

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1164

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Cosmetology)

1 A BILL for an Act to amend and reenact sections 43-11-01, 43-11-02, 43-11-03, 43-11-04,
2 43-11-06, 43-11-08, 43-11-11, 43-11-12, 43-11-17, 43-11-19, 43-11-20.1, 43-11-20.3,
3 43-11-21, 43-11-23, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-28, 43-11-31, 43-11-32,
4 43-11-33, 43-11-34, and 43-11-35 of the North Dakota Century Code, relating to licensure and
5 regulation of cosmetologists and cosmetology salons; and to repeal sections 43-11-07,
6 43-11-13.2, and 43-11-30 of the North Dakota Century Code, relating to the bond of the
7 secretary of the board, homebound licenses, and disciplinary action.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 43-11-01 of the 1995 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

11 **43-11-01. Definitions.** In this chapter, unless the context or subject matter thereof
12 otherwise requires:

- 13 1. "Board" means the state board of cosmetology.
- 14 2. "Cosmetology" means any one or combination of practices generally and usually
15 heretofore and hereafter performed by and known as the occupation of beauty
16 culturists or cosmeticians or cosmetologists or hairdressers, or of any other person
17 holding him or herself out as practicing cosmetology by whatever designation and
18 within the meaning of this chapter and in and upon whatever place or premises;
19 and in particular cosmetology is defined and includes, but otherwise is not limited
20 thereby, the following or any one or a combination of practices: arranging,
21 dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or
22 similar work, upon the hair of any person by any means or with hands or
23 mechanical or electrical apparatus or appliances, or by the use of cosmetic
24 preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging,

cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.

3. "Cosmetology salon" includes that part of any building wherein the occupation of a cosmetologist is practiced.

~~4. "Demonstrator" means any person who possesses the qualifications of a cosmetologist and who is granted permission to promote a product or technique in this state for a limited time in accordance with rules adopted by the board.~~

~~5.~~ "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.

~~6.~~ 5. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.

~~7.~~ 6. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.

~~8.~~ 7. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.

~~9.~~ 8. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.

~~10.~~ 9. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.

~~11.~~ 10. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.

~~12.~~ 11. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.

~~13.~~ 12. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying,

or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person.

"Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.

"Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

"Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

SECTION 2. AMENDMENT. Section 43-11-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-02. Exemptions from provisions of chapter. This chapter does not apply to:

1. Services in case of emergency.
2. Services provided by persons practicing cosmetology upon members of their immediate families.
3. Services by ~~persons authorized under the laws of this state to practice medicine, surgery, dentistry, podiatry, osteopathy, or chiropractic~~ a person licensed by the state and working within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a cosmetologist, osteopatician, or manicurist.
4. Services by nurses, undertakers, and morticians lawfully engaged in the performance of the usual and ordinary duties of their vocation; ~~or by a licensed cosmetologist engaged in manicuring the nails of any person in a licensed barbershop.~~
5. Educational activities conducted in connection with any regularly scheduled meeting or any educational activities of any bona fide association of licensed cosmetologists, from which the general public is excluded. For purposes of this subsection a "bona fide association of cosmetologists" means any organization whose constitution, bylaws, or membership rules establish within said organization a class of membership consisting of licensed cosmetologists.

6. Services provided by retailers or their sales personnel trained in the demonstration of cosmetics application if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration. The board may adopt rules to ensure sanitary conditions for services provided under this exemption.

7. Services provided in a licensed hospital or a nursing home by a person practicing cosmetology on a volunteer basis without compensation or by a nurse's assistant.

SECTION 3. AMENDMENT. Section 43-11-03 of the North Dakota Century Code is amended and reenacted as follows:

43-11-03. State board of cosmetology - Appointment - Term - Removal. The state board of cosmetology consists of ~~three~~ five members appointed by the governor for three years each, with their terms of office so arranged that ~~one term expires~~ not more than two terms expire on June thirtieth of each year. Each member shall qualify by taking the oath required of civil officers and shall hold office until a successor is appointed and qualified. The governor may remove from office a member for misconduct, malfeasance, neglect of duty in office, crime in office, gross incompetency, or habitual drunkenness. A vacancy on the board must be filled by appointment by the governor for the unexpired term.

SECTION 4. AMENDMENT. Section 43-11-04 of the North Dakota Century Code is amended and reenacted as follows:

43-11-04. Members of board - Qualifications. Each member of the board must be a citizen of this state ~~and a. Three members must be licensed cosmetologist~~ cosmetologists who ~~has~~ have had at least three years practical experience in the occupation. ~~No two members of the board may be members of or affiliated with any school of cosmetology, nor may any two members of the board be graduates of the same school of cosmetology. Two members of the board must be lay persons.~~

SECTION 5. AMENDMENT. Section 43-11-06 of the North Dakota Century Code is amended and reenacted as follows:

43-11-06. Compensation of members of board - How paid. Each member of the board is entitled to receive compensation of fifty dollars for each day employed in the actual discharge of official duties, as determined by the board. ~~The secretary of the board shall receive an annual salary of not more than thirteen thousand dollars to be fixed by the board,~~

1 ~~and necessary expenses actually incurred in the performance of official duties.~~ Expenses
2 incurred by a board member in the performance of an official function are payable by the board
3 pursuant to sections 44-08-04 and 54-06-09. The compensation and expenses of all members
4 of the board must be paid from the license fees and other sources of income of the board.

5 **SECTION 6. AMENDMENT.** Section 43-11-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-11-08. Meetings of the board.** The board shall meet at least twice each year on
8 ~~the third Tuesday in January and July~~ at times determined by the board. ~~The board may meet~~
9 ~~at such other times and places as is necessary to conduct the official business of the board.~~ A
10 majority of the members constitute a quorum.

11 **SECTION 7. AMENDMENT.** Section 43-11-11 of the 1995 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **43-11-11. Sanitary rules - Practice outside salon.** The board with the approval of the
14 state department of health shall adopt sanitary rules necessary to prevent the creating and
15 spreading of infectious and contagious diseases. A cosmetology salon must be at a fixed
16 location and must be separate from all other businesses and establishments ~~and may not be~~
17 ~~used for living or sleeping quarters~~ except as provided by rules of the board. An operator may
18 practice outside of the establishment under the direction and control of an owner or manager
19 thereof under rules adopted by the board.

20 **SECTION 8. AMENDMENT.** Section 43-11-12 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-11-12. Persons to aid of board.** The board may employ ~~or receive services from~~
23 ~~any person~~ a secretary, support staff, and other persons knowledgeable in cosmetology for
24 conducting examinations, inspections, and investigations of persons regulated by this chapter.
25 ~~Any person employed by the board is entitled to receive fifty dollars for each day employed in~~
26 ~~the actual discharge of official duties, and expenses in the amounts payable under sections~~
27 ~~44-08-04 and 54-06-09.~~

28 **SECTION 9. AMENDMENT.** Section 43-11-17 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **43-11-17. Licenses issued for schools of cosmetology, and cosmetology salons -**
31 **Fee for annual registration.** The board may issue an annual license for a school of

cosmetology. The annual registration fee for a school must be determined ~~annually~~ by the board, ~~as set forth in section 43-11-28 through administrative rule.~~ The board shall, after inspection and approval, issue a salon license, the annual fee for which must be determined ~~annually~~ by the board, ~~as set forth in section 43-11-28 through administrative rule.~~

SECTION 10. AMENDMENT. Section 43-11-19 of the North Dakota Century Code is amended and reenacted as follows:

43-11-19. Students - Registration. A student cosmetologist must:

1. ~~Be at least seventeen years of age~~ Adhere to the laws and rules regarding the practice of cosmetology;
2. ~~Be of good moral character;~~
3. Have educational qualifications equivalent to completion of four years of high school; and
4. 3. Have enrolled in a school of cosmetology and complied with the preliminary requirements thereof.

The names and qualifications of all students must be certified to the board by each school of cosmetology. The certification must be accompanied by a processing fee for each student in an amount as may be fixed by the board under section 43-11-28.

SECTION 11. AMENDMENT. Section 43-11-20.1 of the North Dakota Century Code is amended and reenacted as follows:

43-11-20.1. Refund of student tuition fees upon cancellation of course. Schools of cosmetology shall refund tuition and other charges paid by or on behalf of a student when written notice of cancellation is given by the student. Refunds must be made in accordance with the following schedule:

		Tuition
Term <u>Hours</u>		Retained
Completed <u>Enrolled</u>		By School
0.0% - 4.9%		20%
5% - 9.9%		30%
10% - 14.9%		40%
15% - 24.9%		45%
25% - 49.9%		70%

1 Over 50% 100%

2 Notice of this section, and of sections 43-11-20.2 and 43-11-20.3, must be posted in a
3 conspicuous place in each school of cosmetology. The notice must be in a form and contain
4 information as prescribed by the board. The board shall take action necessary to enforce this
5 section and sections 43-11-20.2 and 43-11-20.3, including revocation of the license issued
6 pursuant to section 43-11-17. This section does not prejudice the right of any student to
7 commence a civil action against any school of cosmetology for breach of contract or fraud.

8 **SECTION 12. AMENDMENT.** Section 43-11-20.3 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-11-20.3. Cancellation of contract for instruction.** Any person has the
11 unrestricted right to rescind, revoke, or cancel a contract for a course of instruction at any
12 school of cosmetology within three days after entering into the contract ~~without incurring any~~
13 ~~tort or contract liability.~~

14 **SECTION 13. AMENDMENT.** Section 43-11-21 of the 1995 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **43-11-21. Operator's license - Examination required - Application - Examination -**
17 **Fees.** Each person who desires to secure an operator's license shall file with the secretary of
18 the board a written application under oath on a form supplied by the board. The application
19 must be accompanied by:

- 20 1. ~~A health certificate signed by a licensed physician;~~
- 21 ~~2.~~ Satisfactory proof of the educational ~~and moral~~ qualifications required of a student;
- 22 ~~3.~~ 2. An examination fee ~~and kit rental fee~~ as may be fixed by the board ~~pursuant to~~
23 ~~section 43-11-28;~~
- 24 ~~4.~~ 3. Satisfactory proof that the applicant has completed the required training in a school
25 of cosmetology; and
- 26 ~~5.~~ 4. A fee for original licensure as required by ~~section 43-11-28~~ the board.

27 **SECTION 14. AMENDMENT.** Section 43-11-23 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **43-11-23. Examination.** The examination of applicants for license to practice under
30 this chapter must be conducted under rules prescribed by the board and must include both
31 practical demonstrations and written or oral tests in reference to the practices for which a

license is desired and in reference to related studies or subjects as the board may determine necessary for the proper and efficient performance of a practice. The board may require the practical portion of the examination be conducted by schools of cosmetology as part of graduation requirements. The examination may not be confined to any specific system or method and must be consistent with the practical and theoretical requirements of cosmetology.

SECTION 15. AMENDMENT. Section 43-11-24 of the North Dakota Century Code is amended and reenacted as follows:

43-11-24. Operator's license - When issued - Failure to pass examination - Reexamination - Retraining. An operator's license must be issued to any person who has:

1. Complied with section 43-11-21; and
2. Passed to the satisfaction of the board, the examination of applicants for a license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee may not be returned. Within one year after failing to pass an examination, the applicant may be examined again with the payment of a reexamination fee ~~and kit rental fee as set forth in section 43-11-28.~~ Anyone who fails to pass the reexamination must complete an additional one hundred sixty hours of training at a school of cosmetology prior to reapplying for examination.

SECTION 16. AMENDMENT. Section 43-11-25 of the North Dakota Century Code is amended and reenacted as follows:

43-11-25. License issued without examination - Conditions. The board may dispense with the examination of applicants for licenses to practice cosmetology and may grant licenses upon the payment of a fee for original licensure and the reciprocity fee ~~provided in section 43-11-28~~ if:

1. The applicant has complied with the requirements for registration of the District of Columbia, or another state, territory, foreign country, or province where the requirements are equal substantially to those in force in this state at the time the application for the license is filed; and
2. The applicant passes to the satisfaction of the board an examination on sanitary practices and cosmetology law in this state.

SECTION 17. AMENDMENT. Section 43-11-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1 **43-11-26. Manager-operator - License - Qualifications.** A person may obtain a
2 manager-operator's license upon:

- 3 1. Furnishing to the board evidence of ~~being at least eighteen years of age and~~
4 having practiced as a licensed operator for at least one hundred twenty-five days;
- 5 2. Paying an original licensure fee and examination fee ~~as set forth in section~~
6 ~~43-11-28; and~~
- 7 3. ~~Passing an examination conducted by the board to determine fitness to practice as~~
8 ~~a manager-operator; and~~
- 9 4. ~~Complies~~ Complying with the other requirements of this chapter applicable to a
10 manager-operator.

11 **SECTION 18. AMENDMENT.** Section 43-11-27 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **43-11-27. Instructor's license - Student instructor's license - ~~Demonstrator's~~**
14 ~~license~~ **Registration - Qualifications.**

- 15 1. No person may be licensed as an instructor of cosmetology unless the person
16 furnishes the board the examination fee ~~set forth in section 43-11-28~~ and evidence
17 of having ~~attained the age of eighteen years and having~~ a general education
18 equivalent to the completion of four years in high school. An applicant:
 - 19 a. Shall have at least nine hundred sixty hours instructor's training in
20 cosmetology in a school of cosmetology. In no event may more than two
21 thousand sixty hours instructor's training be required for admission to
22 examination. Under this subdivision the practical portion of the examination
23 may be waived if the written examination is supplemented with video tapes of
24 the applicant's teaching procedures;
 - 25 b. Shall have at least one year's experience as an active practicing
26 cosmetologist, supplemented by not less than four hundred eighty hours
27 instructor's training in cosmetology in a school of cosmetology. In no event
28 may more than six hundred hours instructor's training be requisite for
29 admission for examination under this subdivision; or
 - 30 c. Shall possess a current North Dakota license as a cosmetologist and shall
31 have been actively engaged in the practice of cosmetology for at least three

1 years prior to application for an instructor's license supplemented by not less
2 than one hundred sixty hours instructor's training in cosmetology in a school
3 of cosmetology. In no event may more than six hundred hours instructor's
4 training be requisite for admission for examination under this subdivision. No
5 instructor or student instructor may be permitted to practice cosmetology on a
6 patron other than that part of practical work which pertains directly to the
7 teaching of practical operations to students.

- 8 2. Student instructors in cosmetology must be registered upon enrollment in a school
9 of cosmetology and upon certification by the school to the board of the name, age,
10 and qualifications of the student instructor which must be recorded in a register
11 kept for that purpose. A student instructor shall, at the time of enrollment, possess
12 a general education equivalent to the completion of four years in high school and
13 hold a license as a cosmetologist. Upon completion of the course prescribed for
14 student instructors, the student instructor shall make application on a form provided
15 by the board and pay a fee as ~~provided in section 43-11-28~~ prescribed by rule.

16 The board shall thereupon cause the applicant to be examined for an instructor's
17 license. The examination must be given by a special examining committee
18 comprised of the board, assisted by one person designated by the board
19 possessing the minimum qualifications entitling the person to instruct in an
20 institution of higher learning and who shall examine the applicant in teaching
21 procedures only. Upon successfully passing the examination the board shall issue
22 an instructor's license to the applicant.

- 23 3. ~~No person may be licensed as a demonstrator unless the person is a licensed~~
24 ~~cosmetologist or shall file proof with the board of continuously practicing in another~~
25 ~~state as a cosmetologist for a period of at least two years prior to the date of the~~
26 ~~application for license as a demonstrator and shall pay an original license fee as~~
27 ~~set forth in section 43-11-28.~~

- 28 4. No person is entitled to renew an instructor's license unless the instructor has
29 furnished to the board evidence of attendance at an approved seminar pursuant to
30 requirements prescribed by the board.

SECTION 19. AMENDMENT. Section 43-11-28 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-28. Fees.

1. Fees to be paid by applicants for original registrations, original licenses, annual renewals, licenses issued upon reciprocity, and examinations as required under this chapter ~~may not exceed the following amounts:~~

a. Original registrations, licenses, and annual renewals:		MAXIMUM FEE:
(1)	Salons, original registration	\$ 75.00
(2)	Salons, annual renewal	\$ 25.00
(3)	School of cosmetology, original registration	\$500.00
(4)	School of cosmetology, annual renewal	\$200.00
(5)	Operator, original license	\$ 10.00
(6)	Operator, annual renewal	\$ 10.00
(7)	Manager-operator, original license	\$ 20.00
(8)	Manager-operator, annual renewal	\$ 15.00
(9)	Instructor, original license	\$ 30.00
(10)	Instructor, annual renewal	\$ 15.00
(11)	Demonstrators, original license	\$ 25.00
(12)	Demonstrators, annual renewal	\$ 15.00
(13)	Reciprocity license fee	\$100.00
(14)	Registration fee for student instructor	\$ 10.00
(15)	Duplicate license	\$ 5.00
(16)	Penalty fee for late renewal	\$ 10.00
(17)	Certification fee	\$ 15.00
b. Examinations:		
(1)	Operator	\$ 20.00
(2)	Operator's kit rental fee	\$ 45.00
(3)	Manager-operator	\$ 20.00
(4)	Instructors	\$ 50.00
(5)	Instructor's kit rental fee	\$100.00

1	(6)	Reexamination fee, operator's	
2	(a)	Practical	\$ 25.00
3	(b)	Written	\$ 15.00
4	(7)	Reexamination fee, manager-operator	\$ 20.00
5	(8)	Reexamination fee, instructors	
6	(a)	Practical	\$ 50.00
7	(b)	Written	\$ 20.00

8 shall be determined by the board by rule.

- 9 2. Fees are not prorated or returnable. The board may charge a ten dollar penalty for
10 license renewal applications received after December thirty-first. The board may
11 reduce a renewal fee from the maximum amount only if it applies an equal
12 percentage of reduction to all renewal fees. The board shall sponsor an
13 educational program for licenseholders to carry out the purposes of protecting the
14 public health and safety and maintaining capable and skilled operators,
15 manager-operators, and instructors. The board is directed to use such portion of
16 the renewal fees as the board may determine for the purpose of providing the
17 educational program.

18 **SECTION 20. AMENDMENT.** Section 43-11-31 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **43-11-31. License Grounds for disciplinary proceedings - Refusal to grant**

21 ~~—Grounds.~~ The board may deny, refuse to grant a renew, suspend, revoke, or place on
22 probationary status any license which may be issued under this chapter ~~to any person who on~~
23 proof at hearing that the applicant or licensee:

- 24 1. Is guilty of fraud in passing the examination;
25 2. Is guilty of an offense determined by the board to have a direct bearing upon a
26 person's ability to serve the public as a cosmetologist, or who, following conviction
27 of any offense, the board determines is not sufficiently rehabilitated under section
28 12.1-33-02.1;
29 3. Is guilty of grossly unprofessional or dishonest conduct;
30 4. Is addicted to the use of intoxicating liquor or drugs to such an extent as to render
31 ~~her~~ the applicant or licensee unfit to practice cosmetology;

5. Advertises by means of knowingly false or deceptive statements;
6. Fails to display the license as provided in this chapter; or
7. Violates the provisions of this chapter or the rules adopted by the board.

SECTION 21. AMENDMENT. Section 43-11-32 of the North Dakota Century Code is amended and reenacted as follows:

43-11-32. ~~Hearing may be held by any member~~ Hearings. ~~Any investigation, inquiry, or hearing, which the board may hold or undertake under the provisions of this chapter, may be held or undertaken by, or before, any member or members of the board, and the finding or order of such member or members must be deemed to be the finding or order of the board when approved and confirmed by it.~~ All hearings must be conducted pursuant to chapter 28-32. For purposes of the hearing, the licensee or applicant is deemed to be the sole party in interest under section 28-32-08 and the provisions of section 28-32-05 apply only to the licensee.

SECTION 22. AMENDMENT. Section 43-11-33 of the North Dakota Century Code is amended and reenacted as follows:

43-11-33. ~~Hearings--~~ Board may subpoena witnesses - Fees - How paid. The board may require the attendance of witnesses and the production of books, records, and papers at any hearing or with reference to any matter which it has authority to investigate, and for that purpose may ~~require the secretary to~~ issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers. ~~The subpoena must be directed to the sheriff of the county where the witness resides or is found, and must be served and returned in the same manner as a subpoena in a criminal case.~~ The fees and mileage of the sheriff and witnesses must be the same as may be allowed in the court in criminal cases. Fees and mileage must be paid in the same manner as expenses of the board.

SECTION 23. AMENDMENT. Section 43-11-34 of the North Dakota Century Code is amended and reenacted as follows:

43-11-34. Appeal from actions of the board. An appeal may be taken from an action of the board under this chapter in refusing to grant, or in suspending or revoking a license, to the district court of the county of residence of the person who has been refused a license or whose license has been suspended or revoked. The appeal must be taken in accordance with the provisions of chapter 28-32.

1 **SECTION 24. AMENDMENT.** Section 43-11-35 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-11-35. Penalty.** Any person who, without a license, willfully practices any of the
4 occupations, maintains a school, or acts in any capacity, wherein a license is required by this
5 chapter, is guilty of a class B misdemeanor.

6 **SECTION 25. REPEAL.** Sections 43-11-07 and 43-11-30 of the North Dakota Century
7 Code and section 43-11-13.2 of the 1995 Supplement to the North Dakota Century Code are
8 repealed.