

FORBES MAGAZINE

Feb 3, 2017

South Dakota Just Legalized Braiding Hair Without A License

Nick Sibilla, Contributor

Thanks to legislation signed today, South Dakotans no longer need the government's permission to braid hair. Signed by Gov. Dennis Daugaard, the bill, HB 1048, exempts natural hair braiders from the state's thicket of cosmetology regulations.

Previously, braiders faced the toughest law in the nation. Before anyone could work twisting or braiding hair, they first had to obtain a cosmetology license. That license requires at least 2,100 hours of training, which can cost nearly \$15,000 in tuition. Meanwhile, braiding without a permission slip from the government could lead to fines and even jail time. Adding to the absurdity, many cosmetology schools don't even teach African-style braiding techniques, and those that do dedicate almost no time to the subject.

"Today's signature is a win for entrepreneurship, economic liberty and just plain common sense," noted Institute for Justice Senior Attorney Paul Avelar. "The government has no business licensing something as safe and common as braiding hair."

Unsurprisingly, strict requirements made it nearly impossible to find qualified braiders who could work legally. Not only did those restrictions harm the African-American and immigrant communities in the Mount Rushmore State, it also affected South Dakotan parents like Ryan Howlett, who adopted a daughter of color. Speaking before the Senate Commerce and Energy Committee last month, Howlett said it was "critically important" to boost the number of natural hair stylists, "so that people aren't driving six, seven hours to do their hair."

"This is a safe practice. When we are with our provider, it is her fingers and a squirt bottle," he added. "There is no cutting, there is no heat, there is no chemical applied to the hair, and it's just her twisting and locking the hair."

Empirical data bears that out. Research published by the Institute for Justice in July found that out of over 9,700 licensed and registered braiders in nine states and Washington, D.C., over a seven year period, only 95 of them had a complaint file. And only one braider had a complaint filed by a consumer.

Given that braiding hair is safe, HB 1048 sailed through the state legislature, and even passed the Senate unanimously. South Dakota is now the 21st state to deregulate hair braiding, and the very first state to do so this year. In another six states, more reforms are pending, or are expected to be introduced.

"This victory for braiders in South Dakota is another blow against occupational licensing, America's biggest labor-economics issue," said Lee McGrath, IJ's Senior Legislative Counsel, and who testified in favor of the bill.

More than a quarter of South Dakota's workforce is either licensed or certified by the government. By comparison, over five percent of workers are union members, while just 2.4 percent of hourly workers are paid at or below minimum wage.

Many licenses, especially for working-class South Dakotans, can be particularly onerous. A report by the Institute for Justice found that the average license in the Mount Rushmore State requires workers to complete 271 days of training, pay \$166 in fees and pass two exams. On the bright side, that leaves ample opportunity for reform. According to the Heritage Foundation, overhauling the state's licensing laws could save the average South Dakota household \$777 each year.

TOLEDO CITY PAPER

Stylists Get More Hours of Training than EMTs

By Bridget Adams

February 21, 2017

Traditionally, African hair braiding has been passed down from mother to daughter. The intricate styles so often seen in African-American hair are beautiful and practical: they protect curly hair, retain moisture, and encourage healthy growth. Braiding one head of hair may take hours, and being a specialized skill, it's also a career opportunity for those talented enough to pursue it.

The problem is that many professional hair braiders in Ohio are working illegally, due to burdensome licensing laws and required training that is often irrelevant and not readily available.

An Ohio cosmetology license requires 1500 hours of study and supervised practice, at a cost of several thousand dollars. Compared to the 20 hours of required training to work as an armed security guard or 130 hours for an emergency medical technician.

Megan Davis, natural hair expert and owner of Toledo's Kitchen Salon (and wife of City Paper production manager, Imani Lateef) said, "Cosmetology as a curriculum does not encompass the skill and art of hair braiding... [nor] does it include even the most basic methods and techniques of hair care for the African-American. During the course, the main haircare learned is for Caucasian or European hair textures. Less than three hours [is] spent learning how to create a cornrow base to sew in a weft of hair—which is a major service requested by African-Americans. Hair braiding is never introduced in the classroom."

Black haircare rarely taught

"Black haircare as a whole is completely omitted from the cosmetology industry," Davis continued. "Hair braiding has become regulated because African-Americans were providing these services in their homes and both cosmetologists and others who may live in communities where hair braiding takes place thought that no one should practice any beauty service without a license."

Cosmetology training includes shaving the face, cutting hair, application of heated tools to the hair, and chemical treatments, all potentially dangerous activities. African-American hair braiders do not wash, cut, or apply chemical treatments to hair.

Braiding Freedom, a project of the Institute for Justice, highlights the issue of irrational licensing for hair braiders: "At a minimum, the government may only restrict braiders' rights to run their businesses when there is some 'rational basis' for that restriction. To demonstrate that rational basis, the government must show a reasonable connection between the restrictions in question and public health and safety. But there is no threat to public health or safety presented by braiding hair—and certainly not any threat that can justify hundreds, if not thousands, of hours of irrelevant cosmetology classes that can cost \$20,000 or more."

“Recently, Ohio adopted a new rule, that hair braiders must obtain 450 hours of instruction in order to own and operate a hair braiding salon,” Davis noted. “None of the main cosmetology schools offer this course. There are two known schools that offer this in Ohio at a rate of approximately \$3,000, without financial aid or other assistance. While to work in a tanning salon or tattoo parlor, there are no courses or licensing requirements.”

Time for Ohio to take another look

“All areas of Black hair care, including natural hair care and braiding, should be included in cosmetology courses since it is a requirement in the State of Ohio, or Ohio should revisit the current laws in regard to hair braiding and natural hair care,” Davis stated. In Michigan, there is no licensing requirement to practice any form of natural hairstyling or braiding, or to own/operate a natural hair salon. “Hair braiding generalizes a broader field of practice in cosmetology and beauty for the African-American consumer,” Davis explained. “It should be a separate course, included in the current curriculum or left unregulated along with tattoo artists and body piercers.”

ALASKA DISPATCH NEWS

With Alaska budget woes forcing agency cuts, who's inspecting hair and nail salons?

Author: Suzanna Caldwell

Updated: September 28, 2016

Published January 4, 2016

Hair and nail salons lost an arm of oversight when the Alaska Department of Environmental Conservation stopped inspecting them last summer as a result of state budget cuts.

That's left the Board of Barbers and Hairdressers -- the state entity overseeing licensing and regulations for nail and hair salons in Alaska -- with the job of making sure the shops meet the health and safety regulations designed to protect consumers and salon workers from disease and infection.

And it still isn't sure how to do it.

"As a board we are still working on this, and the division (of corporations, business and professional licensing) is working on it," said Board Chair Glenda Ledford. "It's not like we said, 'oh well,' because we realize we have a problem."

The board oversees over 5,000 licensees who work with hair, nails, tattooing and body piercing. The board mostly deals with issues related to licensing and training of salon workers.

The Department of Environmental Conservation, the state agency charged with monitoring everything from food safety to air quality and chemical spill responses, enforced those health and safety regulations until last July.

But the Food Safety and Sanitation Program, which conducted nail and hair salon inspections, cut \$860,000 from its budget for fiscal year 2016, which began in July. That meant a loss of eight staff -- a mix of filled and unfilled positions -- according to program manager Kimberly Stryker. The cut meant "essentially discontinuing" hair and nail salon oversight, she said.

Now DEC health inspectors no longer check hair and nail salons. The program still maintains a website that lists the regulations and other resources, but notes that it does so only as a courtesy.

Now the Division of Corporations, Business and Professional Licensing is in charge of making sure hair and nail salons are following procedures. But the licensing office has limited power to enforce DEC regulations on consumer health and safety, according to Sara Chambers, operations manager for the division.

She said the division is working with the Board of Barbers and Hairdressers to figure out what to do. The board plans to address the lack of oversight at its next meeting in January.

"We're treading cautiously and slowly, gathering information, responding to complaints, being responsive and being proactive in educating shop and school applicants," Chambers said.

Limited inspections

Even before the DEC stopped monitoring nail and hair salons, its oversight was minimal. From 1995 to earlier this year, the DEC has overseen the opening inspections of salons and responded to health and safety complaints as well as a variety of clerical issues -- like maintaining facility files and communicating objections for initial salon licenses.⁷ But routine annual inspections have never been a requirement for Alaska hair and nail salons. Anchorage is the only local government that regulates hair and nail salons, and the municipality is continuing to do inspections, according to a spokeswoman with the Department of Health and Human Services. Like DEC, they only check facilities when they open and if there are complaints.

Now the state asks that salons outside of Anchorage "self-certify," according to Chambers. Salons must submit plans for how they intend to follow health and safety requirements, but there's no required follow-up inspection to make sure businesses are doing so.

Ledford, owner of Glenda's Salon and Training Center in Wasilla, said that's the best option the board has while it considers how to handle the situation. Salons still have to open, she added, and shouldn't be shut down simply because the state doesn't have the resources to follow regulations.

Who handles complaints?

Licensing still takes in complaints, but an Alaska Dispatch News review found there weren't many lodged against hair and nail salons in Alaska. According to documents, there were only six licensing complaints at the state level for the 12 months ending June 30. There were 80 "intakes" during that period, where people called to report a violation. Of those, 58 warranted investigations.

DEC had five health- and sanitation-related complaints in 2014, all of which were resolved, according to Stryker. There were no complaints in 2015.

According to a spokeswoman with the Anchorage Department of Health and Human Services, there have been no nail or hair salon complaints since February 2014.

But that's not to say hair and nail salons operate without criticism. A cursory look at Yelp, a website that includes customer reviews, shows that reports of infections and cuts are not uncommon. While the reviews tend to be positive, it's hard miss things like mentions of bleeding cuticles, infected toenails or reports of fungus-infected feet.

Chambers said that while "iron-clad" clarity is lacking on which agency oversees what regulations, her agency takes every complaint seriously.

"(Licensing personnel) and DEC are both committed to public safety, and where there is a consumer who has a complaint, if they contact DEC or if they contact us, we'll follow through with it and more than likely it will be a partnership -- a joint effort -- in pursuing the complaint and determining how far it should go in the process," she said.

So should the public be concerned?

"As a salon owner, as a school owner, not as a state board member, the responsibility of the public falls on my shoulders," Ledford said. "Whether or not everybody else feels that way, I don't know, I couldn't tell you."

New legislation

The Alaska Legislature passed a bill this year increasing the amount of education needed for manicurists to become licensed in Alaska. It upped the total training hours needed from 12 to 250. Instead of only six hours of instruction on health and safety, workers will be mandated to take 45 during their coursework.

It goes into effect in January. Current manicurists will have until 2017 to comply.

The change was a long time coming, according to Ledford, who said the board worked for eight years to get the law updated.

Rep. Lynn Gattis, R-Wasilla, sponsored the legislation. Gattis, who said she gets her nails done regularly, said she was shocked to learn of the level of education manicurists received. She said she was particularly concerned about workers interacting with people who had health conditions or weakened immune systems.

She was the legal guardian for her diabetic father-in-law, who had difficulty maintaining his feet, she said -- he could have suffered from serious complications if a manicurist clipped his cuticle and caused an infection.

"It had nothing to do with fingernail polish or prettiness," Gattis said.

Gattis said she doesn't want businesses to be too overburdened with regulations, but she acknowledged that more could be done to improve safety.

She declined to say if she would introduce legislation next year to deal with the lack of oversight, but wasn't ruling it out. She said any new laws would come with guidance from the Board of Barbers and Hairdressers.

"I'm not going to put out what I think we should do until the bill comes out," she said. "But yes, there does need to be changes, and it relates to the health and safety of our citizens and their expectations."



THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

**Department of Environmental
Conservation**

DIVISION OF ENVIRONMENTAL HEALTH

Director's Office

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August 27, 2015

Fred Parady
Department of Commerce, Community & Economic Development
Division of Corporations, Business and Professional Licensing
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Termination of Regulatory Oversight of Barbering, Hairdressing, Manicuring and Esthetic Schools and Shops

Deputy Commissioner Parady:

The following information is intended to assist the Department of Commerce, Community & Economic Development (DCCED) in understanding the Department of Environmental Conservation's (DEC) decision to discontinue services for Barbering, Hairdressing, Manicuring and Esthetic Schools and Shops.

Program History:

DEC has had regulations (18 AAC 30 Article 7) since approximately 1982 for barbershops and cosmetology establishments, granted by the authority in AS 44.46.020. In 1995, due to a decrease in resources, the Food Safety and Sanitation (FSS) program stopped inspecting and permitting cosmetology establishments and began only responding to complaints. In 2002, DEC adopted regulations to include hair and body art schools and shops (18 AAC 23).

Program Activities Related to Barber/Hairdresser/Manicurist/Esthetician Shops and Schools:

Prior to July 2015, the program's activities related to these establishments was to accept applications, review plans for new facilities, maintain files, respond to sanitation-related complaints, provide technical assistance, and communicate our non-objection to DCCED for initial licenses.

During FY2011-FY2015, DEC completed the following activities:

	FY2011	FY2012	FY2013	FY2014	FY2015
# Of Plan Reviews (new permits)	29	36	28	43	26
# Of Owner Changes	7	8	9	9	13
# Of Notices of Violations	0	0	0	0	0
# Of Inspections	4	6	1	6	12
# Of Complaints	10	3	2	8	3

Enforcement and Compliance:

The program had no enforcement actions related to these establishments from FY2011 to FY2015.

Overview of Complaints:

Complaints that the FSS program has received were related to ventilation in nail salons, sanitation, improper use of chemicals, and facilities that were doing procedures such as tattooing and waxing without a license from the Board of Barbers and Hairdressers. All complaints were successfully resolved, and no facility received more than one complaint.

Overview of Inspection Findings:

Inspections completed were in response to complaints and, in some cases, for new establishments.

Note: it has been the program policy to not complete inspections for new establishments, however some FSS offices chose to complete pre-operational inspections as time was available.

Water and Wastewater:

DCCED should be aware that there may be a need for coordination with the DEC Division of Water for onsite septic systems. Shops that are not on public water systems need to have a plan review.

Rationale for discontinuing program:

The FSS program has historically prioritized the inspection of high-risk facilities (retail food establishments and food processors), but the program continues to lack the resources to complete the necessary inspections of regulated food establishments at the frequencies recommended by the U.S Food and Drug Administration.

In FY2016, the FSS program responded to a significant General Fund cut in excess of \$800.0. Eight PCNs were eliminated. The program adjusted to these cuts by ceasing review, inspection, and enforcement services for all low-risk facilities, including barber, hairdresser, manicurist, or esthetician shops and schools. The FSS program has also cut services for public accommodations and low-risk food establishments.

The previous regulatory program that FSS was providing for cosmetology establishments was minimal at best, and would not be considered protective, but rather a reactive public health program.

Rationale for not pursuing and RSA with DCCED:

An RSA from DCCED would result in diverting the already reduced FSS program resources away from regulatory oversight high-risk establishments, which has been challenging even prior to the recent cuts to the

program in FY2016. The program does receive an RSA from DCCED for the inspection of body art facilities, which are considered high-risk in relation to public health.

Program Revenues/Expenditures

The FSS did not collect any fees or generate any revenues for oversight of barber, hairdresser, manicurist, or esthetician shops and schools. Program expenditures were related to Personal Services and Supplies.

Total for FY2011 – FY2015

Personal Services: \$21,028.47

Supplies: \$293.28

(From AKSAS for FY11-15 charged to Barbers & Hairdressers collocation code 18633130.)

Assistance to DCCED:

The FSS program is willing to share all forms, inspection reports, and guidance documents related to barber, hairdresser, manicurist, or esthetician shops or schools. Additionally, FSS is willing to provide in-person training to review the program protocols, regulations, and processes to assist DCCED staff during this transition.

Sincerely,



Elaine Busse Floyd
Director



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Environmental
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June 25, 2015

Director Janey Hovenden
Department of Commerce, Community & Economic Development
Division of Corporations, Business and Professional Licensing
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Termination of DEC Regulatory Oversight of Barbering, Hairdressing,
Manicuring and Esthetic Schools and Shops

Dear Director Hovenden:

Due to the critical financial situation that the State faces, the Department of Environmental Conservation, Food Safety and Sanitation (FSS) program, must begin the process of making necessary reductions to services which have traditionally been paid for by general funds.

The FSS program does not collect program receipts for work that our staff completes for the oversight of sanitary conditions of Barbering, Hairdressing, Manicuring and Esthetic Schools and Shops. Therefore, due to our resource constraints, the FSS program will no longer provide these services and regulatory oversight of these facilities beginning July 1, 2015. These terminated services include accepting applications, issuing letters of no objection, conducting plan reviews, performing inspections, and responding to complaints.

We regret that budget reductions have brought us to this point. If there is additional information we can provide, such as facility file information, training, or technical assistance, please contact Kimberly Stryker, FSS Program Manager at 907.269.7583 or Kimberly.Stryker@alaska.gov.

Sincerely,

A handwritten signature in blue ink that reads "Elaine Busse Floyd".

Elaine Busse Floyd
Director