

CHAPTER 137**(HB 517)**

AN ACT relating to estheticians.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS CHAPTER 317B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 11 of this Act, unless the context otherwise requires:

- (1) *"Board" means the Kentucky Board of Hairdressers and Cosmetologists, created in KRS 317A.030;*
- (2) *"Esthetician" means a person who is licensed by the board to engage in esthetic practices in the Commonwealth of Kentucky;*
- (3) (a) *"Esthetic practices" means one (1) or more of the following acts:*
 1. *Giving facials, including consultation and skin analysis;*
 2. *Providing makeup artistry, including corrective and camouflage techniques;*
 3. *Giving skin care;*
 4. *Removing facial hair by tweezing or waxing;*
 5. *Beautifying or cleaning the body with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; or*
 6. *Providing preoperative and postoperative esthetic skin care, either referred by or supervised by a medical professional;*
- (b) *Except when these acts are performed incident to:*
 1. *Treatment of an illness or a disease;*
 2. *Work as a student in a board approved school;*
 3. *Work without compensation from the person receiving the service; or*
 4. *Work performed by a licensed massage therapist; and*
- (4) *"Esthetic salon" means a place where an esthetician performs esthetic practices.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *Estheticians practicing under Sections 1 to 11 of this Act shall not perform any of the following: Botox or collagen injections, laser treatments, electrolysis, tattoo, permanent makeup, microdermabrasion, or piercing unless practicing under the immediate supervision of a licensed physician.*
- (2) *The provisions of Sections 1 to 11 of this Act shall not apply to any other person licensed, certified, or registered under any other chapter of the Kentucky Revised Statutes, or any student within an accredited training program of any of these professions. Nothing in Sections 1 to 11 of this Act shall be construed to limit, interfere, or restrict the practice, descriptions of services, or manner in which that person holds himself or herself out to the public so long as that person does not hold himself or herself out as an esthetician unless that person is licensed as an esthetician under Sections 1 to 11 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall administer and enforce the provisions of Sections 1 to 11 of this Act and shall evaluate the qualifications of applicants for licensure and the issuance of licenses.*
- (2) *The board may employ inspectors, staff, and other personnel as reasonably necessary to carry out the provisions of Sections 1 to 11 of this Act. The compensation shall be established by the board.*
- (3) *The board may promulgate administrative regulations, including but not limited to administrative regulations that:*
 - (a) *Protect the health and safety of the public;*
 - (b) *Protect the public against incompetent or unethical practice, misrepresentation, deceit, or fraud in the practice of esthetics or teaching of esthetic practices;*
 - (c) *Set standards for the operation of the schools and salons;*
 - (d) *Protect the students;*
 - (e) *Establish the quality of equipment, supplies, materials, records, and furnishings required in esthetic salons or classrooms;*
 - (f) *Establish course work and conduct of school owners, instructors, estheticians, esthetic salons, and cosmetology schools conducting classes in esthetic practices;*
 - (g) *Set the requirements for the proper education and training of students;*
 - (h) *Establish the qualifications of instructors of esthetic practices;*
 - (i) *Set standards for the hours and courses of instruction in esthetic practices;*
 - (j) *Establish the examinations of applicants for licenses;*
 - (k) *Establish a code of ethics for persons licensed by the board; and*
 - (l) *Establish fees required pursuant to Sections 1 to 11 of this Act.*
- (4) *Administrative regulations pertaining to health and sanitation shall be approved by the Department for Health Services before becoming effective.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall issue an esthetician license to any person who:*
 - (a) *Is of good moral character and temperate habit;*
 - (b) *Is at least eighteen (18) years of age;*
 - (c) *Has a high school education or equivalent;*
 - (d) *Has satisfactorily completed one thousand (1,000) hours of instruction in a licensed school approved by the board;*
 - (e) *Has received a satisfactory grade on an examination prescribed by the board to determine fitness to practice as an esthetician; and*
 - (f) *Has paid a fee of at least seventy-five dollars (\$75) to be adjusted as needed in administrative regulations promulgated by the board.*

- (2) *The board may issue a license to a cosmetologist who seeks dual licensure as an esthetician by offering a dual cosmetologist and esthetician license to individuals who meet licensure criteria for a cosmetologist as in KRS Chapter 317A and licensure criteria for an esthetician as in Sections 1 to 11 of this Act. The fee for the dual license and continuing education required for license renewal shall be determined by the board as promulgated in administrative regulations. Nothing in Sections 1 to 11 of this Act shall prohibit separate licensure of cosmetologists and estheticians.*
- (3) *The board shall issue licenses as follows:*
- (a) *A license to operate an esthetic salon shall be issued to any licensed esthetician upon receipt of:*
 - 1. *The completed application; and*
 - 2. *A fee of at least one hundred twenty-five dollars (\$125) to be adjusted as needed in administrative regulations promulgated by the board.*
 - (b) *If an owner is not a licensed esthetician, the owner shall have a licensed esthetician manage the esthetic salon at all times. A new license shall be purchased if the salon's owner, manager, or location changes.*
 - (c) *Licensed esthetic salons shall have the furnishings and salon equipment required pursuant to administrative regulations adopted by the board.*
 - (d) *Any licensed esthetician who leases or rents space or pays a fee to do business in a beauty salon or esthetic salon shall be considered an independent owner and shall meet the qualifications for the respective salon owner as set out in paragraphs (a), (b), and (c) of this subsection.*
 - (e) *The board may refuse to issue a license if the applicant fails to comply with the provisions of Sections 1 to 11 of this Act or the administrative regulations promulgated by the board.*
- (4) *The board shall issue a license to teach esthetic practices to any person who:*
- (a) *Is of good moral character and temperate habit;*
 - (b) *Is at least eighteen (18) years of age;*
 - (c) *Has a high school education or equivalent;*
 - (d) *Holds a current cosmetologist and instructor's license;*
 - (e) *Has completed eight (8) continuing education hours in esthetics or has completed fifty (50) hours in esthetics training within the last two (2) years;*
 - (f) *Has received a satisfactory grade on the examination for the teaching of esthetics as prescribed by the board; and*
 - (g) *Has paid a fee promulgated by the board in administrative regulations.*
- (5) *The board may issue a license to teach esthetic practices to an individual with two (2) or more years' experience in teaching esthetic practices in another jurisdiction who meets the requirements of paragraphs (a), (b), and (c) of subsection (3) of this section.*
- (6) *Courses in esthetic practices may be taught at any licensed cosmetology school that complies with the administrative regulations promulgated by the board under Sections 1 to 11 of this Act.*

- (7) *Applications for esthetician examinations required by this section shall be accompanied by an examination fee of at least one hundred twenty-five dollars (\$125) to be adjusted as needed in administrative regulations promulgated by the board.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *Licenses issued by the board under Sections 1 to 11 of this Act shall be renewed between July 1 and July 31 of each year, if the applicant provides proof of continuing education as determined by the board by promulgation of an administrative regulation.*
- (a) *Estheticians shall provide proof of six (6) clock hours of continuing education.*
- (b) *Instructors of esthetic practices shall provide proof of eight (8) clock hours of continuing education.*
- (c) *Continuing education credit may be earned in other states and countries that license estheticians, if approved by the board.*
- (2) *All applications for license renewal shall comply with the provisions of Sections 1 to 11 of this Act and the administrative regulations promulgated by the board.*
- (3) *Any license application postmarked after July 31 shall be considered expired. The board shall promulgate through administrative regulations the appropriate restoration fee based on length of time a license has been expired for a period up to five (5) years. After five (5) years, restoration fees shall be required in addition to an examination, additional course work, or both.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *No examination or part of any examination required by Sections 1 to 11 of this Act shall be given unless a quorum of the board is present to supervise that examination.*
- (2) *Examinations given by the board shall cover all phases of the applicant's qualifications for the particular license, including the skill and technique of the applicant, as well as scientific and other knowledge.*
- (3) *Examinations shall be given at regularly prescribed intervals as set by the board.*
- (4) *Examinations shall be given at the principal office of the board or at a location approved by the board.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *The board may promulgate administrative regulations pertaining to the issuance of a license, upon payment of the prescribed license fee, to any person holding a comparable license issued by another state or country where the laws of that state or country, in the opinion of the board, provide comparable professional qualification, health, and safety standards.*
- (2) *Notwithstanding the provisions of subsection (1) of this section, a license to operate or practice in this state may be refused or denied a holder of a license issued by another state if that state does not extend to the holder of a Kentucky license similar or comparable recognition and opportunity.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *The board may refuse to issue or renew a license, or may suspend, revoke, impose probationary conditions upon, impose an administrative fine, issue a written reprimand or admonishment, or any combination thereof regarding proof of any applicant's or licensee's:*
 - (a) *Conviction of a felony;*
 - (b) *Gross malpractice or incompetence;*
 - (c) *Mental or physical health that would endanger public health or safety;*
 - (d) *False or deceptive practice or misrepresentation including advertising;*
 - (e) *Practicing in an unlicensed salon or in a salon knowing that the practice is not in compliance with Sections 1 to 11 of this Act or the administrative regulations of the board promulgated pursuant to Sections 1 to 11 of this Act;*
 - (f) *Immoral conduct, unprofessional conduct, or a violation of the code of ethics;*
 - (g) *Teaching in an unlicensed school or in a school knowing that the school is not in compliance with Sections 1 to 11 of this Act or the administrative regulations of the board promulgated pursuant to Sections 1 to 11 of this Act; or*
 - (h) *Failure to comply with Sections 1 to 11 of this Act or the administrative regulations promulgated by the board.*
- (2) *Payments in lieu of suspension collected by the board shall be deposited in the State Treasury and credited to the trust and agency account of the board.*
- (3) *The board may require retesting of any licensee upon proper showing of gross malpractice or incompetence on the part of the licensee.*
- (4) *Three (3) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon a finding that the individual has complied with any terms prescribed by the board, including retesting, and is again able to competently engage in the practice of esthetics.*
- (5) (a) *The board may issue a written admonishment to the licensee, when in the judgment of the board:*
 1. *An alleged violation is not of a serious nature; and*
 2. *The evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond provides a clear indication that the alleged violation did in fact occur.*
- (b) *A copy of the admonishment shall be placed in the permanent file of the licensee.*
- (c) *The licensee may file a response to the admonishment within thirty (30) days of its receipt. A copy of the licensee's response shall be placed in the permanent licensure file.*
- (d) *The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board.*

- (e) *Upon receipt of this request the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.*
- (6) *At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the licensee which effectively deals with the complaint.*
- (7) *The board may utilize mediation as a technique in reasonably handling disciplinary matters. The board may appoint any member or members of the board, any staff member, or any other person or combination thereof to serve in the mediation process.*
- (8) *The board may reconsider, modify, or reverse its probation, suspension, or other disciplinary action.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall receive complaints concerning any person licensed under the provisions of Sections 1 to 11 of this Act relating to the licensee's business or professional practices.*
- (2) *Each complaint received shall be placed in a log, recording the licensee's name, the name of complaining party, date of complaint, and a brief statement of the complaint and its ultimate disposition, and the board shall make the log available for public inspection.*
- (3) *The board shall review all complaints concerning any person licensed under the provisions of Sections 1 to 11 of this Act.*
- (4) *The board may initiate an investigation on any complaint received or on its own volition and shall promulgate any administrative regulations necessary for the administration of the provisions of this section.*
- (5) *If, upon investigation, there appears to be a violation of the provisions of Sections 1 to 11 of this Act, the board shall take the action it deems necessary under the provisions of Section 8 of this Act.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

- (1) *The board, before suspending, revoking, imposing probationary or supervisory conditions upon, imposing an administrative fine, issuing a written reprimand, or any combination of actions regarding any license under the provisions of Sections 1 to 11 of this Act, shall set the matter for hearing pursuant to the provisions of KRS Chapter 13B.*
- (2) *After denying an application under the provisions of Sections 1 to 11 of this Act, or issuing a written admonishment, the board shall grant a hearing pursuant to the provisions of KRS Chapter 13B.*
- (3) *A licensee or applicant aggrieved by a disciplinary action of the board may bring an action in Franklin Circuit Court pursuant to the provisions of KRS Chapter 13B.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 317B IS CREATED TO READ AS FOLLOWS:

Any person who violates any provision of Sections 1 to 11 of this Act shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or imprisoned for not less than ten (10) days nor more than six (6) months, or be subject to both the fine and the imprisonment.

Approved March 18, 2003