



SUNSET EVALUATION REPORT
PRACTICE OF BARBERING
Chapter 438, Hawaii Revised Statutes

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

Submitted by the
Legislative Auditor of the State of Hawaii

Report No. 80-4
February 1980

FOREWORD

Under the "sunset law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Nationally, the first sunset law was passed in 1976. Within three years, 30 more states had enacted similar legislation. The rapid spread of sunset legislation reflects increasing public concern with what it sees as unwarranted government interference in everyday activities.

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, terminated 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of barbers under Chapter 438, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate barbers to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

Our approach to the evaluation of the regulation of barbers is described in Chapter I of this report under "Framework for Evaluation." That framework will also serve as the framework for conducting subsequent evaluations. We used the policies enunciated by the Legislature in the Sunset Law to develop our framework for evaluation. The first and basic test we apply is whether there exists an identifiable potential danger to public health, safety, or welfare arising from the conduct of the occupation or profession being regulated. If the program does not meet this first test, then the other criteria for evaluation are not applied. However, if potential harm to public health, safety, or welfare exists, then the other evaluation criteria, as appropriate, are applied.

We acknowledge the cooperation and assistance extended to our staff by the Board of Barbers, the Department of Regulatory Agencies, and other officials contacted during the course of our examination.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

February 1980

TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION	1
	Objective of the Evaluation	1
	Scope of the Evaluation	1
	Organization of the Report	1
	Framework for Evaluation	2
2	BACKGROUND	7
	The Practice of Barbering	7
	The Statute and the Licensing Requirements	8
3	EVALUATION OF CHAPTER 438, HAWAII REVISED STATUTES, ON THE PRACTICE OF BARBERING	11
	Summary of Findings	11
	The Purpose of Regulation	11
	Public Health	11
	The Real Purpose of Regulation	14
	Conclusions and Recommendations	20

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. This is our evaluation of Chapter 438, Hawaii Revised Statutes, on the licensing of barbers, which statute is scheduled by the Sunset Law to expire on December 31, 1980.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 438.

Scope of the Evaluation

This report examines the history of the statute on licensing of barbers and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our analysis, evaluation, and recommendation.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies are:

1. The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose must be the protection of the public welfare, not that of the regulated profession or vocation.

2. Even where regulation is reasonably necessary, government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted.

3. Regulation shall not be imposed except where necessary to protect relatively large numbers of consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the service.

4. Evidence of abuses by providers of the service shall be accorded great weight in determining whether government supervision is desirable.

5. Regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.
2. The public that is likely to be harmed is a substantial portion of the consuming public.
3. The potential harm is not one against which the public can reasonably be expected to protect itself.
4. There is a reasonable relationship between licensing and protection of the public from potential harm.
5. Licensing is superior to other optional ways of protecting the public from the potential harm.
6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.¹ In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.² The court held that mere interest in

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits", Sec. 14.

2. *Terr. v. Fritz Kraft*, 33 Haw. 397.

maintaining honesty in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to his employer, but his workmanship ultimately affects the consumer who brings a car in to his employer for repairs or who rents a car from his employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

The law further requires that the consuming public that may potentially be harmed be relatively large in number. This requirement rules out those situations where potential harm is likely to occur only sporadically or on a casual basis.

Consumer disadvantage. The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected adequately to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of consumer characteristic which may cause the consumer to be at a disadvantage. Highly technical and complex nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were

the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, the posting of bond, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

Barbering has been regulated in Hawaii since 1947, when the Legislature enacted Act 194. Act 194 has been codified in Chapter 438, Hawaii Revised Statutes. Under the law, it is illegal for anyone to engage in the practice of barbering unless he has received a certificate of registration, and it is unlawful for any person to operate a barber shop unless he has first registered the barber shop.

The Practice of Barbering

The statute defines "barbering" as any combination of the following practices for remuneration: shaving, cutting, trimming, singeing, shampooing, arranging, dressing, curling or waving (other than permanent waving) the hair, beard, or applying tonics or other preparations thereto; massaging, cleansing, or applying oils, creams, lotions or other preparations to the face, scalp, or neck by hand or by mechanical appliances.

The law distinguishes between an apprentice and a barber and requires a certificate of registration for both.¹ An apprentice is one who is engaged in learning barbering, or in assisting in barbering, under the supervision of a barber or an instructor. A barber is anyone other than an apprentice who practices barbering.

The records of the Department of Regulatory Agencies (DRA) show that, as of September 30, 1979, there were 1022 barbers, 100 apprentice barbers, and 362 barber shops.

The number of barbers practicing in the State has remained fairly constant over the past decade, but the number of barber shops has decreased by about one quarter, and the number of apprentices has decreased by one half.

Nationally, there has been a marked decline in the number of barbers over the past decade. In 1966, there were about 250,000 barbers, but by 1976 the number had decreased to about 124,000. The national decline is attributed to the shift from regular haircuts to more elaborate hairstyling.

1. Although these are called certificates of registration in Chapter 438, they are actually mandatory licenses to practice.

Hawaii has followed the national trend, and, beginning in the mid-1960's, hairstyling became fashionable.² Today, in addition to haircuts, barber shops provide other services such as hairstyling, coloring, and body processing. The latter is comparable to permanent waving. Barbers trained in these areas are referred to as hairstylists and they service both men and women.

This shift in consumer preferences from regular haircuts to more sophisticated services is expected to continue. It has undermined the traditional distinction, based on sex of the customer, between barbers and cosmetologists. Both groups now supply nearly the same services to both men and women.

The Statute and the Licensing Requirements

Since the passage of Act 194 in 1947, the law on licensing of barbers and barber shops remained fairly static until 1978 and 1979. In those years, some significant changes were made in the law. These changes are described as appropriate in the discussion below on the statute and licensing requirements.

The Board of Barbers. The power to issue certificates of registration to apprentices and to barbers and to register barber shops is vested in the Board of Barbers, consisting of seven members. The board is placed within DRA for administrative purposes. It receives staff and financial support from the department.

Five board members are required to be licensed barbers with at least five years of experience. Three of them must be from Oahu and two from the neighbor islands. The two remaining members of the board are public members. Until 1978, the Board of Barbers consisted of only five licensed barbers. The public members were added to the board in 1978 by Act 208.

The Board of Barbers is empowered to give examinations for the issuance of certificates of registration to practice barbering. It may also suspend or revoke the certificate of any person who is guilty of fraud in taking an examination or of grossly unprofessional or dishonest conduct, or is addicted to liquor or drugs to such a degree as to render that person unfit to practice barbering. Other powers of the board include establishing rules and regulations governing the practice of barbering, and investigating, inquiring into, or holding hearings on matters relating to barbering.

2. "Fashions and Beauty—New Barbering Concept," *Honolulu Star-Bulletin*, May 1, 1965.

The primary function of the board is to examine applicants. The board meets quarterly to do so. Examinations for apprentices and for barbers are given in alternate quarters. Practicing barbers on the board serve as the examiners.

Between fiscal years 1975-76 and 1978-79, the board examined a total of 210 applicants for barbers. The board passed 123, or 58.6 percent. It examined 303 applicants for apprenticeships and passed 217, or 71.6 percent.

Licensing requirements. 1. *Apprentices.* To qualify for a certificate of registration as an apprentice, one must be at least 16 years of age, be free of any infectious or contagious disease, and pass a written examination. Before 1979, the law required that one also be of good moral character and temperate habits and have an eighth grade education or its equivalent. The Legislature eliminated these requirements by Act 8, SLH 1979.

Also before 1979 and for 18 years, the board had required the applicant to pass both a practical examination as well as a written examination. The need for a practical examination was deleted effective October 1979.³

2. *Barbers.* To qualify for a certificate of registration as a barber, one must be at least 18 years of age, be free of any infectious or contagious disease, have practiced as a barber or served as an apprentice for a period of at least six months, and pass a practical examination. Before Act 8, SLH 1979, one also needed to be a person of good moral character and temperate habits and have an eighth grade education or its equivalent. The law, before 1979, further required that one have practiced barbering or served as an apprentice for a period of at least 18 months, rather than six months. The six-month period now required does not include time spent learning barbering at a barber school.

Up to January 1980, the board had required that an applicant for a certificate of registration as a barber pass not only a practical examination but also a written examination dealing with rules and regulations and the theory of barbering. But, effective January 1980, the board decided that no written examination need be taken.⁴ An apprentice may take the barber's examination three times. If the apprentice fails the third time, the apprentice may no longer practice as an apprentice.

3. *Barber shops.* Except to require that all barber shops be registered, the law is silent as to what agency is responsible for registering barber shops and the conditions that

3. Minutes of the Board of Barbers, July 18, 1979.

4. *Ibid.*

must be met for registration. By practice, the Board of Barbers has assumed the responsibility for registering barber shops. It has formulated rules for registration which are in essence a recapitulation of the health and sanitation rules of the Department of Health (DOH).

Under the rules, each applicant must submit a certificate from DOH showing that the shop has met all sanitation and health requirements.

Other statutory provisions. The law authorizes the board to issue temporary certificates to barbers and apprentices from other states and countries whose qualifications are essentially the same as those in Hawaii. Individuals with temporary certificates must take the board's next examination. The statute provides that a person with a temporary barber's license may retake the exam two times. If such person fails to pass on the third try, such person may no longer practice barbering.

Barbering without a license is subject to penalties of not more than \$100 or imprisonment of not more than six months, or both. Each day of violation is considered a separate offense.

Chapter 3

EVALUATION OF CHAPTER 438, HAWAII REVISED STATUTES, ON THE PRACTICE OF BARBERING

This chapter contains our evaluation of the continuing need for the regulation of the practice of barbering and our recommendation on the subject.

Summary of Findings

Chapter 438, Hawaii Revised Statutes, is no longer needed. There is no serious threat to public health, safety, or welfare which would justify the continuance of the chapter.

The Purpose of Regulation

Neither the statute nor the committee reports reporting on the bill which resulted in the statute regulating the practice of barbering contain any reason for the statute. However, the reason most commonly given for regulating barbering is the prevention of the spread of infections or contagious diseases (e.g., head lice, ringworms, tuberculosis). Regulation is said to be necessary to ensure clean and sanitary methods, procedures, and surroundings, to the end that the public may be protected against the spread of communicable diseases.

The need to ensure competence in the practice of barbering is sometimes advanced as a further reason for regulating barbering. It is not always clear, however, whether the competence being sought is competence in protecting against the spread of contagious diseases or competence in giving a shave, cut, trim, etc., of a sufficient quality.

Our analysis shows that neither the reason of health nor the reason of competence is sufficient to justify the continuance of Chapter 438.

Public Health

The case for regulating the practice of barbering has traditionally rested on the premise that barbering is a trade which operates directly on the person. It is contended that this direct contact makes it possible for contagious diseases to be transmitted from one person to another in the practice of barbering.

The possibility always exists that contagious diseases may be spread in the practice of barbering. However, it provides little justification for continuing Chapter 438 for two reasons. *First*, the danger that contagious diseases would be transmitted in barbering is minimal. *Second*, Chapter 438 affords little protection against such danger.

Minimal danger. In Hawaii, there has not been in many years any outbreak of any serious disease attributable to the practice of barbering. Over the last seven years, only 23 complaints arising out of the practice of barbering have been registered with the Board of Barbers. None of these involved the spreading of diseases. Most of the complaints registered objections to unlicensed practice. One complaint alleged that a barber failed to complete a haircut. The Office of the Ombudsman has received four complaints since 1975. All of them were from applicants complaining of the board's examination practices.

Hawaii's experience is duplicated nationally. Two or three years ago, a task force was created in California to review California's various regulatory boards. In a report to the director of the Department of Consumer Affairs on California's Board of Cosmetology and Board of Barber Examiners, the task force quoted Dr. Ron Roberts of the Infectious Disease Laboratory of the California Department of Health that there have been no outbreaks of any serious disease attributable to barbers and cosmetologists anywhere in the United States in recent times.¹

The absence of any outbreak of a serious disease cannot be credited to the licensing and regulatory provisions of Chapter 438. As noted below, and as observed by the California task force in its report with respect to the California situation, the spread of disease is not controllable by the requirements imposed for certification.

What little threat there may be of the spread of contagious diseases in the practice of barbering can be and are in fact being met by simple health regulations prescribed by the Department of Health. Thus, the problem of the possible spread of head lice, which is one of the diseases frequently cited as being associated with the practice of barbering, can be and is met by Department of Health regulations requiring combs and all other tools and equipment coming in direct contact with the patron's head and hair be sanitized before each use. The threat of the spread of ringworms and other skin diseases can be and

1. Harry L. Summerfield, *Review of State Board of Cosmetology and State Board of Examiners*, April 1978, p. F.3.

are met by various health regulations such as those which prescribe the use of a clean strip of cotton, towel, or paper band around the neck of each patron to prevent the hair, cloth, or cape from coming in contact with the skin of the patron; proscribe the use of towels or other fabrics that come in contact with the skin of a person on more than one patron without being laundered in an acceptable manner; prohibit the removal of any wart, mole, pimple, and in-grown hair; and require the sterilization of razors and other implements that come in contact with the patron's skin.

The health and safety needs here are largely hygienic. They arise out of the conditions in the operation of the barber business. Regulations to meet these needs are easily imposed without regulating the practice of barbering itself. There is no harm or safety need to regulate the basic activity of the industry—i.e., cutting hair. Our statutes appear to recognize this. As noted below, Chapter 438 deals very little with hygienic requirements, and Section 321-12, Hawaii Revised Statutes, expressly authorizes the Department of Health to prescribe public health and safety regulations for barbers:

“The department of health may prescribe rules and regulations which it deems necessary for the public health and safety relative to barbers, hair-dressers, cosmeticians, cosmetologists, and beauticians, and the carrying on of their occupations.”

Protection not provided by licensing. Although the ostensible purpose of licensing barbers is to prevent the spread of contagious diseases, Chapter 438 is not structured and is thus not executed to accomplish that result. There is very little relationship between Chapter 438 and the prevention of the spread of communicable diseases.

Chapter 438 contains only a brief and limited reference to the matter of infectious diseases. The rest of the statute is aimed at the establishment of an examination procedure to determine the competency of candidates for certification in the art of giving haircuts and shaves. The brief and limited reference to the matter of infectious diseases is the requirement that candidates for certification submit satisfactory proof of freedom from infectious or contagious diseases.

An anomaly in the statute, cited earlier, is worth noting again. The statute provides that “[i]t shall be unlawful for any person to operate a barber shop in the State unless he has first registered the barber shop.” Except for this provision, barber shops are not mentioned again in the statute. The statute even fails to state with whom barber shops

are supposed to be registered. It would seem that if prevention of the spread of contagious diseases is indeed the purpose of Chapter 438, the statute would contain a more extensive treatment of barber shops. This is particularly so, when the health and safety needs in this area are largely hygienic, arising from the conditions under which the operation of the barbering business is conducted. But, the statute fails to treat the matter of regulating barber shops.

The thrust of the statute is echoed in the practices of the Board of Barbers. Except for requiring candidates for certification to produce proof of freedom from contagious diseases, and except for repeating virtually verbatim in its rules the rules of the Department of Health concerning sanitation in barber shops, the board does little in the way of regulating the health and safety of barbering. Even the requirement of proof of freedom from contagious diseases is a one-time thing. Once a candidate is certified, no continuing effort is made to ensure that he is free from such diseases. The board's efforts are concentrated mainly in determining whether applicants for certification possess competency in the art of giving haircuts and shaves. The board's licensing program does little to prevent the spread of communicable diseases.

The Real Purpose of Regulation

It is evident from the operation of the Board of Barbers that the real purpose of the barbering regulation is to restrict entrance into the vocation. The instrument to accomplish this is the examination given by the board to applicants for certification as apprentices and as barbers. The examinations are stringently administered. Consider the following.

For many years before 1979, an applicant for certification as an apprentice had to take nearly the same written and practical examination that applicants for certification as barbers were required to take. Only since 1979 has the requirement of the need to pass a practical examination been deleted for applicants for apprenticeship certification. If the term "apprentice" really means what the statute says it means (and it has said so since it was first enacted in 1947)—i.e., "a person who is engaged *in learning* or acquiring within a barbering establishment or school . . ."—it makes little sense to require an applicant for an apprenticeship certification (a certificate to allow one to be

an apprentice) to demonstrate practical proficiency in barbering, much less to require him to take and pass an examination designed for applicants for certification as full-fledged barbers, unless such a test is intended to weed out would-be barbers.

Also, before 1979, the law required that one had to serve as an apprentice for a minimum period of 18 months before he could apply for certification as a full-fledged barber. There has not been any valid reason why such a long apprenticeship period is needed to be served unless, again, it was intended to discourage persons from entering the vocation.

The requirement that applicants for certification as apprentices take and pass a practical examination and the requirement that one serve as an apprentice for at least 18 months before applying for certification as a barber were both eliminated in 1979. The first requirement was deleted by board action, and the second requirement was amended by the Legislature. However, the statute still serves to restrict entrance into the practice of barbering.

The law now states that for an apprentice to qualify to take an examination to become a full-fledged barber, he must have served as an apprentice for at least six months "under the immediate personal supervision of a barber or instructor." This provision has been applied by the Board of Barbers to mean that the time spent at a barber school is not to be included in calculating the six-month period.

This means that for most applicants they must serve an apprenticeship of at least 15 months. This is because, although not required, most persons wanting to become barbers attend a barber school, and barber schools typically offer a curriculum requiring approximately nine months to complete. The curriculum generally consists of 200 hours of classroom studies and 1050 hours of practical training. To most applicants, then, the statutory change has not reduced appreciably the length of time they must serve as apprentices before becoming eligible to take the barber's examination. Such a long waiting period, of course, can be discouraging to those wanting to enter the trade.

Aside from the fact that the board's application of the six-month provision of the statute has meant little change to most applicants for barber certification, there are a number of things inherently unfair about the board's decision not to credit applicants for time spent at a barber school. For one thing, it places those persons who attend a barber school at a disadvantage in relation to those few who opt to receive their training at a barbering establishment rather than at a barber school. Those who learn the trade

in a barbering establishment can qualify to take the examination for certification as barbers in six months compared to 15 months for those who go to a barber school.

Further, the practical training that one receives at a barbering school consists of practicing the art of barbering on live models—i.e., customers who come to the school for haircuts and shaves—and this practice is conducted under the personal supervision of experienced barbers who make up the faculty at the schools. Yet, under the board's application of the six-month requirement, this practice means very little in terms of qualifying for certification as a barber.

That Chapter 438 serves as a means of restricting entrance into the barbering trade is further evidenced by the examinations, particularly the practical examination given to would-be barbers.

Table 3.1 shows the pass rate on the examinations since 1972. As shown, the passage rate has averaged 57 percent on the barber license examination. The pass rate has been as low as 37 percent, or only a third of all applicants. The low pass rate is attributable in the main to the practical examination.

Table 3.1
Applicant Pass/Fail Rates
Fiscal Years 1972-73 through 1978-79

	Fiscal year							Total
	72/73	73/74	74/75	75/76	76/77	77/78	78/79	
Apprentice applicants	40	41	45	71	83	91	58	429
No. passing	34	34	41	53	61	58	45	326
Percent passing	85	82.9	91.1	74.6	73.5	63.7	77.6	76
Barber applicants	44	36	27	41	51	67	51	317
No. passing	22	21	15	30	19	48	26	181
Percent passing	50	58.3	55.6	73.2	37.3	71.6	51	57.1

Source: Department of Regulatory Agencies examination records.

The practical examination is a skills test in haircutting, shaving, etc. Applicants for certification as barbers must bring live models to the test on whom the skills must be demonstrated. The practicing barbers on the board serve as examiners.

Each examiner scores each applicant on all phases of the examination. The scores are then discussed, and by a majority vote of the examiners a composite score is assigned to each candidate on each category and subcategory examined upon.²

Up until January 1980, the test examined the applicants only for skills in standard barbering—i.e., haircut, shave, facial, scalp manipulation, and sanitation. In January 1980, at the urging of various people in the industry that the examination reflect modern trends and practices, the board added hairstyling to the practical examination. Thus, today, there are two major parts to the practical examination: standard barbering and hairstyling. Standard barbering makes up 60 percent and hairstyling makes up 40 percent of the total grade. A combined total of 75 points is required to pass the practical examination.

For standard barbering, the categories (haircut, shave, facial, scalp manipulation, and sanitation) are further subdivided and point values are assigned to the categories and subcategories as shown in Table 3.2. The point values are as of July 19, 1978.

The practical examination tends to discourage entry into the barbering trade in two principal ways. *First*, the score that an applicant makes on the examination is dependent heavily on the subjective judgment of the examiners, and the examiners have generally borne down heavily on the examinees. The board has never established any agreed-upon criteria for evaluating performance and has left it to the individual judgment of the examiners as to how each applicant-examinee is to be scored for such things as preparing the model, handling implements, evenness of cut, and the final appearance of the cut. Invariably, more than half of the examinees have received a failing or unsatisfactory score in one or more subcategories over the past three years.

Second, the scoring system is weighted heavily toward producing a failing total score. Although numerical points have been assigned to each subcategory of the standard

2. For a time in 1978 and 1979, the board had assigned a particular subcategory to a particular examiner and the examiner examined all candidates on the subcategory. (See minutes of the Board of Barbers, July 19, 1978.) This method was changed in the January 1980 examination. Examiners have reverted to grading all applicants in all subcategories.

Table 3.2

Point Values for Practical Examination
By Category and Subcategory

Category/Subcategory	Point values
Total	<u>100</u>
Haircut	<u>60</u>
Final appearance	20
Edging and tapering	20
Shear and comb technique	18
Preparation of patron	2
Shave	<u>20</u>
Smoothness	10
Technique	6
Hone and strop	2
Preparation of patron	2
Facial	<u>10</u>
Movements	6
Application of creams	2
Preparation of patron	2
Scalp manipulation	<u>5</u>
Movements	3
Preparation of patron	2
Sanitation	<u>5</u>

barbering part of the examination, number grades are not used to score performance in each such subcategory. Instead, letter grades are used to denote excellent, good, fair, or unsatisfactory performance. Each letter grade is given a percentage value as follows:

Percentage Value of Letter Grades

Excellent	(E)	100%
Good	(G)	90
Fair	(F)	75
Unsatisfactory	(U)	50

The point values are multiplied by these percentages to arrive at a score for an applicant. For example, if an examiner assigns the following letter grades for the haircut category, the score would be computed as follows:

	Grade	Point values	Times percentage values	Score
Haircut				
Preparation of patron	G	2	x 90%	1.8
Shear and comb technique ..	F	18	x 75	13.5
Edging and tapering	U	20	x 50	10.0
Final appearance	F	<u>20</u>	x 75	<u>15.0</u>
Total		<u>60</u>		<u>40.3</u>

Out of a total of 60 points, the applicant would receive 40.3 points, or 67 percent of the total points available.

The problem with this methodology is that the lower one descends on the scale of the letter grades, the greater is the difference in percentage value between the letter grades. For instance, between letter grades E and G, the difference in percentage value is 10 percent; but between letter grades F and U, the difference in percentage value is 25 percent. This works to the disadvantage of applicants who score a U grade in any subcategory. This disadvantage is aggravated by the fact that the E grade is almost never awarded.

The combination of this scoring methodology and the propensity of the examiners to issue U grades to applicants in one or more subcategories have worked to pull many applicants down below the passing grade of 75.

The members of the Board of Barbers acknowledge that the examinations are stringently administered and that this controls entry into the barbering trade. They justify the result, however, on the need to ensure competence in the trade and to maintain professional integrity of the occupation. These reasons are not sufficient to continue the certification of barbers. Whether a haircut or a shave has been competently given is a matter easily judged by the consuming public. Thus, the rise or fall of individual barbers is best left to competition and the workings of the marketplace.

Conclusion and Recommendation

The practice of barbering presents no substantial health or safety hazard. What little health or safety needs there might be are not met by Chapter 438 and the present licensing program. Chapter 438, instead, has worked against consumer interests by restricting entrance into the trade and reducing competition within the trade.

Barber shops should, of course, continue to meet the health and sanitation standards prescribed by the Department of Health.

Recommendation. We recommend that Chapter 438, HRS, be allowed to expire as scheduled on December 31, 1980.