

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/09/2019**

Revised  
 Bill/Resolution No.: HB 1361

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This Bill requires the Board to create and determine the qualifications to practice advanced skin care.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 4. AMENDMENT. 43-11-28 Fees. 1a(15-16)  
 Advanced skin care certification, original certification \$20  
 Advances skin care certification, annual renewal \$20

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

In ND we currently have 438 licensed estheticians and 7,129 licensed cosmetologists, who would practice advanced skin care. The minimum impact would be that none of these licensees decided to become certified in advanced skin care bringing the revenue to \$0.00 annually, and maximum would be that all of these licensees decided to become certified in advanced skin care which would bring the revenue to \$151,340 annually. Additionally if only the licensed estheticians certified in advanced skin care the revenue would be \$8,760 annually.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Magen Buchholz

**Agency:** State Board of Cosmetology

**Telephone:** 701-224-9800

**Date Prepared:** 01/14/2019

**FISCAL NOTE**  
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	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>				\$151,340		\$151,340
<b>Expenditures</b>				\$0		\$0
<b>Appropriations</b>				\$0		\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

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**Name:** Magen Buchholz

**Agency:** State Board of Cosmetology

**Telephone:** 701-224-9800

**Date Prepared:** 01/14/2019

**2019 HOUSE HUMAN SERVICES**

**HB 1361**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Union Room, State Capitol

HB 1361  
1/29/2019  
31681

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature Nicole Klamann

### Explanation or reason for introduction of bill/resolution:

Relating to the practice of advanced skin care and relating to the regulation of the practice of advanced skin care by the state board of cosmetology.

### Minutes:

6

**Chairman Weisz:** Opened hearing. Our bill sponsor is not here yet, anyone in Support of HB 1361?

**Support:** None

**Chairman Weisz:** Anyone here in opposition?

**Megen Buchholz**, member of the Board of Cosmetology: Opposed, written testimony received, see **attachment 1**. This bill would expand the scope of practice for cosmetologists and estheticians to perform invasive procedures that currently require a medical or nurse practitioner's license to perform which puts the public at risk.  
(0:09:09)

**Chairman Weisz:** Questions from the committee? Seeing none, thank you.

**Representative Glenn Bosch**, District 30 of Bismarck: Introduced HB 1361. I was asked to present this bill by a constituent who is currently in the hospital. Unfortunately, I have not received written testimony to provide. This leaves me in a tough spot, as I'm uninformed about this industry. The bill adds a category of treatments provided by cosmetologists along with proposed training requirements.

**Chairman Weisz:** Any questions for Rep. Bosch? Seeing none. Further opposition?

**McKenzie Tupa**, licensed cosmetologist and licensed esthetician: Opposed, written testimony provided see **attachment 2**. The procedures mentioned in the bill are medical grade that only qualified individuals should be performing.  
(0:13:00)

**Chairman Weisz:** Questions? Further opposition?

**Deb Frank,** Salon owner and Cosmetology instructor, Citizen of Dickinson: Opposed, written testimony provided, see **attachment 3**. Cost and training requirements aren't realistic.  
(0:16:14)

**Vice Chair Rohr:** What percentage of your business is advanced skin care?

**Deb Frank:** 40%

**Vice Chair Rohr:** Of that 40%, how many of those clients have you referred out to medical for reactions or infections?

**Deb Frank:** I've never had a reaction. I've referred my clients onto dermatology due to my findings, not my actions.

**Vice Chair Rohr:** What is the percentage of clients have you referred to dermatology?

**Deb Frank:** 50% were referred back to the director of nursing for further exam.  
(0:18:25)

**Chairman Weisz:** Further questions? Thank you. Opposition?

**Andrea Birst,** owner of Glance Spa & Salon: Opposed, written testimony provided, see **attachment 4**  
(0:21:39)

**Chairman Weisz:** Questions? Seeing none, thank you? Opposition?

**Jodi Zahn,** JZ Trend Academy Owner: Opposed, not present written testimony provided. See **attachment 5**.

Michelle Maier, FNP-C: Family nurse practitioner. Opposed, not present, written testimony provided. See **attachment 6**

**Chairman Weisz:** Closes hearing

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Union Room, State Capitol

HB 1361  
1/31/2019  
31872

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature Nicole Klamann

### Explanation or reason for introduction of bill/resolution:

Relating to the practice of advanced skin care and relating to the regulation of the practice of advanced skin care by the state board of cosmetology.

### Minutes:

**Chairman Weisz:** Opened meeting. This was introduced by Representative Bosch for a constituent. He did not provide written testimony.

**Representative Todd Porter:** I move do not pass on HB 1361

**Representative Mary Schneider:** Second

**Roll Call Vote**      Yes 12      No 0      Absent 2  
Do Not Pass motion carries

**Rep. Schneider:** Carrier

**Chairman Weisz:** Closes meeting



**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1361**

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass    ☒ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Rep. Porter                      Seconded By Rep. Schneider

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz, Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr, Vice Chair	---	---	Mary Schneider	X	
Dick Anderson	---	---			
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert	X				
Todd Porter	X				
Matthew Ruby	X				
Bill Tveit	X				
Greg Westlind	X				
Kathy Skroch	X				

Total    (Yes)    12                      No    0

Absent    2

Floor Assignment    Rep. Schneider

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

**Do Not Pass Motion carries**

**REPORT OF STANDING COMMITTEE**

**HB 1361: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1361 was placed on the Eleventh order on the calendar.

**2019 TESTIMONY**

**HB 1361**

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HUMAN SERVICES COMMITTEE

TUESDAY JANUARY 29, 2019

TESTIMONY OF MAGEN BUCHHOLZ

HOUSE BILL NO. 1361

Mr. Chairman, members of the Committee, I am Magen Buchholz, member of the Board of cosmetology, and I appear on behalf of the Board.

The North Dakota Board of Cosmetology opposes Bill No. 1361, related to the practices of advanced skin care. The bill, in essence, would expand the scope of practice for cosmetologists and estheticians to perform invasive procedures that currently require a medical or nurse practitioners license to perform.

**SECTION 1.** The proposed change to North Dakota Century Code section 43-11-01 (1) involves the services of microdermabrasion, dermaplaning, and collagen induction therapy (CIT). Many of you may not be familiar with these skin care services, so the board would like to provide you with a brief description of each.

- Microdermabrasion treatments use minimally abrasive instrument to gently sand the skin, removing the thicker, uneven outer layer.
- Dermaplaning is a physical exfoliation procedure that requires the use of a sterile, surgical scalpel to gently “shave” the skin’s surface. This removes the outermost layer of skin along with fine vellus hair, also known as “peach fuzz”.
- Collagen induction therapy goes by many names, including micro puncture, dermal rolling, cosmetic dry needling, and percutaneous collagen induction. Microneedling is the most commonly used term to describe the procedure. It involves the use of tiny needles to create precision micro-perforations where the dermis and epidermis meet. This should result in

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controlled wounding that stimulates collagen and elastin production and skin renewal and repair.

Under current law, cosmetologists and estheticians are not allowed to perform any services that are considered “invasive care” defined under section 43-11-01(14), which is any procedure that invades the live tissue of the dermis. As such, cosmetologists and estheticians in the state of North Dakota are currently allowed to perform the above procedures as long as they do not penetrate past the epidermis. So for example, cosmetologists and estheticians can perform CIT if they only use a needle depth of .33mm, as this would not invade the live tissue.

This bill seeks to exclude the advance skin care procedures from the prohibition against invasive care, in essence, allowing cosmetologist and estheticians to perform microdermabrasion, dermaplaning, and CIT to an invasive depth that currently requires a medical license.

This expanded definition of “advanced skin care” to be performed at an invasive level is of great concern to the board as it would open the door to potential injury and unwanted side effects to the public that we are trying to protect. Essentially, this would mean that estheticians and cosmetologist would be performing medical treatments with no supervision and no medical license. Side effects for CIT alone can include darkening of the skin due to inflammation, aggravation of acne and reactivation of herpes, systemic hypersensitivity, allergic reactions and localized infections following the use of a non-sterile instrument. Allergic contact dermatitis has also been observed. Allowing someone to perform a procedure who does not have the ability to diagnose and treat or doesn’t work with a physician or APN, is leaving the public at risk. The risks are unacceptable to the board.

Dermaplaning and CIT are considered medical procedures in many states. After receiving the proposed bill, the board reached out to the NIC (National Interstate Council of State Boards of Cosmetology) and received feedback from eleven states that do not allow CIT as it is considered a

medical procedure. Illinois no longer allows their estheticians and cosmetologists to perform CIT at any depth. Utah allows CIT under an advanced license, but requires 1200 hours of education followed by a theory and practical exam. Further, the licensees may only perform at a 1.5mm depth with the needle, anything deeper requires supervision by a licensed health care practitioner. California, a leader in the esthetics industry, no longer allows their estheticians and cosmetologists to perform CIT or dermaplaning. Many states are considering following suit.

The board therefore opposes the proposed language in section one which would allow cosmetologists and estheticians in the State of North Dakota to perform invasive advanced skin care.

**SECTION 3.** One of the Board's biggest concerns with this proposed bill is the language found in subsection 1 of 43-11-27.2 that once an individual obtains an advanced skin care certificate, they would not be required to practice invasive advanced skin care under the supervision, control, or responsibility of a physician or advanced practice registered nurse. To allow cosmetologists and estheticians to perform invasive procedures is risky enough, but to require this without any supervision or control of licensed medical professionals puts the public at great risk.

The board is of course in favor of additional education, especially to keep up with new practices. However, the proposed addition to North Dakota Century Code section 43-11-27.2 is requiring the board to establish qualifications for certification to practice invasive advanced skin care. There is no national standard to follow because this is a medical procedure and out of our jurisdiction. Initial research into other states' requirements show very few have an advanced practice license/certification.

For example, Minnesota has an advanced practice esthetics license which requires 600 hours of esthetics training and 600 additional hours on advanced practice esthetics in a licensed cosmetology school. Yet these advanced practice licensees are not still not authorized to perform services to treat skin layers deeper than the epidermis, because these would be considered medical services. Minnesota

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requires eight hours of continuing education every three years for advanced practice licensees, which is the length of their license. One course must be on infection control and safety and another course must be on professional practice.

The proposed bill requires a yearly recertification that involves thirty hours of continuing education directly related to the practice of advanced skin care. As a board, we feel that this is excessive. To put this in perspective, a Registered Nurse in the state of North Dakota is only required to obtain twelve hours of continuing education every two years.

Finally, we are concerned that this would be a loss of business for our licensees that are currently allowed to provide noninvasive microdermabrasion and dermaplaning if they do not complete this certification and annual recertification. This proposed legislation does not include a grandfather clause which could mean that individuals that have been performing these services for years would need to complete the training, which would certainly disrupt their practice and income.

**SECTION 4.** The boards concern with section 4 is that the Certification Fee is removed. This fee is actually for the board to provide certification of licensure to other states when a licensee is requesting verification and is unrelated to the proposed changes in the rest of the bill. As you can see, the proposed instructor fee is already provided in subsections (9) and (10). The fee needs to be kept in for this purpose and duties of the board and should not be changed to be in conflict with the rest of the section.

Thank you for allowing the North Dakota Board of Cosmetology to present its concerns to you today. For the above reasons, the board opposes the bill in its entirety and I be happy to answer any further questions.

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McKenzie Tupa

House Bill No. 1361

1/29/19

House Bill No. 1361

I am McKenzie Tupa, a licensed cosmetologist and licensed esthetician. I agree with Ms. Buchholz's testimony. The procedures that are mentioned in this bill are medical grade procedures and only qualified individuals should be performing these procedures.

I understand the need for continuing education that aligns with the procedures esthetician's perform and would welcome appropriate mandatory continuing education. As a licensed esthetician in North Dakota my continuing education in my workplace are as follows:

Skincare product training and knowledge

Certification on all new procedures

Training and certification to operate new equipment

Certification on blood borne pathogens

Weekly webinars on infection control

I am also in support of the certification fee. I pay annual fees to retain my licenses. The certification fee is no different.

I am closing I am against this bill as I do not believe it is in the best interest of a practicing esthetician or to the public. Thank you for your time.



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Chairman, Committee Members,

I'm Deb Frank, Salon owner and Cosmetology Instructor. I reside in Dickinson and have been practicing Cosmetology for over 4 decades. I oppose House Bill #1361.

Our Cosmetology licenses currently allow us to practice the services defined in this bill under the advanced skin care definition; microdermabrasion, dermaplaning or collagen induction therapy aka micro needling.

As proposed, we would have to cease our practice and become certified in a class requiring 40 hours costing on average of \$2400.00. And then to be able to continue these services, we need 30 hours of continuing education at the rate \$60-100 per unit. That is almost 1 week out of our salons or studios. That is 1 week of income we cannot live without. The cost will also include:

1. Cost of training
2. Cost of hotel
3. Cost of gas
4. Cost of food

I will stand for any questions at this time.

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Testimony on HB 1361

Human Service Committee

Andrea Birst, Owner of Glance Spa & Salon

Mr. Chairman and member of the committee:

Good Morning, my name is Andrea Birst and I am the owner of Glance Spa and Salon in downtown Bismarck. Today I represent my entire staff consisting of 17 both cosmetologists and estheticians. **Today we are in opposition to the HB 1361.**

I have owned Glance Spa & Salon for nine years and have been a licensed cosmetologist for 16 years. Currently we, cosmetologists and estheticians perform microdermabrasion, dermaplaning or collagen induction therapy. This bill is proposing, and if passed, would require us to stop performing such services and take 40 continuing education hours and 30 hours each year thereafter. I find no reason that this is necessary. Directly speaking to estheticians or cosmetologists, there is currently no further education required by our board of cosmetology for any performed service. We do not see the reason to now directly govern these specific 3 services to require this large amount of education hours. Other services are performed to the skin that are just as qualified in importance such as chemical peels or any lash service. We believe in education greatly at our spa and salon and I do see the need to implement continuing education for our industry, most importantly sanitation regulations and requirements.

Honestly speaking we believe requiring this many hours of education for only these specific services is unfair. I also see this will be a tough endeavor to fulfill or create this kind of education training that would be new and advanced for estheticians and/or cosmetologists consecutively each year.

Lastly, I will state that this section 3 certification states that a certificate holder will not be required to perform these specific services under the supervision or control of a physician or registered nurse. This is slightly confusing or misleading. These services do not currently require this type of supervision and we see no need when performing these non-invasive services. Also, I would like to make mention that I have not once witnessed any adversity or issues around these specific services throughout my career as a cosmetologist.

As stated, we do believe in education and therefore advanced education. However, this is not the right approach. **We ask the committee today to please oppose HB 1361.**

Thank you for your time.

Human Services Committee

19.0486.01000

Tuesday January 29, 2019

Testimony of:

Jodi Zahn

CEO/Director of JZ Trend Academy Paul Mitchell Partner School

[jodiz@jztrendacademy.edu](mailto:jodiz@jztrendacademy.edu)

**House Bill #1361**

A BILL to an Act to create and enact section 43-11-27.2 of ND Century Code, relating to the practice of advanced skin care; to amend and reenact sections 43-11-01, 43-11-20, and 43-11-28 of the North Dakota Century Code, relating to the regulation of the practice of advanced skin care by the state board of cosmetology; to provide for application; and provide an effective date.

Introduced by:

Representatives Bosch, Nathe

Senator D. Larson

Mr. Chairman, members of the Committee, I am Jodi Zahn and have been in the industry since 1982 as a licensed cosmetologist, national educator, instructor, and currently a Cosmetology school owner.

Advanced skin care defined as microdermabrasion, dermaplaning or collagen induction therapy or (micro needling) as a noninvasive procedure is an acceptable practice by the school, with a .33mm needle. These services are noninvasive procedures and safe to the public.

**Noninvasive** procedures mean the services are provided on the epidermis layer (the outermost and thinnest layer of the skin. It contains no blood vessels, but has many small nerve endings.)

**Invasive procedures** mean services provided beyond the epidermis layer into the dermis (the underlying or inner layer of the skin containing numerous blood vessels, lymph vessels, nerves, sudoriferous (sweat) glands, sebaceous (oil) glands, and hair follicles, as well as arrector pili muscles which cause goose bumps.)

Our institution does provide education with advanced skin care using noninvasive procedures. As a school we do not teach invasive procedures. We recommend these services be provided under supervision of a medical professional due to penetration into the dermis. The school is able to provide certificates for individuals on these noninvasive advanced skin care procedures.

Cosmetology schools provide general sciences including infection control principles and practices, general anatomy and physiology, skin structure, growth and nutrition, along with skin disorders and diseases. We provide skin care including hair removal, facials, and facial makeup.

To conclude, the professional industry is always changing and new procedures are being introduced. Continued education is very important. I have witnessed individuals providing services without proper education, or they think they know how to do a service by watching a you-tube video. Thirty (30) hours of continued education seems aggressive. Industry companies, and licensed instructors at an accredited school should be able to provide certifications for individuals.

It is my professional opinion that allowing invasive procedures in the realm of cosmetology and skin care without medical supervision is not safe to the public.

Thank you for your time and allowing my testimony today.

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**Embrace**

SKIN, ANTI-AGING & WELLNESS

Better Health – Seek it. Find it.

1-29-19

To whom it concerns:

As a Family Nurse Practitioner who has had advanced training in skin procedures, I do have some concerns with the proposed house bill No. 1361. As a medical provider, it is expected that I can anticipate potential complications for treatments and procedures plus have a plan in place if a problem should occur. I do have a concern with the collagen induction therapy to be performed by cosmetologists with advanced skin care training. They are not medically trained, and the House Bill No. 1361 is proposing they are wanting to practice independently performing procedures invading live tissue of the dermis. Possible complications can occur after micro-needling which include infection, allergic reaction, pain/itching, and scarring and texture changes. The most common problem following micro-needling is a reaction to the medication or serum which is being used. As a Nurse Practitioner, I can provide a prescription necessary to treat the reaction, plus I obtain numbing cream compounded by the local pharmacy to make the treatment more comfortable. Cosmetologists are not licensed to dispense any medications. With Micro-needling blood exposure is common and likely to occur. Universal precautions must be taken and the microneedles need to be properly disposed. Please consider the potential complications and lack of required medical decision making with the procedure. If a treatment is given causing problems, the professional should be able to assist in taking care of the problem. For example, if a client requires a topical prescription, steroid cream, or appropriate antibiotic treatment It can be provided by a licensed medical practitioner.

Sincerely,

*Michelle Maier FNP-C*

Michelle Maier FNP-C