SPONSOR: Rep. J. Johnson & Sen. Henry
Reps. Baumbach, Q. Johnson, Kowalko, Lynn, Osienski, B. Short; Sens. Ennis, Simpson

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 97
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 51 OF TITLE 24 OF THE DELAWARE CODE RELATING TO COSMETOLOGY AND BARBERING

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 5107, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 5107. Qualifications of applicant; judicial review; report to Attorney General.

(a) All persons applying for a license to practice under this chapter:

(6) Shall not have been convicted of a crime substantially related to the practice of cosmetology, barbering, electrology or nail technology, unless the applicant was previously so licensed or was enrolled in a training program to be so licensed while an offender under the supervision of the Department of Correction prior to July 10, 2001~~;~~ . In determining whether a crime is substantially related to the professions regulated by this chapter, the Board shall not consider a conviction where more than 10 years have elapsed since the date of conviction, if there have been no other criminal convictions in the intervening time. ~~however, a~~After a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, or, during the time period between Board meetings, the Board President or his or her designee, may waive this paragraph (a)(6), if it finds all of the following:

a. For waiver of a felony conviction where the crime was committed against a person, more than ~~5~~ 3 years have elapsed since the date of the conviction and for all other felonies, more than 2 years have elapsed since the date of conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation~~, on~~ or parole at Level III Supervision or higher, or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may not be incarcerated, on work release, on probation~~, on~~ or parole at Level III Supervision or higher, or serving any

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part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

c. The applicant is capable of practicing cosmetology, barbering, electrology or nail technology in a competent and professional manner.

d. The granting of the waiver will not endanger the public health, safety or welfare.

(7) Shall not have a pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of cosmetology, barbering, electrology or nail technology. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the applicant can carry out that applicant's own professional services with due regard for the health and safety of the recipients of those services and the public.

(8) Shall not have any disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant previously has been, or currently is, licensed to practice cosmetology, barbering, electrology or nail technology.

(b) As set forth in board rules and regulations, foreign-trained applicants shall provide evidence satisfactory to the Board of training equivalent to that required in paragraph (a)(3) of this section, in addition to meeting all other requirements of this section.

(c) When a person who feels the Board has refused or rejected an application without justification; has imposed higher or different conditions for the person than for other applicants or persons now licensed; or has in some other manner contributed to or caused the failure of such person's application, the applicant may appeal to Superior Court.

(d) Where the Board has found to its satisfaction that an application has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

Section 2. Amend Section 5127, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5127. Qualifications.

(a) No person shall be licensed under this subchapter unless the person has:

~~(6) Shall not have a criminal conviction record nor pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of aesthetics. Applicants who have criminal conviction records or pending criminal charges shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the~~

~~conviction or charge is substantially related to actions as a licensed aesthetician. However, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(6), if it finds all of the following:~~

(6) Shall not have been convicted of a crime substantially related to the practice of aesthetics. In determining whether a crime is substantially related to the practice of aesthetics, the Board shall not consider a conviction where more than 10 years have elapsed since the date of conviction, if there have been no other criminal convictions in the intervening time. After a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, or, during the time period between Board meetings, the Board President or his or her designee, may waive this paragraph (a)(6), if it finds all of the following:

a. For waiver of a felony conviction where the crime was committed against a person, more than ~~5~~ 3 years have elapsed since the date of the conviction and for all other felonies, more than 2 years have elapsed since the date of conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation~~, on~~ or parole at Level III Supervision or higher, or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may not be incarcerated, on work release, on probation~~, on~~ or parole at Level III Supervision or higher, or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

c. The applicant is capable of performing as a licensed aesthetician in a competent and professional manner.

d. The granting of the waiver will not endanger the public health, safety or welfare.

Section 3. This Bill shall take effect 90 days after enactment.