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DELORES L. ALSPAUGH
Interim Executive Director

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SEP 18 1997

September 15, 1997 Opinion Committee

The Opinions Committee
Office of the Attorney General
209 West 14th Street
Austin, Texas 78701

FILE # ML-39785-97
I.D.# 39785
RQ-998

To Whom It May Concern:

The commission is seeking a formal opinion with regard to Section 31 of the Cosmetology Act. The legislature amended subsection (a) of Section 31, Health Certificate, in Senate Bill 1131, to read, "Every applicant for an original or renewal operator license, instructor license, reciprocal license, or specialty certificate must submit a certificate of health signed by a licensed physician or physician's assistant, showing that the applicant is free, as determined by an examination, from tuberculosis, hepatitis, or a contagious disease for which the applicant is not entitled to protection under the American with Disabilities Act (42 U.S.C. Section 12101 et seq)." The commission previously required all applicants for licensure to be tested free from any contagious diseases as determined by a general examination and tuberculosis test.

The commission has received numerous calls from cosmetology schools, students and licensees, as well as health care providers who are concerned with the financial implications resulting from this new legislation. In addition, several members from the industry question whether or not this requirement is constitutional and/or discriminatory against certain groups of individuals. Neither the Board of Medical Examiners nor Nurse Examiners require a health certificate upon license renewal. The Board of Barber Examiners require a health certificate, but only request the individual be free from any contagious or infectious diseases.

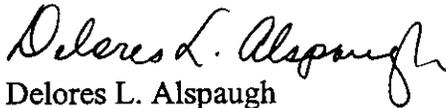
The commission requested an opinion from Dr. Jean Brender, who is employed with the Department of Health, in hopes of finding some clarification regarding the hepatitis virus, as well as possible ways of testing. Dr. Brender sent the commission information regarding the various types of hepatitis and possible ways of transmission. A copy of this letter is attached for your review.

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Although the commission wishes to comply with the regulations set forth in SB1131, the unspecified language of the bill does not allow for an easily understood interpretation. Therefore, the commission needs to know exactly what types of hepatitis need to be tested for and what kinds of tests are necessary in determining if an individual has hepatitis. The commission also requests clarification on what protections, if any, are afforded to persons with hepatitis under the American with Disabilities Act.

Thank you for your time and assistance in this matter. If you have any questions, please feel free to contact me at (512) 454-4674.

Sincerely,



Delores L. Alspaugh
Interim Executive Director

DLA:cdn



Patti J. Patterson, M.D.
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September 4, 1997

Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology Commission
P.O. Box 26700
Austin, Texas 78755-0700

Dear Ms. Alspaugh:

Your letter of August 19th requested an opinion on which strains of hepatitis each licensee should be tested for in order to best protect public health, safety, and welfare. This request stems from the need to promulgate rules for Senate Bill 1131 which stipulates that "every applicant for an original or renewal operator license, instructor license, reciprocal license, or specialty certificate must submit a certificate of health signed by a licensed physician or licensed physician assistant, showing that the applicant is free, as determined by an examination, from tuberculosis, hepatitis, or a contagious disease for which the applicant is not entitled to protection under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.)."

Before providing our recommendations for testing, we would like to provide the Commission some general information about viral hepatitis. Viral hepatitis is an infection that causes inflammation of the liver. Symptoms include loss of appetite, fatigue, mild fever, nausea and vomiting, jaundice (yellow eyes and skin), dark urine, and light-colored stools. Several different types of hepatitis have been identified, including hepatitis A, B, C, D, E, and G. Active infections of viral hepatitis are associated with elevated liver function tests such as alanine aminotransferase (ALT) and aspartate aminotransferase (AST). Hepatitis A, B, and C are the most common types of viral hepatitis in the United States. Hepatitis D only infects persons with hepatitis B. Hepatitis E is common in many developing countries, but is not endemic within the U.S., and there are no readily available laboratories that test for this virus. Hepatitis G has recently been identified, and testing for this type of hepatitis is only available in research laboratories.

The transmission of hepatitis A occurs through the fecal/oral route, through close person to person contact (household or sexual contact), or ingestion of contaminated food and water. Although up

to 15% of persons can have prolonged or relapsing infection, no chronic infection or carrier state are known to occur. It is highly unlikely that this virus would be transmitted in a setting where cosmetology services are provided unless the infected worker directly handled food for customers after going to the bathroom, etc. The test available to detect an acute infection of hepatitis A is called IgM anti-HAV. This test indicates a recent infection with hepatitis A and is positive up to 4 to 6 months after infection.

Hepatitis B is transmitted through contact with infected blood, seminal fluid, and vaginal secretions. Sexual contact with an infected person, contact with contaminated needles or other sharp instruments, and tattoo/body piercing are known risk factors for this disease. Hepatitis B can also be spread from an infected mother to her newborn. Cosmetologists, who are infected with hepatitis B, could transmit the virus to clients if their blood came in contact with a break in the skin of the client or if their blood contaminated instruments or equipment that pierced the skin, e.g. manicuring tools. If the appropriate precautions are taken by cosmetologists such as covering open wounds, wearing gloves if they have breaks in their skin, and cleaning their equipment properly, the chances of transmission of hepatitis B from the cosmetologist to the client are virtually nonexistent.

The test available to detect an acute infection with the hepatitis B virus is called IgM anti-HBc. A positive IgM anti-HBc indicates a recent infection with hepatitis B, and this test stays positive for 4 to 6 months after infection. Up to 10% of adults who contract hepatitis B develop a chronic infection with this virus as evidenced by the persistence of hepatitis B surface antigen (HBsAg). A safe and highly effective vaccine is available to prevent hepatitis B. Persons who receive the vaccine series would decrease their risk substantially of getting this infection.

Because hepatitis B can develop into a chronic infection and cause chronic liver disease and cirrhosis, chronic viral hepatitis may be covered under the Americans with Disabilities Act (ADA). We recommend that you consult with an expert in ADA concerning this matter.

Hepatitis C is transmitted through contact with infected blood and contaminated needles, razors, tattoo/body piercing, and other sharp instruments. It may also be transmitted from an infected mother to her newborn and through sexual contact, but these routes of transmission are less likely. No specific tests are currently available to detect an acute infection of hepatitis C. The test for anti-HCV detects antibodies to HCV which indicates that the person has been infected with this virus at some time in the past. Nearly all persons who contract hepatitis C (> 85%) develop a chronic infection; therefore, this condition may be covered under the ADA. As with hepatitis B, the blood of an infected cosmetologist would need to come in contact with a break in the skin of a client for transmission of this virus to occur. This risk is virtually nonexistent if the appropriate precautions are taken as outlined under the discussion of hepatitis B.

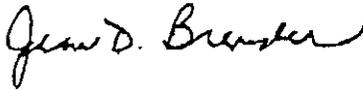
In summary, it is highly unlikely that a cosmetologist with viral hepatitis would transmit these viruses to the client in the course of normal working duties. The specific tests for hepatitis are costly. With hepatitis A, B, and C, the liver function tests (ALT and AST) are elevated. Therefore, it would probably be sufficient for the health care provider to conduct a physical examination and these liver function tests (ALT and/or AST). If the physical examination and/or

liver function tests indicate liver problems, further testing could be done for hepatitis A, B, and C. If the liver enzymes are within normal limits, it is very unlikely that the patient would have an active infection of viral hepatitis. Several types of hepatitis can develop into chronic conditions that may be covered under the ADA. We recommend the following:

1. Consult an expert in the ADA to determine whether chronic viral hepatitis is covered under the ADA.
2. Since the law specifies an examination by a physician or physician assistant and the Commission is already getting calls from physicians about what hepatitis tests to order, you might require an ALT, a liver function test. If this test is within normal limits, it is highly unlikely that the client has viral hepatitis. If it is elevated, then the physician might consider further testing for the various types of viral hepatitis as outlined above.
3. Licensees might be advised of the availability of the hepatitis B vaccine. This vaccine will provide long-term immunity from hepatitis B infections.

We hope this information is of assistance to you. If you have any further questions, please contact me at 458-7676.

Sincerely,



Jean D. Brender, R.N., Ph.D.
Epidemiologist
Infectious Disease Epidemiology and
Surveillance Division

AN ACT

1-1 relating to the regulation of the practice of cosmetology;
 1-2 providing an administrative penalty.

1-3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-4 SECTION 1. Subdivision (3), Section 1, Chapter 1036, Acts of
 1-5 the 62nd Legislature, Regular Session, 1971 (Article 8451a,
 1-6 Vernon's Texas Civil Statutes), is amended to read as follows:

1-7 (3) "Cosmetology" means the performing or doing, or
 1-8 offering or attempting to do or perform for compensation, any of
 1-9 the following acts, services, works, treatments, or undertakings:

1-10 (A) arranging, beautifying, bleaching, tinting,
 1-11 cleansing, coloring, dressing, dyeing, processing, shampooing,
 1-12 shaping, singeing, straightening, styling, waving, or otherwise
 1-13 treating the hair as primary services, treatments, or undertaking
 1-14 by any means or method, including any bobbing, clipping, cutting,
 1-15 or trimming of the hair as a necessary incident preparatory or
 1-16 ancillary to such primary services; cutting the hair as a primary
 1-17 service, treatment, or undertaking and not as a necessary incident
 1-18 preparatory or ancillary to those primary services enumerated in
 1-19 this subdivision, or primarily engaging in the occupation of
 1-20 cutting hair or practicing primarily as a haircutter by cutting
 1-21 hair as a separate and independent service, treatment, or
 1-22 undertaking for which haircut a charge is made, separate and apart
 1-23 from any other service, treatment, or undertaking, directly or
 2-1 indirectly, or in any manner;

2-2 (B) cleansing, stimulating, or massaging the
 2-3 scalp, face, neck, or arms by means of the hands, devices,
 2-4 apparatus, or appliances, with or without the use of cosmetic
 2-5 preparations, antiseptics, tonics, lotions, or creams; beautifying
 2-6 the face, neck, or arms by use of cosmetic preparations,
 2-7 antiseptics, tonics, lotions, powders, oils, clays, creams, or
 2-8 appliances;

2-9 (C) removing superfluous hair from the body by
 2-10 the use of depilatories or mechanical tweezers;

2-11 (D) cutting, trimming, polishing, tinting,
 2-12 coloring, cleansing, or manicuring the nails of any person; or
 2-13 attaching false nails or massaging, cleansing, treating, or
 2-14 beautifying the hands or feet of any person;

2-15 (E) servicing a wig or artificial hairpiece
 2-16 either on a human head or on a block subsequent to the initial
 2-17 retail sale and servicing by any of the practices enumerated in
 2-18 Paragraph (A) of this subdivision;

2-19 (F) administering facial treatments;

2-20 (G) hair weaving or braiding; or

2-21 (H) shampooing and conditioning hair.

2-22 SECTION 2. Subsection (l), Section 4, Chapter 1036, Acts of
 2-23 the 62nd Legislature, Regular Session, 1971 (Article 8451a,
 2-24 Vernon's Texas Civil Statutes), as added by Chapter 777, Acts of
 2-25 the 73rd Legislature, 1993, is redesignated as Subsection (m) and
 3-1 amended to read as follows:

3-2 (m) ~~(l)~~ The commission by rule shall establish and assess
 3-3 on all persons and entities licensed or regulated under this Act
 3-4 reasonable and necessary fees in amounts necessary to administer
 3-5 this Act.

3-6 SECTION 3. Section 9, Chapter 1036, Acts of the 62nd
 3-7 Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas
 3-8 Civil Statutes), is amended by adding Subsection (e) to read as
 3-9 follows:

3-10 (e) A license or certificate issued under this Act is not
 3-11 transferable.

3-12 SECTION 4. Subsection (d), Section 10, Chapter 1036, Acts of
 3-13 the 62nd Legislature, Regular Session, 1971 (Article 8451a,
 3-14 Vernon's Texas Civil Statutes), is amended to read as follows:

3-15 (d) The applicant is entitled to an operator license if the
 3-16 applicant ~~he~~ possesses the qualifications enumerated in

3-17 Subsection (b) of this section, satisfactorily completes the
3-18 examination, pays the [a-~~35~~] license fee prescribed by the
3-19 commission, and has not committed an act that constitutes a ground
3-20 for denial of a license.

3-21 SECTION 5. Subsection (d), Section 11, Chapter 1036, Acts of
3-22 the 62nd Legislature, Regular Session, 1971 (Article 8451a,
3-23 Vernon's Texas Civil Statutes), is amended to read as follows:

3-24 (d) The applicant is entitled to a manicurist license if the
3-25 applicant [he] possesses the qualifications enumerated in
4-1 Subsection (b) of this section, satisfactorily completes the
4-2 examination, pays the [a-~~35~~] license fee prescribed by the
4-3 commission, and has not committed an act that constitutes a ground
4-4 for denial of a license.

4-5 SECTION 6. Subsection (d), Section 12, Chapter 1036, Acts of
4-6 the 62nd Legislature, Regular Session, 1971 (Article 8451a,
4-7 Vernon's Texas Civil Statutes), is amended to read as follows:

4-8 (d) The applicant is entitled to an instructor license if
4-9 the applicant [he] possesses qualifications enumerated in
4-10 Subsection (b) of this section, satisfactorily completes the
4-11 examination, pays the [a-~~50~~] license fee prescribed by the
4-12 commission, and has not committed an act that constitutes a ground
4-13 for denial of a license.

4-14 SECTION 7. Subsection (d), Section 13, Chapter 1036, Acts of
4-15 the 62nd Legislature, Regular Session, 1971 (Article 8451a,
4-16 Vernon's Texas Civil Statutes), is amended to read as follows:

4-17 (d) The applicant is entitled to a specialty certificate if
4-18 the applicant [he] possesses the qualifications enumerated in
4-19 Subsection (b) of this section, pays the [a-~~35~~] certificate fee
4-20 prescribed by the commission, and has not committed an act that
4-21 constitutes a ground for denial of a certificate.

4-22 SECTION 8. Subsection (d), Section 13A, Chapter 1036, Acts
4-23 of the 62nd Legislature, Regular Session, 1971 (Article 8451a,
4-24 Vernon's Texas Civil Statutes), is amended to read as follows:

4-25 (d) The applicant is entitled to a facialist specialty
5-1 license if the applicant possesses the qualifications enumerated in
5-2 Subsection (b) of this section, satisfactorily completes the
5-3 examination, pays the [a-~~35~~] license fee prescribed by the
5-4 commission, and has not committed an act that constitutes a ground
5-5 for denial of a license.

5-6 SECTION 9. Subsection (b), Section 15, Chapter 1036, Acts of
5-7 the 62nd Legislature, Regular Session, 1971 (Article 8451a,
5-8 Vernon's Texas Civil Statutes), is amended to read as follows:

5-9 (b) A temporary license shall be issued on submission of an
5-10 application form prescribed by the commission and payment of the [a-
5-11 ~~45~~] temporary license fee prescribed by the commission if the
5-12 applicant meets the requirements of Subsection (a) of this section.

5-13 SECTION 10. Section 16, Chapter 1036, Acts of the 62nd
5-14 Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas
5-15 Civil Statutes), is amended to read as follows:

5-16 Sec. 16. DUPLICATE LICENSE OR CERTIFICATE. (a) A duplicate
5-17 license or certificate shall be issued upon application on a form
5-18 prescribed by the commission and on the payment of the [a-~~35~~] fee
5-19 prescribed by the commission.

5-20 (b) A transcript shall be given to licensees under this Act
5-21 upon application on a form prescribed by the commission and payment
5-22 of the [a-~~5~~] fee prescribed by the commission.

5-23 SECTION 11. Subsection (b), Section 17, Chapter 1036, Acts
5-24 of the 62nd Legislature, Regular Session, 1971 (Article 8451a,
5-25 Vernon's Texas Civil Statutes), is amended to read as follows:

6-1 (b) The applicant shall submit an application on a form
6-2 prescribed by the commission and pay the [a-~~100~~] fee prescribed by
6-3 the commission, plus the applicable license or certification fee.

6-4 SECTION 12. Subsection (b), Section 18, Chapter 1036, Acts
6-5 of the 62nd Legislature, Regular Session, 1971 (Article 8451a,
6-6 Vernon's Texas Civil Statutes), is amended to read as follows:

6-7 (b) A student permit shall be issued on submission of an
 6-8 application form prescribed by the commission and payment of the [~~e~~
 6-9 ~~\$25~~] fee prescribed by the commission, which must accompany the
 6-10 application.

6-11 SECTION 13. Subsections (b) and (c), Section 19, Chapter
 6-12 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article
 6-13 8451a, Vernon's Texas Civil Statutes), are amended to read as
 6-14 follows:

6-15 (b) An applicant for a beauty shop license must submit an
 6-16 application on a form prescribed by the commission. The
 6-17 application must contain proof of the particular requisites for a
 6-18 beauty shop as established by the commission and must be verified
 6-19 by the applicant. With the application, the applicant must submit
 6-20 the [~~a~~ ~~\$35~~] inspection fee prescribed by the commission.

6-21 (c) The applicant is entitled to a beauty shop license if
 6-22 the application shows compliance with the rules of the commission,
 6-23 the [~~a~~ ~~\$45~~] license fee prescribed by the commission is paid, and
 6-24 the applicant [~~he~~] has not committed an act that constitutes a
 6-25 ground for denial of a license.

7-1 SECTION 14. Subsections (b) and (c), Section 20, Chapter
 7-2 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article
 7-3 8451a, Vernon's Texas Civil Statutes), are amended to read as
 7-4 follows:

7-5 (b) An applicant for a specialty shop license must submit an
 7-6 application on a form prescribed by the commission. The
 7-7 application must contain proof of the particular requisites for a
 7-8 specialty shop as established by the commission and must be
 7-9 verified by the applicant. With the application, the applicant
 7-10 must submit the [~~a~~ ~~\$35~~] inspection fee prescribed by the
 7-11 commission.

7-12 (c) The applicant is entitled to a specialty shop license if
 7-13 the application shows compliance with the rules and regulations of
 7-14 the commission, the [~~a~~ ~~\$45~~] license fee prescribed by the
 7-15 commission is paid, and the applicant [~~he~~] has not committed an act
 7-16 that constitutes a ground for denial of a license.

7-17 SECTION 15. Subsection (d), Section 21, Chapter 1036, Acts
 7-18 of the 62nd Legislature, Regular Session, 1971 (Article 8451a,
 7-19 Vernon's Texas Civil Statutes), is amended to read as follows:

7-20 (d) Each application for a private beauty culture school
 7-21 license must be accompanied by payment of the [~~a~~ ~~\$500~~] license fee
 7-22 and [~~a~~ ~~\$200~~] inspection fee prescribed by the commission. Each
 7-23 application for certification as a public secondary or public
 7-24 postsecondary beauty culture school must be accompanied by the [~~a~~
 7-25 ~~\$200~~] inspection fee prescribed by the commission. The inspection
 8-1 fee is charged for each inspection trip required before approval of
 8-2 the license or certificate.

8-3 SECTION 16. Subsection (b), Section 21A, Chapter 1036, Acts
 8-4 of the 62nd Legislature, Regular Session, 1971 (Article 8451a,
 8-5 Vernon's Texas Civil Statutes), is amended to read as follows:

8-6 (b) The commission shall determine the amount of the fee by
 8-7 applying a percentage to each school's annual renewal fee. The
 8-8 percentage is the rate determined by the commission that, when
 8-9 applied to the total of all renewal fees, will result in the
 8-10 collection of \$200,000 for deposit in the fund in the first three
 8-11 years that the fee is collected. [~~The fee assessed under this~~
 8-12 ~~section may not exceed \$200 per year.~~]

8-13 SECTION 17. Section 29, Chapter 1036, Acts of the 62nd
 8-14 Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas
 8-15 Civil Statutes), is amended to read as follows:

8-16 Sec. 29. RIGHT OF ACCESS. The commission, an inspector, or
 8-17 any duly authorized representative of the commission may enter the
 8-18 premises of any licensee at any time during normal business hours
 8-19 [~~and in such manner as not to interfere with the conduct or~~
 8-20 ~~operation of the business or school~~] to determine whether [~~or not~~]
 8-21 the licensee is in compliance with this Act and the rules of the

8-22 commission.
 8-23 SECTION 18. Section 31, Chapter 1036, Acts of the 62nd
 8-24 Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas
 8-25 Civil Statutes), is amended to read as follows:

9-1 Sec. 31. HEALTH CERTIFICATE. (a) Every applicant for an
 9-2 original or renewal operator license, instructor license,
 9-3 reciprocal license, or specialty certificate must submit a
 9-4 certificate of health signed by a licensed physician or licensed
 9-5 physician assistant, showing that the applicant is free, as
 9-6 determined by an examination, from tuberculosis, hepatitis, or a
 9-7 [any] contagious disease for which the applicant is not entitled to
 9-8 protection under the Americans with Disabilities Act (42 U.S.C.
 9-9 Section 12101 et seq.) [as determined by an examination that
 9-10 included a tuberculosis test].

9-11 (b) Any physician or physician assistant who signs a health
 9-12 certificate required by Subsection (a) of this section showing the
 9-13 applicant to be free from a [any contagious] disease covered by
 9-14 that subsection without having made the physical examination is
 9-15 guilty of a misdemeanor, and on conviction may be fined not less
 9-16 than \$50 or more than \$200.

9-17 SECTION 19. Section 32, Chapter 1036, Acts of the 62nd
 9-18 Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas
 9-19 Civil Statutes), is amended to read as follows:

9-20 Sec. 32. INFECTIOUS AND CONTAGIOUS DISEASES. (a) A person
 9-21 holding an operator, instructor, or specialty certificate may not
 9-22 perform any practice of cosmetology knowing that he is suffering
 9-23 from an infectious or contagious disease for which the person is
 9-24 not entitled to protection under the Americans with Disabilities
 9-25 Act (42 U.S.C. Section 12101 et seq.).

10-1 (b) A person holding a beauty or specialty shop license, a
 10-2 private beauty culture school license, or a license to operate a
 10-3 vocational cosmetology program in a public school may not employ
 10-4 any person to perform any practice or practices of cosmetology
 10-5 knowing that the licensee is suffering from an infectious or
 10-6 contagious disease for which the person is not entitled to
 10-7 protection under the Americans with Disabilities Act (42 U.S.C.
 10-8 Section 12101 et seq.).

10-9 SECTION 20. Subsections (e), (f), (g), and (i), Section 33,
 10-10 Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971
 10-11 (Article 8451a, Vernon's Texas Civil Statutes), are amended to read
 10-12 as follows:

10-13 (e) A license that has been expired for less than 30 days
 10-14 may be renewed. A renewal license shall be issued on submission of
 10-15 a completed application form prescribed by the commission and
 10-16 payment of the renewal fee, plus the [a \$10] delinquency fee
 10-17 prescribed by the commission.

10-18 (f) Except as provided by Subsection (h) of this section, a
 10-19 license that has been expired for more than 30 days but less than
 10-20 five years may be renewed. A renewal license shall be issued on
 10-21 submission of an application, payment of the fee established by
 10-22 this Act for each year the license has been expired, and payment of
 10-23 the [a] delinquency fee prescribed by the commission. [Delinquency
 10-24 fees under this subsection are:]

- 10-25 [~~(1) operator or specialty license \$25,~~]
- 11-1 [~~(2) instructor license \$50,~~]
- 11-2 [~~(3) manicurist license \$25, and~~]
- 11-3 [~~(4) beauty or specialty salon license \$35.~~]

11-4 (g) An applicant for renewal of a license that has been
 11-5 expired for more than five years shall be issued a license on
 11-6 submission of an application, payment of the examination fee,
 11-7 satisfactory completion of the examination, and payment of the [a
 11-8 \$50] reinstatement fee prescribed by the commission.

11-9 (i) An applicant for first renewal of a license must have a
 11-10 high school diploma, or the equivalent of a high school diploma, or
 11-11 have passed an ability to benefit from training examination. [The

11-12 ~~commission by rule shall establish the delinquency fee for a booth~~
11-13 ~~rental license.]~~

11-14 SECTION 21. Subsection (a), Section 34, Chapter 1036, Acts
11-15 of the 62nd Legislature, Regular Session, 1971 (Article 8451a,
11-16 Vernon's Texas Civil Statutes), is amended to read as follows:

11-17 (a) The commission shall prescribe renewal [Renewal] fees
11-18 under this Act [are].

- 11-19 [~~(1) Operator or specialty license \$35.~~]
- 11-20 [~~(2) Instructor license \$50.~~]
- 11-21 [~~(3) Manicurist license \$35.~~]
- 11-22 [~~(4) Private beauty school license \$200 per year; and~~]
- 11-23 [~~(5) Beauty or specialty shop license \$45.~~].

11-24 SECTION 22. Section 35, Chapter 1036, Acts of the 62nd
11-25 Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas
12-1 Civil Statutes), is amended to read as follows:

12-2 Sec. 35. VIOLATION. (a) If an inspector discovers a
12-3 violation of this Act or of a rule established by the commission,
12-4 the inspector [he] shall:

- 12-5 (1) give written notice of the violation on a form
- 12-6 prescribed by the commission to the violator; [7] and
- 12-7 (2) [if the violation is not corrected in 10 days from
- 12-8 the date of notice, the inspector shall] file a complaint with the
- 12-9 executive director.

12-10 (b) If a licensee commits a violation of this Act or a rule
12-11 adopted under this Act and the violation poses a serious threat to
12-12 the public health, the commission shall initiate [three or more
12-13 violations of a similar nature within any 12 month period,] a suit
12-14 for injunction and proceedings for suspension or revocation of the
12-15 license [shall be instituted].

12-16 SECTION 23. Chapter 1036, Acts of the 62nd Legislature,
12-17 Regular Session, 1971 (Article 8451a, Vernon's Texas Civil
12-18 Statutes), is amended by adding Section 35A to read as follows:

12-19 Sec. 35A. ADMINISTRATIVE PENALTY. (a) The commission may
12-20 impose an administrative penalty against a person licensed or
12-21 regulated under this Act who violates this Act or a rule or order
12-22 adopted under this Act.

12-23 (b) The penalty for a violation may be in an amount not to
12-24 exceed \$1,000. Each day a violation continues or occurs is a
12-25 separate violation for purposes of imposing a penalty.

13-1 (c) The amount of the penalty shall be based on:

- 13-2 (1) the seriousness of the violation, including the
- 13-3 nature, circumstances, extent, and gravity of any prohibited acts,
- 13-4 and the hazard or potential hazard created to the health, safety,
- 13-5 or economic welfare of the public;
- 13-6 (2) the economic harm to property or the environment
- 13-7 caused by the violation;
- 13-8 (3) the history of previous violations;
- 13-9 (4) the amount necessary to deter future violations;
- 13-10 (5) efforts to correct the violation; and
- 13-11 (6) any other matter that justice may require.

13-12 (d) The executive director, on a determination that a
13-13 violation has occurred, may issue to the commission a report that
13-14 states the facts on which the determination is based and the
13-15 director's recommendation on the imposition of a penalty, including
13-16 a recommendation on the amount of the penalty.

13-17 (e) Within 14 days after the date the report is issued, the
13-18 executive director shall give written notice of the report to the
13-19 person. The notice may be given by certified mail. The notice
13-20 must include a brief summary of the alleged violation and a
13-21 statement of the amount of the recommended penalty and must inform
13-22 the person that the person has a right to a hearing on the
13-23 occurrence of the violation, the amount of the penalty, or both the
13-24 occurrence of the violation and the amount of the penalty.

13-25 (f) Within 20 days after the date the person receives the
14-1 notice, the person in writing may accept the determination and

14-2 recommended penalty of the executive director or may make a written
 14-3 request for a hearing on the occurrence of the violation, the
 14-4 amount of the penalty, or both the occurrence of the violation and
 14-5 the amount of the penalty.

14-6 (g) If the person accepts the determination and recommended
 14-7 penalty of the executive director, the commission by order shall
 14-8 approve the determination and impose the recommended penalty.

14-9 (h) If the person requests a hearing or fails to respond
 14-10 timely to the notice, the executive director shall set a hearing
 14-11 and give notice of the hearing to the person. The hearing shall be
 14-12 held by an administrative law judge of the State Office of
 14-13 Administrative Hearings. The administrative law judge shall make
 14-14 findings of fact and conclusions of law and promptly issue to the
 14-15 commission a proposal for a decision about the occurrence of the
 14-16 violation and the amount of a proposed penalty. Based on the
 14-17 findings of fact, conclusions of law, and proposal for a decision,
 14-18 the commission by order may find that a violation has occurred and
 14-19 impose a penalty or may find that no violation occurred.

14-20 (i) The notice of the commission's order given to the person
 14-21 under Chapter 2001, Government Code, must include a statement of
 14-22 the right of the person to judicial review of the order.

14-23 (j) Within 30 days after the date the commission's order
 14-24 becomes final as provided by Section 2001.144, Government Code, the
 14-25 person shall:

15-1 (1) pay the amount of the penalty;

15-2 (2) pay the amount of the penalty and file a petition
 15-3 for judicial review contesting the occurrence of the violation, the
 15-4 amount of the penalty, or both the occurrence of the violation and
 15-5 the amount of the penalty; or

15-6 (3) without paying the amount of the penalty, file a
 15-7 petition for judicial review contesting the occurrence of the
 15-8 violation, the amount of the penalty, or both the occurrence of the
 15-9 violation and the amount of the penalty.

15-10 (k) Within the 30-day period, a person who acts under
 15-11 Subsection (j)(3) of this section may:

15-12 (1) stay enforcement of the penalty by:

15-13 (A) paying the amount of the penalty to the
 15-14 court for placement in an escrow account; or

15-15 (B) giving to the court a supersedeas bond that
 15-16 is approved by the court for the amount of the penalty and that is
 15-17 effective until all judicial review of the commission's order is
 15-18 final; or

15-19 (2) request the court to stay enforcement of the
 15-20 penalty by:

15-21 (A) filing with the court a sworn affidavit of
 15-22 the person stating that the person is financially unable to pay the
 15-23 amount of the penalty and is financially unable to give the
 15-24 supersedeas bond; and

15-25 (B) giving a copy of the affidavit to the
 16-1 executive director by certified mail.

16-2 (l) On receipt of a copy of an affidavit under Subsection
 16-3 (k)(2) of this section, the executive director may file with the
 16-4 court, within five days after the date the copy is received, a
 16-5 contest to the affidavit. The court shall hold a hearing on the
 16-6 facts alleged in the affidavit as soon as practicable and shall
 16-7 stay the enforcement of the penalty on finding that the alleged
 16-8 facts are true. The person who files an affidavit has the burden
 16-9 of proving that the person is financially unable to pay the amount
 16-10 of the penalty and to give a supersedeas bond.

16-11 (m) If the person does not pay the amount of the penalty and
 16-12 the enforcement of the penalty is not stayed, the executive
 16-13 director may refer the matter to the attorney general for
 16-14 collection of the amount of the penalty.

16-15 (n) Judicial review of the order of the commission:

16-16 (1) is instituted by filing a petition as provided by

16-17 Subchapter G, Chapter 2001, Government Code; and
 16-18 (2) is under the substantial evidence rule.
 16-19 (o) If the court sustains the occurrence of the violation,
 16-20 the court may uphold or reduce the amount of the penalty and order
 16-21 the person to pay the full or reduced amount of the penalty. If
 16-22 the court does not sustain the occurrence of the violation, the
 16-23 court shall order that no penalty is owed.
 16-24 (p) When the judgment of the court becomes final, the court
 16-25 shall proceed under this subsection. If the person paid the amount
 17-1 of the penalty and if that amount is reduced or is not upheld by
 17-2 the court, the court shall order that the appropriate amount plus
 17-3 accrued interest be remitted to the person. The rate of the
 17-4 interest is the rate charged on loans to depository institutions by
 17-5 the New York Federal Reserve Bank, and the interest shall be paid
 17-6 for the period beginning on the date the penalty was paid and
 17-7 ending on the date the penalty is remitted. If the person gave a
 17-8 supersedeas bond and if the amount of the penalty is not upheld by
 17-9 the court, the court shall order the release of the bond. If the
 17-10 person gave a supersedeas bond and if the amount of the penalty is
 17-11 reduced, the court shall order the release of the bond after the
 17-12 person pays the amount.

17-13 (q) A penalty collected under this section shall be remitted
 17-14 to the comptroller for deposit in the general revenue fund.

17-15 (r) All proceedings under this section are subject to
 17-16 Chapter 2001, Government Code.

17-17 SECTION 24. Section 40, Chapter 1036, Acts of the 62nd
 17-18 Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas
 17-19 Civil Statutes), is amended to read as follows:

17-20 Sec. 40. CRIMINAL PENALTIES. (a) Any person who violates
 17-21 this Act, except Section 31 of this Act, is guilty of a
 17-22 misdemeanor, and on conviction is punishable by a fine of not less
 17-23 than \$100 nor more than \$300.

17-24 (b) A licensee or certificate holder who violates this Act
 17-25 is guilty of a misdemeanor and on conviction is punishable under
 18-1 Subsection (a) of this section and is subject to the revocation or
 18-2 suspension of the person's [his] license or certificate.

18-3 SECTION 25. Section 21C, Chapter 1036, Acts of the 62nd
 18-4 Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas
 18-5 Civil Statutes), is repealed.

18-6 SECTION 26. (a) This Act takes effect September 1, 1997.

18-7 (b) A specific fee amount prescribed in Chapter 1036, Acts
 18-8 of the 62nd Legislature, Regular Session, 1971 (Article 8451a,
 18-9 Vernon's Texas Civil Statutes), as that statute existed immediately
 18-10 before the effective date of this Act, shall remain in effect until
 18-11 superseded by a rule adopted by the Texas Cosmetology Commission
 18-12 prescribing a different fee amount, and the former law is continued
 18-13 in effect for that purpose.

18-14 SECTION 27. The importance of this legislation and the
 18-15 crowded condition of the calendars in both houses create an
 18-16 emergency and an imperative public necessity that the
 18-17 constitutional rule requiring bills to be read on three several
 18-18 days in each house be suspended, and this rule is hereby suspended.

S.B. No. 1131

President of the Senate	Speaker of the House
I hereby certify that S.B. No. 1131 passed the Senate on April 11, 1997, by a viva-voce vote; and that the Senate concurred in House amendments on May 10, 1997, by a viva-voce vote.	I hereby certify that S.B. No. 1131 passed the House, with amendments, on May 7, 1997, by a non-record vote.

	Secretary of the Senate
I hereby certify that S.B. No. 1131 passed the House, with amendments, on May 7, 1997, by a non-record vote.	

	Chief Clerk of the House
Approved:	

