

Sixty-second  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2098**

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Cosmetology)

1 A BILL for an Act to create and enact a new subsection to section 43-11-02 of the North Dakota  
2 Century Code, relating to exemption from cosmetology licensure; and to amend and reenact  
3 sections 43-11-01, ~~43-11-05~~43-11-03, 43-11-04, and 43-11-06, subsection 7 of section 43-11-16,  
4 ~~and~~ sections ~~43-11-17, 43-11-19~~, 43-11-21, 43-11-24, 43-11-25, and 43-11-26,  
5 ~~43-11-27~~subdivision b of subsection 1 of section 43-11-28, and section 43-11-31 of the North  
6 Dakota Century Code, relating to fees, the practice and licensing of cosmetologists,  
7 cosmetology salons, estheticians, instructors, manicurists, and schools, and the powers,  
8 membership, and compensation of the state board of cosmetology; ~~to repeal section 43-11-28~~  
9 ~~of the North Dakota Century Code, relating to fees; and to provide an effective date.~~

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

11 **SECTION 1. AMENDMENT.** Section 43-11-01 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **43-11-01. Definitions.**

14 In this chapter, unless the context or subject matter otherwise requires:

- 15 1. "Board" means the state board of cosmetology.
- 16 2. "Cosmetologist" means an individual licensed under this chapter to practice  
17 cosmetology.
- 18 3. "Cosmetology" means any one or combination of practices generally and usually  
19 performed by and known as the occupation of beauty culturists or cosmeticians or  
20 cosmetologists or hairdressers, or of any other person holding out as practicing  
21 cosmetology by whatever designation and within the meaning of this chapter and in  
22 and upon whatever place or premises; and in particular cosmetology includes the  
23 following or any one or a combination of practices: arranging, dressing, curling,  
24 waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair

of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, waxing to remove hair, beautifying, or similar work on the body, or manicuring the nails of any person.

~~3.4.~~ "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.

~~4.5.~~ "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.

~~5.6.~~ "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.

~~6.7.~~ "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.

~~7.8.~~ "Invasive care" means any procedure that invades the live tissue of the dermis, including:

a. Laser use, except the use of cold laser technology using nonlinear, pulsed light application for the purpose of biostimulation without the generation of heat; and

b. Chemical peels, except for chemical peels using:

(1) Thirty percent alpha hydroxy acid, which includes glycolic acid with a pH of 3.0 or higher;

(2) Twenty percent beta hydroxy acid, which includes salicylic acid with a pH of 3.0 or higher; or

(3) Two percent resorcinol with a pH of 3.0 or higher.

~~8.9.~~ "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.

~~9.10.~~ "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.

- 1   40:11. "Manicurist" means a person who is licensed by the board to engage in the practice of  
2           manicuring.
- 3       11. ~~"Operator" means a person, not a student, who is licensed under the provisions of this~~  
4           ~~chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.~~
- 5       12. "School of cosmetology" means an establishment operated for the purpose of teaching  
6           cosmetology.
- 7       13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions,  
8           creams, or otherwise, massaging, cleansing, stimulating, manipulating, waxing to  
9           remove hair, beautifying, or similar work on the body of any person. The term does not  
10          include invasive care.
- 11      14. "Student" means any person who is engaged in the learning or acquiring of any or all  
12          the practices of cosmetology and while so learning, performs or assists in any of the  
13          practices of cosmetology in any school registered or licensed and under the immediate  
14          supervision of an instructor licensed as such under this chapter.
- 15      15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's  
16          training in a duly registered school of cosmetology.
- 17      16. "Tuition" means the total cost of a person's cosmetology studies, and does not include  
18          books or demonstration kits.

19       **SECTION 2.** A new subsection to section 43-11-02 of the North Dakota Century Code is  
20   created and enacted as follows:

21           Skin care provided under the supervision, control, and responsibility of a physician in  
22           the hospital, clinic, or physician's office.

23   ~~— **SECTION 3. AMENDMENT.** Section 43-11-05 of the North Dakota Century Code is~~  
24   ~~amended and reenacted as follows:~~

25   ~~— **43-11-05. Officers of board - Powers - Rulemaking.**~~

26   ~~— The members of the board annually shall elect a president and a secretary from the~~  
27   ~~members of the board. The president and the secretary may administer oaths. The board may~~  
28   ~~adopt rules necessary to implement this chapter, including rules establishing license,~~  
29   ~~application, examination, reexamination, renewal, late renewal, and administrative fees in~~  
30   ~~amounts necessary to compensate the board for administration and enforcement of this~~  
31   ~~chapter.~~

**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~~no 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~~. Three of the members of the board must each be a licensed cosmetologist who has had at least three years' practical experience in the occupation. The other two members of the board must be citizen members, at least one of whom has professional experience as a secondary teacher or as a postsecondary educator.

**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 one hundred dollars~~in the amount provided for members of the legislative management under section 54-35-10 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, and necessary expenses actually incurred in the performance of official duties.~~ Expenses incurred by a board member in the performance of an official function are payable by the board pursuant to sections 44-08-04 and 54-06-09. The compensation and expenses of all members of the board must be paid from the license fees and other sources of income of the board.

**SECTION 6. AMENDMENT.** Subsection 7 of section 43-11-16 of the North Dakota Century Code is amended and reenacted as follows:

7. Agrees not to:

a. ~~Conduct a clinical department for fees after licensure by the board, until the school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter;~~

b. Permit any student to practice on any person not an instructor or registered student of the school until the student has completed at least twenty percent of the total hours of instruction required by this chapter; or

c. ~~b.~~ Compensate any of its basic students in any way; and

~~**SECTION 6. AMENDMENT.** Section 43-11-17 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**43-11-17. Licenses issued for schools of cosmetology and cosmetology salons -- 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 by the board, as set forth in section 43-11-28 by rule. The board shall, after inspection and approval, issue a salon license, the annual fee for which must be determined by the board, as set forth in section 43-11-28 by rule.~~

~~**SECTION 7. 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. Adhere to the laws and rules regarding the practice of cosmetology;~~

~~2. Have educational qualifications equivalent to completion of four years of high school;~~  
~~and~~

~~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 by rule.~~

**SECTION 7. AMENDMENT.** Section 43-11-21 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-21. ~~Operator's~~Cosmetologist license - Examination required - Application - Examination - Fees.**

Each person who desires to secure an ~~operator's~~ a cosmetologist license shall file with the secretary of the board a written application under oath on a form supplied by the board. The application must be accompanied by all of the following:

1. Satisfactory proof of the educational qualifications required of a student;
2. An examination fee as may be fixed by the board pursuant to section 43-11-28; ~~by rule~~.
3. Satisfactory proof that the applicant has completed the required training in a school of cosmetology; ~~and~~.
4. A fee for original licensure as required by section 43-11-28 ~~rule~~.

**SECTION 8. AMENDMENT.** Section 43-11-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-24. ~~Operator's~~Cosmetologist license - When issued - Failure to pass examination - Reexamination - Retraining.**

~~An operator's~~ A cosmetologist license must be issued to any person who has met all the following requirements:

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. If an applicant fails to pass an examination, the applicant may be examined again with the payment of a reexamination fee as set forth in section 43-11-28. An applicant who fails to pass the first ~~reexamination~~ practical examination twice must complete an additional one hundred sixty hours of training at a school of cosmetology before applying for a second reexamination.

**SECTION 9. AMENDMENT.** Section 43-11-25 of the North Dakota Century Code is amended and reenacted as follows:

1       **43-11-25. License issued without examination - Conditions.**

2       The board may dispense with the examination of applicants for licenses to practice  
3       cosmetology and may grant licenses upon the payment of a fee for original licensure and the  
4       reciprocity fee ~~provided in section 43-11-28~~ if all the following requirements are met:

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

11      **SECTION 10. AMENDMENT.** Section 43-11-26 of the North Dakota Century Code is  
12      amended and reenacted as follows:

13      **43-11-26. Manager-operator - License - Qualifications.**

14      ~~A person~~An individual may obtain a manager-operator's license upon meeting all the  
15      following requirements:

- 16      1.   Furnishing to the board evidence of having practiced as a ~~licensed~~  
17      ~~operator~~cosmetologist for at least ~~one hundred twenty-five days~~one thousand hours.  
18      2.   Paying an original licensure fee as set forth in section 43-11-28; ~~and~~.  
19      3.   Complying with the other requirements of this chapter applicable to a  
20      manager-operator.

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

23      ~~**43-11-27. Instructor's license - Student instructor's license - Registration -**~~  
24      ~~**Qualifications.**~~

25      ~~1. No person may be licensed as an instructor of cosmetology unless the person~~  
26      ~~furnishes the board the examination fee set forth in section 43-11-28 and evidence of~~  
27      ~~having a general education equivalent to the completion of four years in high school.~~

28      ~~An applicant:~~

29      ~~a. Shall have at least nine hundred sixty hours instructor's training in cosmetology in~~  
30      ~~a school of cosmetology. In no event may more than two thousand sixty hours~~  
31      ~~instructor's training be required for admission to examination. Under this~~

subdivision the practical portion of the examination may be waived if the written examination is supplemented with videotapes of the applicant's teaching procedures;

~~b. Shall possess a current North Dakota license as a cosmetologist and must have been actively engaged in the practice of cosmetology for at least one year before application for an instructor's license, supplemented by not less than four hundred eighty hours instructor's training in a school of cosmetology or course of training approved by the board; or~~

~~c. Shall possess a current North Dakota license as a cosmetologist and shall have been actively engaged in the practice of cosmetology for at least three years prior to application for an instructor's license supplemented by not less than one hundred sixty hours instructor's training in a school of cosmetology or course of training approved by the board. No instructor or student instructor may be permitted to practice cosmetology on a patron other than that part of practical work which pertains directly to the teaching of practical operations to students.~~

~~2. Student instructors in cosmetology must be registered upon enrollment in a school of cosmetology and upon certification by the school to the board of the name, age, and qualifications of the student instructor which must be recorded in a register kept for that purpose. A student instructor shall, at the time of enrollment, possess a general education equivalent to the completion of four years in high school and hold a license as a cosmetologist. Upon completion of the course prescribed for student instructors, the student instructor shall make application on a form provided by the board and pay a fee as provided in section 43-11-28. The board shall thereupon cause the applicant to be examined for an instructor's license. The examination must be given by a special examining committee comprised of the board, assisted by one person designated by the board possessing the minimum qualifications entitling the person to instruct in an institution of higher learning and who shall examine the applicant in teaching procedures only. Upon successfully passing the examination the board shall issue an instructor's license to the applicant.~~



~~3. No person is entitled to renew an instructor's license unless the instructor has furnished to the board evidence of completion of the continuing education established by the board by rule.~~

**SECTION 11. AMENDMENT.** Subdivision b of subsection 1 of section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

b. Examinations:

(1) Operator practical examination \$25.00

(2) Instructors practical examination \$55.00

(3) ~~Reexamination fee, operator's~~

~~(a) Practical \$30.00~~

~~(b) Written \$20.00~~

~~(4) Reexamination fee, instructor's~~

~~(a) Practical \$55.00~~

~~(b) Written \$25.00~~ Written

examination fees are set and collected by the administrator of the examination and payment is the responsibility of the applicant.

**SECTION 12. AMENDMENT.** Section 43-11-31 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-31. License - Refusal to grant - Grounds.**

The board may ~~refuse to grant a license which may be issued under this chapter to any person who~~ deny an application or discipline a licensee on any of the following grounds:

1. ~~Is guilty of fraud~~ Fraud in passing the examination; ~~;~~
2. ~~Is guilty~~ Conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public ~~as a cosmetologist in a profession licensed by the board~~, or ~~who~~, following conviction of any offense, the board determines the person is not sufficiently rehabilitated under section 12.1-33-02.1; ~~;~~
3. ~~Is guilty of grossly~~ Grossly unprofessional or dishonest conduct; ~~;~~
4. ~~Is addicted~~ Addiction to the use of intoxicating liquor or drugs to such an extent as to render the person unfit to practice cosmetology; ~~;~~
5. ~~Advertises~~ Advertising by means of knowingly false or deceptive statements;
6. ~~Fails~~ Failure to display the license as provided in this chapter; ~~or~~

1        7.    ~~Violates~~Violation of the provisions of this chapter or the rules adopted by the board.

2        8.    Permitting an unlicensed person to practice cosmetology, manicuring, skin care, or  
3        teaching in a cosmetology salon or school of cosmetology.

4    ~~— **SECTION 14. REPEAL.** Section 43-11-28 of the North Dakota Century Code is repealed.~~

5    ~~— **SECTION 15. EFFECTIVE DATE.** Section 14 of this Act becomes effective on January 1,~~  
6    ~~2012.~~