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# Sunset Evaluation of Barbering and Beauty Culture

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A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawaii

Report No. 01-02  
January 2001



**THE AUDITOR**  
STATE OF HAWAII

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## Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds are existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
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9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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# OVERVIEW

## *Sunset Evaluation of Barbering and Beauty Culture*

Report No. 01-02, January 2001

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### Summary

During the 1999 legislative session, the Legislature found that deregulating professions and vocations where appropriate could reduce government bureaucracy and red tape. Consequently, Act 254, Session Laws of Hawaii 1999, directed the Auditor to conduct a sunset review of the regulation of barbering and beauty culture. The Auditor is required to report on whether regulation of these professions should be continued or repealed, and if continued, whether it would be more efficient and cost-effective to regulate barbering and beauty culture through a regulatory board, the Department of Commerce and Consumer Affairs, or some other agency or mechanism.

Barbers cut, trim, shampoo, and style hair. Beauty culturists, also known as cosmetologists, primarily shampoo, cut, and style hair, but also perform a number of other services. Many beauty culturists offer specialized services and work exclusively on hair, nails, or skin. A growing number also actively sell cosmetic products and supplies.

Currently, all 50 states regulate beauty culture, also known as cosmetology, and require licensure while 49 of 50 states regulate barbering and require licensure. Barbering has been regulated in Hawaii since 1947 and beauty culture since 1929. As of July 2000, there were over 6,700 licensed practitioners, shops, and schools in Hawaii. In addition, a total of 202 apprentice permits and 600 temporary permits have been issued.

Since 1980, we have conducted two sunset evaluation reviews of barbering and three of beauty culture. In all five reports, we recommended against the continuation of the statutes under which the two occupations are regulated (Chapter 438 and Chapter 439, HRS). We found that regulation of the practices of barbering and beauty culture under these chapters was not warranted as the two practices posed little danger to the public. Potential dangers to public welfare were found to be outside the purview of these two chapters and could be more appropriately addressed by other state and federal laws and agencies.

We found that little has changed since we last evaluated these occupations over ten years ago. The practices of barbering and beauty culture pose a minimal risk to the public's health, safety, or welfare. Locally and nationally, there is little evidence of abuses by barbers and beauty culturists. Furthermore, protection from the potential harm posed by these two occupations exists within the purview of other state and federal agencies' regulations. For example, the state Department of Health regulates the sanitation of barber shops and beauty parlors while the federal Food and Drug Administration regulates cosmetic products.



In addition, other incentives exist for practitioners to prevent harm to consumer health, safety, and welfare. These incentives relate to the impact on insurance cost and availability, the potential for liability lawsuits, and practitioners' word-of-mouth reputation.

Finally, we found that regulation of barbering and beauty culture reduces the number of individuals able to provide services and thereby limits consumer choice. Relatively high failure rates for barbering and beauty culture examinations indicate that these examinations are barriers to entry into the occupations. As a result, consumers face a reduction in the selection and quality of services, while facing higher costs for those services.

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## Recommendation and Response

We recommended that Chapters 438 and 439, HRS, be repealed.

In its response, the Board of Barbering and Cosmetology noted strong disagreement with our recommendation. The board feels that repeal of Chapters 438 and 439 would open the door to fraud, incompetence, and public distrust in barbers and cosmetologists. The board also noted its belief that repeal would undermine the safeguards administered by the state Departments of Education and Health and the federal Food and Drug Administration. The Department of Commerce and Consumer Affairs did not submit a response.

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Conducted by

The Auditor  
State of Hawaii

Submitted by

**THE AUDITOR**  
STATE OF HAWAII

Report No. 01-02  
January 2001

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## Foreword

Act 254, Session Laws of Hawaii 1999, directed the State Auditor to conduct a sunset review of the regulation of barbering and beauty culture. The act asked us to report on whether the regulation of these professions should be continued or repealed, and if continued, whether it would be more efficient and cost-effective to regulate these professions through a regulatory board, the Department of Commerce and Consumer Affairs, or some other agency or mechanism. This report presents our findings and recommendation.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Board of Barbering and Cosmetology, and the many others whom we contacted during the course of our evaluation.

Marion M. Higa  
State Auditor

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# Chapter 1

## Introduction

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During the 1999 legislative session, the Legislature found that deregulating professions and vocations where appropriate could reduce government bureaucracy and red tape. Streamlining government operations by terminating unnecessary programs would make government more cost-effective and efficient, an important and desirable outcome given Hawaii's struggling economy at that time. Consequently, Act 254, Session Laws of Hawaii (SLH) 1999, directed the Auditor to conduct a sunset review of the regulation of barbering and beauty culture. The Auditor is required to report on whether regulation of these professions should be continued or repealed, and if continued, whether it would be more efficient and cost-effective to regulate barbering and beauty culture through a regulatory board, the Department of Commerce and Consumer Affairs, or some other agency or mechanism.

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## Background

The practices of barbering and beauty culture are professions that have existed for centuries. In Hawaii, these professions have been legally recognized for decades. Hawaii has required the licensure of barbers for about 50 years and beauty culturists for about 70 years. Even before occupational licensure was statutorily required, Hawaii's Board of Health was granted authority to adopt rules establishing standards of sanitation for barber shops and beauty salons.

### ***Barbers and beauty culturists help people look their best***

The basic task of barbers and beauty culturists has remained the same despite changing tastes and fashions — to help people look their best. Barbers cut, trim, shampoo and style hair. Beauty culturists, also known as cosmetologists, primarily shampoo, cut, and style hair, but also perform a number of other services. Many beauty culturists offer specialized services and work exclusively on hair, nails, or skin. A growing number also actively sell cosmetic products and supplies.

The barbering and beauty culture industry is projected to grow as fast as the national average for all industries through 2008. Although employment of barbers is expected to decline, those entering the occupation should have good job prospects due to a large number of barbers retiring, the return of male patrons to barber shops, and the relatively small number of beauty school graduates opting to obtain barbering licenses. Within beauty culture, a surge in the demand for hair coloring, beauty wraps, pedicures, massages, and other services will generate numerous job openings. The largest and fastest growing field of specialized services within beauty culture is nail technology.



From 1996 to 1998, the total number of barbers and beauty culturists nationwide increased by 3 percent. In 1998, barbers and beauty culturists held 723,000 jobs — about 90 percent of which were in beauty culture and about 10 percent in barbering.

***Barbering and beauty culture are regulated***

In Hawaii, barbering has been regulated since 1947 and beauty culture, also known as cosmetology, has been regulated since 1929. It is unlawful to practice as a barber or beauty culturist for compensation without a license or permit. The primary purpose of regulating barbering and beauty culture is to protect consumers from potential harm. Examples of harm include chemical burns, skin infections, allergic reactions, accidental injuries, infections, and contraction of contagious diseases such as head lice and tuberculosis.

**The Board of Barbering and Cosmetology provides oversight in Hawaii**

A seven-member Board of Barbering and Cosmetology (board) oversees the regulation of barbers and beauty culturists in Hawaii. The board consists of three public members, two licensed barbers, and two licensed beauty culturists (also called operators). Members are appointed by the governor and serve four-year terms. The board is administratively attached to the Department of Commerce and Consumer Affairs and is supported by an executive officer who assists in administering the licensing rules and regulations.

Pursuant to Chapter 438 and 439, Hawaii Revised Statutes (HRS), barbers, beauty operators, barber and beauty shops, and beauty instructors are required to obtain licenses from the board to provide services. Once licensed, barbers may perform the following services for compensation: (1) shave, trim, singe, shampoo, color, wave, or curl a person's hair or beard; and (2) massage, cleanse, or apply oil, creams or lotions to the face, neck, or scalp. Licensed beauty culturists may provide a wider range of services as estheticians, hairdressers, nail technicians or cosmetologists. Exhibit 1.1 outlines the specific services these licensed providers may offer for compensation.

## Exhibit 1.1

### Scopes of Practice for Beauty Culturists

Category	Services Allowed With Licensure
<b>Esthetician</b>	<p>May use hands, non-medically prescribed mechanical or electrical apparatus or devices, cosmetic preparations, antiseptics, tonics, lotions, or creams to:</p> <ul style="list-style-type: none"> <li>• Massage, cleanse, stimulate, manipulate, exercise, beautify, or do similar work on the scalp, face, neck, hands, arms, bust, upper part of the body, legs, or feet;</li> <li>• Cleanse, exfoliate, wrap, or do similar work upon the entire body utilizing gloves, loofah mitts, or brushes; and</li> <li>• Remove superfluous hair about the body of any person by means other than electrolysis.</li> </ul>
<b>Hairdresser</b>	<p>May arrange, dress, curl, wave, cleanse, cut, singe, bleach, color, or do similar work on the hair of another person.</p>
<b>Nail Technician</b>	<p>May:</p> <ul style="list-style-type: none"> <li>• Cut, trim, polish, color, cleanse, or otherwise treat a person's fingernails and toenails;</li> <li>• Apply artificial fingernails and toenails; and</li> <li>• Massage and cleanse a person's hands, arms, legs, and feet.</li> </ul>
<b>Cosmetologist</b>	<p>May engage in the practices of an esthetician, hairdresser, and nail technician.</p>

Barber and beauty apprentices learn their respective practices under the immediate direction and supervision of a licensed practitioner. Barber shops and beauty shops are establishments or places of business where barbering and beauty culture are the primary services provided.

To obtain a barber's or beauty operator's license, an applicant must meet age and training requirements and pass an examination. For example, an applicant for a barber's license must be at least 17 years old and have a total of 1,500 hours of training. Permits must also be obtained for training in these areas. An applicant for a barber or beauty apprentice permit must meet an age requirement and arrange for training in a licensed barber or beauty shop under the supervision of a qualified practitioner. Beauty instructor applicants must meet training and experience requirements.

Before a barber or beauty shop may provide services, an applicant for a barber or beauty shop license must:

1. Identify at least one licensee of the appropriate practice at the shop;
2. Identify the shop’s owner who shall be responsible for all operations of the shop and ensure that only currently licensed and permitted operators practice;
3. Identify the shop’s name and location;
4. Demonstrate that the shop has adequate equipment and facilities for its practice; and
5. Provide a statement that only qualified, experienced licensees will engage in training apprentices.

Additionally, Chapters 438 and 439 require barber and beauty shops to submit proof of a sanitary inspection by the Department of Health for licensure.

Any person may obtain a license to operate a school in the practice of cosmetology, provided the school employs and maintains a sufficient number of licensed instructors and has sufficient equipment and adequate facilities. Furthermore, schools must offer a course of training in accordance with board approved curriculum, which includes training on safe and sanitary practices.

As of July 2000, there were over 6,700 licensed practitioners, shops, and schools in Hawaii. Exhibit 1.2 provides a breakdown of the types of licenses obtained by island.

**Exhibit 1.2  
Licensure Breakdown by Island**

Island	Type of License						Total
	Barbering	Barber Shop	Cosmetology	Beauty Shop	Beauty Instructor	Beauty School	
Oahu	729	163	3,418	669	33	2	5,014
Hawaii	46	25	472	138	7	1	689
Maui	21	9	540	107	7	1	685
Kauai	22	7	229	70	1	0	329
Molokai	1	1	6	3	1	0	12
Lanai	1	0	12	1	0	0	14
<b>Total</b>	<b>820</b>	<b>205</b>	<b>4,677</b>	<b>988</b>	<b>49</b>	<b>4</b>	<b>6,743</b>

Source: Department of Commerce and Consumer Affairs

In addition to the 6,700 licenses held by Hawaii residents, individuals residing in other states and foreign countries hold several hundred other licenses valid in Hawaii. A total of 202 apprentice permits and 600 temporary permits have also been issued. Apprentice permits allow individuals to obtain the training hours needed for licensure. Temporary permits allow individuals who have applied to take the licensure examination to practice under licensed operators' supervision.

All applicants for licenses or permits are required to pay fees to the board. Initial application and license fees range from \$30 to \$750 and renewal fees range from \$30 to \$350. Practitioner and shop licenses must be renewed biennially while school licenses must be renewed annually. Exhibit 1.3 reflects the revenues collected by the Department of Commerce and Consumer Affairs' Professional and Vocational Licensing Division from its regulatory activities for barbering and cosmetology.

**Exhibit 1.3**  
**Revenues Collected from Barbering and Cosmetology Regulatory Activities**

Licensing Category	FY1995-96	FY1996-97	FY1997-98	FY1998-99	FY1999-00	Total
Barbering	\$48,655	\$13,300	\$44,640	\$9,775	\$51,512	\$167,882
Cosmetology	\$238,412	\$46,273	\$245,684	\$53,357	\$265,792	\$849,518
Total	\$287,067	\$59,573	\$290,324	\$63,132	\$317,304	\$1,017,400

Source: Department of Commerce and Consumer Affairs

**Nearly all states regulate both occupations**

There are three generally recognized forms of occupational regulation: (1) licensure, (2) certification, and (3) registration. Licensure is the strictest form of regulation. A government agency grants permission via licensure to individuals engaging in a specified profession or occupation when individuals attain the minimal degree of competency required to ensure reasonable protection of the public's health, safety, and welfare. The next level of regulation is certification, whereby a government agency allows only those who meet predetermined qualifications to legally use a designated title. The simplest form of regulation is registration, which usually requires little more of individuals than to provide their names for an official roster.

All 50 states regulate cosmetology and require licensure, while 49 of 50 states regulate barbering and require licensure. The lone exception is Alabama, where regulatory authority of barbering is deferred to its counties, most of which require only registration.

***Prior sunset evaluations recommended repeal of Chapters 438 and 439, HRS***

Since 1980, we have conducted two sunset evaluation reviews of barbering (Report Nos. 80-4 and 86-2) and three of beauty culture (Report Nos. 80-6, 86-6, and 88-18). In all five reports, we recommended against the continuation of either Chapter 438 or Chapter 439, HRS. We found that regulation of the practices of barbering and beauty culture under Chapters 438 and 439 was not warranted as the two practices posed little danger to the public. The danger of transmitting diseases in barbering or beauty culture was minimal, and Chapters 438 and 439 afforded little protection against such danger. Potential dangers to public welfare were found to be outside the purview of Chapters 438 and 439 and could be more appropriately addressed by other state and federal laws and agencies.

The Board of Barbers and the Board of Cosmetologists disagreed with our prior recommendations that Chapters 438 and 439 be allowed to sunset as scheduled. The Board of Cosmetologists stated that its regulations ensure the protection of consumer health, safety, and welfare. The Legislature also found a potential for consumers to be exposed to a variety of health and safety risks. These risks ranged from allergic reactions and accidental injuries to chemical burns and communicable diseases. The Legislature concluded that the safety hazards associated with the practices of barbering and beauty culture warranted regulation.

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**Objectives of the Review**

1. Determine whether the regulation of barbering and beauty culture is warranted.
2. Determine the most appropriate regulatory mechanism for barbering and beauty culture.
3. Make recommendations as appropriate.

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**Scope and Methodology**

In this sunset evaluation we determined the need to regulate barbering and beauty culture. Unlike previous sunset evaluation updates, we did not assess the appropriateness of current regulatory requirements designed to protect the public or whether the regulatory program was being implemented efficiently and effectively. The period under review focused primarily on the past five calendar years (1996-2000).

During our evaluation, we collected information related to the risks and problems posed by barbering and beauty culture. We reviewed complaint files at the Regulated Industries Complaints Office and obtained barbering and beauty culture complaint information from other states.

We interviewed staff of the Department of Commerce and Consumer Affairs' Professional and Vocational Licensing Division; Department of Health; Department of Labor and Industrial Relations; and Department of Education. We also interviewed members of the Board of Barbering and Cosmetology and commercial insurance underwriters. We reviewed relevant state statutes, administrative rules, regulations, and board meeting minutes.

We also obtained information from federal agencies including the U.S. Centers for Disease Control and Prevention, Food and Drug Administration, and Consumer Product Safety Commission.

Our work was conducted from May 2000 through December 2000 in accordance with generally accepted government auditing standards.

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# Chapter 2

## Regulation of Barbering and Beauty Culture Is Not Warranted Under Chapters 438 and 439, HRS

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This is our third sunset evaluation of barbering and our fourth sunset evaluation of beauty culture. Our previous sunset evaluations of barbering and beauty culture in 1986 and 1988, respectively, found little evidence of the need to continue regulating these practices under Chapters 438 and 439, Hawaii Revised Statutes (HRS). We found little has changed over the past decade. The practices of barbering and beauty culture continue to pose a minimal risk to the public's health, safety, or welfare.

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### Summary of Finding

Regulation of the practices of barbering and beauty culture under Chapters 438 and 439, HRS, respectively, is not warranted.

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### Regulation of the Practices of Barbering and Beauty Culture Under Chapters 438 and 439, HRS, Respectively, Is Not Warranted

Under Chapter 26H, HRS, the Hawaii Regulatory Licensing Reform Act, the purpose of occupational regulation is to protect the health, safety, and welfare of consumers and not that of the regulated industry or profession. However, there does not appear to be sufficiently real or serious evidence of abuse by barbering or beauty culture practitioners to warrant occupational regulation. We found that other state and federal regulations provide adequate and appropriate consumer protection. In addition, practitioners are economically motivated to ensure consumers are protected from inadequate barbering and beauty services.

### *There is little evidence of abuses by barbers and beauty culturists in Hawaii*

According to the Board of Barbering and Cosmetology, the greatest risks that consumers face from incompetent practitioners range from cuts and wounds inflicted by scissors and razors, to chemical burns and communicable disease transmission. According to Section 26H-2, HRS, evidence of abuse by providers of the service shall be accorded great weight in determining whether regulation is desirable. However, we found little evidence of these potential problems in Hawaii.

We reviewed complaint files at the Regulated Industries Complaints Office (RICO) and found relatively few allegations of harm to consumer health, safety, or welfare. RICO assists the public through education, complaints processing, and enforcement of licensing laws. Although there were 335 RICO investigations relating to barbering or beauty



culture conducted from January 1996 to August 2000, the majority (over 200) of the 212 investigations available for our review were related to unlicensed activity, not allegations of physical harm to consumers.

Of the 212 cases we reviewed, only 13 were initiated by consumers, licensees, or apprentices. The remaining 199 investigations were self-initiated by RICO and mostly related to crackdowns on unlicensed activity. Of the 13 cases initiated by consumers, licensees, or apprentices, only 2 alleged consumer harm resulting from barbering or beauty culture services. One consumer alleged chemical damage to her scalp during hair treatment. Another alleged burn damage to her face resulting from laser skin treatment. However, RICO was unable to find sufficient evidence to substantiate these allegations and closed the cases.

We interviewed another state agency to determine whether these occupations caused public harm. The Department of Health's Communicable Disease Division monitors transmittable diseases and promotes preventive efforts. The Communicable Disease Division is assisted by the Sanitation Branch, which implements and enforces the environmental sanitation statutes, rules, and policies. Both health authorities reported no known communicable disease or sanitation problems, complaints, or investigations associated with barbering or beauty culture.

***Nationally, there is little evidence of abuses by barbers and beauty culturists***

The U.S. Centers for Disease Control and Prevention (CDC) and six states across the country report relatively few problems associated with barbering and beauty culture. The CDC has not attributed any cases of human immunodeficiency virus (HIV) or tuberculosis transmission specifically to barbering or beauty culture. According to the CDC, it is unlikely that anyone outside the health care industry would become infected with HIV in a work environment. Environmental transmission of HIV is remote because HIV is a fragile virus that dies quickly outside the human body. The CDC also reports a low risk of hepatitis transmission through barbering or beauty culture.

The states that responded to our inquiries on barbering and beauty culture complaints — Alabama, Arizona, California, Oregon, Washington, and West Virginia — also reported relatively few problems related to the practices. Based on the low risks involved, the Alabama Department of Public Health does not see any reason to regulate barbering through licensure. Other than scattered cases of head lice transmittal, Alabama reported no known problems related to sanitation or communicable diseases associated with barber shops.

Although the Arizona State Board of Cosmetology reported serious public health problems resulting from unsanitary beauty culture practices

and incompetent beauty operators, these problems appear to be isolated incidents. The total number of cosmetology-related complaints in Arizona during fiscal years 1999 and 2000 amounted to less than 2 percent of the total number of licensure applications for the same years. Similarly, the California Bureau of Barbering and Cosmetology and the Oregon Health Licensing Office reported an insignificant number of complaints related to consumer health and safety relative to the total number of licenses and permits held.

The Washington State Department of Professional Licensing reportedly does not receive many sanitation complaints and has no records on file relating to communicable disease transfer stemming from barbering or beauty culture. Likewise, the West Virginia Board of Barbers and Cosmetologists has not documented any serious disease transmissions resulting from the occupations to date. Of the 32 complaints logged by West Virginia's board during its previous fiscal year, only one was related to consumer harm — a fungal infection due to an unsanitary nail salon. West Virginia's board credits frequent inspections of barbering and beauty culture schools and shops for reducing the number of complaints it receives and eliminating serious complaints.

***Other state agencies and regulations provide a measure of protection***

Protection from the potential harm posed by barbers and beauty culturists exists within the purview of other state agencies' regulations. The Departments of Health, Education, and Labor and Industrial Relations currently offer oversight that protects the public from the types of risk that may exist from the two occupations.

**The Department of Health has standards to ensure public health protection**

We found that many of the potential health risks associated with barbering and beauty culture are preventable if the Department of Health's rules and regulations are followed. Pursuant to Section 321-12, HRS, the Department of Health may prescribe rules that it deems necessary for public health and safety relative to barbers, hairdressers, cosmeticians, cosmetologists, and beauticians. The department currently regulates the sanitation of barber shops and beauty parlors under Chapter 11 of its administrative rules. The purpose of the chapter is to provide minimum sanitation standards that protect public health and human welfare and minimize safety hazards.

Section 11-11-3, Hawaii Administrative Rules (HAR), includes the general sanitation requirements that walls, floors, ceilings, furniture and fixtures, and all other parts and surfaces of every barber and beauty shop be kept clean at all times. This section also includes specific sanitary practice requirements. For example, no operator may use razors, shears, scissors, clippers, tweezers, finger bowls, or combs on any customer

unless the item has been thoroughly cleaned and sanitized since last used. In addition, every operator is required to wash and dry his or her hands thoroughly immediately before attending any person and to wear a clean uniform, outer coat, or apron at all times.

The administrative rules also address contagious and infectious diseases. Operators afflicted with a communicable disease are prohibited from attending anyone in a barber shop or beauty parlor. Persons afflicted with a communicable disease are also prohibited from receiving treatment in any barber shop or beauty parlor.

Although the Department of Health's statutes and rules address sanitation requirements, they do not specify the frequency of sanitation inspections for barber and beauty shops. Pursuant to Chapters 438 and 439, an applicant for a barber or beauty shop license must submit proof of a Department of Health sanitation inspection showing the shop meets sanitation standards. However, once a shop license has been obtained, additional sanitation inspections are not required for continued licensure except when a shop changes location or ownership.

### **The Department of Education regulates technical, vocational, and trade schools**

In addition to the immediate risks to public health and safety, barber and beauty school students face the risk of not receiving the education for which they have paid. This risk, as it applies to most technical, vocational, and trade students, is mitigated by the Department of Education.

The Department of Education currently regulates barbering schools and other technical, vocational, and trade schools under Sections 302A-424 through 302A-428, HRS, and Chapter 101 of its administrative rules. The purpose of regulating these schools is to protect students against practices by private trade, vocational, or technical schools that are false, deceptive, misleading, or unfair, and to help ensure adequate educational quality. The department provides oversight of these schools by:

1. Ensuring teacher qualifications;
2. Verifying that school-defined curriculum is followed; and
3. Requiring business registration with the Department of Commerce and Consumer Affairs and maintenance of a \$50,000 surety bond.

While the Department of Education does not currently oversee beauty schools specifically, these schools would fall under the department's purview if the Board of Barbering and Cosmetology no longer regulated them under Section 439-18, HRS.

### **The Apprenticeship Council oversees apprenticeship programs**

The potential of not receiving proper training also applies to barber and beauty apprentices. The Department of Labor and Industrial Relations (DLIR) currently oversees apprenticeship programs. Pursuant to Chapter 372, HRS, the director of labor and industrial relations has established an Apprenticeship Council that advises the department on apprenticeship programs within its jurisdiction. In addition, Chapter 372, HRS, and Chapter 30 of the department's administrative rules formulate and promote labor standards that safeguard apprentice welfare.

However, compliance with those labor standards is voluntary. When a potential apprentice group has no collective bargaining agent, an employer or group of employers may propose an apprenticeship program to the Apprenticeship Council for registration. For participating apprenticeship programs, the department ensures apprentices receive proper training in accordance with apprenticeship agreements, program standards, and health and safety standards.

### ***Federal regulation also provides a measure of protection***

The Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC) provide oversight of products related to barbering and beauty culture. The FDA regulates cosmetic products under the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. The CPSC regulates over 15,000 types of consumer products under the Consumer Product Safety Act.

### **The Food and Drug Administration oversees cosmetics**

In general, the FDA, with the assistance of the state Department of Health, enforces oversight of cosmetic products through the Food, Drug, and Cosmetic Act. This act prohibits misbranded and adulterated products in the marketplace. A misbranded cosmetic has labeling that is false or misleading or does not conform to other packaging or labeling requirements. Cosmetic products that are available to the general public are required to have a label declaring their ingredients in accordance with the Fair Packaging and Labeling Act. An adulterated cosmetic contains a substance that may render it injurious to users under the prescribed conditions of use.

For example, the FDA and Department of Health have oversight of cosmetic products such as methyl methacrylate (MMA), which is suspected of being used illegally in acrylic nails. MMA is a poisonous and adulterated substance that can cause liver damage, respiratory problems, serious skin reactions, and permanent nail damage. Consequently, the FDA and Department of Health are responsible for seizing MMA used in acrylic nails. The Board of Barbering and Cosmetology can neither seize nor detain MMA because the board does not have specific provisions addressing product use.

One concern expressed regarding the “For Professional Use Only” labeling on some cosmetic products falls within the scope of the Food, Drug, and Cosmetic Act. Licensure proponents believe that deregulation of barbers and beauty culturists will prohibit practitioners from purchasing and using products labeled “For Professional Use Only.” However, the FDA does not interpret a “professional” as a *licensed* practitioner. Instead, any individual who engages in an occupation as a means of livelihood or for gain is considered a professional. Therefore, in the event of deregulation, currently licensed practitioners would still be able to purchase and use products labeled “For Professional Use Only.”

### **The Consumer Product Safety Commission regulates consumer products**

In addition to the FDA’s oversight of cosmetics, the Consumer Product Safety Commission (CPSC) ensures the safety of other barbering and beauty products. The CPSC oversees the following products related to barbering and beauty culture: nail hardeners and preparations, combs, hairbrushes, scissors, clippers, trimmers, razors, shavers, hairpins, hair dryers, curlers, curling irons, and coloring preparations. To reduce the risk of harm from consumer products, the CPSC develops voluntary product standards with industries, issues and enforces mandatory standards, and obtains product recall.

One product of potential concern in the beauty industry that the CPSC does not regulate is laser equipment. The use of laser equipment on people falls within the practice of medicine and is regulated by the FDA and the Hawaii Board of Medical Examiners.

***Other incentives exist for practitioners to reduce the potential level of harm to consumer health, safety, and welfare***

Other incentives exist for practitioners to prevent harm to consumer health, safety, and welfare. These incentives relate to the impact on insurance cost and availability, the potential for liability lawsuits, and practitioners’ word-of-mouth reputations.

### **Malpractice insurance cost is based on claims history**

One economic incentive for practitioners to prevent harm to consumers is the cost and availability of liability insurance. Local barber and beauty shops and operators may obtain professional liability insurance and/or general business liability insurance through insurance underwriters. Professional liability insurance, also known as malpractice insurance, covers the services provided by the policyholder. This insurance is typically packaged with general business liability insurance that covers third-party risks, such as slips and falls. While the exact

number of barber and beauty shops and operators currently insured is unknown, insurance professionals estimate that a majority of barbering and beauty culture service providers have professional liability insurance.

The cost of the professional liability insurance policy is affected by different factors including the policy terms and insurer. Policy costs for shop owners partially depend on the number of shops owned and practitioners within the shop. However, the primary factor determining the cost of a policy is the shop owner's loss or claim history. The insurance underwriters we contacted reported that policies they offer owners of barber and beauty shops cost about \$300 to \$500 per year. One underwriter stated barber and beauty insurance is considered a good risk for the insurer because most problems are minor and are resolved by the customer and the individual service provider.

Although an insurer may request proof of licensure, it is usually presumed the applicant is licensed. If the practices of barbering and beauty culture are deregulated, one underwriter believes that insurance packages may increase by a few hundred dollars, but will still cost less than \$1,000. Another underwriter stated that deregulation would not eliminate the availability of insurance because "everything can be insured."

### **Liability lawsuits offer consumers an avenue through which to seek remedies**

The potential for unhappy consumers to file liability lawsuits is also an incentive for barbering and beauty culture service providers to protect consumers from harm. Lawsuits may be filed in small claims court or in circuit court. Small claims courts allow claimants to file suits of dollar amounts not more than \$3,500 and without the assistance of an attorney. Circuit courts tend to be more procedural, time-consuming, and therefore more costly. In both instances, many people end up hiring attorneys to assist their navigations through the legal system.

### **Word-of-mouth reputation plays a key role in a barber or beauty operator's success**

Word-of-mouth reputation also serves as an incentive for barbers and beauty culturists to provide good service. Practitioners whom we interviewed noted that word-of-mouth reputation plays a critical role in attracting clients. Knowing this, practitioners try to provide service at a level of quality that will lead to repeat and referral business.

***Barriers to entry into the occupations limit consumer choice***

The Hawaii Regulatory Licensing Reform Act states that regulation should not unreasonably restrict entry into professions and vocations by all qualified persons. Professional and vocational regulations that artificially increase the costs of goods and services to the consumer should be avoided except in those cases where the Legislature determines that the costs are exceeded by the potential dangers to the consumer. Furthermore, professional and vocational regulation should be eliminated when the Legislature determines that regulation has no further benefits to consumers.

Our review found relatively high failure rates for barbering and beauty culture examinations indicating that these examinations are barriers to entry into the occupations. Since June 1995, 48 percent of barbering applicants were denied licensure because they could not pass the board's barbering examination. Since January 1990, 36 percent of prospective beauty culturists were denied licensure because they could not pass the board's cosmetology examination. The January and May 2000 failure rates for the cosmetology examinations were 39 and 35 percent, respectively. About 60 percent of the applicants taking the March and June 2000 barbering examinations failed.

Regulation of barbering and beauty culture reduces the number of individuals able to provide barber and beauty services and thereby limits consumer choice. Research indicates that when certain occupations or industries are regulated, service providers are able to charge higher prices for a given level of service quality or offer lesser service quality for a given price than if there were a greater supply of services available. Consequently, consumers face reduced overall selection and quality, while facing higher costs of services of the regulated occupation.

One researcher has stated:

Most of the evidence suggests that licensing has, at best, a neutral effect on quality and may even cause harm to consumers. By making entry more costly, licensing increases the price of service rendered in the occupations and decreases the number of people employed in them. Some consumers therefore resort to do-it-yourself methods, which in some occupations has led to lower overall quality and less safety than if there were no licensing.<sup>1</sup>

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**Conclusion**

Regulation is warranted only when the health, safety, or welfare of the public is jeopardized by the nature of the services provided by the occupations. Evidence of abuse by those in the occupations should be considered when determining the necessity of regulation. However, we found relatively few problems related to barbering and beauty culture

and no documented evidence of serious harm in Hawaii. Moreover, we found that other state and federal agencies and regulations provide measures of protection against potential harm. Additional protection is afforded to consumers through economic incentives for practitioners. By providing safe and adequate services to consumers, practitioners prevent higher malpractice insurance premiums, reduce the probability of liability lawsuits, and enhance their word-of-mouth reputations positively. Finally, consumers may benefit from the repeal of Chapters 438 and 439 that will allow for a greater number and thereby greater choice of service providers. Consumers will continue to receive adequate protection already in place from risks that may exist.

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## **Recommendation**

Chapters 438 and 439, HRS, should be repealed.



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## Notes

### Chapter 2

1. S. David Young, *The Rule of Experts*, Washington, D.C., Cato Institute, 1987, p. 53.

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## Responses of the Affected Agencies

### Comments on Agency Responses

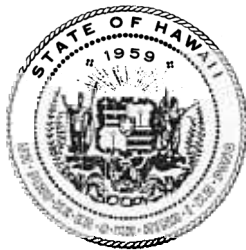
We transmitted drafts of this report to the Department of Commerce and Consumer Affairs and the Board of Barbering and Cosmetology on January 9, 2001. A copy of the transmittal letter to the Department of Commerce and Consumer Affairs is included as Attachment 1. A similar letter was sent to the Board of Barbering and Cosmetology. The response from the board is included as Attachment 2. The Department of Commerce and Consumer Affairs did not submit a response.

The Board of Barbering and Cosmetology strongly disagreed with our recommendation to repeal Chapters 438 and 439, HRS. The board feels that repealing these two chapters would open the door to fraud, incompetence, and public distrust in barbers and cosmetologists. The board also believes that repeal would undermine the safeguards administered by the state Departments of Education and Health and the federal Food and Drug Administration.

ATTACHMENT 1

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917

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MARION M. HIGA  
State Auditor  
(808) 587-0800  
FAX: (808) 587-0830

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January 5, 2001

**COPY**

The Honorable Kathryn S. Matayoshi  
Director  
Department of Commerce and Consumer Affairs  
Kamamalu Building  
1010 Richards Street  
Honolulu, Hawaii 96813

Dear Ms. Matayoshi

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Sunset Evaluation of Barbering and Beauty Culture*. We ask that you telephone us by Tuesday, January 9, 2001, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Tuesday, January 16, 2001.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marion M. Higa".

Marion M. Higa  
State Auditor

Enclosures

BENJAMIN J. CAYETANO  
GOVERNOR



KATHRYN S. MATAYOSHI  
DIRECTOR

MAZIE K. HIRONO  
LT. GOVERNOR

JAN K. YAMANE  
ACTING LICENSING  
ADMINISTRATOR

BOARD OF BARBERING AND COSMETOLOGY

STATE OF HAWAII  
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P.O. BOX 3469  
HONOLULU, HAWAII 96801

January 16, 2001

RECEIVED

JAN 16 3 25 PM '01

OFF. OF THE AUDITOR  
STATE OF HAWAII

Honorable Marion M. Higa  
State Auditor  
Office of the Auditor  
465 South King Street, Room 500  
Honolulu, Hawaii 96813

Dear Ms. Higa

Re: Draft Report on the Sunset Evaluation of  
Barbering and Beauty Culture

Thank you for the opportunity to comment on the draft report entitled *Sunset Evaluation of Barbering and Beauty Culture*. The Board of Barbering and Cosmetology ("Board") strongly disagrees with the recommendation of repealing Chapters 438 and 439, Hawaii Revised Statutes.

The Board feels that repealing of the barber and cosmetology licensing laws would adversely affect the public by opening the door to fraud, incompetence, and public distrust in professionals. Both licensing laws provide the Board with the authority to establish training standards, entry level competence, scope of practice, and disciplinary standards, which are essential parts of effective consumer protection.

Repealing the barber and cosmetology licensing laws would result in Hawaii being the only state without licensing regulations for these practices. Hawaii began licensing barbers in 1947 and beauty operators in 1929. Because of this long history of licensing for both barbers and cosmetology, the public readily accepts and recognizes these licenses as a standard of professionalism in the community.

The Board note that the agencies identified in this report rely on the Board's licensing information to carry out their duties and responsibilities. The Department of Education relies on the Board's training standards to determine the appropriate course curriculum for students and the training standards for licensed barbers with experience

Honorable Marion M. Higa  
January 16, 2001  
Page 2

or beauty instructors to become teachers of barber or beauty schools. The Board's licensing laws require that the barber and beauty shops comply with the sanitation standards of the Department of Health. And in order to comply with the Food and Drug Administration's "for professional use only" labeling, the barber and beauty supply retailers rely on the Board's barber and beauty operator license to ensure that only qualified practitioners are able to purchase such labeled products and equipment. Repeal of the barber and cosmetology licensing laws will undermine these safeguards as administered by the Department of Education, Department of Health, and the Food and Drug Administration.

Again, the Board voices its strong opposition to the report's recommendation to repeal the barber and cosmetology licensing laws. Thank you for the opportunity to comment on this report.

Very truly yours,

A handwritten signature in black ink that reads "Lance Marugame". The signature is written in a cursive style with a large, sweeping initial "L".

Lance Marugame  
Board of Barbering and Cosmetology