

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1164
(Industry, Business and Labor Committee)
(At the request of the State Board of Cosmetology)

AN ACT to amend and reenact sections 43-11-01, 43-11-02, 43-11-08, 43-11-11, 43-11-12, 43-11-17, 43-11-19, 43-11-20.1, 43-11-21, 43-11-23, 43-11-24, 43-11-26, 43-11-27, 43-11-28, 43-11-32, 43-11-33, 43-11-34, and 43-11-35 of the North Dakota Century Code, relating to licensure and regulation of cosmetologists and cosmetology salons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology is defined and includes, but otherwise is not limited thereby, the following or any one or a combination of practices: arranging, dressing, curling, 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, 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. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
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.
8. "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.
40. 9. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
44. 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.
42. 11. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
43. 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.
44. 13. "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.
45. 14. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
46. 15. "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 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 43-11-08 of the North Dakota Century Code is amended and reenacted as follows:

43-11-08. Meetings of the board. The board shall meet at least twice each year ~~on the third Tuesday in January and July at times determined by the board.~~ The board ~~may meet at such other times and places as is necessary to conduct the official business of the board~~ shall publish annually the time and place of its regularly scheduled meetings. A majority of the members constitutes a quorum.

SECTION 4. AMENDMENT. Section 43-11-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 5. AMENDMENT. Section 43-11-12 of the North Dakota Century Code is amended and reenacted as follows:

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

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 ~~annually~~ by the board, as set forth in section 43-11-28. 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.

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. ~~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 8. 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:

<u>Term Hours</u> <u>Completed Enrolled</u>	<u>Tuition</u> <u>Retained</u> <u>By School</u>
0.0% - 4.9%	20%
5% - 9.9%	30%
10% - 14.9%	40%
15% - 24.9%	45%
25% - 49.9%	70%
Over 50%	100%

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

SECTION 9. AMENDMENT. Section 43-11-21 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Each person who desires to secure an operator's 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:

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

SECTION 10. AMENDMENT. Section 43-11-23 of the North Dakota Century Code is amended and reenacted as follows:

43-11-23. Examination. The examination of applicants for license to practice under this chapter must be conducted under rules prescribed by the board and must include both 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 11. 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~~ A person who fails to pass the reexamination must complete an additional one hundred sixty hours of training at a school of cosmetology ~~prior to~~ before reapplying for examination.

SECTION 12. AMENDMENT. Section 43-11-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 13. AMENDMENT. Section 43-11-27 of the North Dakota Century Code is amended and reenacted as follows:

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

1. No person may be licensed as an instructor of cosmetology unless the person furnishes the board the examination fee set forth in section 43-11-28 and evidence of having ~~attained the age of eighteen years and having~~ a general education equivalent to the completion of four years in high school. An applicant:
 - a. Shall have at least nine hundred sixty hours instructor's training in cosmetology in a school of cosmetology. In no event may more than two thousand sixty hours 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 video tapes of the applicant's teaching procedures;
 - b. Shall have at least one year's experience as an active practicing cosmetologist, supplemented by not less than four hundred eighty hours instructor's training in cosmetology in a school of cosmetology. In no event may more than six hundred hours instructor's training be requisite for admission for examination under this subdivision; 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 cosmetology in a school of cosmetology. In no event may more than six hundred hours instructor's training be requisite for admission for examination under this subdivision. 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 may be licensed as a demonstrator unless the person is a licensed cosmetologist or shall file proof with the board of continuously practicing in another state as a cosmetologist for a period of at least two years prior to the date of the application for license as a demonstrator and shall pay an original license fee as set forth in section 43-11-28.~~
4. No person is entitled to renew an instructor's license unless the instructor has furnished to the board evidence of attendance at an approved seminar pursuant to requirements prescribed by the board.

SECTION 14. 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
(6) (3)	Reexamination fee, operator's	
	(a) Practical	\$ 25.00
	(b) Written	\$ 15.00
(7)	Reexamination fee, manager-operator	\$ 20.00
(8) (4)	Reexamination fee, instructors	
	(a) Practical	\$ 50.00
	(b) Written	\$ 20.00

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

SECTION 15. 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 16. 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 17. 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.

SECTION 18. AMENDMENT. Section 43-11-35 of the North Dakota Century Code is amended and reenacted as follows:

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1164.

House Vote: Yeas 91 Nays 4 Absent 2

Senate Vote: Yeas 43 Nays 4 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State