Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011

SENATE BILL NO. 2098
(Industry, Business and Labor Committee)
(At the request of the State Board of Cosmetology)

AN ACT to create and enact a new subsection to section 43-11-02 of the North Dakota Century Code, relating to exemption from cosmetology licensure; and to amend and reenact sections 43-11-01, 43-11-03, 43-11-04, and 43-11-06, subsection 7 of section 43-11-16, sections 43-11-21, 43-11-24, 43-11-25, and 43-11-26, subdivision b of subsection 1 of section 43-11-28, and section 43-11-31 of the North Dakota Century Code, relating to fees, the practice and licensing of cosmetologists, cosmetology salons, estheticians, instructors, manicurists, and schools, and the powers, membership, and compensation of the state board of cosmetology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-11-01. Definitions.

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

1. "Board" means the state board of cosmetology.

2. "Cosmetologist" means an individual licensed under this chapter to practice cosmetology.

3. "Cosmetology" means any one or combination of practices generally and usually performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding 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 includes 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, 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.

~~10.~~11. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.

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

13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, waxing to remove hair, beautifying, or similar work on the body of any person. The term does not include invasive care.

14. "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.

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

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

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

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

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 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~~;~~.

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.

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:

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 all the following requirements are met:

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

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

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

1. Furnishing to the board evidence of having practiced as a ~~licensed operator~~cosmetologist for at least ~~one hundred twenty-five days;~~one thousand hours.

2. Paying an original licensure fee as set forth in section 43-11-28~~; and~~.

3. Complying with the other requirements of this chapter applicable to a manager-operator.

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~~.
7. ~~Violates~~Violation of the provisions of this chapter or the rules adopted by the board.
8. Permitting an unlicensed person to practice cosmetology, manicuring, skin care, or teaching in a cosmetology salon or school of cosmetology.

_____ _____
President of the Senate Speaker of the House

_____ _____
Secretary of the Senate Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2098.

Senate Vote:	Yeas 47	Nays 0	Absent 0
House Vote:	Yeas 75	Nays 15	Absent 4

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Secretary of the Senate

Received by the Governor at _____M. on _____, 2011.

Approved at _____M. on _____, 2011.

_____
Governor

Filed in this office this _____day of _____, 2011,

at _____ o'clock _____M.

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Secretary of State