	8	3	10	26
Initial Application	7	3	10	5	25
Re-Exam	5	6	6	6	23
Sub-Total	17	17	19	21	74
Reciprocity	--	--	1	-	1
Apprentice	--	--	--	-	
Esthetician					
Pre-App	664	821	1,093	1,106	3,684
Initial Application	367	414	492	533	1,806
Re-Exam	472	408	476	450	1,806
Sub-Total	1,503	1,643	2,061	2,089	7,296
Reciprocity	113	78	63	107	361
Manicurist					
Pre-App	574	797	646	816	2,833
Initial Application	457	473	533	514	1,977
Re-Exam	641	753	859	708	2,961
Sub-Total	1,672	2,023	2,038	2,038	7,771
Reciprocity	101	116	92	130	439
Total	9,355	10,437	11,914	11,900	43,609

Examination Results

Tests Between Apr 1, 2019 and Jun 30, 2019

Practical Examinations

Administered	Passed	Failed	Total	Pass Rate
Barber	704	311	1,015	69%
Cosmetologist	1,626	535	2,161	75%
Electrologist	12	4	16	75%
Esthetician	1,416	63	1,479	96%
Manicurist	1,178	381	1,559	76%
Total	4,936	1,294	6,230	79%

Written Examinations

Barber	Passed	Failed	Total	Pass Rate
English	491	589	1,080	45%
Korean	1	2	3	33%
Spanish	55	116	171	32%
Vietnamese	13	10	23	57%
TOTAL	560	717	1,277	44%

Cosmo	Passed	Failed	Total	Pass Rate
English	1,106	722	1,828	61%
Korean	13	4	17	76%
Spanish	195	421	616	32%
Vietnamese	77	11	88	88%
TOTAL	1,391	1,158	2,549	55%

Esthetician	Passed	Failed	Total	Pass Rate
English	1,149	322	1,471	78%
Korean	4	3	7	57%
Spanish	1	6	7	14%
Vietnamese	143	14	157	91%
TOTAL	1,297	345	1,642	79%

Manicurist	Passed	Failed	Total	Pass Rate
English	221	125	346	64%
Korean	5	--	5	100%
Spanish	14	11	25	56%
Vietnamese	667	294	961	69%
TOTAL	907	430	1,337	68%

Electrologist	Passed	Failed	Total	Pass Rate
English	7	1	8	88%
Korean	-	-	-	-
Spanish	-	-	-	-
Vietnamese	-	-	-	-
TOTAL	7	1	8	88%

Licenses Issued FY 2018-2019

License Type	Jul-Sept	Oct-Dec	Jan-Mar	Apr-June	YTD
Barber	614	356	497	499	1,966
Barber Apprentice	234	216	208	196	854
Cosmetology	1,812	1,587	1,661	1,408	6,468
Cosmetology Apprentice	211	200	189	242	842
Electrology	9	5	10	7	31
Electrology Apprentice	-	-	--	-	-
Esthetician	1,219	1,152	1,286	1,233	4,890
Manicurist	1,119	1,189	1,190	916	4,414
Establishment	1,852	1,791	1,962	2,101	7,706
Mobile Unit	-	-	-	-	-
Totals	7,070	6,496	7,003	6,602	27,171

Licenses Issued Last 5 Years

License Type	FY 14/15	FY 15/16	FY 16/17	FY 17/18	FY 18/19
Barber	1,715	1,950	2,189	2,259	1,966
Barber Apprentice	397	511	665	885	854
Cosmetology	12,702	10,813	8,389	7,085	6,468
Cosmetology Apprentice	543	650	793	727	842
Electrology	34	35	26	22	31
Electrology Apprentice	-	-	-	1	-
Esthetician	5,059	4,747	4,818	4,007	4,890
Manicurist	5,876	6,298	6,550	3,787	4,414
Establishment	6,654	6,996	6,875	7,609	7,706
Mobile Unit	8	7	7	2	-
Totals	32,988	32,007	30,312	26,384	27,171

License Population

Barber	31,549
Barber Apprentice	1,581
Cosmetology	313,650
Cosmetology Apprentice	1,427
Electrology	1,711
Electrology Apprentice	1
Esthetician	88,747
Manicurist	129,994
Establishment	52,617
Mobile Unit	48
Total	621,325



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
 DEPARTMENT OF CONSUMER AFFAIRS • BOARD OF BARBERING AND COSMETOLOGY
 P.O. Box 944226, Sacramento, CA 94244-2260
 Phone : (800) 952-5210 Email: barbercosmo@dca.ca.gov
 Website: www.barbercosmo.ca.gov



**QUARTERLY BARBERING AND COSMETOLOGY
 DISCIPLINARY REVIEW COMMITTEE STATISTICS**

Fiscal Year 18-19

Report Date: June 30, 2019

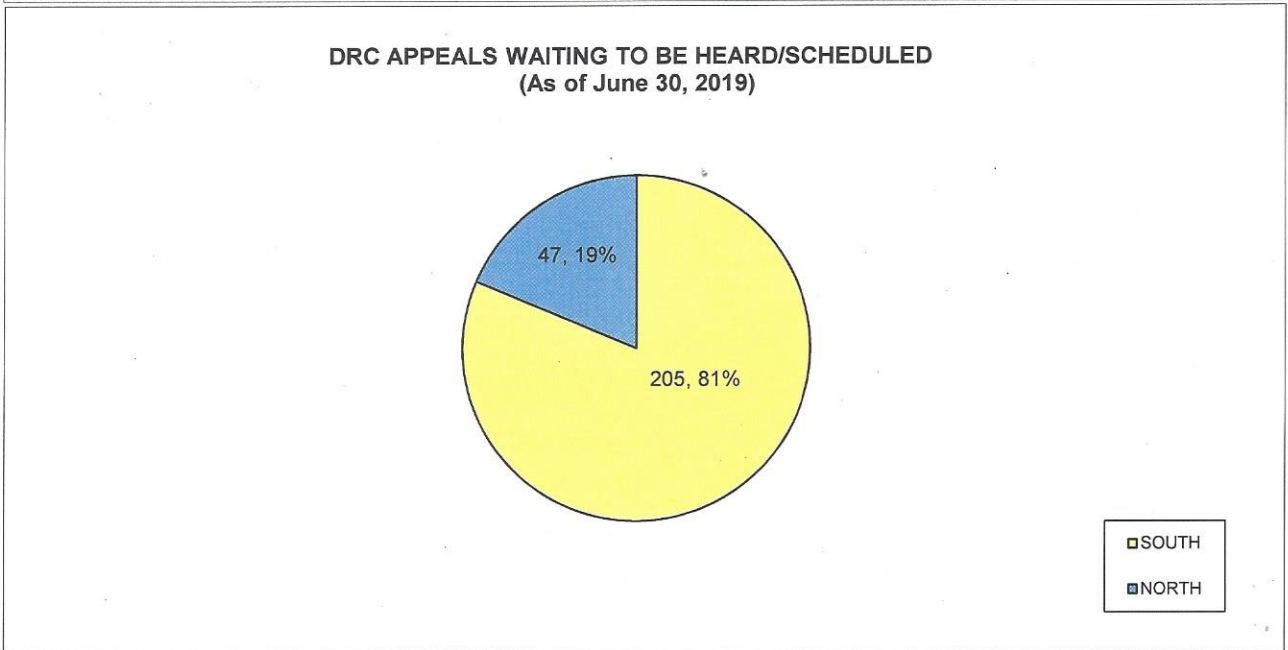
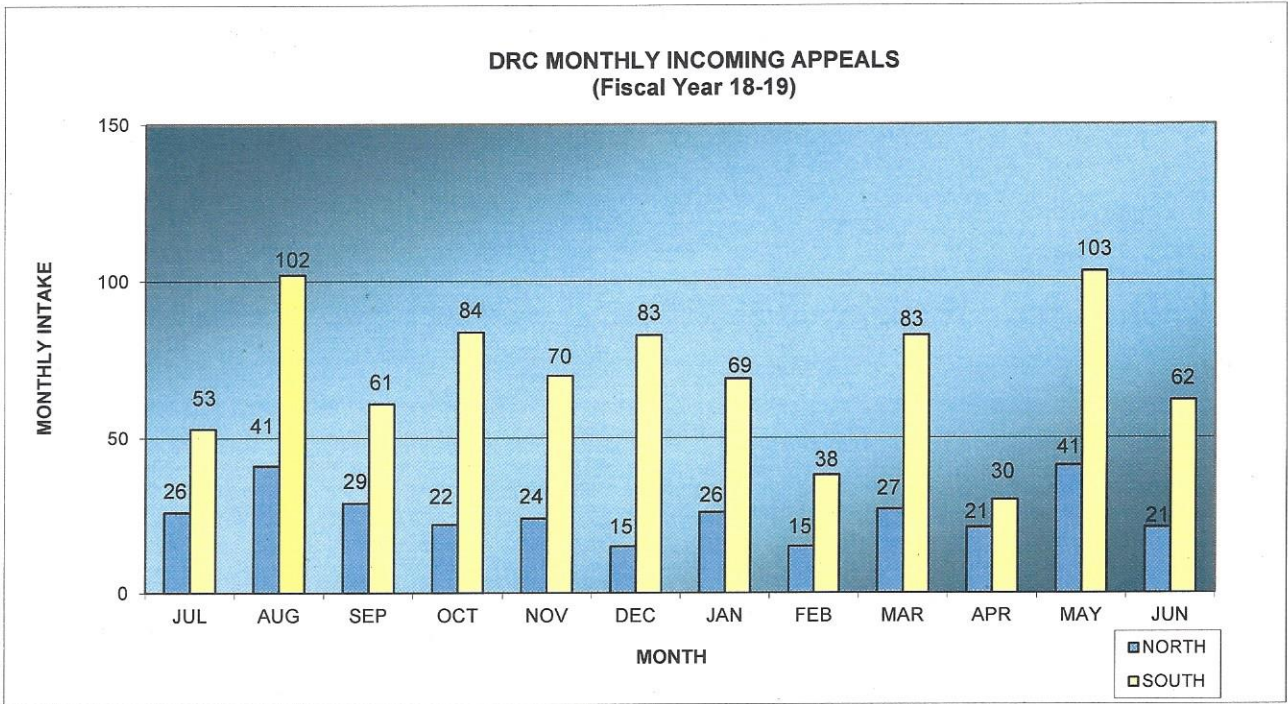
	April - June	YTD
NORTHERN		
Heard	95	359
Received	83	308
Pending ¹	47	47 ²
SOUTHERN		
Heard	292	817
Received	195	838
Pending ¹	205	205 ²

¹ Pending refers to the number of appeals received but not yet heard by DRC.

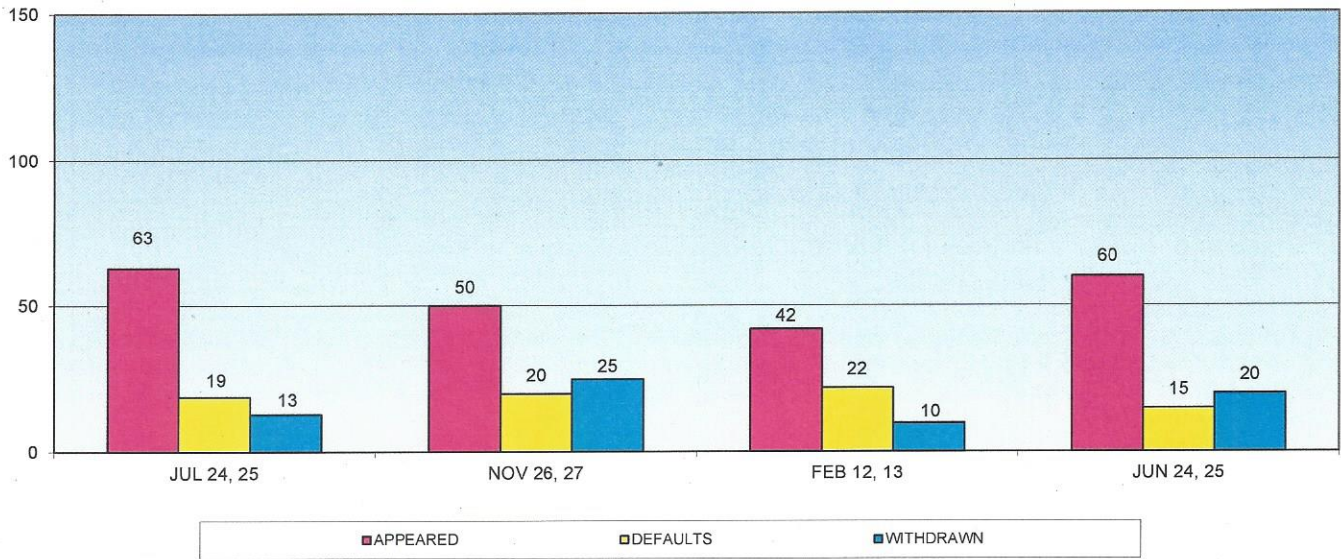
² Figure represents number of pending requests as of report date.

2019 SCHEDULED HEARINGS

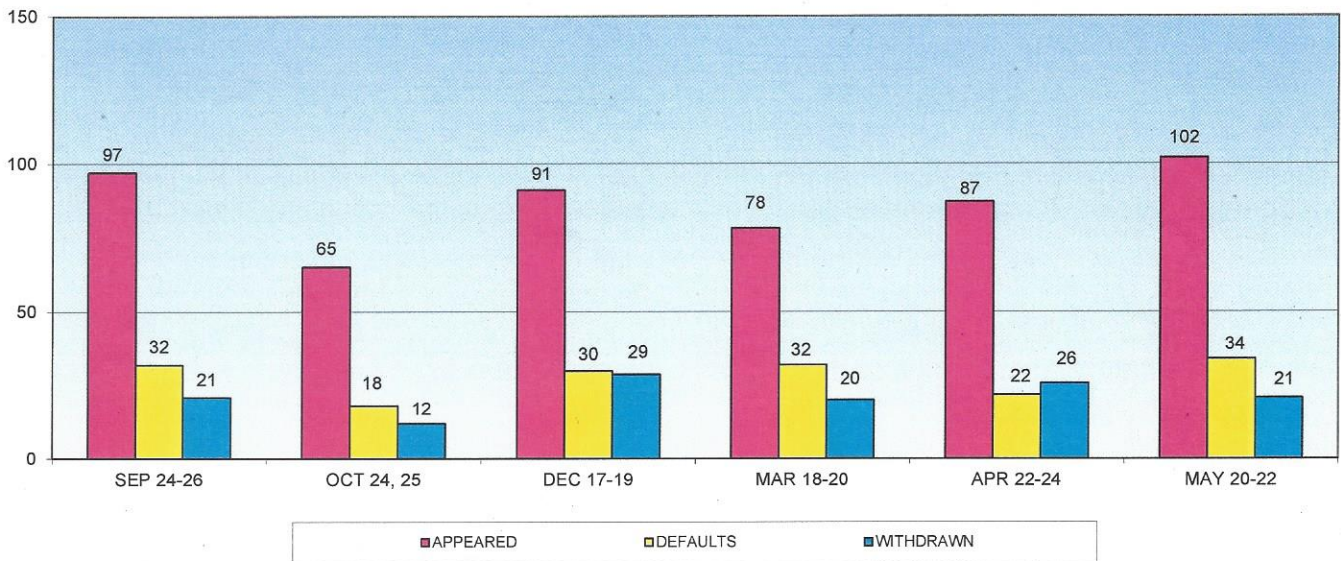
Area	Location	Date
Southern	Burbank	August 13, 14, 2019
Northern	Sacramento	October 15, 16, 2019
Southern	Norwalk	November 04, 05, 06, 2019
Southern	San Diego	December 03, 04, 2019



**NORTHERN APPEALS HEARD
(Fiscal Year 18-19)**



**SOUTHERN APPEALS HEARD
(Fiscal Year 18-19)**



**QUARTERLY BARBERING AND COSMETOLOGY
ENFORCEMENT STATISTICS Fiscal Year 18-19**

	Jul-Sept	Oct-Dec	Jan-Mar	Apr-Jun	YTD
COMPLAINTS					
Complaints Received	1,039	1,038	1,062	1,213	4,352
Referred to DOI	0	2	0	0	2
Complaints Closed	1,102	1,040	1,086	1,028	4,256
Total Complaints Pending	893	876	875	1,023	1,023
Average Days to Close	101	77	78	77	80
APPLICATION INVESTIGATIONS*					
Received	148	38	21	1	208
Pending	54	4	1	0	0
Closed	1,067	85	20	2	1,174
ATTORNEY GENERAL					
Referred	11	38	25	32	106
Accusations Filed	17	14	23	23	77
Statement of Issues Filed	4	4	1	13	22
Total Pending	72	90	93	89	89
DISCIPLINARY PROCESS					
Proposed Decisions	6	2	3	3	14
Default Decision	2	3	1	1	7
Stipulation	11	13	11	16	51
DISCIPLINARY OUTCOMES					
Revocation	8	5	4	3	20
Revoke, Stay, Probation	3	8	1	1	13
Revoke, Stay, Suspend/Prob	13	2	11	20	46
Revocation, Stay w/ Suspend	0	0	0	0	0
Probation Only	0	0	0	0	0
Suspension Only	0	0	0	0	0
Suspension & Probation	0	0	2	0	2
Suspension, Stay, Probation	1	4	2	2	9
Surrender of License	1	6	3	6	16
Public Reprimands	0	0	0	0	0
License Denied	0	0	0	0	0
Other	1	0	0	0	1
Total	27	25	23	32	107
PROBATION					
Active	136	121	126	119	119
Jul-Sept Oct-Dec Jan-Mar Apr-Jun* YTD					
CITATIONS					
Establishments	2,296	2,149	1,814	1,812	8,071
Barber	268	260	155	207	890
Barber Apprentice	49	30	33	30	142
Cosmetologist	761	648	569	589	2,567
Cosmetologist Apprentice	13	10	11	20	54
Electrologist	0	0	0	0	0
Electrologist Apprentice	0	0	0	0	0
Manicurist	851	593	419	490	2,353
Esthetician	94	88	169	192	543
Unlicensed Est.	88	102	91	86	367
Unlicensed Individual	139	111	96	104	450
Total	4,559	3,991	3,357	3,530	15,437
INSPECTIONS					
Establishments w/ violations	2,273	2,001	2,125	2,230	8,629
Establishments w/o violations	769	822	838	785	3,214
Total	3,042	2,823	2,963	3,015	11,843

Complaints Received

Apr 2019 through Jun 2019

Complaint Type	Anonymous	Internal	Public	Totals
Fraud	3	0	3	6
Health & Safety	311	61	84	456
Non-Jurisdictional	59	0	47	106
Incompetence/Negligence	2	0	117	119
Other	2	14	0	16
Personal Conduct	1	0	0	1
Unlicensed Activity	237	217	55	509
App Investigation	0	1	0	1
Totals	615	293	306	1,214

Last 4 Fiscal Years

Category	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Fraud	44	82	61	84	86
Health & Safety	1,347	1,310	1,616	1,604	1,637
Non-Jurisdictional	312	294	284	319	354
Incompetence/Negligence	303	333	270	438	407
Other	20	42	35	19	39
Personal Conduct	13	19	20	6	2
Unlicensed Activity	1,523	1,651	1,817	1,555	1,841
App Investigation	1	0	0	1,061	194
Totals	3,563	3,731	4,103	5,086	4,560

Top 10 Consumer Harm Cases

Allegation	2014	2015	2016	2017	2018	Total
Facial Burn	13	11	8	16	22	70
Manicure Burn	20	-	7	11	26	64
Manicure Cut	12	27	25	38	49	151
Manicure Infection	19	38	19	38	58	172
Over Processed Hair	25	44	52	50	44	215
Pedicure Cut	13	26	23	37	39	138
Pedicure Infection	52	83	50	71	65	321
Scalp Burn	12	24	24	33	37	130
Skin Cut	7	8	7	10	14	46
Wax Burn	3	6	6	17	18	50
Totals	176	267	221	321	372	1,307

Board of Barbering and Cosmetology
Fiscal Year 2018/2019
Projected Expenditures 06/30/19

Personnel Services	ALLOTMENT	BBC Projected Expenditures	Projected Year
Permanent	4,672,000	3,741,152	930,848
Expert Examiners	453,000	403,088	49,912
Temporary	134,000	120,985	13,015
BL 12-03 Blanket	0	192,601	(192,601)
Statutory-Exempt	104,000	124,296	(20,296)
Board Member Commission	0	10,900	(10,900)
Overtime	0	0	0
Total Salary & Wages	5,363,000	4,593,022	769,978
Net Salary & Wages	5,363,000	4,593,022	769,978
Staff Benefits	2,773,000	2,543,644	229,356
Total of Personnel Services	8,136,000	7,136,666	999,334
Operating Expenses & Equipment (OE&E)	Allotment	BBC Projected Expenditures	Projected Year End Balance
General Expense	191,000	150,000	41,000
Printing	168,000	400,000	(232,000)
Communication	41,000	58,000	(17,000)
Postage	283,000	96,000	187,000
Insurance	4,000	42,433	(38,433)
Travel In State	83,000	46,000	37,000
Travel, Out-of-State	0	2,000	(2,000)
Training	11,000	3,000	8,000
Facilities Operations	1,289,000	945,229	343,771
Utilities	0	0	0
Consultant & Professional Svs. - Interdept.	126,000	20,000	106,000
Consultant & Professional Svs. - External	373,000	710,000	(337,000)
Depart. and Central Admin. Services	8,346,000	8,403,072	(57,072)
Consolidated Data Center	68,000	59,000	9,000
Information Technology	38,000	25,776	12,224
Central Admin Pro Rata	0	0	0
Examinations	1,394,000	2,440,000	(1,046,000)
Major Equipment	34,000	3,000	31,000
Minor Equipment	13,000	26,000	(13,000)
Other Items of Expense	5,000	44	4,956
Vehicle Operations	38,000	50,000	(12,000)
Enforcement	1,876,000	1,043,591	832,409
Special Items of Expenses	0	0	0
Total Operating Expenses & Equipment	14,381,000	14,523,145	(142,145)
Total Personal Services Expenses	8,136,000	7,136,666	999,334
Total reimbursements	(57,000)	(57,000)	
Executive Officer's Report 10 of 13 Total	22,460,000	21,602,811	857,189

0069 - Barbering and Cosmetology Contingency Fund
Analysis of Fund Condition

Prepared 7/16/2019

(Dollars in Thousands)

NOTE: \$21 Million General Fund Repayment Outstanding

2019-20 Budget Act

	PY 2018-19	Budget Act CY 2019-20	BY 2020-21
BEGINNING BALANCE	\$ 19,557	\$ 18,255	\$ 39,993
Prior Year Adjustment	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 19,557	\$ 18,255	\$ 39,993
REVENUES AND TRANSFERS			
Revenues:			
4121200 Delinquent fees	\$ 1,178	\$ 1,146	\$ 1,146
4127400 Renewal fees	\$ 12,185	\$ 12,382	\$ 12,382
4129200 Other regulatory fees	\$ 4,849	\$ 5,230	\$ 5,230
4129400 Other regulatory licenses and permits	\$ 4,051	\$ 4,225	\$ 4,225
4143500 Miscellaneous services to the public	\$ 40	\$ -	\$ -
4163000 Income from surplus money investments	\$ 372	\$ 272	\$ 597
4171400 Escheat - unclaimed checks, warrants, bonds, and coupons	\$ 75	\$ 12	\$ 12
4172500 Miscellaneous revenues	\$ 10	\$ 12	\$ 12
Total Revenues	\$ 22,760	\$ 23,279	\$ 23,604
Transfers from Other Funds			
Proposed GF Loan Repayment (Budget Act of 2008)	\$ -	\$ 10,000	\$ -
Proposed GF Loan Repayment (Budget Act of 2011)	\$ -	\$ 11,000	\$ -
Total Revenues, Transfers, and Other Adjustments	\$ 22,760	\$ 44,279	\$ 23,604
Total Resources	\$ 42,317	\$ 62,534	\$ 63,597
EXPENDITURES			
1111 Department of Consumer Affairs Program Expenditures (State Operations)	\$ 22,460	\$ 21,039	\$ 21,670
8880 Financial Information System for California (State Operations)	\$ 2	\$ -3	\$ -3
9892 Supplemental Pension Payments (State Operations)	\$ 134	\$ 316	\$ 316
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 1,466	\$ 1,189	\$ 1,189
Total Disbursements	\$ 24,062	\$ 22,541	\$ 23,172
FUND BALANCE			
Reserve for economic uncertainties	\$ 18,255	\$ 39,993	\$ 40,425
Months in Reserve	9.7	20.7	20.4

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 3% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 1.5%.
- D. ASSUMES FULL APPROPRIATION IN PY 2018-19



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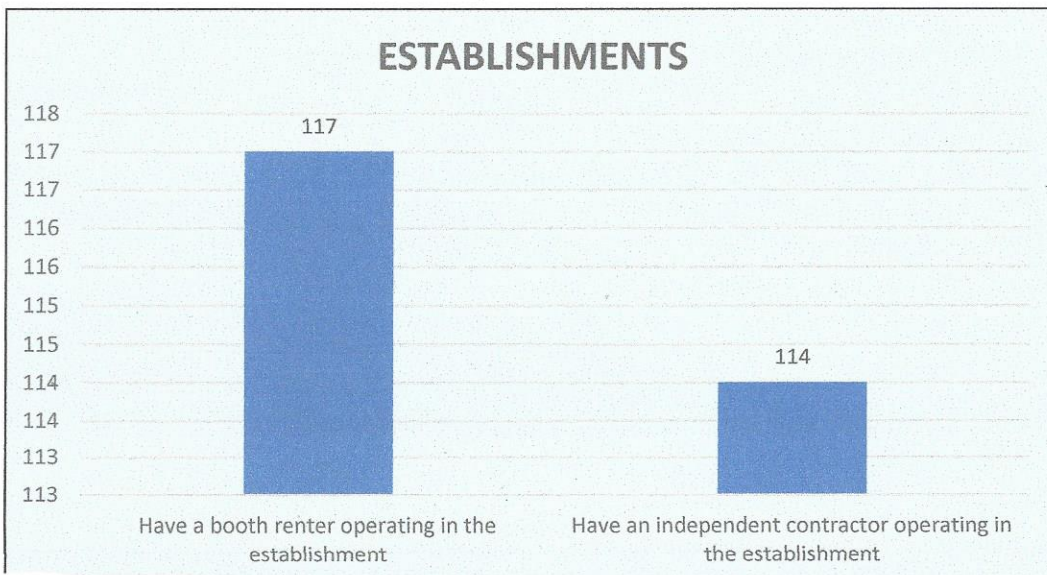
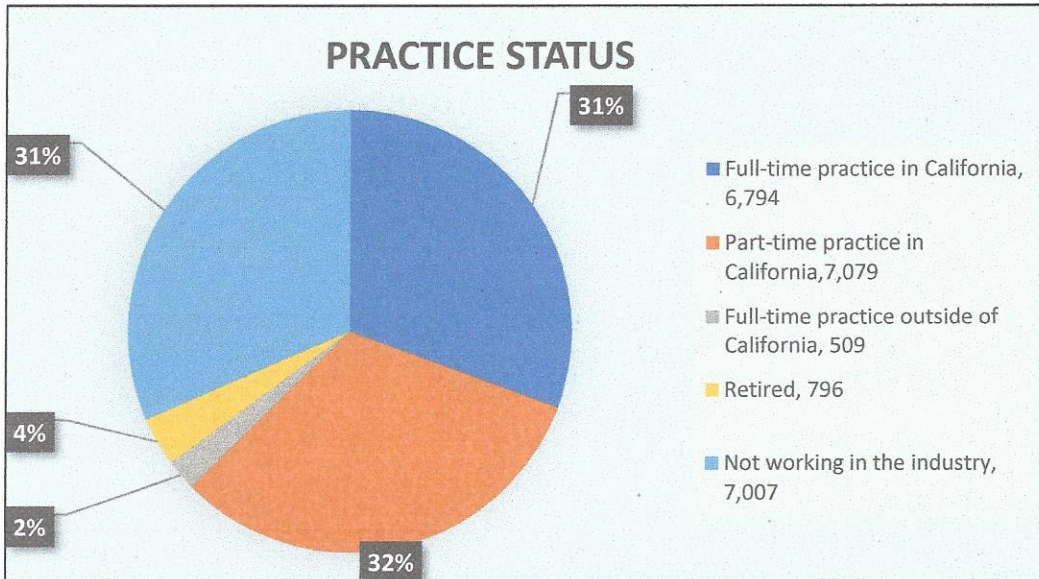
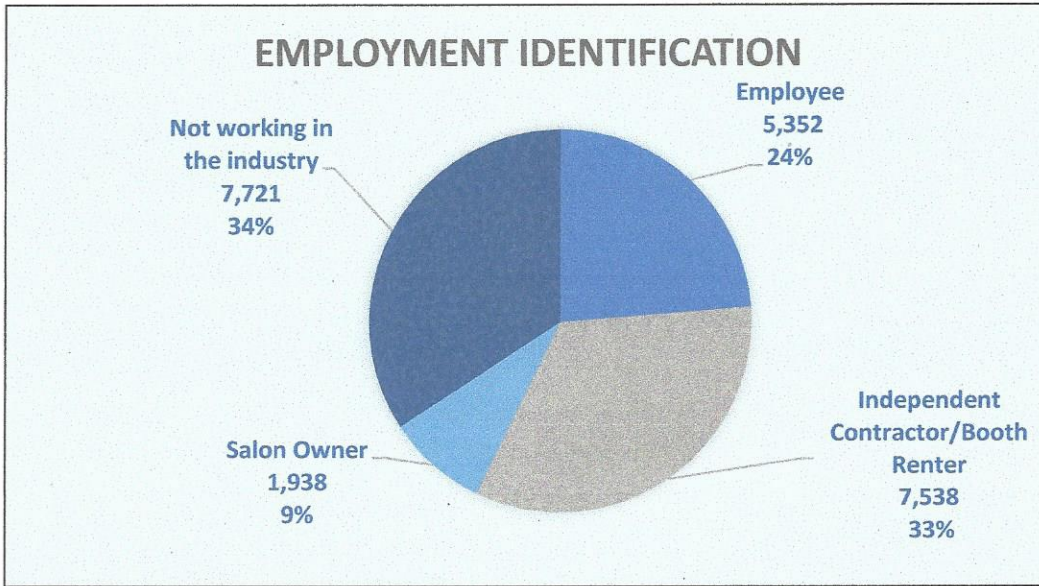
MEMORANDUM

DATE August 12, 2019
TO: Members, Board of Barbering and Cosmetology
FROM: Kristy Underwood, Executive Officer
SUBJECT: Outreach Update

- Board staff participated May 7 at the Senior Rally Day at the State Capital. Over 200 seniors visited the board's booth. This was the first outreach event displaying the "Look for the License" promotional material and it was well received by all who stopped by the booth.
- The Outreach unit has been approved to travel to the following events:
 - August 3, 2019 - Assemblymember Chris Holden's Community Resource Fair and Block Party - Pasadena
 - August 25-26, 2019 – Face and Body Spa and Expo San Jose Convention Center
 - September 22, 2019 - NailPro Sacramento CAL EXPO

RENEWAL QUESTIONNAIRE

April 1 - June 30, 2019



DRAFT
**CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY**

BOARD MEETING

MINUTES OF APRIL 29, 2019

Department of Consumer Affairs
1747 North Market Blvd.
HQ2 Hearing Room 186, 1st Floor
Sacramento, California

BOARD MEMBERS PRESENT

Lisa Thong, President
Andrew Drabkin, Vice President
Jacquelyn Crabtree
Steve Weeks
Dr. Kari Williams

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Michael Santiago, Board Legal Representative
Marcene Melliza, Board Analyst

[Note: Agenda Item 12 was taken out of order. These minutes reflect this Agenda Item as listed on the agenda and not as taken in chronological order.]

1. Agenda Item #1, CALL TO ORDER/ ROLL CALL/ ESTABLISHMENT OF A QUORUM

Lisa Thong, Board President, called the meeting to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

2. Agenda Item #2, PETITION FOR REINSTATEMENT HEARINGS

- Canh Trung Huynh
- Sandra Martinez

CLOSED SESSION

- a. Pursuant to Government Code Section 11126(c)(3), the Board will meet in Closed Session to Deliberate on Disciplinary Matters.**

The Board met in closed session as permitted by law to deliberate on disciplinary matters.

- b. Adjourn Closed Session and Reconvene Open Session**

Ms. Thong reconvened the meeting. No action was announced as having been taken.

3. Agenda Item #3, BOARD PRESIDENT'S OPENING REMARKS

Ms. Thong thanked staff for their work during the Board's sunset review.

Ms. Thong presented former Board Member Joseph Federico with a resolution from the Department of Consumer Affairs (DCA) in appreciation for his years of service with the Board.

4. Agenda Item #4, BOARD MEMBER REMARKS

No Board Member remarks were offered.

5. Agenda Item #5, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

John Moreno, Vice President, Bakersfield Barber College, stated he ordered physical copies of the Health and Safety textbooks and workbooks in February and has not received them yet, although he has been assured that they have been shipped. He asked that the books be delivered in a timely manner. Also, the State Board Laws and Regulations have been ordered and have yet to be received.

Kyin Chiou, Chief Operating Officer, International Beauty College, San Francisco, stated his students have been applying for their test dates since December. His college's application is under review and he has been told that he will hear from the Board soon but he has yet to receive anything.

Eleven students who have completed the manicure program, seven students who have completed the cosmetology program, three students who have completed the esthetician program, and two students with undeclared programs from the International Beauty College spoke in support of Mr. Chiou's request. Many of these students have been waiting for five to six months to get their test date.

Wendy Cochran, Founder, California Aesthetic Alliance (CAA), stated licenses are being held by franchise owners and licensees are not being allowed to take the licenses with them to other jobsites. Many estheticians work multiple places and the franchise owners are either holding their licenses at the front desk away from their work areas or telling them to contact the Board to get a duplicate, which costs \$10. She asked the Board to address this issue by perhaps having a better understanding with the establishment owners that this is part of what licensees take with them every day so they can perform services elsewhere. Licensees are being written up for not knowing the regulation that the license is to stay with the practitioner as they move from room to room and that they cannot take it with them when they go to another jobsite. They are being disciplined and often lose their jobs. They are being written up for asking to bring their license back and forth between jobs.

Fred Jones, Legal Counsel, Professional Beauty Federation of California (PBFC), stated the 14th Annual Welcome to Our World (WOW) event at the state Capitol is one week from today from 3:00 p.m. to 6:30 p.m. Details are on the PBFC website.

Patty Barnes, Instructor, Solano Community College, stated instructor licenses must be posted at community colleges and some instructors teach at multiple facilities. She stated she had to move her license back and forth between Solano Community College

and another college she was teaching in while also owning a salon. She asked the Board to provide multiple copies of licenses.

Ms. Barnes stated accommodations are made for students who have special needs in the written portion of the exam. She stated those same students often have need for accommodation in the practical portion of the exam. She asked what the Board does to ensure that the needs of all students are met.

Ms. Barnes stated she also is the owner of Rent-A-Kit, which is a business that facilitates students with State Board kits. She invited the Board to visit to get a bird's eye view of what is going on in the testing world and how successful the students are. She stated it is shameful how some schools and apprenticeship programs operate. She stated the need to be held accountable to a higher standard for the students. Students should not have to go back to the State Board five or six times. She stated this is an issue that will not go away. Some apprenticeship programs and schools are very good while others are very bad.

6. Agenda Item #6, EXECUTIVE OFFICER'S REPORT

- a. Licensing Statistics**
- b. Examination Statistics**
- c. Disciplinary Review Committee Statistics**
- d. Enforcement Statistics**
- e. Budget Updates**
- f. Outreach Updates**
- g. Practice Status Survey Results**

Kristy Underwood, Executive Officer, reviewed the statistics and update reports, which were included in the meeting packet. She noted that a historic review was added to the examination statistics per Board request.

Questions and Discussion

Mr. Weeks asked about the low 2019 Spanish barber pass rate of 15 percent.

Ms. Underwood stated the new barber test went into effect two months ago. She stated there consistently is a decline in scores for new examinations.

Ms. Thong asked about things the Board has done in the past to help decrease the number of violations issued and if there is a difference between how the Board is enforcing now versus ten years ago. Ms. Underwood stated the Board made huge progress with foot spa enforcement. Also, the fine scheduled has been increased several times, which has made a difference. She stated staff will do a historical analysis of the enforcement statistics for the next Board meeting.

Mr. Drabkin asked why interpreter services were not used during the last quarter for Disciplinary Review hearings. Ms. Underwood stated no appellants requested it. Historically, appellants bring individuals with them to interpret.

Mr. Drabkin suggested ensuring that appellants know that this service is available to them. Ms. Underwood stated staff has put together a press release that talks about services provided. This will be translated into multiple languages and sent out to communities to help get the word out.

Ms. Thong suggested that language material be shared on Facebook and Instagram. There are individuals who use those platforms in other languages.

Public Comment

Ms. Barnes stated part of the reason for low test scores is because the test is in correct grammar and very often the students do not understand that because they do not speak using correct grammar. She suggested that the schools teach using proper grammar, especially in the Hispanic and Asian communities.

Kevin Nguyen, California Barber and Beauty College, San Diego, stated the pass rate has dropped since implementing the new rules and testing.

7. Agenda Item #7, OVERVIEW OF DCA'S BUDGET PROCESS PRESENTED BY DEPARTMENT OF CONSUMER AFFAIRS BUDGET OFFICE

Karen Munoz, Budget Manager, DCA Budget Office, provided an overview of the budget process. She reviewed the three stages of the annual budget process, which was included in the meeting packet.

Questions and Discussion

Mr. Weeks asked how the Board's budget for the upcoming year is set. Ms. Munoz stated it starts with the governor's budget. Additional resources may be requested through the Budget Change Proposal process.

8. Agenda Item #8, APPROVAL OF BOARD MEETING MINUTES

• February 11, 2019

MOTION: Mr. Drabkin moved to approve the February 11, 2019, California State Board of Barbering and Cosmetology Meeting Minutes as presented. Ms. Crabtree seconded. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Crabtree, Drabkin, Thong, Weeks, and Williams.

9. Agenda Item #9, APPOINTMENT OF COMMITTEE MEMBERS TO THE HEALTH AND SAFETY ADVISORY COMMITTEE

Ms. Crabtree and Ms. Thong volunteered to serve on the Health and Safety Advisory Committee this year.

10. Agenda Item #10, UPDATE ON SUNSET REVIEW

Ms. Underwood stated the February Sunset Review Hearing was postponed. An extension will be put into a bill to allow for discussions on the oversight of the industry and the hearing will be rescheduled soon.

Public Comment

Ms. Cochran stated the esthetician license scope has not been reviewed since 1978. Estheticians would like to provide services that are modern to 2019 and beyond.

11. Agenda Item #11, DISCUSSION AND POSSIBLE ACTIONS REGARDING SPANISH LANGUAGE EXAMINATION PASS RATES

- **Review of Recommendations from Spanish Language Examination Task Force**
- **Review of Spanish Pass Rates for Written Examinations**

Ms. Underwood reviewed the five recommendations made by the Spanish Language Task Force and the staff analysis of Spanish pass rates for written examinations, which were included in the meeting packet.

Ms. Underwood stated staff separated the data on the Apprenticeship Program for the first time and found a 33 percent pass rate for applicants who took the examination in Spanish and a 38 percent pass rate for applicants who took the examination in all other languages. These percentages are alarming. She stated possible issues are that the examination is developed referencing textbooks, yet the apprenticeship program does not require the use of textbooks, and the trainers have no requirements other than that they are licensed with no fines. Also, apprentices are often found working in shops with no supervision.

Questions and Discussion

Mr. Weeks asked what can be corrected through the actions of the Board and the Division of Apprenticeship Standards (DAS). Ms. Underwood stated it will take significant changes on the regulatory level for both entities. The DAS standards for sponsors need to be reviewed.

Ms. Thong asked if new legislation would be needed to implement new requirements. Ms. Underwood stated it depends on the authority the Board has through current statute. She stated the hope to see a significant regulation package to change how the Board is handling schools. Several recommendations were made in the sunset report for how the Board currently handles schools and more Board authority of schools was requested. New and revised regulations can improve the situation in schools.

Mr. Weeks stated concern about the language in the Business and Professions Code (BPC) – for example, whether “weighted average” is the right answer, the most adequate, or part of the solution to the problem. The BPC states “practical demonstration shall prevail over a written test.” It seems that the Board historically has ignored the basis of this law. The code is unambiguous and to interpret it in any other way is to change the intent of the law and the intent of the Legislature. This is fundamental to how examinations should be done. The code states that examinations should be graded in a very different format than all examinations are currently being graded. A recent study indicated that following the Legislature’s direction could increase pass rates. The study stated that the practical examination is more important than the written examination with respect to the protection of the public, which is the Board’s fundamental goal.

Ms. Thong stated it sounded like there were two questions: a compliance question regarding whether or not the Board is operating out of compliance, which is a question for legal counsel, and the question of the way the scoring is weighted as it pertains to not just Spanish language pass rates but to pass rates overall. She stated a letter was provided to the Board, which contains information that was recently agreed upon to become public. Ms. Thong asked Ms. Underwood and Michael Santiago, Board Legal Representative, to go through the memo.

Ms. Underwood deferred to the creators of the letter to discuss it.

Lee Schroeder, Ed.D., President and Founder, Schroeder Measurement Technologies, Inc. (SMT), representing its parent company, Metric (phonetic), and the National Interstate Council of State Boards, asked, given the statement of law that was just referenced, what the case would be to follow that rule. SMT currently scores examinations on what is referred to as a non-compensatory basis, where both examinations must be passed and having more skill in one area does not compensate for less in the other. It appears as though it was in the minds of the individuals who passed the law that somehow extra competence in the practical area should compensate for less performance in the written area.

Dr. Schroeder stated he looked at a one-year period of time ending June of 2018 for first-time test-takers. He stated 62 percent of English language examinations passed versus 36 percent of Spanish language examinations passed. He noted that averaging these two scores with a 1 percent difference, making it 51 percent of the weight placed on the practical examination and 49 percent placed on the written examination, changed the Spanish language examination pass rate from 51 percent to 54 percent. Using this smallest possible weighting difference made a fairly dramatic change of 18 percent.

Ms. Crabtree stated her understanding that the examinations are currently weighed 50/50. Dr. Schroeder stated there currently is a non-compensatory model. Both the written and practical portions of the examination must be passed; the scores are not averaged.

Mr. Weeks stated the first paragraph on the second page of the SMT report, which was included in the meeting packet, states “further, such a weighting does not make it possible for a candidate with a very high score on the practical examination to pass without a meaningful level of performance on the written examination,” meaning there is bad equity between the two.

Dr. Schroeder stated what he was getting at was his understanding that a few years ago the examination portions were separated, where 25 percent of the weight was placed on the written examination and 75 percent was placed on the practical. He stated that was compliant with the law as he understands it; yet, an individual could be licensed without demonstrating any knowledge on the written examination. Moving to his example of a 49/51 weighted scoring would change the outcomes substantially while requiring individuals to demonstrate some meaningful level of knowledge on the written examination.

Dr. Schroeder stated 25/75 only raises the pass rate a little. He stated he did “what if” calculations all the way up the line but soon realized, apart from the fact that data

should not be made to fit needs, the thing that made a big difference was the combination of the scores – treating them as compensatory, where better performance in one compensates for poor performance in the other. That one change is meaningful and has a significant effect for almost any weight that is applied.

Sean Colton, Vice President, SMT, stated another factor that cannot be omitted from this discussion is the large numbers of low examination scores for the apprenticeship programs, which will skew the numbers.

Ms. Crabtree asked if the scores were assigned percentages of 25/75 30 years ago. Dr. Schroeder stated 100 points were assigned to the written portion of the examination and 300 points were assigned to the practical portion.

Ms. Crabtree asked why the scoring method was changed. Tracy Montez, Ph.D., Chief, Division of Programs and Policy Review, DCA, stated it was changed because the criterion reference non-compensatory model is the best model for licensing examinations. Not many licensing examinations use a compensatory model. Most programs, including the CBBC, have certain standards and expectations that are based on entry-level standards. A candidate must achieve those minimum standards in order to practice safely and competently.

Dr. Montez stated a decision was made in the past to change the scoring to a criterion reference passing score for the written and practical examinations. Each one of those pass points must be achieved in order for a candidate to become licensed. The compensatory model was removed because it was found that the scoring was so weighted that there were candidates who could fail the written portion and still become licensed by passing the practical examination. Practical examinations tend to be less standardized, less reliable, and more difficult to score. It was important to the Board at that time to keep both the written and practical portions of the examination.

Dr. Montez stated the scoring is normative where data is used based upon the students while a criterion is what a student must do to practice safely and competently. The criterion does not fluctuate. She stated her concern about adjusting the percentages to ensure a higher pass rate. The standards specifically state that regulatory boards should not adjust pass rates arbitrarily to allow individuals to enter into the field but that scoring should be based on a criterion reference base.

Dr. Montez cited BPC section 139 and stated legislators put the term “prevail” in the law but they were not advised by a psychometrician. Psychometric standards are based on case law.

Mr. Drabkin asked if it is the role of the Legislature to gate-keep. Dr. Montez stated, based on testing, it is not. The Legislature must look at what is appropriate for standards for health and safety. The Board makes those decisions too but it does not gate-keep by arbitrarily adjusting the passing score. The Board establishes regulations to protect consumers but it would be on a test-by-test case by doing occupational analyses based on the scope of practice that identifies important tasks, skills, and knowledge that must be known upon licensure; then, the test is developed based on that. That is what should govern those decisions, not raising the pass rate.

Mr. Weeks stated it appears that the DCA is in conflict with the BPC. There are two different things going on here: the code and scientific testing of what would be best in this area. Dr. Montez stated her concern about the interpretation of the word “prevail.” There was no guidance on the appropriate use of that word when that was established so the Board chose to use BPC Section 139 to help them address the word “prevail” and how that has been interpreted.

Mr. Weeks asked for a discussion on that point. Mr. Santiago stated the overarching question is whether or not the Board is in compliance with the law. He stated it is a difficult question to ask because it is not clear-cut. The Board is in substantial compliance in terms of the BPC Section 7338 and also 139, meaning struggling with these two different code sections and trying to be lawful. The Board has been working with the Office of Professional Examination Services (OPES) over the years because of the vague language of BPC Section 7338.

Mr. Santiago stated the need for a regulation in order to say the Board is in full compliance because of the language in the statute and the regulations on how to implement what “prevail” means. Absent having a regulation, the Board relies on the psychometric data and OPES to determine how to best implement this code section. The Board must acknowledge that the language does not state the practical portion of the test will surpass the written every time because Section 139 states policies must be developed that pertain to the setting of passing standards. If the Board has that advice that it cannot automatically say that the practical demonstration surpasses the written every time, the Board has to acknowledge that and find a course. He stated that is where the Board comes into substantial compliance. The Board is legally defensible in that it is in substantial compliance with the law.

Dr. Montez suggested combining the written and practical portions into one examination. Students do a practical demonstration and then articulate some of those knowledge concepts captured on a written test. Rather than dealing with compensation or some model or two different tests, there is a way to address the Board’s concerns about the differences in pass rates. There is a much bigger picture with the apprenticeship program and other issues with language and translation but, rather than going back to this one statute, she suggested looking at the examinations and how they are done. Computer-based testing was a huge change and maybe now it is time to look at something a little different in terms of one exam versus two.

Dr. Montez stated she has done audits of the national examination programs and they are very strong with great information to candidates that must connect with the students and the schools. If students do what is being asked of them, taking the time to learn the material and to see what is published out there, they should be able to do well. She stated her concern is that students are not being led in the right direction.

Mr. Weeks asked if Dr. Montez is suggesting that there could be some sort of internalized weighting in a single examination that could offset the current issues. Dr. Montez stated it is a possibility by combining them to where students could articulate some of those concepts in greater detail that were on the written test as they are completing their practical demonstration. It is a way to streamline while still protecting

consumers. It addresses the need to get candidates licensed fairly while knowing that there is a disparate situation with the written and practical portions.

Mr. Weeks stated his understanding that the concept would be to go to a one-test format to negate the problem with the word “prevail.” Dr. Montez agreed and suggested working closely with the executive officer and legal counsel for any changes made in consultation with SMT and licensees who are the subject matter experts. She stated the importance of having the Board, licensees, and psychometricians at the table to discuss any changes made.

Mr. Weeks asked the representatives from SMT for their thoughts on a one-exam format to accomplish the Board’s needs. Dr. Schroeder stated he agreed with everything that Dr. Montez said, but it is difficult to visualize the mechanics of that. It would seem there would be a facility where there would be a demonstration of skills, similar to the practical portion of the examination, and then something would be done to collect cognitive information and then move on to perhaps another demonstration of skills. He stated, at the end of the day, it would do the same as combining the scores.

Dr. Schroeder stated, if there is a cognitive format, a written exam where 50 percent of it is science, 25 percent is health and safety, and 25 percent is products, if someone is good in science and not so good in health and safety, they can still pass because one compensates for the other within the exam. It is not inherently wrong to combine the scores across the two types of examinations.

Ms. Underwood asked how other states make the national examination work. Dr. Schroeder stated other states are not seeing the difference in performance that California is observing. He stated he sees candidates who are trained in other languages have certain deficiencies; the translation aspect of the examinations has been looked at in every possible way to see if it could have in some way been flawed. It comes back to the fact that for some reason candidates who choose to take their examinations in a language other than English cannot seem to read it. He suggested toggling the content. Most individuals who take the examination in Spanish are bilingual fundamentally and the examination can and should be presented in a bilingual way where a candidate can read it in both Spanish and English.

Mr. Colton added that this is currently done for a number of clients and toggling to English can be done in any language that the test is translated into for a better understanding of the terms.

Dr. Montez stated a new computer-based testing contract will be in place by the end of this year. The ability to toggle between English and other languages is a priority and is an anticipated option.

Mr. Drabkin suggested including a screen reader. Mr. Colton stated a screen reader is included in the program, but he stated the need to be careful because not all words are pronounced accurately.

Mr. Weeks stated he was intrigued by looking at a one-examination format. He asked staff to continue looking at that as a possible solution to the problem with BPC Sections 7338 and 139 and report findings at the next Board meeting.

Ms. Thong stated there is a bigger need than just looking at scoring in terms of reviewing the examination, what other states are doing, and whether or not the exam itself is how the Board should be testing. She asked that the Licensing and Examination Committee look at this in detail and bring recommendations to the Board.

Ms. Thong stated the Board is now on two separate tracks from what is seen in the data of the Spanish language exam:

- The apprenticeship and school issues are a huge factor in pass/fail rates. The examination question may play a much smaller part of that but major issues need to be addressed for Spanish test takers first and foremost.
- The examination must be looked at in detail, especially with the new toggle option and seeing how that plays out and maybe having the Licensing and Examination Committee look into other questions the Board may want to raise and take to a more detailed level.

Ms. Thong noted that Committee appointments were tabled to January due to the number of vacancies on the Board.

Dr. Montez stated it will take time to research these issues. She suggested sharing at the Sunset Review Hearing that the Board is looking at Spanish pass rates, the examination structure, and how to do things more efficiently and still protect consumers. This is a great example of the balance between being fair, improving the economy, and protecting the public.

Mr. Weeks stated the Legislature would appreciate a one-examination format.

Mr. Colton stated changing the examination format is not the solution to the problem because there is still the administration side. There is flexibility where candidates can take the test but changing the examination model will increase the length of the exam and the wait time for individuals to take the examination. There are other factors to consider.

Ms. Thong agreed that it is not only about how the examination is scored but whether or not the examination needs to be updated in any other way so that it is easier to access and also addresses the economic need, especially what legislators have concerns with.

Public Comment

Mr. Jones suggested not changing the format and not assigning weighted percentages but instead combining the score of the written and practical portions of the examination. A single test score will compensate for students who do well on the practical portion but not so well on the written portion.

Mr. Jones noted that BPC Section 7338 is specific to this Board while Section 139 is a general DCA code section.

Mr. Jones stated his organization's primary concern is to preserve the practical examination. The practical examination should prevail but, at the very least, it should exist. Going back to a single score will help preserve the practical examination.

Janice Moses, On-Site Administrator, Blake Austin College, Vacaville, stated quality of education is a concern. She encouraged the Board not to diminish the written portion of the examination because it is in the learning of the sciences and health and safety that produces a higher caliber licensee. She stated getting anyone to pass is not what the Board is looking for. Elevating what the students are learning is important.

[Note: Agenda Item 12 was taken out of order and was heard after Agenda Item 5.]

12. Agenda Item #12, DISCUSSION ON INSTRUCTOR REQUIREMENTS FOR PRIVATE BEAUTY SCHOOLS

Ms. Underwood summarized the staff notes, which were provided in the meeting packet. She stated the Board does not have oversight over instructors in any school setting; however, the Bureau for Private Postsecondary Education (BPPE) does have requirements for instructors. She invited the representatives from the BPPE to come to the presentation table for a question and answer session.

Dr. Michael Marion, Jr., Bureau Chief, BPPE, introduced his colleague, Robert Bayles, Chief, Quality of Education and Annual Reports Unit, BPPE, and stated they would be happy to answer any questions from the Board.

Questions and Discussion

Ms. Thong asked about the requirements in the BPPE's oversight of instructors.

Mr. Bayles stated the BPPE looks at a combination of three years of education, experience, and training for faculty in non-degree programs. In the case of Board programs, typically three years of experience meets the requirement for hire. This is evaluated through various documents that come to the BPPE through the licensing application process. BPPE compliance inspectors verify the same thing when out in the field.

Mr. Weeks asked what the equivalencies are for experience, education, and training that the second sentence of the California Code of Regulations (CCR) Section 71720(b)(1) refers to, which states "If an instructor does not possess the required three years of experience, education, and training in the subject area they are teaching, the institution shall document the qualifications the instructor possesses that are equivalent to the minimum qualifications."

Mr. Bayles stated the Quality of Education Unit met four or five months ago because that question was posed by compliance inspectors. The unit came up with a single example and it was for a criminal justice program, where an individual had some type of significant award because of their accomplishments in the field. There are no equivalencies for instructors in the CBBC programs.

Mr. Weeks asked if equivalencies have been denied at the BPPE or school level.

Mr. Bayles stated they would be denied in the licensing application but, once a school becomes licensed, they are free to operate so they can hire more faculty. Schools are not required to run additional faculty through the BPPE. Compliance inspectors typically return after the school has been running a few years. The compliance inspectors review the faculty files to ensure that the instructors are qualified.

Mr. Drabkin asked what community colleges require for instructors. Mr. Bayles stated community colleges are typically more stringent in their requirements for degree programs. He stated he was unsure for non-degree programs.

Ms. Crabtree asked if the BPPE oversees apprenticeship programs. Mr. Bayles stated it does not.

Ms. Thong asked about the documentation the BPPE requests for instructors. Mr. Bayles stated, in most cases, it is a resume because a resume outlines an individual's career and qualifications based on experience. If qualifications are based in part on education, the BPPE asks for an academic transcript from the college or university that the individual attended. If qualifications are based on training such as their attendance at a CBBC school, the BPPE asks for documentation of that, which can be a transcript or proof-of-training document.

Mr. Weeks stated the CCR Section 71720(b)(2) requires the completion of continuing education courses in three areas. He asked about the frequency and number of hours required and proof that these requirements were met for file audits.

Mr. Bayles stated it is recommended but there are currently no such requirements. Accrediting agencies typically require that information on an annual basis. The BPPE is in the process of revising the minimum operating standards language to an annual requirement and adding information that was not previously required.

Ms. Thong asked if the BPPE works with Board staff to look at the applicant's record, specifically the history of violations. Mr. Bayles stated the BPPE does not work with the Board staff as part of the licensing application process.

Ms. Thong asked if there is a requirement for faculty to be a current licensee with the Board. Mr. Bayles stated the BPPE does not have a regulation that says that faculty must hold current licensure.

Ms. Crabtree asked who oversees the apprenticeship program. Ms. Underwood stated the Division of Apprenticeship Standards oversees the apprenticeship program.

Mr. Weeks stated there has been more collaboration and sharing of information recently between the Board and the BPPE. That is good for both entities. Dr. Marion thanked the Board for their support. He stated the hope for continued collaboration in the future.

Public Comment

Ms. Cochran asked how schools can hire contractors who teach services that are out of scope, such as microneedling, permanent makeup, dermaplaning, and fibroblasting. Students are being misled into thinking that they will perform these services when licensed.

Jaime Schrabec, Ph.D., Owner, Precision Nails, stated her concern that, if the Board took action, it would give instructors the opportunity to teach at schools. She stated her concern that any type of instructor license within cosmetology will lend a sheen of credibility to schools whose business models may be to sell hours and proofs of training. These may be great instructors, but students will not be present to benefit from that instruction.

Ms. Barnes stated, to instruct at a community college, individuals must have a degree and multiple years of experience, and must do continuing education within the college district.

Ms. Underwood stated students' time in school working toward a cosmetology license gives them the experience to apply to the BPPE to be an instructor. She suggested further discussion on this issue at a future Board meeting.

13. Agenda Item #13, LEGISLATIVE UPDATE: DISCUSSION AND POSSIBLE ACTION ON PROPOSED BILLS

Ms. Underwood summarized the Bill Analysis, which was included in the meeting packet, for the following bills:

a. AB 5 (Gonzalez) – Worker Status: Independent Contractors

Public Comment

Ms. Cochran suggested taking a watch position. It is a massive problem in the industry and what follows behind it is tax evasion, which will eventually roll back to the Board.

MOTION: Mr. Drabkin made a motion, seconded by Ms. Crabtree, that the Board watch AB 5. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Crabtree, Drabkin, Thong, Weeks, and Williams.

b. AB 193 (Patterson) – Barbering and Cosmetology Scope of Practice Changes

Ms. Underwood stated the Board currently has taken an oppose position on this bill. This bill has been pulled from the Committee. She recommended maintaining an oppose position.

c. AB 496 (Low) – Business and Professions Changes

MOTION: Ms. Thong made a motion, seconded by Dr. Williams, that the Board support AB 496. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Crabtree, Drabkin, Thong, Weeks, and Williams.

d. AB 613 (Low) – Regulatory Fees

MOTION: Mr. Weeks made a motion, seconded by Ms. Crabtree, that the Board support AB 613. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted "Yes": Crabtree, Drabkin, Thong, Weeks, and Williams.

e. AB 817 (Kiley) – Mobile Units

Ms. Underwood stated this bill has recently been pulled by the author. She stated this bill will be discussed at the Sunset Review Hearing. She suggested that the Board support this bill because it makes significant changes.

Public Comment

Dr. Schrabec stated the need to define the word “enclosed” or it may be interpreted to include horse trailers or carts.

Ms. Thong asked staff to take that feedback to the author’s office.

MOTION: Dr. Williams made a motion, seconded by Ms. Crabtree, that the Board support AB 817. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

f. AB 1271 (Diep) – Licensing Examination Reports

MOTION: Ms. Crabtree made a motion, seconded by Dr. Williams, that the Board watch AB 1271. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

g. AB 1607 (Boerner Horvath) – Gender Discrimination Notification

Public Comment

Dr. Schrabec stated the language is sloppy - for example, it refers to barbers or hair salons. Barber is an individual and a category of licensure while a hair salon is a type of establishment. She suggested the language “for every business that offers services that are regulated by the CBBC.” If the language does not apply to the entire Board, it is problematic.

Ms. Thong asked staff to take that feedback to the author’s office.

MOTION: Ms. Crabtree made a motion, seconded by Mr. Drabkin, that the Board support AB 1607. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

h. SB 238 (Grove) – Worker Status

Ms. Underwood stated this bill failed passage at the hearing and reconsideration was granted. This bill is a carve-out to AB 5.

MOTION: Mr. Drabkin made a motion, seconded by Ms. Thong, that the Board watch SB 238. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

i. SB 607 (Glazier) – Health and Safety Advisory Committee

MOTION: Mr. Drabkin made a motion, seconded by Ms. Crabtree, that the Board support SB 607. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

14. Agenda Item #14, PROPOSED REGULATIONS: DISCUSSION AND POSSIBLE ACTION OF PROPOSED REGULATORY CHANGES

Ms. Underwood summarized the Regulations Update memo, which was included in the meeting packet, for the following regulations:

- a. Title 16, CCR Section 904 (Definition of Access)**
- b. Title 16, CCR Section 950.10 (Transfer of Credit or Training)**
- c. Title 16, CCR Section 961 (National Interstate Council (NIC) Translation Guides)**
- d. Title 16, CCR Sections 962, 962.1 and 962.2 (Externs)**
- e. Title 16, CCR Section 965.2 (Personal Service Permit)**
- f. Title 16, CCR Section 970, 971 and 972 (Substantial Relationship Criteria, Criteria for Rehabilitation, and Disciplinary Guidelines)**
- g. Title 16, CCR Section 974 and 974.3 (Fine Schedule and Payment Plan)**

MOTION: Ms. Crabtree made a motion, seconded by Dr. Williams, that the Board approves the proposed language and disciplinary guidelines booklet for Title 16, CCR Sections 970, 971, and 972. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

MOTION: Ms. Crabtree made a motion, seconded by Dr. Williams, that the Board approves the proposed revisions to fine schedule language in Section 974. Motion carried 5 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Board Members voted “Yes”: Crabtree, Drabkin, Thong, Weeks, and Williams.

15. Agenda Item #15, AGENDA ITEMS FOR THE NEXT MEETING

No additional agenda items were offered.

16. Agenda Item #16, ADJOURNMENT

There being no further business, the meeting was adjourned at 3:06 p.m.



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • BOARD OF BARBERING AND COSMETOLOGY
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MEMORANDUM

DATE August 12, 2019

TO: Members, Board of Barbering and Cosmetology

FROM: Kristy Underwood, Executive Officer

SUBJECT: Update and Possible Action on Recommendations from the Health and Safety Advisory Committee

This memo is to provide the Board with a summary of the Health and Safety Advisory Committee's meeting held on July 29, 2019 in Sacramento.

Committee Members Present:

- Lisa Thong, Board President
- Kathy Te Nelson, Physical/Sexual Abuse Awareness Specialist
- Leslie Roste, Medical Professional Representative
- Zenith Khwaja, Department of Public Health Representative
- Paul Bryson, Scientist
- Brandon Hart, Department of Industrial Relations/CalOSHA Representation
- Fred Jones, Industry Association Representative
- Jennifer Cruz-Jimenez, Barber
- Joanie Gonella, Electrologist
- Kellie Swallow, Esthetician
- Jaime Schraback, Manicurist
- Larry Cromwell, Establishment Owner

Staff Members Present:

- Kristy Underwood, Board Executive Officer
- Michael Santiago, DCA Legal Counsel
- Allison Lee, Board Project Manager
- Marcene Melliza, Board Analyst

Workers' Rights

Fred Jones provided a brief overview of AB 5. Committee members agreed that the language is not clear and there was discussion regarding whether a booth renter would be required to book their own appointments instead of a receptionist. Fred Jones believes something similar

to the current version of the bill will pass and clean up language will come later. The Committee made a motion or a recommendation to the Board that is noted below.

Updating Health and Safety Regulations

The Committee discussed updating health and safety regulations, so they are practical, enforceable, and necessary for consumer protection. This would also shorten the regulations, so they are easier for licensees and consumers to read and understand.

Committee members requested the Board to educate licensees and consumers more. Instead of saying a licensee cannot do something, explain why and the risks associated with such service. The Committee would like the Board to have more of a presence at consumer events, so the public is aware of the Board and the health and safety regulations.

Agenda Items for Next Meeting

- Discussion and Recommendations to the Board Regarding Updating Health & Safety Regulations
- Discussion and Recommendations to Staff Regarding Environmental Factors and Best Practices

Recommendations to Board for Approval

- Appoint an alternate board member to stand on the Health and Safety Advisory Committee

Motion from Committee:

- Approach policy makers for a booth rental permit
- Engage the AB 5 author to:
 - Appropriately refer to Board licensees (not workers) in sections 6
 - Add verbiage regarding their professional license in section E
 - Request all occupational licensees to be included with the exemption



BOARD OF BARBERING & COSMETOLOGY

BILL ANALYSIS

Author: Assembly Member Gonzalez

Subject: Dynamex Decision

Bill Number: AB 5

Version: July 11, 2019

Existing Law:

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes.

This Bill:

This bill would state the intent of the Legislature to codify the decision in the *Dynamex* case and clarify its application. The bill would provide that the factors of the “ABC” test be applied in order to determine the status of a worker as an employee or independent contractor for all provisions of the Labor Code and the Unemployment Insurance Code, except if a statutory exemption from employment status or from a particular obligation related to employment or where a statutory grant of employment status or a particular right related to employment applies. The bill would codify existing exemptions for specified professions that are not subject to wage orders of the Industrial Welfare Commission or the ruling in the *Dynamex* case. The bill would state that its provisions do not constitute a change in, but are declaratory of, existing law.

Analysis:

As written, AB 5 does not impact any operations of the Board, however, because of the significant amount of booth renters/independent contractors within the barbering and cosmetology industry, the Board’s licensees are impacted. This bill would exempt workers providing hairstyling or barbering services, electrologists, and estheticians. This bill does not exempt manicurists.

The *Dynamex* decision provides the “ABC Test” for determining if someone is an independent contractor. The ABC is as follows:

1. Part A: Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?

2. Part B: Does the worker perform work that is outside the usual course of the hiring entity's business?

3. Part C: Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?

The barbering and cosmetology industry has operated for many years of individuals considering themselves to be independent contractors. With the ABC Test, many of these individuals are finding that they are technically classified as employees. This could be a significant financial burden to someone who has their own clientele and received direct compensation from their clients, but according to the test may now have to be paid an hourly wage.

The Dynamex decision was issued by the California Supreme Court. This bill will place the provisions of the decision into statutes.

AMENDED IN SENATE JULY 11, 2019
AMENDED IN ASSEMBLY MAY 24, 2019
AMENDED IN ASSEMBLY MAY 1, 2019
AMENDED IN ASSEMBLY MARCH 26, 2019
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 5

Introduced by Assembly Member Gonzalez

December 3, 2018

An act to *amend Section 7500.2 of the Business and Professions Code, to amend Section 3351 of, and to add Section 2750.3 to, the Labor Code, and to amend Section 621.5 of the Unemployment Insurance Code*, relating to employment, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as amended, Gonzalez. Worker status: employees and independent contractors.

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment

insurance and disability insurance from the wages paid to their employees. Existing law defines “employee” for those purposes to include, among other individuals, ~~any officer of a corporation, and any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.~~ *employee, or is an employee of a person who holds or is required to obtain a valid state contractor’s license.*

This bill would state the intent of the Legislature to codify the decision in the Dynamex case and clarify its application. The bill would provide that the factors of the “ABC” test be applied in order to determine the status of a worker as an employee or independent contractor for all provisions of the Labor Code and the Unemployment Insurance Code, ~~unless another definition or specification of “employee” is provided.~~ *except if a statutory exemption from employment status or from a particular obligation related to employment or where a statutory grant of employment status or a particular right related to employment applies.* The bill would exempt specified professions from these provisions and instead provide that the employment relationship test for those professions shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 if certain requirements are met. These exempt professions would include, *among others*, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, ~~a direct sales salesperson,~~ *salespersons*, real estate licensees, workers providing hairstyling or barbering services, *electrologists, estheticians, workers providing natural hair braiding, licensed repossession agencies who meet requirements described below,* and those performing work under a contract for professional ~~services.~~ *The bill would require the State Board of Barbering and Cosmetology to promulgate regulations for the development of a booth rental permit and a reasonable biennial fee upon workers providing specified hairstyling or barbering services, by no later than July 1, 2021. services, with another business entity, or pursuant to a subcontract in the construction industry.*

This bill would also expand the definition of employee, for purposes of unemployment insurance provisions, to include individuals who are defined as employees pursuant to the above-described provision of the Labor Code codifying the “ABC” test. Because this bill would ~~expand~~ *increase* the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the

Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission.

Existing provisions of the Labor Code make it a crime for an employer to violate specified provisions of law with regard to an employee. The Unemployment Insurance Code also makes it a crime to violate specified provisions of law with regard to benefits and payments.

By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a ~~crime~~: *crime, thereby imposing a state-mandated local program.*

Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services. Existing law defines a repossession agency to include any person who engages in the business or accepts employment to locate or recover collateral. Existing law permits a licensed repossession agency to only transact business with another person or entity as an independent contractor.

This bill, to ensure that independent contractor status is met, would require the repossession agency to be both free from the control and direction of the hiring person or entity, as specified, and perform work that is outside the usual course of the hiring person or entity’s business.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) On April 30, 2018, the California Supreme Court issued a
- 4 unanimous decision in *Dynamex Operations West, Inc. v. Superior*
- 5 *Court of Los Angeles* (2018) 4 Cal.5th 903.
- 6 (b) In its decision, the Court cited the harm to misclassified
- 7 workers who lose significant workplace protections, the unfairness

1 to employers who must compete with companies that misclassify,
2 and the loss to the state of needed revenue from companies that
3 use misclassification to avoid obligations such as payment of
4 payroll taxes, payment of premiums for workers' compensation,
5 Social Security, unemployment, and disability insurance.

6 (c) The misclassification of workers as independent contractors
7 has been a significant factor in the erosion of the middle class and
8 the rise in income inequality.

9 (d) It is the intent of the Legislature in enacting this act to
10 include provisions that would codify the decision of the California
11 Supreme Court in *Dynamex Operations West, Inc. v. Superior*
12 *Court of Los Angeles* (2018) 4 Cal.5th 903, and would clarify the
13 decision's application in state law.

14 *SEC. 2. Section 7500.2 of the Business and Professions Code*
15 *is amended to read:*

16 7500.2. (a) A repossession agency means and includes any
17 person who, for any consideration whatsoever, engages in business
18 or accepts employment to locate or recover collateral, whether
19 voluntarily or involuntarily, including, but not limited to, collateral
20 registered under the provisions of the Vehicle Code which is
21 subject to a security agreement, except for any person registered
22 pursuant to Article 7 (commencing with Section 7506).

23 (b) A repossession agency licensed pursuant to this chapter shall
24 only transact business with another person or entity as an
25 independent contractor. *To ensure that this requirement is met,*
26 *both of the following shall be satisfied:*

27 (1) *The repossession agency shall be free from the control and*
28 *direction of the hiring person or entity in connection with the*
29 *performance of the work, both under the contract for the*
30 *performance of the work and in fact.*

31 (2) *The work that the repossession agency performs shall be*
32 *outside the usual course of the hiring person or entity's business.*

33 (c) A repossession agency shall not allow a person or entity
34 other than the qualified certificate holder, as provided in Section
35 7505.1, or the owner or officer of the repossession agency, to
36 manage the day-to-day operations, operate, control, or transact
37 business covered by this act, except as provided in Section 7503.3.

38 ~~SEC. 2.~~

39 *SEC. 3. Section 2750.3 is added to the Labor Code, to read:*

1 2750.3. (a) ~~For purposes of the provisions of this code and the~~
2 ~~Unemployment Insurance Code, where another definition or~~
3 ~~specification for the term “employee” is not provided, Except~~
4 ~~where a statutory exemption from employment status or an~~
5 ~~exemption from a particular obligation related to employment~~
6 ~~applies or where a statutory grant of employment status or a~~
7 ~~particular right related to employment applies, for purposes of~~
8 ~~the provisions of this code and the Unemployment Insurance Code,~~
9 and for the wage orders of the Industrial Welfare Commission, a
10 person providing labor or services for remuneration shall be
11 considered an employee unless the hiring entity demonstrates that
12 all of the following conditions are satisfied:

13 (1) The person is free from the control and direction of the hiring
14 entity in connection with the performance of the work, both under
15 the contract for the performance of the work and in fact.

16 (2) The person performs work that is outside the usual course
17 of the hiring entity’s business.

18 (3) The person is customarily engaged in an independently
19 established trade, occupation, or business of the same nature as
20 that involved in the work performed.

21 (b) This section and the holding in *Dynamex Operations West,*
22 *Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903, 903
23 (*Dynamex*), do not apply to the following occupations as defined
24 below, and instead, for these occupations only, the employment
25 relationship shall be governed by the test adopted by the California
26 Supreme Court in the case of *S. G. Borello & Sons, Inc. v.*
27 *Department of Industrial Relations* (1989) 48 Cal.3d 341 (*S. G.*
28 *Borello & Sons, Inc.*), or ~~Business and Professions Code Section~~
29 ~~10032(b) Section 7500.2 of, or subdivision (b) of Section 10032~~
30 ~~of, the Business and Professions Code, as set forth in paragraph~~
31 ~~paragraphs (5) and (7) below.~~

32 (1) A person or organization who is licensed by the Department
33 of Insurance pursuant to Chapter 5 (commencing with Section
34 1621), Chapter 6 (commencing with Section 1760), or Chapter 8
35 (commencing with Section 1831) of Part 2 of Division 1 of the
36 Insurance Code.

37 (2) A physician and surgeon licensed by the State of California
38 pursuant to Division 2 (commencing with Section 500) of the
39 Business and Professions Code, performing professional or medical
40 services provided to or by a health care entity, including an entity

1 organized as a sole proprietorship, partnership, or professional
2 corporation as defined in Section 13401 of the Corporations Code.

3 (3) A securities broker-dealer or investment adviser or their
4 agents and representatives that are registered with the Securities
5 and Exchange Commission or the Financial Industry Regulatory
6 Authority or licensed by the State of California under Chapter 2
7 (commencing with Section 25210) or Chapter 3 (commencing with
8 Section 25230) of Division 1 of Part 3 of Title 4 of the
9 Corporations Code.

10 (4) A direct sales salesperson as described in Section 650 of the
11 Unemployment Insurance Code, so long as the conditions for
12 exclusion from employment under that section are met.

13 (5) A real estate licensee licensed by the State of California
14 pursuant to Division 4 (commencing with Section 10000) of the
15 Business and Professions Code shall have their relationship
16 governed by ~~Business and Professions Code Section 10032(b).~~
17 *subdivision (b) of Section 10032 of the Business and Professions*
18 *Code.* If that section is not ~~applicable~~ *applicable*, then classification
19 shall be governed as follows: (1) for purposes of unemployment
20 insurance by ~~Unemployment Insurance Code Section 650; Section~~
21 *650 of the Unemployment Insurance Code*; (2) for purposes of
22 workers compensation by Section 3200 and ~~following~~ *following*;
23 *and* (3) for all other purposes in the Labor Code by the test adopted
24 by the California Supreme Court in the case of ~~S.G. S. G. Borello~~
25 ~~and Sons, Inc. v. Department of Industrial Relations (1989) 48~~
26 ~~Cal.3d 341.~~ The statutorily imposed duties of a responsible broker
27 under ~~Business and Professions Code Section 10015.1 of the~~
28 *Business and Professions Code* are not factors under the Borello
29 test.

30 (6) ~~(A)~~ ~~A worker providing hairstyling or barbering services~~
31 ~~who has a booth rental permit and services, an electrologist, an~~
32 ~~esthetician, or worker providing natural hair braiding, who is free~~
33 ~~from direction or control both under the contract for the~~
34 ~~performance of the work and in fact. For purposes of this~~
35 ~~subparagraph, “free from direction or control” includes, but is not~~
36 ~~limited to, the worker meets all of the following criteria:~~

37 (i)

38 (A) Sets their own rates for services ~~performed.~~ *performed,*
39 *provided the rate is equal to or greater than two times the minimum*
40 *wages for hours worked and is paid directly by their clients.*

1 (ii)
 2 (B) Sets their own hours of ~~work.~~ *work and has sole discretion*
 3 *to decide which clients from who they will provide services.*

4 (iii)
 5 (C) Has their own book of business ~~or clients.~~ *and schedules*
 6 *their own appointments.*

7 (D) *Uses their own funds to purchase requisite supplies used*
 8 *in connection with providing services.*

9 (E) *Maintains their own business license in connection with the*
 10 *services offered to clients.*

11 ~~(B) The State Board of Barbering and Cosmetology shall~~
 12 ~~promulgate regulations no later than July 1, 2021, for the~~
 13 ~~development of a booth renter permit and a reasonable biennial~~
 14 ~~fee not to exceed fifty dollars (\$50), which may be included as an~~
 15 ~~addendum to the initial and biennial license renewal application.~~
 16 ~~Booth renters shall post a notice of their booth renter permit for~~
 17 ~~consumers to view. The board shall share the list and contact~~
 18 ~~information of all booth renters with any state agency that requests~~
 19 ~~the list, for purposes of assuring compliance with this section.~~

20 (C) ~~The permit requirement set forth in subparagraph (B) shall~~
 21 ~~not become operative until six months after the State Board of~~
 22 ~~Barbering and Cosmetology finalizes regulations as required under~~
 23 ~~this section in accordance with the Administrative Procedure Act~~
 24 ~~(Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
 25 ~~Division 3 of Title 2 of the Government Code). Until that date, the~~
 26 ~~employment relationship between a hiring entity and a worker who~~
 27 ~~meets all the criteria in paragraph (1) of subdivision (a), except~~
 28 ~~for the permit requirement of subparagraph (B) of this paragraph,~~
 29 ~~shall be governed by the test adopted by the California Supreme~~
 30 ~~Court in the case of S. G. Borello & Sons, Inc. v. Department of~~
 31 ~~Industrial Relations (1989) 48 Cal.3d 341.~~

32 (D) ~~For the purposes of this paragraph:~~
 33 (i) ~~“Hairstyling” is any combination of the following practices:~~
 34 (I) ~~Arranging, dressing, curling, waving, machineless permanent~~
 35 ~~waving, permanent waving, cleansing, cutting, shampooing,~~
 36 ~~relaxing, singeing, bleaching, tinting, coloring, straightening,~~
 37 ~~dyeing, applying hair tonics to, beautifying, or otherwise treating~~
 38 ~~by any means, the hair of any person.~~

39 (II) ~~The provision of natural hair braiding services together with~~
 40 ~~any of the services and procedures described in subclause (I).~~

1 (ii) ~~“Barbering shall have the same meaning as defined in~~
2 ~~subdivision (a) of Section 7316 of the Business and Profession~~
3 ~~Code.~~

4 (7) *A repossession agency licensed pursuant to Section 7500.2*
5 *of the Business and Professions Code.*

6 (8) *The relationship between a business entity and an individual*
7 *performing work pursuant to contract with another business entity*
8 *to provide services to the contracting business, if the contracting*
9 *business entity demonstrates that all the following criteria are*
10 *satisfied:*

11 (A) *The service provider is free from the control and direction*
12 *of the contracting business entity in connection with the*
13 *performance of the work, both under the contract for the*
14 *performance of the work and in fact.*

15 (B) *The service provider is providing services to the contracting*
16 *business rather than to customers of the contracting business.*

17 (C) *The contract with the service provider is in writing.*

18 (D) *If the work is performed in a jurisdiction that requires the*
19 *service provider to have a business license or business tax*
20 *registration, the service provider has the required business license*
21 *or business tax registration.*

22 (E) *The service provider maintains a business location that is*
23 *separate from the business or work location of the contracting*
24 *business.*

25 (F) *The service provider is customarily engaged in an*
26 *independently established business of the same nature as that*
27 *involved in the work performed.*

28 (G) *The service provider actually contracts with other businesses*
29 *to provide the same or similar services and maintains a clientele*
30 *without restrictions from the hiring entity.*

31 (H) *The service provider advertises and holds itself out to the*
32 *public as available to provide the same or similar services.*

33 (I) *The service provider has no other financial relationships*
34 *with the contracting business.*

35 (J) *The service provider can negotiate its own rates, provided*
36 *that the rate is equal to or greater than two times the minimum*
37 *wage for hours worked.*

38 (K) *The service provider can set its own hours and location of*
39 *work.*

1 (L) *The service provider is not performing the type of work for*
2 *which a license from the Contractor's State License Board is*
3 *required, pursuant to Section 7000 and following of the Business*
4 *and Professions Code.*

5 (c) (1) This section and the holding in ~~Dynamex-Operations~~
6 ~~West, Inc. v. Superior Court (2018) 4 Cal.5th 903~~, do not apply
7 to a contract for professional service and instead the employment
8 relationship shall be governed by the test adopted by the California
9 Supreme Court in the case of ~~S. G. Borello & Sons, Inc. v.~~
10 ~~Department of Industrial Relations (1989) 48 Cal.3d 341, Inc.~~, if
11 the hiring entity demonstrates that all of the following factors are
12 satisfied:

13 (A) The individual maintains a business location, which may
14 include the individual's residence, that is separate from the hiring
15 entity.

16 (B) If work is performed more than six months after the effective
17 date of this section, the individual has a business license, in
18 addition to any required professional licenses or permits for the
19 individual to practice in their profession.

20 (C) The individual has the ability to use their own employees
21 in the completion of the work, where reasonable, and has the
22 authority to hire and fire other persons who assist in providing the
23 services. Nothing in this section requires an individual to hire an
24 employee.

25 (D) The individual has the ability to engage in other contracts
26 for services than with the hiring entity.

27 (E) Both the individual and the hiring entity have the ability to
28 negotiate compensation for the services performed.

29 (F) Outside of project completion dates and reasonable business
30 hours, the individual has the ability to set their own hours.

31 (G) For services that do not reasonably have to be performed
32 at a specific location, the individual can determine where to
33 perform the services under the contract.

34 (H) The individual is customarily engaged in the same type of
35 work performed under the contract with another hiring entity or
36 holds themselves out to other potential customers as available to
37 perform the same type of work.

38 (I) The individual customarily and regularly exercises discretion
39 and independent judgment in the performance of the services.

40 (2) For purposes of this subdivision:

1 (A) An “individual” includes an individual providing services
2 through a sole proprietorship or other business entity.

3 (B) (i) “Professional services” means services that ~~either~~ *meet*
4 *any of the following:*

5 (I) Require an active license from the State of California and
6 involve the practice of one of the following recognized professions:
7 law, dentistry, architecture, engineering, *podiatrists, veterinarian,*
8 *private investigation,* or accounting.

9 (II) Require possession of an advanced degree that customarily
10 involves a prolonged course of specialized intellectual instruction
11 and study in the field of marketing or the administration of human
12 resources from an accredited university, college, or professional
13 school, as distinguished from a general academic education.

14 (III) *Work that is performed by a freelance writer who does not*
15 *provide content to any one publication more than 25 times per*
16 *year, if that person actually sets all of the following:*

17 (ia) *Hours.*

18 (ib) *Locations.*

19 (ic) *Rate of pay for work provided, except that rate shall be*
20 *equal to or greater than two times the minimum wage for hours*
21 *worked.*

22 (IV) *Fine artists, professional grant writers, and graphic*
23 *designers if that person actually sets the hours, locations, and*
24 *rates of pay for work provided.*

25 (ii) “Professional services” does not include professionals
26 engaged in the fields of health care and medicine.

27 (d) *This section and the holding in Dynamex do not apply to*
28 *the relationship between a contractor and an individual performing*
29 *work pursuant to a subcontract in the construction industry, and*
30 *instead the employment relationship shall be governed by the test*
31 *adopted by the California Supreme Court in the case of S. G.*
32 *Borello & Sons, Inc., if the contractor demonstrates that all the*
33 *following criteria are satisfied:*

34 (1) *The individual is free from the control and direction of the*
35 *contractor in connection with the performance of the work, both*
36 *under the contract for the performance of the work and in fact.*

37 (2) *The subcontract is in writing.*

38 (3) *The subcontractor is licensed by the Contractors State*
39 *License Board and the work is within the scope of that license.*

1 (4) *If the work is performed in a jurisdiction that requires the*
2 *subcontractor to have a business license or business tax*
3 *registration, the subcontractor has the required business license*
4 *or business tax registration.*

5 (5) *The subcontractor maintains a business location that is*
6 *separate from the business or work location of the contractor.*

7 (6) *The subcontractor has the authority to hire and to fire other*
8 *persons to provide or to assist in providing the services.*

9 (7) *The subcontractor assumes financial responsibility for errors*
10 *or omissions in labor or services as evidenced by insurance,*
11 *performance bonds, or warranties relating to the labor or services*
12 *being provided.*

13 (8) *The subcontractor is customarily engaged in an*
14 *independently established business of the same nature as that*
15 *involved in the work performed.*

16 ~~(d)~~

17 (e) *The addition of this section to the Labor Code by this act*
18 *does not constitute a change in, but is declaratory of, existing law*
19 *with regard to violations of the Labor Code relating to wage orders*
20 *of the Industrial Welfare Commission.*

21 *SEC. 4. Section 3351 of the Labor Code is amended to read:*

22 3351. “Employee” means every person in the service of an
23 employer under any appointment or contract of hire or
24 apprenticeship, express or implied, oral or written, whether lawfully
25 or unlawfully employed, and includes:

26 (a) Aliens and minors.

27 (b) All elected and appointed paid public officers.

28 (c) All officers and members of boards of directors of
29 quasi-public or private corporations while rendering actual service
30 for the corporations for pay. An officer or member of a board of
31 directors may elect to be excluded from coverage in accordance
32 with paragraph (16), (18), or (19) of subdivision (a) of Section
33 3352.

34 (d) Except as provided in paragraph (8) of subdivision (a) of
35 Section 3352, any person employed by the owner or occupant of
36 a residential dwelling whose duties are incidental to the ownership,
37 maintenance, or use of the dwelling, including the care and
38 supervision of children, or whose duties are personal and not in
39 the course of the trade, business, profession, or occupation of the
40 owner or occupant.

1 (e) All persons incarcerated in a state penal or correctional
2 institution while engaged in assigned work or employment as
3 defined in paragraph (1) of subdivision (a) of Section 10021 of
4 Title 8 of the California Code of Regulations, or engaged in work
5 performed under contract.

6 (f) All working members of a partnership or limited liability
7 company receiving wages irrespective of profits from the
8 partnership or limited liability company. A general partner of a
9 partnership or a managing member of a limited liability company
10 may elect to be excluded from coverage in accordance with
11 paragraph (17) of subdivision (a) of Section 3352.

12 (g) A person who holds the power to revoke a trust, with respect
13 to shares of a private corporation held in trust or general partnership
14 or limited liability company interests held in trust. To the extent
15 that this person is deemed to be an employee described in
16 subdivision (c) or (f), as applicable, the person may also elect to
17 be excluded from coverage as described in subdivision (c) or (f),
18 as applicable, if that person otherwise meets the criteria for
19 exclusion, as described in Section 3352.

20 ~~(h) This section shall become operative on July 1, 2018.~~

21 (h) *It is the intent of the Legislature to amend the law to address*
22 *workers' compensation and the holding in Dynamex Operations*
23 *West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903.*

24 *SEC. 5. Section 621.5 of the Unemployment Insurance Code*
25 *is amended to read:*

26 621.5. (a) "Employee" also means any individual who is an
27 employee, pursuant to Section 2750.5 of the Labor Code, of a
28 person who holds a valid state contractor's license pursuant to
29 Chapter 9 (commencing with Section 7000) of Division 3 of the
30 Business and Professions Code.

31 (b) When subdivision (a) does not apply, "employee" ~~shall~~ also
32 ~~mean~~ *means* any individual who is an employee, pursuant to
33 Section 2750.5 of the Labor Code, of a person who is required to
34 obtain a valid state contractor's license pursuant to Chapter 9
35 (commencing with Section 7000) of Division 3 of the Business
36 and Professions Code.

37 (c) *"Employee" also means any individual who is an employee*
38 *pursuant to Section 2750.3 of the Labor Code.*

1 ~~SEC. 3.~~

2 *SEC. 6.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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BOARD OF BARBERING & COSMETOLOGY

BILL ANALYSIS

Author: Assembly Member Low

Subject: Gendered Terms

Bill Number: AB 496

Version: May 6, 2019

Existing Law:

Existing law establishes the Department of Consumer Affairs, which is comprised of various boards, and provides that the Governor has power to remove from office any member of any board appointed by the Governor for specified reasons, including incompetence.

Existing law authorizes the director to audit and review, upon the director's own initiative or upon the request of a consumer or licensee, inquiries and complaints regarding, among other things, dismissals of disciplinary cases of specified licensees and requires the director to report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually regarding any findings from such an audit or review.

Existing law defines the term "licentiate" to mean any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated or referred to, as specified.

This Bill:

This bill would provide that the appointing authority has power to remove a board member from office for specified reasons.

This bill would require the director to report to the Chairpersons of the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee.

This bill would instead define "licensee" to mean any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated or referred to, as specified, and would provide that any reference to licentiate be deemed to refer to licensee.

This bill would replace gendered terms with nongendered terms and make other non-substantive changes.

Analysis:

This bill would only impact terms within the Boards laws and regulations. The impact to the Board would be minimal as most laws and regulations are obtained via the website and can be easily updated.



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BOARD OF BARBERING & COSMETOLOGY BILL ANALYSIS

Author: Assembly Member Low

Subject: Regulatory Fees

Bill Number: AB 613

Version: February 14, 2019

Existing Law:

Establishes the Department of Consumer Affairs, which is comprised of boards that are generally authorized to charge a fee for the cost of administering their programs.

This Bill:

This bill would authorize each Board to increase every four years any fee by an amount not to exceed the increase in the California Consumer Price Index for the preceding four years. This bill would require the Director of DCA to approve any fee increase.

Analysis:

The Board currently has its fees established to be the actual cost of administering the functions of the Board. We do not anticipate any fee increase in the near future. This bill has no current impact on the operations of the Board nor would we foresee any concerns should there be a need to increase fees.

ASSEMBLY BILL

No. 613

Introduced by Assembly Member Low

February 14, 2019

An act to add Section 101.1 to the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 613, as introduced, Low. Professions and vocations: regulatory fees.

Existing law establishes the Department of Consumer Affairs, which is comprised of boards that are established for the purpose of regulating various professions and vocations, and generally authorizes a board to charge fees for the reasonable regulatory cost of administering the regulatory program for the profession or vocation. Existing law establishes the Professions and Vocations Fund in the State Treasury, which consists of specified special funds and accounts, some of which are continuously appropriated.

This bill would authorize each board within the department to increase every 4 years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index for the preceding 4 years, subject to specified conditions. The bill would require the Director of Consumer Affairs to approve any fee increase proposed by a board except under specified circumstances. By authorizing an increase in the amount of fees deposited into a continuously appropriated fund, this bill would make an appropriation.

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

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

1 SECTION 1. Section 101.1 is added to the Business and
2 Professions Code, to read:

3 101.1. (a) Notwithstanding any other law, no more than once
4 every four years, any board listed in Section 101 may increase any
5 fee authorized to be imposed by that board by an amount not to
6 exceed the increase in the California Consumer Price Index, as
7 determined pursuant to Section 2212 of the Revenue and Taxation
8 Code, for the preceding four years in accordance with the
9 following:

10 (1) The board shall provide its calculations and proposed fee,
11 rounded to the nearest whole dollar, to the director and the director
12 shall approve the fee increase unless any of the following apply:

13 (A) The board has unencumbered funds in an amount that is
14 equal to more than the board’s operating budget for the next two
15 fiscal years.

16 (B) The fee would exceed the reasonable regulatory costs to the
17 board in administering the provisions for which the fee is
18 authorized.

19 (C) The director determines that the fee increase would be
20 injurious to the public health, safety, or welfare.

21 (2) The adjustment of fees and publication of the adjusted fee
22 list is not subject to the Administrative Procedure Act (Chapter
23 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
24 Title 2) of the Government Code.

25 (b) For purposes of this section, “fee” includes any fees
26 authorized to be imposed by a board for regulatory costs. “Fee”
27 does not include administrative fines, civil penalties, or criminal
28 penalties.



BOARD OF BARBERING & COSMETOLOGY

BILL ANALYSIS

Author: Assembly Member Diep

Subject: Barriers; Examinations

Bill Number: AB 1271

Version: February 21, 2019

Existing Law:

Existing law provides for the licensure and regulation of professions and vocations by various boards that comprise the Department of Consumer Affairs.

This Bill:

This bill would require the department, on or before January 1, 2021, to provide a report to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development that contains specified information relating to licensing examinations for each licensed profession and vocation under the department's jurisdiction.

Analysis:

This bill would require the DCA to report on the following in regard to licensing examinations:

- (a) Whether licensure requires completion of a board-approved education or training program.
- (b) Whether licensure requires passage of a written or clinical licensing examination.
- (c) Whether an examination fee is required in addition to any other initial licensure or application fees and, if so, the amount of the examination fee.
- (d) To the extent feasible, information on the average length of time between submitting a licensure application and taking the licensing examination.
- (e) Information on average passage rates for the licensing examination and, to the extent feasible, information on the percentage of yearly applicants who ultimately never receive a license due to one or more examination failures.

This bill is requiring the DCA to prepare this report, however, the Board would be included in this report and has the required information readily available.

ASSEMBLY BILL

No. 1271

Introduced by Assembly Member Diep

February 21, 2019

An act relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1271, as introduced, Diep. Licensing examinations: report.

Existing law provides for the licensure and regulation of professions and vocations by various boards that comprise the Department of Consumer Affairs.

This bill would require the department, on or before January 1, 2021, to provide a report to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development that contains specified information relating to licensing examinations for each licensed profession and vocation under the department's jurisdiction.

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. The intent of the Legislature in enacting this act
2 is to seek opportunities to reduce barriers to professional licensing
3 by eliminating licensing examinations that are found largely to
4 duplicate already required formal education and training.

5 SEC. 2. On or before January 1, 2021, the Department of
6 Consumer Affairs shall provide a report to the Assembly
7 Committee on Business and Professions and the Senate Committee

- 1 on Business, Professions and Economic Development that contains
2 the following summary information for each licensed profession
3 and vocation under its jurisdiction:
- 4 (a) Whether licensure requires completion of a board-approved
5 education or training program.
 - 6 (b) Whether licensure requires passage of a written or clinical
7 licensing examination.
 - 8 (c) Whether an examination fee is required in addition to any
9 other initial licensure or application fees and, if so, the amount of
10 the examination fee.
 - 11 (d) To the extent feasible, information on the average length of
12 time between submitting a licensure application and taking the
13 licensing examination.
 - 14 (e) Information on average passage rates for the licensing
15 examination and, to the extent feasible, information on the
16 percentage of yearly applicants who ultimately never receive a
17 license due to one or more examination failures.



BOARD OF BARBERING & COSMETOLOGY

BILL ANALYSIS

Author: Assembly Member Boerner Horvath
Coauthor: Stern (S)

Subject: Gender Discrimination
Notification

Bill Number: AB 1607

Version: July 5, 2019

Existing Law:

Existing law prohibits businesses from discriminating against persons because of a person's gender with respect to the price charged for services of similar or like kind.

Existing law requires specified business establishments to disclose in writing the pricing for each standard service, as defined, to display, in a specified manner, a sign stating that it is illegal to base pricing on gender and that a complete price list is available upon request, and to display, in a specified manner, a price list, and to provide the customer with a copy of the complete price list upon request.

Existing law requires the Department of Consumer Affairs to develop a pamphlet or other informational materials to explain a business establishment's rights and obligations under these provisions. Existing law requires the department to provide the pamphlet or other informational materials to affected business establishments at specified times and to make the pamphlet or other informational materials available on the department's internet website.

This Bill:

This bill would require a city, county, or city and county that issues local business licenses to provide written notification of the above provisions to the licensee at the time the business license is issued or renewed in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean commencing January 1, 2021. The bill would authorize a city, county, or city and county to increase the fee for a business license to cover the reasonable cost of providing the notice.

This bill would require DCA to develop by October 1, 2020, a pamphlet in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean to explain that the business is prohibited from charging different prices for similar services based on the customer's gender. This bill would also require the department to revise the pamphlet as necessary.

Analysis:

Effective January 1, 2019, the Board was required to distribute a gender discrimination pamphlet at the time of initial establishment license, renewal establishment license, and at the time of inspection. This is currently in place. This bill will also provide this information at the time an application is made to the city or county to receive a business license.

This bill has no impact on the Board's current operations, however, it does provide additional information to establishment licensees on the laws prohibiting gender discrimination on services provided in the barbering and cosmetology industry.

AMENDED IN SENATE JULY 5, 2019

AMENDED IN SENATE JUNE 13, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1607

Introduced by Assembly Member Boerner Horvath
(Coauthor: Senator Stern)

February 22, 2019

An act to amend Sections 51.6 and 55.63 of the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1607, as amended, Boerner Horvath. Gender discrimination: notification.

Existing law prohibits a business establishment from discriminating against a person because of the person's gender with respect to the price charged for services of similar or like kind. Existing law also requires specified business establishments to disclose in writing the pricing for each standard service, as defined, to display, in a specified manner, a sign stating that it is illegal to base pricing on gender and that a complete price list is available upon request, and to display, in a specified manner, a price list, and to provide the customer with a copy of the complete price list upon request. Existing law requires the Department of Consumer Affairs to develop a pamphlet or other informational materials to explain a business establishment's rights and obligations under these provisions. Existing law requires the department to provide the pamphlet or other informational materials to affected business establishments at specified times and to make the pamphlet or other informational materials available on the department's internet website.

This bill ~~would~~ *would, commencing January 1, 2021*, require a city, county, or city and county that issues local business licenses to provide written notification in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean of the above provisions to the licensee at the time the business license is ~~issued~~ *issued or renewed*. *The bill would declare that it addresses a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities. By requiring local agencies to comply with these requirements, this bill would impose a state-mandated local program.* ~~The~~

*The bill would require the Department of Consumer Affairs to develop, on or before January 1, 2020, a written notification of the above provisions in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean and would require the notification to be available for download from the department’s internet website. The bill would authorize a city, county, or city and county to provide the department’s written notification to a business and to increase the fee for a business license to cover the reasonable cost of providing the notice. The bill ~~would also~~ *would, commencing October 1, 2020*, require the department to provide the pamphlet and other informational materials in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. *The bill would require the department to subsequently revise the pamphlet and notice, as necessary.**

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 51.6 of the Civil Code is amended to
- 2 read:
- 3 51.6. (a) This section shall be known, and may be cited, as the
- 4 Gender Tax Repeal Act of 1995.
- 5 (b) No business establishment of any kind whatsoever may
- 6 discriminate, with respect to the price charged for services of
- 7 similar or like kind, against a person because of the person’s
- 8 gender.

1 (c) Nothing in subdivision (b) prohibits price differences based
2 specifically upon the amount of time, difficulty, or cost of
3 providing the services.

4 (d) Except as provided in subdivision (f), the remedies for a
5 violation of this section are the remedies provided in subdivision
6 (a) of Section 52. However, an action under this section is
7 independent of any other remedy or procedure that may be
8 available to an aggrieved party.

9 (e) This act does not alter or affect the provisions of the Health
10 and Safety Code, the Insurance Code, or other laws that govern
11 health care service plan or insurer underwriting or rating practices.

12 (f) (1) The following business establishments shall clearly and
13 conspicuously disclose to the customer in writing the pricing for
14 each standard service provided:

15 (A) Tailors or businesses providing aftermarket clothing
16 alterations.

17 (B) Barbers or hair salons.

18 (C) Dry cleaners and laundries providing services to individuals.

19 (2) The price list shall be posted in an area conspicuous to
20 customers. Posted price lists shall be in no less than 14-point
21 boldface type and clearly and completely display pricing for every
22 standard service offered by the business under paragraph (1).

23 (3) The business establishment shall provide the customer with
24 a complete written price list upon request.

25 (4) The business establishment shall display in a conspicuous
26 place at least one clearly visible sign, printed in no less than
27 24-point boldface type, which reads: "CALIFORNIA LAW
28 PROHIBITS ANY BUSINESS ESTABLISHMENT FROM
29 DISCRIMINATING, WITH RESPECT TO THE PRICE
30 CHARGED FOR SERVICES OF SIMILAR OR LIKE KIND,
31 AGAINST A PERSON BECAUSE OF THE PERSON'S
32 GENDER. A COMPLETE PRICE LIST IS AVAILABLE UPON
33 REQUEST."

34 (5) A business establishment that fails to correct a violation of
35 this subdivision within 30 days of receiving written notice of the
36 violation is liable for a civil penalty of one thousand dollars
37 (\$1,000).

38 (6) For the purposes of this subdivision, "standard service"
39 means the 15 most frequently requested services provided by the
40 business.

1 (g) (1) ~~A~~ Commencing January 1, 2021, a city, county, or city
2 and county that issues business licenses shall provide a business,
3 at the time the business is issued the ~~license~~, license or when the
4 license is renewed, written notice of these provisions in English,
5 Spanish, Chinese, Tagalog, Vietnamese, and Korean. In order to
6 comply with this paragraph, a city, county, or city and county may
7 provide the business with the notice created by the Department of
8 Consumer Affairs under subdivision (b) of Section 55.63.

9 (2) A city, county, or city and county that issues business
10 licenses may increase the fee for that license in an amount not to
11 exceed the reasonable costs of providing the written notice above.

12 (h) *The Legislature finds and declares that this section addresses*
13 *a matter of statewide concern rather than a municipal affair as*
14 *that term is used in Section 5 of Article XI of the California*
15 *Constitution. Therefore, this section applies to all cities, including*
16 *charter cities.*

17 SEC. 2. Section 55.63 of the Civil Code is amended to read:

18 55.63. (a) (1) On or before January 1, 2019, the Department
19 of Consumer Affairs shall develop a pamphlet or other
20 informational materials for use by the following business
21 establishments: tailors and businesses providing aftermarket
22 clothing alterations; barbers and hair salons; and dry cleaners and
23 laundries providing services to individuals. The pamphlet shall
24 explain the business' rights and obligations under Section 51.6 in
25 clear and concise language. Specifically, the pamphlet shall explain
26 that the business is prohibited from charging different prices for
27 services of similar or like kind based on the customer's gender,
28 unless the price difference is based upon the amount of time,
29 difficulty, or cost of providing the services and that the business
30 shall disclose a price list and sign in the manner prescribed in
31 subdivision (f) of Section 51.6. The pamphlet shall explain that a
32 business has 30 days to correct any violation of the posting
33 requirements in subdivision (f) of Section 51.6 and that a business
34 that fails to correct within 30 days of receiving notice of the
35 violation is liable for a civil penalty of one thousand dollars
36 (\$1,000). The department may include any other information that
37 would help the business comply with Section 51.6. *The department*
38 *shall subsequently revise the pamphlet, as necessary.*

39 (2) The department shall provide the pamphlet or other
40 informational materials required by paragraph (1) to an affected

1 business establishment at the time that the business establishment
2 applies for or renews a license, at the time of any inspection, or at
3 both times. The department shall post a copy of the pamphlet or
4 other informational materials on its internet website.

5 ~~(3) On or before January~~ *Commencing October 1, 2020*, the
6 department shall provide the pamphlet and other informational
7 materials required by paragraph (1) in English, Spanish, Chinese,
8 Tagalog, Vietnamese, and Korean.

9 ~~(b) On or before January~~ *By October 1, 2020*, the department
10 shall develop a written notice explaining the requirements and
11 obligations specified in Section 51.6. The notice shall be available
12 in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.
13 The department shall post a copy of the notice in each language
14 on its internet website in a format available for download. *The*
15 *department shall subsequently revise the notice, as necessary.*

16 SEC. 3. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.

BOARD OF BARBERING & COSMETOLOGY

BILL ANALYSIS

Introduced: Senator Mitchell

Subject: Discrimination (Hairstyles)

Coauthors: Bonta (A), Caballero (S), Cooper (A),
Hertzberg (S), Kamlager-Dove (A), McCarty (A), Weber (A)

Bill Number: SB 188

Version: July 3, 2019

Existing Law:

Existing law states the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other specified characteristic, equal rights and opportunities in the educational institutions of the state, and states that the purpose of related existing law is to prohibit acts that are contrary to that policy and to provide remedies therefor. Existing law defines race or ethnicity for these purposes.

Under the California Fair Employment and Housing Act, it is unlawful to engage in specified discriminatory employment practices, including hiring, promotion, and termination based on certain protected characteristics, including race, unless based on a bona fide occupational qualification or applicable security regulations. The act also prohibits housing discrimination based on specified personal characteristics, including race. The act also prohibits discrimination because of a perception that a person has one of those protected characteristics or is associated with a person who has, or is perceived to have, any of those characteristics. Existing law defines terms such as race, religious beliefs, and sex, among others, for purposes of the act.

This Bill:

This bill, also known as the CROWN Act (Creating a Respectful and Open Workplace for Natural hair), provides that the definition of race for the purposes above also include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles, and defines protective hairstyles (including, but is not limited to, such hairstyles as braids, locks, and twists).

Analysis:

This bill does not impact any operations of the Board but would protect Board licensees from discriminatory employment practices regarding their hair texture and protective hairstyles.

Senate Bill No. 188

CHAPTER 58

An act to amend Section 212.1 of the Education Code, and to amend Section 12926 of the Government Code, relating to discrimination.

[Approved by Governor July 3, 2019. Filed with Secretary of State July 3, 2019.]

legislative counsel's digest

SB 188, Mitchell. Discrimination: hairstyles.

Existing law states the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other specified characteristic, equal rights and opportunities in the educational institutions of the state, and states that the purpose of related existing law is to prohibit acts that are contrary to that policy and to provide remedies therefor. Existing law defines race or ethnicity for these purposes. Under the California Fair Employment and Housing Act, it is unlawful to engage in specified discriminatory employment practices, including hiring, promotion, and termination based on certain protected characteristics, including race, unless based on a bona fide occupational qualification or applicable security regulations. The act also prohibits housing discrimination based on specified personal characteristics, including race. The act also prohibits discrimination because of a perception that a person has one of those protected characteristics or is associated with a person who has, or is perceived to have, any of those characteristics. Existing law defines terms such as race, religious beliefs, and sex, among others, for purposes of the act.

This bill would provide that the definition of race for these purposes also include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles, and would define protective hairstyles for purposes of these provisions.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The history of our nation is riddled with laws and societal norms that equated “blackness,” and the associated physical traits, for example, dark skin, kinky and curly hair to a badge of inferiority, sometimes subject to separate and unequal treatment.

(b) This idea also permeated societal understanding of professionalism. Professionalism was, and still is, closely linked to European features and

mannerisms, which entails that those who do not naturally fall into Eurocentric norms must alter their appearances, sometimes drastically and permanently, in order to be deemed professional.

(c) Despite the great strides American society and laws have made to reverse the racist ideology that Black traits are inferior, hair remains a rampant source of racial discrimination with serious economic and health consequences, especially for Black individuals.

(d) Workplace dress code and grooming policies that prohibit natural hair, including afros, braids, twists, and locks, have a disparate impact on Black individuals as these policies are more likely to deter Black applicants and burden or punish Black employees than any other group.

(e) Federal courts accept that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, and therefore protects against discrimination against afros. However, the courts do not understand that afros are not the only natural presentation of Black hair. Black hair can also be naturally presented in braids, twists, and locks.

(f) In a society in which hair has historically been one of many determining factors of a person's race, and whether they were a second class citizen, hair today remains a proxy for race. Therefore, hair discrimination targeting hairstyles associated with race is racial discrimination.

(g) Acting in accordance with the constitutional values of fairness, equity, and opportunity for all, the Legislature recognizes that continuing to enforce a Eurocentric image of professionalism through purportedly race-neutral grooming policies that disparately impact Black individuals and exclude them from some workplaces is in direct opposition to equity and opportunity for all.

SEC. 2. Section 212.1 of the Education Code is amended to read:

212.1. (a) "Race or ethnicity" includes ancestry, color, ethnic group identification, and ethnic background.

(b) "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

(c) "Protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

SEC. 3. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached a 40th birthday.

(c) Except as provided by Section 12926.05, "employee" does not include any individual employed by that person's parent, spouse, or child or any

individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) “Employer” includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

“Employer” does not include a religious association or corporation not organized for private profit.

(e) “Employment agency” includes any person undertaking for compensation to procure employees or opportunities to work.

(f) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. “Essential functions” does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired based on expertise or the ability to perform a particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer’s judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) (1) “Genetic information” means, with respect to any individual, information about any of the following:

(A) The individual’s genetic tests.

(B) The genetic tests of family members of the individual.

(C) The manifestation of a disease or disorder in family members of the individual.

(2) “Genetic information” includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(3) “Genetic information” does not include information about the sex or age of any individual.

(h) “Labor organization” includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or

of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(i) “Medical condition” means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, “genetic characteristics” means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or that person’s offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or that person’s offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(j) “Mental disability” includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(k) “Military and veteran status” means a member or veteran of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.

(l) “On the bases enumerated in this part” means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or military and veteran status.

(m) “Physical disability” includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) “Limits” shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(n) Notwithstanding subdivisions (j) and (m), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civilrights

of individuals with a mental disability or physical disability, as defined in subdivision (j) or (m), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and (m).

(o) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or military and veteran status” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(p) “Reasonable accommodation” may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(q) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice, including religious dress and grooming practices. “Religious dress practice” shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of an individual observing a religious creed. “Religious grooming practice” shall be construed broadly to include all forms of head, facial, and body hair that are part of an individual observing a religious creed.

(r) (1) “Sex” includes, but is not limited to, the following:

(A) Pregnancy or medical conditions related to pregnancy.

(B) Childbirth or medical conditions related to childbirth.

(C) Breastfeeding or medical conditions related to breastfeeding.

(2) “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(s) “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.

(t) “Supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(u) “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.

(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.

(3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.

(4) The type of operations, including the composition, structure, and functions of the workforce of the entity.

(5) The geographic separateness or administrative or fiscal relationship of the facility or facilities.

(v) “National origin” discrimination includes, but is not limited to, discrimination on the basis of possessing a driver’s license granted under Section 12801.9 of the Vehicle Code.

(w) “Race” is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

(x) “Protective hairstyles” includes, but is not limited to, such hairstyles as braids, locks, and twists.



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BOARD OF BARBERING & COSMETOLOGY BILL ANALYSIS

Author: Senator Glazer

Subject: Sunset Review

Bill Number: SB 606

Version: July 11, 2019

Existing Law:

Existing law provides for the licensure and regulation of barbering and cosmetology by the State Board of Barbering and Cosmetology and authorizes the board to appoint an executive officer. Under existing law, these provisions are repealed on January 1, 2020.

This Bill:

This bill would extend the operation of the Board of Barbering and Cosmetology to January 1, 2021.

Analysis:

SB 606 is the sunset bill established for the Board. This bill would extend the sunset date of the Board from January 1, 2020 to January 1, 2021.

AMENDED IN ASSEMBLY JULY 11, 2019

AMENDED IN ASSEMBLY JUNE 19, 2019

AMENDED IN SENATE APRIL 22, 2019

SENATE BILL

No. 606

Introduced by Senator Glazer

February 22, 2019

An act to amend Sections 7303, 7602, 7646, and 7650 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 606, as amended, Glazer. Professions and vocations.

(1) The Barbering and Cosmetology Act provides for the licensure and regulation of the practice of barbering and cosmetology by the State Board of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law authorizes the board to appoint an executive officer. Existing law repeals those provisions on January 1, 2020.

This bill would extend the operation of those provisions to January 1, 2021.

(2) The Cemetery and Funeral Act provides for the licensure and regulation of cemeteries, crematories, funeral establishments, and their personnel, including embalmers, by the Cemetery and Funeral Bureau, which is within the Department of Consumer Affairs. The act makes the bureau's powers and duties, as set forth in this act, subject to review by the appropriate policy committees of the Legislature as if the act's provisions are scheduled to be repealed on January 1, 2020. The act requires the bureau to require an applicant for licensure as an embalmer to pass two examinations. The act authorized an applicant who previously failed the examination administered by the bureau prior to

January 1, 2010, to retake the examination until June 30, 2010. That act also authorizes the bureau, from time to time, to examine the requirements for the licensure of embalmers in other states, as specified.

This bill would make the board's powers and duties subject to review as if the act's provisions are scheduled to be repealed on January 1, 2024. The bill would delete the obsolete provision that authorized certain applicants to retake the examination, and would ~~authorize delete the phrase "from time to time" from the provision authorizing the bureau to examine licensure requirements for embalmers in other states every 4 years. states.~~

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.
19 (c) The board may appoint an executive officer who is exempt
20 from civil service. The executive officer shall exercise the powers
21 and perform the duties delegated by the board and vested in the
22 executive officer by this chapter. The appointment of the executive
23 officer is subject to the approval of the director. In the event that
24 a newly authorized board replaces an existing or previous bureau,
25 the director may appoint an interim executive officer for the board

1 who shall serve temporarily until the new board appoints a
2 permanent executive officer.

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

6 (e) This section shall remain in effect only until January 1, 2021,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2021, deletes or extends that date.
9 Notwithstanding any other law, the repeal of this section renders
10 the board subject to review by the appropriate policy committees
11 of the Legislature.

12 SEC. 2. Section 7602 of the Business and Professions Code is
13 amended to read:

14 7602. (a) (1) There is in the department the Cemetery and
15 Funeral Bureau, under the supervision and control of the director.

16 (2) The director may appoint a chief at a salary to be fixed and
17 determined by the director, with the approval of the Director of
18 Finance. The duty of enforcing and administering this chapter is
19 vested in the chief, and the chief is responsible to the director. The
20 chief shall serve at the pleasure of the director.

21 (3) Every power granted or duty imposed upon the director
22 under this chapter may be exercised or performed in the name of
23 the director by a deputy director or by the chief, subject to
24 conditions and limitations the director may prescribe.

25 (b) Notwithstanding any other law, the powers and duties of the
26 bureau, as set forth in this chapter, shall be subject to review by
27 the appropriate policy committees of the Legislature. The review
28 shall be performed as if this chapter is scheduled to be repealed
29 on January 1, 2024.

30 SEC. 3. Section 7646 of the Business and Professions Code is
31 amended to read:

32 7646. (a) The bureau shall require the applicant to pass both
33 of the following:

34 (1) The sciences section of the national examination
35 administered by the International Conference of Funeral Service
36 Examining Boards, or its equivalent, as determined by the bureau.

37 (2) An examination, administered by the bureau, on the state's
38 laws and the rules and regulations of the bureau, including those
39 sections of the Health and Safety Code which pertain to the funeral
40 industry.

1 (b) An applicant who has previously passed the sciences section
2 of the national examination described in paragraph (1) of
3 subdivision (a) shall be deemed to be in compliance with that
4 paragraph.

5 SEC. 4. Section 7650 of the Business and Professions Code is
6 amended to read:

7 7650. ~~Every four years, the~~*The* bureau may examine the
8 requirements for the issuance of licenses to embalmers in other
9 states of the United States and cause a record to be kept of those
10 states in which standards are maintained for embalmers, not lower
11 than those provided in this chapter.

BOARD OF BARBERING & COSMETOLOGY

BILL ANALYSIS

Author: Senator Glazer

Subject: Health and Safety

Bill Number: SB 607

Version: February 22, 2019

Existing Law:

Existing law, the Barbering and Cosmetology Act, provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology and requires 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 that impact licensees, including, among other things, how to ensure licensees are aware of basic labor laws.

This Bill:

This bill would require the committee to include at least 3 board members and would require the committee to also provide the board with advice and recommendations on information on professional cosmetic labeling requirements.

Analysis:

This bill is likely to be amended to include additional information relating to the Board. As currently written, the addition of one member to the advisory committee is not substantial. Board staff will continue to monitor this bill for future amendments.

Introduced by Senator Glazer

February 22, 2019

An act to amend Section 7314.3 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 607, as introduced, Glazer. Barbering and Cosmetology.

Existing law, the Barbering and Cosmetology Act, provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology and requires 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 that impact licensees, including, among other things, how to ensure licensees are aware of basic labor laws.

This bill would require the committee to include at least 3 board members and would require the committee to also provide the board with advice and recommendations on information on professional cosmetic labeling requirements.

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 7314.3 of the Business and Professions
- 2 Code, as added by Section 2 of Chapter 312 of the Statutes of
- 3 2017, is amended to read:
- 4 7314.3. (a) The board shall establish a Health and Safety
- 5 Advisory ~~Committee~~ *Committee, which shall include no less than*

1 *three board members*, to provide the board with advice and
2 recommendations on health and safety issues before the board that
3 impact licensees, including *information on professional cosmetic*
4 *labeling requirements*, how to ensure licensees are aware of basic
5 labor laws, and how to ensure licensees have awareness about
6 physical and sexual abuse their clients may be experiencing.

7 (b) For purposes of this section, basic labor laws include, but
8 are not limited to, all of the following:

9 (1) Key differences between the legal rights, benefits, and
10 obligations of an employee and an independent contractor.

11 (2) Wage and hour rights of an hourly employee.

12 (3) Antidiscrimination laws relating to the use of a particular
13 language in the workplace.

14 (4) Antiretaliation laws relating to a worker’s right to file
15 complaints with the Department of Industrial Relations.

16 (5) How to obtain more information about state and federal
17 labor laws.

18 (c) For purposes of this section, physical and sexual abuse
19 includes, but is not limited to, the following:

20 (1) Domestic violence.

21 (2) Sexual assault.

22 (3) Human trafficking.

23 (4) Elder abuse.

24 (d) This section shall become operative on July 1, 2019.



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MEMORANDUM

DATE	August 12, 2019
TO	Members, Board of Barbering and Cosmetology
FROM	Kristy Underwood, Executive Officer
SUBJECT	Regulations Update

The following package has been approved by OAL (Effective Oct 1):

- Title 16, CCR Section 904 (Definition of Access)

The following package was subject to a public hearing on July 24:

- Title 16, CCR Section 974 & 974.3 (Fine Schedule and Payment Plan)

The following regulation packages are under internal review at DCA:

- Title 16, CCR Section 950.10 (Transfer of Credit or Training)
- Title 16, CCR Section 965.2 (Personal Service Permit)
- Title 16, CCR Section 972 (Disciplinary Guidelines)
- Title 16, CCR Section 970, 971 (Substantial Relationship Criteria, Criteria for Rehabilitation)

Staff is developing the filing documents on the following regulation packages:

- Title 16, CCR Section 961 (National Interstate Council (NIC) Translation Guides)
- Title 16, CCR Sections 962, 962.1 and 962.2 (Externs)

BOARD OF BARBERING AND COSMETOLOGY

Division 9, Title 16, of the California Code of Regulations.

ORDER OF ADOPTION

LEGEND

<u>Underlined</u>	Indicates proposed amendments or additions to the existing regulation.
Strikeout	Indicates proposed deletions to the existing regulation.

- **Amend Section 904, Title 16, California Code of Regulations, as follows:**

§ 904. Enforcement.

(a) Article 12 of the board's regulations, within Title 16, Division 9 of the California Code of Regulations, contains the board's "Health and Safety Rules".

(b) The holder or holders of an establishment license or a mobile unit license, and the person in charge of any such establishment or mobile unit, shall implement and maintain the Health and Safety Rules in such establishment or mobile unit individually and jointly with all persons in or employed by or working in or on the premises of such establishment or mobile unit.

(c) All licensed barbers, cosmetologists, estheticians, manicurists, electrologists, instructors, or apprentices shall individually implement and maintain the Health and Safety Rules.

(d) All persons performing acts of a barber, cosmetologist, esthetician, manicurist or electrologist, except students in schools, shall, upon request of an authorized representative of the board, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other recognized government entity.

(e) Failure to present valid proof of identification shall be grounds for disciplinary action.

(f) The executive officer and any authorized representative of the board shall have access to and inspect all areas within an establishment, mobile unit, or school, including any room, closet, cabinet, drawer, container, or mobile or fixed storage or display unit.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312, 7313 and 7404, Business and Professions Code.

BOARD OF BARBERING AND COSMETOLOGY
Division 9, Title 16, of the California Code of Regulations.

SPECIFIC LANGUAGE

LEGEND

<u>Underlined</u>	Indicates proposed amendments or additions to the existing regulation.
Strikeout	Indicates proposed deletions to the existing regulation.

- **Adopt Section 900, Title 16, California Code of Regulations, as follows:**

§ 900. “Establishment.”

Except as otherwise expressly provided, for purposes of this division and the Barbering and Cosmetology Act (Chapter 10 (commencing with section 7301) of Division 3 of the Business and Professions Code), “establishment” does not include any offsite premises, building, or part of a building where a personal service permit (“PSP”) holder travels to meet a client, if the only activities practiced by the PSP holder at that location are authorized pursuant to section 965.2. A PSP holder’s place of residence or employment, or a booth or other space that is procured by or on behalf of the PSP holder, is not “offsite” for purposes of this section.

NOTE: Authority cited: Sections 7312 and 7402.5, Business and Professions Code.
Reference: Sections 7312, 7346, 7350, and 7402.5, Business and Professions Code.

- **Adopt Section 965.2, Title 16, California Code of Regulations, as follows:**

§ 965.2. Personal Service Permit.

(a) The Board may issue a personal service permit (PSP) authorizing the holder of the permit to perform certain barbering and cosmetology services outside of a licensed establishment if the following conditions are met:

- (1) The applicant is licensed by the Board and has held a valid license for a minimum of two consecutive years, or has been licensed in another state and is eligible for licensure pursuant to section 7331 of the Business and Professions Code, as a barber, cosmetologist, esthetician, or manicurist, and is not subject to denial pursuant to section 480.
 - (2) The applicant submits via Live Scan a full and complete set of his or her fingerprints for use in conducting a criminal background check through the California Department of Justice and the Federal Bureau of Investigation. Applicants may be denied a PSP pursuant to Chapter 10 of Division 3 of the Business and Professions Code, pursuant to Division 1.5 (commencing with Section 475) of that same code.
 - (3) The applicant pays an application fee to the Board as provided in Section 998 of these regulations.
 - (4) The applicant provides proof of current liability insurance in a minimum amount of \$1,000,000.
- (b) A PSP holder shall maintain liability insurance in a minimum amount of \$1,000,000, and present proof of liability insurance to the board or its representatives upon demand with reasonable notice. Failure to present proof of liability insurance to the board or its representatives may be grounds for discipline and PSP revocation.
- (c) The services that may be performed outside of a licensed establishment by a licensed barber who holds a PSP are as follows:
- (1) Shampooing;
 - (2) Cutting, styling, dressing, arranging, curling and waving hair. These authorized services do not include singeing, relaxing, or dyeing the hair.
 - (3) Applying hair tonics;
 - (4) Applying powders, clays, antiseptics, and oils to the scalp, face or neck;
 - (5) Trimming the beard.
- (d) The services that may be performed outside of a licensed establishment by a licensed cosmetologist who holds a PSP are as follows:
- (1) Shampooing;
 - (2) Cutting, styling, dressing, arranging, curling and waving hair. These authorized services do not include singeing, relaxing, or dyeing the hair.
 - (3) Applying hair tonics;
 - (4) Applying powders, clays and oils to the scalp, face or neck;
 - (5) Cleaning, massaging, or stimulating the face and neck by means of the hands with the use of cleansing agents, antiseptics, tonics, lotions, or creams. This does not include chemical exfoliation or exfoliation with the use of a tool, machine or device;
 - (6) Removing hair from the body of any person with tweezers;
 - (7) Applying make-up or strip lashes;
 - (8) Buffing and filing nails with non-electrical tools;
 - (9) Applying and removing nail polish.
- (e) The services that may be performed outside of a licensed establishment by a licensed esthetician who holds a PSP are as follows:

- (1) Cleaning, massaging, or stimulating the face and neck by means of the hands with the use of cleansing agents, antiseptics, tonics, lotions, or creams. This does not include chemical exfoliation or exfoliation with the use of a tool, machine or device;
 - (2) Applying make-up or strip lashes;
 - (3) Removing hair from the body of any person with tweezers.
- (f) The services that may be performed outside of a licensed establishment by a licensed manicurist who holds a PSP are as follows:
- (1) Filing and buffing of nails by non-electrical tools;
 - (2) Applying and removing nail polish.
- (g) A PSP holder should use disposable tools whenever possible.
- (h) A PSP holder shall follow all laws, rules and regulations applicable to the services rendered.
- (i) Upon completion of services outside of a licensed establishment, the holder of a PSP shall:
- (1) Provide the consumer with a Personal Service Permit Consumer Notice (BBC-PSP (2018)), which is hereby incorporated by reference.
 - (2) Obtain a signed and dated receipt from the consumer that contains the following information:
 - A. The consumer's acknowledgement of receipt of the Personal Service Permit Consumer Notice;
 - B. The consumer's name;
 - C. The consumer's phone number;
 - D. The consumer's email address, if available
 - E. A list of all services rendered to the consumer.

A copy of the receipt shall be provided to the consumer. The PSP holder's copy of the receipt shall be presented upon demand with reasonable notice to the board or its representatives by the PSP holder, and shall be kept on file by the PSP holder for a period of five (5) years from the date of the service. Failure to present the receipt of Consumer Notice to the board or its representatives may be grounds for discipline. The notice and receipt requirements in this section may be satisfied electronically.

NOTE: Authority cited: Sections 7312 and 7402.5, Business and Professions Code.
Reference: Sections 7312 and 7402.5, Business and Professions Code.

Amend Section 998 of Title 16, California Code of Regulations, as follows:

998. Schedule of Fees.

The following fees shall be charged by the board:

(a) Barbers:

(1) Preapplication fee.....	9
(2) Application and examination fee.....	75
(3) Initial license fee.....	50
(4) License renewal fee.....	50 ¹
(5) License renewal delinquency fee.....	25 ¹

(b) Cosmetologists:

(1) Preapplication fee.....	9
(2) Application and examination fee.....	75
(3) Initial license fee.....	50
(4) License renewal fee.....	50 ¹
(5) License renewal delinquency fee.....	25 ¹

(c) Estheticians:

(1) Preapplication fee.....	9
(2) Application and examination fee.....	75
(3) Initial license fee.....	40
(4) License renewal fee.....	50 ¹
(5) License renewal delinquency fee.....	25 ¹

(d) Manicurists:

(1) Preapplication fee.....	9
(2) Application and examination fee.....	75
(3) Initial license fee.....	35
(4) License renewal fee.....	50 ¹
(5) License renewal delinquency fee.....	25 ¹

(e) Electrologists:

(1) Preapplication fee.....	9
(2) Application and examination fee.....	75
(3) Initial license fee.....	50
(4) License renewal fee.....	50 ¹

(5) License renewal delinquency fee.....	25 ¹
(f) Apprentice application and license fee ²	25
(g) Establishments:	
(1) Application and initial license fee.....	50
(2) License renewal fee.....	40 ¹
(3) License renewal delinquency fee.....	20 ¹
(h) Mobile Units:	
(1) Application fee.....	50
(2) Initial inspection and license fee.....	100
(3) License renewal fee.....	40 ¹
(4) License renewal delinquency fee.....	20 ¹
 (i) <u>Personal Service Permit</u>	
<u>(1) Initial License fee</u>	<u>25</u>
<u>(3) License renewal fee</u>	<u>10</u>
<u>(3) License renewal delinquency fee</u>	<u>5</u>

1 Fees effective for all licenses expiring on or after December 21, 2007.

2 Licenses of apprentices are not renewable.

NOTE: Authority cited: Sections 7312, 7337.5(b) and 7421, Business and Professions Code. Reference: Sections 7402.5, 7415, 7417, 7418, 7419, 7420, 7423, 7424, and 7425, Business and Professions Code.