

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2249

2001 SENATE HUMAN SERVICES

SB 2249

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2249

Senate Human Services Committee

Conference Committee

Hearing Date January 29, 2001

Tape Number	Side A	Side B	Meter #
1		X	10.4
Committee Clerk Signature			

Minutes:

The hearing was opened on SB 2249.

ROLF SLETTEN, Executive secretary and treasurer of ND State Board of Medical Examiners, introduced the bill. (Written testimony) SENATOR MATHERN: Why not include this under number 3? MR. SLETTEN: They are not licensed.

BERT KNELL, President of the Board of Cosmetology, supports the bill, written testimony.

No opposition.

The hearing was closed on SB 2249.

SENATOR MATHERN moved a DO PASS. SENATOR FISCHER seconded it. Roll call vote carried 6-0. SENATOR KILZER will carry the bill.

Date: 1/29/01

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2249

Senate HUMAN SERVICES Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Sen Mathern Seconded By Sen Fischer

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Kilzer

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 29, 2001 1:06 p.m.

**Module No: SR-15-1823**  
**Carrier: Kilzer**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2249: Human Services Committee (Sen. Lee, Chairman) recommends DO PASS**  
**(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2249 was placed on the**  
**Eleventh order on the calendar.**

2001 HOUSE HUMAN SERVICES

SB 2249

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2249

House Human Services Committee

Conference Committee

Hearing Date February 13, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		800 to 1785
Tape 1			1910 to 2060
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Chairman Price: Open the hearing on SB 2249.

Senator Kilzer: Presented the Bill. SB 2249 is a bill that I sponsored at the request of the State Board of Medical Examiners. Skin care comes under the Board of Cosmetology and if you violate something to do with skin care without a license, you will be prosecuted by the Board of Cosmetology. There are seven or eight exemptions under the existing law. This bill would add one more exemption to the people who do skin care so that they would not be subject to the Board of Cosmetology. This bill states that people who work in physicians offices and clinics would be exempt. For example, if I have someone in my office who removes stitches after

surgery and they don't have proper qualifications, they could be prosecuted if they are not licensed. So this Bill is brought in to take care of that.

Rep. Weiler: Can you give me an example in your office of someone that would take out stitches?

Senator Kilzer: Usually LPN's, sometimes technicians of one type or another.

Rep. Weiler: Give me an example of someone that is licensed to do that?

Senator Kilzer: In a typical medical office, it is just the physicians who are licensed in addition to nurses that might be there.

Chairman Price: Are you saying that, unless we pass this bill, that anyone in a physicians office that does some type of skin care is falling under the Board of Cosmetology right now?

Senator Kilzer: The incident that Mr. Sutton will address is someone that was in that situation. There is a possible liability of someone doing skin care without a license.

Rep. Galvin: I can't envision a cosmetologist removing stitches, but it must have something to do with removing or shaving the hair before the procedure, that's what the bill would be about?

Senator Kilzer: That is probably a better example than what I gave.

Rep. Devlin: We had suggested merging the Board of Podiatrists with the State Medical Board, and it didn't meet with a lot of success. Do you have any thoughts on that?

Senator Kilzer: My thoughts on that is that we should have the numbers. We should have at least 100 or 200 practitioners before we give licensing authority, because if they have to discipline one of their members, they run out of funds and complete the process.

Chairman Price: We will stand at ease until Mr. Sletten gets here.

Chairman Price: The meeting will come to order and we will resume the hearing on SB 2249.

John Olson: North Dakota Board of Medical Examiners. I have passed out testimony that was written out by my boss, the Executive Director Rolf Sletten. The bill essentially does a very simple thing. It exempts the services provided under the supervision, control, and responsibility of a North Dakota licensed physician from Cosmetology Practice Act. Currently Estheticians are people who engage in the practice of skin care and they are regulated by the Board of Cosmetology. The Board of Cosmetology's attorneys advised the Board of Medical Examiners that there were some people who were providing these kinds of services in a plastic surgeons office that were in violation of the Cosmetology Act. As a result, this Bill was prepared to exempt those people who assist physicians in Dermatologists offices from the Cosmetology Act. (See Rolf Sletten's written testimony.)

Bert Knell: President, N.D. State Board of Cosmetology. (See support of SB 2249 in written testimony.) The board members voted to except this exemption.

Chairman Price: Close hearing on SB 2249.

**COMMITTEE WORK:**

**Chairman Price**: Would you like to take action on SB 2249?

**Rep. Metcalf**: I will motion for a DO PASS.

**Rep. Tieman**: I will second.

**Chairman Price**: The clerk will take the roll for a DO PASS.

**12 YEAS, 2 ABSENT**

**CARRIED BY REP. POLLERT**

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2249A

House Human Services Committee

Conference Committee

Hearing Date March 20, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		4350 to 5800
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Doseli, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig

**COMMITTEE WORK:**

Chairman Price: We pulled SB 2249 back down here to hold until we decided on SB 2371. The Board of Medical Examiners have proposed amendments to that bill. On the last line it will read "licensed physician in a hospital or a medical clinic". The first thing we need to do to re-address this bill is that we have to vote to reconsider our options. If not, it will go back up to the floor as is as a DO PASS. The concerns expressed by the cosmetologists with this bill which all came after our hearing was that the persons owning or operating a spa would have licensed personnel doing these procedures. I had asked Mr. Olson to prepare language that he felt would definitely specify that the only exemptions are in a hospital or in the doctor's office. I also expressed my

concerns about the physician actually seeing the patient. Mr. Olson, would you like to address that?

John Olson: I presented this year and it is the best we can do. We want to make it very clear that we're not talking about spas. Medical clinics and hospitals are pretty widely known terms and should restrict those exemption to those practices where medical services are being rendered.

Chairman Price: Committee, what would you like to do?

Vice Chairman Devlin: I would move that we reconsider action where SB 2249 received a DO PASS in this committee.

Rep. Metcalf: Second.

Chairman Price: All those in favor signify by saying Aye. We have 2249 in front of us what are your wishes.

Vice Chairman Devlin: I will move the Medical Examiner's amendment.

Rep. Metcalf: Second.

Chairman Price: Any discussion? Mr. Olson, do you feel that this will take care of having these services in a spa unless by a licensed cosmetologist or esthetician?

John Olson: I don't know how more clear we can be.

Chairman Price: All those in favor of the amendments signify by saying Aye? Opposed? We have an amended bill, what are your wishes?

Rep. Metcalf: I move a DO PASS on the amended bill.

Rep. Weiler: Second.

Chairman Price: Discussion?

Rep. Dosch: Have we addressed the concern of Rep. Porter that by doing this we are allowing a licensed individual to do things in a medical office that they couldn't do anywhere else?

Chairman Price: No.

Rep. Porter: My concerns are still there. That what we're saying it is not under the direct supervision. We're saying that an untrained, unlicensed individual that is working in a medical clinic for a physician can, by themselves, apply medical grade products to an unknowing patient. If nothing ever happens, I think we have an unknowing patient situation being in a physician's office. We don't allow it with nurses, and we don't allow it with lab techs. I am going to oppose the bill as it is written.

Chairman Price: This bill came in front of us because, apparently, there was an unlicensed person doing some sort of services they felt should require a license. Do you want the physician's office to have that legally or not?

Rep. Porter: We have a motion for a DO PASS as amended. Clerk will read the roll. The motion failed.

Rep. Porter: I move a DO NOT PASS as amended.

Rep. Klein: Second

Rep. Porter: By defeating this bill it does not affect the licensed practical nurse, the licensed registered nurse, any licensed professional working inside that physician's office. All it is affecting is an untrained, unlicensed person, doing something in a physician's office. It is the right statement in public protection.

Chairman Price: We have a motion for a DO NOT PASS.

8 YES 5 NO 1 ABSENT

CARRIED BY VICE CHAIRMAN DEVLIN

Date: 2-13-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2249

House Human Services Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. Metcalf Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary	✓	
Rep. William Devlin, V, Chairman	✓		Rep. Ralph Metcalf	✓	
Rep. Mark Dosch	✓		Rep. Carol Niemeier		
Rep. Pat Galvin	✓		Rep. Sally Sandvig	✓	
Rep. Frank Klein					
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Wayne Tieman	✓				
Rep. Dave Weiler	✓				
Rep. Robin Weisz	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Pollert

If the vote is on an amendment, briefly indicate intent:

18279.0101  
Title.0200

Adopted by the Human Services Committee  
March 20, 2001

VR  
3/20/01

**HOUSE AMENDMENTS TO SB 2249**      **HOUSE HUMAN SERVICES**      **03/21/01**  
Page 1, line 8, replace the first comma with "or medical" and remove ", or physician's office"

Renumber accordingly

Date: 3-20-01  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2249

House Human Services Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Rep. Metcalf Seconded By Rep. Weiler

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	X		Rep. Audrey Cleary	X	
Rep. William Devlin, V, Chairman		X	Rep. Ralph Metcalf	X	
Rep. Mark Dosch		X	Rep. Carol Niemeier		X
Rep. Pat Galvin		X	Rep. Sally Sandvig		X
Rep. Frank Klein		X			
Rep. Chet Pollert	X				
Rep. Todd Porter		X			
Rep. Wayne Tieman	X				
Rep. Dave Weiler	X				
Rep. Robin Weisz					

Total (Yes) 6 No 7

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-20-01  
 Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2249

House Human Services Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass as Amended

Motion Made By Rep. Porter Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman		X	Rep. Audrey Cleary		X
Rep. William Devlin, V, Chairman	X		Rep. Ralph Metcalf		X
Rep. Mark Dosch	X		Rep. Carol Niemeier	X	
Rep. Pat Galvin	X		Rep. Sally Sandvig	X	
Rep. Frank Klein	X				
Rep. Chet Pollert		X			
Rep. Todd Porter	X				
Rep. Wayne Tieman		X			
Rep. Dave Weiler	X				
Rep. Robin Weisz					

Total (Yes) 8 No 5

Absent 1

Floor Assignment Devlin

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
**March 21, 2001 8:36 a.m.**

**Module No: HR-49-6223**  
**Carrier: Devlin**  
**Insert LC: 18279.0101 Title: .0200**

**REPORT OF STANDING COMMITTEE**

**SB 2249: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). SB 2249 was placed on the Sixth order on the calendar.**

Page 1, line 8, replace the first comma with "or medical" and remove ", or physician's office"

Renumber accordingly

2001 TESTIMONY

SB 2249



**NORTH DAKOTA STATE  
BOARD OF COSMETOLOGY**

1102 S. WASHINGTON SUITE 310  
P.O. BOX 2177  
BISMARCK, ND 58502  
TELEPHONE (701) 224-9800

**TESTIMONY OF BERT KNELL**

**ON**

**SENATE BILL 2249**

**Mr. Chairman, members of the committee, I am Bert Knell, President of the Board of Cosmetology. I am here today in support of Senate Bill 2249.**

**Senate Bill 2249 being introduced today will exempt North Dakota licensed physicians in hiring a person in performing skin care or other services under their supervision, control and responsibility.**

**The board members voted to except this exemption.**

A handwritten signature in cursive script that reads "Bert Knell".

**Bert Knell, President  
ND State Board of Cosmetology**

**North Dakota State  
Board of Medical Examiners**

**ROLF P. SLETTEN**  
Executive Secretary and Treasurer

**LYNETTE LEWIS**  
Administrative Assistant

**TO: SENATE HUMAN SERVICES COMMITTEE**

**FROM: ROLF P. SLETTEN, EXECUTIVE SECRETARY AND TREASURER**

**RE: SENATE BILL 2249**

**DATE: JANUARY 29, 2001**

As is true of most if not all professions, the scope of practice of cosmetology is defined in very broad terms (see Exhibit A).

More importantly, the code provides that the cosmetology board licenses stheticians. Estheticians are defined (Exhibit A) as people who are licensed by that board "to engage in the practice of skin care".

The term skin care is extremely broad. Obviously, other people also engage in providing skin care, eg., dermatologists and plastic surgeons provide skin care at a level that no esthetician ever contemplated.

The history of this bill is that an attorney representing the Board of Cosmetology wrote to one or more plastic surgeons practicing in North Dakota and suggested that the doctor's assistant could be prosecuted criminally for practicing cosmetology without a license because that assistant was providing skin care.

We then suggested to that attorney that when activities which might be described as cosmetology or skin care are provided in a medical facility under the direction of a physician, the services fall within the practice of medicine and should not be regulated by the Cosmetology

**Board.**

The Cosmetology Board agreed and provided us with a proposed amendment to their practice act (Exhibit B).

This bill is an addition to the exemptions from the provisions of the Cosmetology Practice Act. The other exemptions are included here at Exhibit C.

# EXHIBIT A

**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. "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.
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.



# EXHIBIT C

**48-11-02. 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, by-laws, 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.