21.0960.01000

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1426

Introduced by

Representatives Nathe, O'Brien

Senator Meyer

A BILL for an Act to create and enact section 43-11-02.1 of the North Dakota Century Code, relating to certification of niche beauty services providers; and to amend and reenact sections 43-11-01 and 43-11-02 of the North Dakota Century Code, relating to exemptions to regulation by the state board of cosmetology and definitions relating to the regulation 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. "Booth space" means that part of a licensed salon operated independently by an individual licensed under this chapter.
3. "Cosmetic application" means the application of a cosmetic to enhance the appearance of the face or skin, including powder, foundation, rouge, eyeshadow, eyeliner, mascara, and lipstick. The term includes the application of makeup applied using an airbrush. The term does not include the application of permanent makeup or tattooing.
4. "Cosmetologist" means an individual licensed under this chapter to practice cosmetology.
~~4.~~5. "Cosmetology" means any one or a 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.

a. The term includes the following or any one or a combination of these practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any individual 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, performing noninvasive hair removal, beautifying, or similar work on the body, manipulation of eyelashes, or manicuring the nails of any individual.

b. The term does not include natural hair braiding or threading.

~~5.~~6. "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.

~~6.~~7. "Esthetician" means an individual who is licensed by the board to engage in the practice of skin care.

~~7.~~8 "Eyelash extension application" means the application, removal, and trimming of threadlike natural or synthetic fibers to an eyelash and includes the cleansing of the eye area and lashes. Eyelash extensions do not include color agents, straightening agents, permanent wave solutions, bleaching agents, or any other cosmetology service.

9. "Hairstyling" means the practice of shampooing, conditioning, drying, arranging, curling, straightening, or styling hair using only mechanical devices, hair sprays, and topical agents, such as balms, oils, and serums. The term includes the use and styling of hair extensions, hair pieces, and wigs. The term does not include cutting hair or the application of dyes, bleach, reactive chemicals, keratin treatments, or other preparations to color or alter the structure of hair.

10. "Homebound" means an individual who is ill, disabled, or otherwise unable to travel to a salon.

~~8.~~11. "Instructor" means an individual who is at least eighteen years old, 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.

~~9.~~12. "Invasive care" means any procedure that invades the live tissue of the dermis, including:

a. Laser use; and

b. Chemical peels using:

(1) Thirty percent or higher concentration of alpha hydroxy acid;

(2) Twenty percent or higher concentration of beta hydroxy acid;

(3) Two percent or higher concentration of resorcinol;

(4) Fifteen percent or higher concentration of trichloroacetic acid (TCA); or

(5) Fifteen percent or higher concentration of phenol.

~~10.~~13. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any individual.

~~11.~~14. "Manicurist" means an individual who is licensed by the board to engage in the practice of manicuring.

~~12.~~15. "Master cosmetologist" means an individual who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.

~~13.~~16. "Mechanical device" means a brush, clip, comb, crochet hook, curler, curling iron, flat iron, hairpin, roller, scissors, blunt-tipped needle, thread, tweezers, and hair binder.

~~14.~~17. "Natural hair braiding" means the service of twisting, wrapping, weaving, extending, locking, or braiding hair by hand or with a mechanical device. Natural hair braiding is commonly known as "African-style hair braiding" but is not limited to any particular cultural, ethnic, racial, or religious forms of hairstyles.

a. The term includes:

(1) The use of natural or synthetic hair extensions, natural or synthetic hair and fibers, and decorative beads and other hair accessories;

(2) Minor trimming of natural hair or hair extensions incidental to twisting, wrapping, weaving, extending, locking, or braiding hair;

(3) The making of wigs from natural hair, natural fibers, synthetic fibers, and hair extensions; and

(4) The use of topical agents, such as conditioners, gels, moisturizers, oils, pomades, and shampoos, in conjunction with performing services under paragraph 1 or 2.

b. The term does not include:

(1) The application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair; or

(2) The use of chemical hair joining agents, such as synthetic tape, keratin bonds, or fusion bonds.

~~15.~~18. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.

~~16.~~19. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, performing noninvasive hair removal, beautifying, or similar work on the body of any person. The term does not include invasive care or threading.

~~17.~~20. "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.

~~18.~~21. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

~~19.~~22. "Threading" means the method of removing hair from the eyebrows, upper lip, or other body part by using cotton thread to pull hair from follicles.

a. The term may include the use of an over-the-counter astringent, gel, and powder, tweezers, and scissors, incidental to the removal of hair by threading.

b. The term does not include the use of chemicals, heat, or any type of wax.

~~20.~~23. "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 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 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.
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, beauty aid, or equipment, 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.
8. Skin care provided under the supervision, control, and responsibility of a physician practicing within the scope of the physician's license under chapter 43-17 or nurse practicing within the scope of the nurse's license under chapter 43-12.1.
9. Providing dry hairstyling.
10. Providing eyelash extension application.

SECTION 3. Section 43-11-02.1 of the North Dakota Century Code is created and enacted as follows:

43-11-02.1. Certification for niche beauty services.

The board shall certify an individual who performs only hairstyling and cosmetic application as a niche beauty services provider. The board may require a certificate holder to complete a board-approved four-hour course in health, safety, and infection control and state law. A certificate holder is not licensed under this chapter as a cosmetologist, esthetician, or

manicurist. A facility at which a niche beauty services provider provides hairstyling and cosmetic services is not subject to regulation under this chapter.