

recognized for such purposes by the State through the board of nurse examiners; and practiced in conjunction with curative and preventive medicine, by an individual licensed to so by the State through the Board of Nurse Examiners.

A "professional nurse" means one who has met all the legal requirements for registration in the State, and who practices or holds a position by virtue of her professional knowledge and legal status, and who holds a certificate from the North Dakota Board of Nurse Examiners, acquired according to the provisions of this act.

Training school and school of nursing are used synonymously.

§ 13. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 14. EMERGENCY.] An emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval.

Approved March 15, 1939.

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## PHOTOGRAPHY

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### CHAPTER 188

H. B. No. 270—(Schauss, Benno and Bergesen)

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#### PHOTOGRAPHY ACT

An act to create a State board of photographic examiners and to regulate the practice of professional photography and to provide for licensing and registration of persons engaged in the practice of professional photography and to protect the public from fraud practiced by unscrupulous and irresponsible persons through misrepresentation and other unconscionable artifices and the obtaining of the possession of property without returning value therefor and for the protection of the public health and safety; providing for the enforcement of the provision of this act and for the punishment for violation thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. PHOTOGRAPHY DEFINED.] The practice of professional photography shall be deemed to be the profession or occupation of production for compensation of images on sensitized materials by the action of light, and with the use of a camera; development and fixation of the latent image to render same visible and permanent, and/or the subsequent reproduction or transfer of such

image, either negative or positive, upon other sensitized material by the aid of light and chemical action. This shall not be deemed to include photo finishing, motion picture photography, the intaglio printing processes, nor the processes known as blue printing, brown printing and photoengraving, nor the use of the photostat or equivalent apparatus.

§ 2. EXCEPTIONS TO APPLICATION OF ACT.] In addition to the exceptions contained in Section 1, nothing herein shall be construed to apply to the following:

(a) Individuals, co-partnerships, associations and corporations engaged in photography solely for their own use, and their employees, provided the photographic reproductions produced by such departments are not sold nor offered for sale nor otherwise disposed of for a consideration in this State.

(b) Individuals receiving a salary and in the employ of newspapers and periodicals, and/or news and picture syndicates when performing acts of photography in the regular course of their employment by such newspapers and periodicals, provided that photographic reproductions produced by such employees are not sold nor offered for sale nor otherwise disposed of in this State, except to other newspapers, news syndicates or periodical publications, and then only by said employer.

(c) Authors and writers engaged in photography for the sole purpose of illustrating their own manuscripts.

(d) Individuals engaged in photography solely for their own use and pleasure, and/or engaged in the casual sale of photographic reproductions of their own making, provided such individuals do not have a regular clientele nor list of customers, and, further provided such individuals do not in any manner, shape or form solicit such orders and/or such individuals selling or otherwise disposing of photographic reproductions made by themselves when the same are exhibited in recognized art or photographic exhibitions and a price for such reproductions is stated in the catalogue or other printed matter of such exhibition.

(e) Individuals engaged in photography in the employ of the Federal Government, this State, or any other political subdivision thereof or of any public institution when acting in the regular course of their employment.

(f) Individuals or institutions engaged in photography solely for educational or scientific purposes.

(g) Medical or dental practitioners engaged in photography, provided the photographic reproductions so produced are used solely for clinical or educational purposes or to illustrate manuscripts for publication.

§ 3. CREATION OF BOARD.] There is hereby created a State

Board of Photographic Examiners, to consist of five members who shall be appointed by the Governor within ten days after the taking effect of this act, each of whom shall be a practicing photographer who shall have been engaged in the practice of professional photography in the State for not less than four consecutive years.

(a) Of the members first appointed to the board, two shall be appointed for one year, two for two years, and one for three years. Thereafter, the terms of all members shall be three year terms, except that appointments to fill vacancies happening in any manner shall be for the unexpired term only. The Governor shall appoint the five original members of the board from a list of seven or more candidates nominated by the professional photographers' association of this State, an organization having nominal dues, membership in which is open to all professional photographers in this State, without restriction. All vacancies thereafter shall be filled by the Governor from nominations made by the professional photographers' association of this State, which shall submit, on each occasion, a list including the names of at least double the number of candidates required.

(b) Members of said board, before entering upon their duties, shall take and subscribe to the oath of office provided for State officers and the same shall be filed in the office of the Secretary of State.

§ 4. ORGANIZATION; DUTIES OF OFFICERS; MEETINGS; COMPENSATION.] (a) Within thirty (30) days after the appointment of the members thereof, the board shall organize by electing one (1) of its members as president, one (1) as vice-president, and one (1) as secretary and treasurer. The board shall make such rules and regulations as may be necessary to the performance of its duties. A majority of the board shall constitute a quorum.

(b) It shall be the duty of the president to preside at all meetings. In the absence or incapacity of the president, the vice-president shall assume his duties. It shall be the duty of the secretary-treasurer to keep a record of all proceedings of the board, which shall be open at all times to public inspection. He shall have custody of all funds and shall hold, use or expend such funds only in the manner hereinafter provided. He shall give such surety bond as the board shall from time to time prescribe, in not less than double the amount of money he would hold at any one time, and the premium shall be a charge against the board.

(c) The board shall hold public meetings at least once each year and as often and at such places as it may deem necessary.

(d) Each member of the board shall receive as compensation five dollars (\$5.00) for each day he is present at and engaged in a session of the board, and/or is actively engaged in the duties of the board or of his office, in addition to actual and necessary traveling expenses and hotel bills incurred in connection with the

performance of such duties. In addition thereto, the secretary-treasurer shall be allowed an annual expense account not to exceed one hundred dollars (\$100.00) for stenographic assistance.

(e) The secretary-treasurer shall receive and be responsible for all fees and other revenue coming into the possession of the board, and shall be the custodian thereof. All expenses, salaries and compensation paid by said board under the provisions of this act shall be paid out of moneys in the hands of the secretary-treasurer of the board, and none thereof shall in any event be paid out of the Treasury of the State of North Dakota. Disbursements shall be made by the secretary-treasurer from such moneys only upon warrant duly signed by the president of said board, attested by the secretary-treasurer, and any moneys in the hands of the secretary-treasurer of the board at the end of the fiscal year shall be kept by him for the future maintenance of the board, to be disbursed only upon warrant as aforesaid. The secretary-treasurer shall keep a complete record of receipts and disbursements, together with vouchers, receipts and other evidence of such receipts and disbursements as may be required by said board, and shall at such times as may be required by said board, furnish to it a complete statement of such receipts and disbursements, under oath.

§ 5. AUTHORITY TO GIVE EXAMINATIONS. CERTIFICATES AND LICENSES.] (a) The board shall have authority to examine applicants who desire to practice photography in the State; to collect fees for such examinations, and to issue certificates of registration and license to practice photography to such as qualify as to competency, ability and integrity. The board shall adopt rules for the issuance of temporary certificates pending an examination, which shall be null and void after the next ensuing examination by the board. For the advancement of the profession, the board shall also provide for temporary certificates to apprentices.

(b) In giving examinations, the board may take testimony, under oath, which may be administered by any member, as to technical qualifications or the business record of the applicant, and the board shall grant or refuse a license to practice to the applicant in accordance with the provisions of Section 8 hereof.

§ 6. FORMS OF TECHNICAL EXAMINATIONS.] The board shall provide two forms of technical examinations, covering respectively portrait and commercial photography, and shall provide separate certificates for each such branch of photography. A certificate for any one branch shall not permit practice of the other branch, but a person may hold certificates in both branches. An applicant may take the examination in one or more such branches of photography, and if taken at the same meeting of the board, one examination fee shall suffice.

§ 7. REPORTS; REMOVAL OF MEMBER.] (a) The board shall

make an annual report of its proceedings to the Governor, not later than the fifteenth (15th) day of December of each year, which report shall contain an account of all moneys received and disbursed, from what source received, and for what purpose paid out.

(b) After a full and complete hearing of charges, the Governor, on a majority vote of the remaining members and himself, may remove any member of the board for continued neglect of duty, incompetency, or unlawful or dishonorable conduct.

§ 8. EXAMINATIONS; FEES; LICENSES.] (a) Every person desiring to commence the practice of photography in this State after this act takes effect, shall file an application, under his true name, for a license to so practice, together with an examination fee of twenty-five dollars (\$25.00), with the secretary of the board. He shall appear before the board for examination within one year, and present such references and credentials as the board may require, and shall give satisfactory evidence as to competency and fitness to practice photography, based on technical knowledge and business integrity.

(b) If the applicant successfully passes the examination, he shall be registered by the board as a qualified photographer and receive a license signed by each member, authorizing him to practice photography. Such license shall not be transferable.

(c) No company, firm, corporation or association shall practice photography under an assumed or fictitious name, unless the name of the concern, together with the name of each person working under such name, or in any way associated with such concern shall be prominently and continuously displayed in the place of business of such concern. Said sign shall be conspicuously printed in plain type in the English language, on a card not less than twelve (12) by fourteen (14) inches, and shall be framed under glass.

(d) Fees paid for examination shall in no case be refunded, but an applicant who fails in the first examination may take a subsequent examination in branches in which he failed, and the fee for such re-examination shall be ten dollars (\$10.00). Should the applicant again fail, and desire to again come before the board for a third examination, he may make application as in the first instance, accompanied by the regular examination fee of twenty-five dollars (\$25.00).

§ 9. LICENSE TO BE RECORDED.] Each recipient of a license to practice photography shall record the same in the office of the register of deeds of the county in which he practices photography, and shall keep such license conspicuously displayed in his camera room.

§ 10. FEES.] (a) Every person licensed to practice photography, who maintains an established place of photographic business,

and who is not merely an employee of an established business, shall pay an annual fee of five dollars (\$5.00) for an establishment license.

(b) Every person licensed to practice photography, who is an employee of an established photographic business, shall pay an annual license fee of three dollars (\$3.00).

(c) All fees shall be paid to the secretary on or before July first (1st), and he shall give a receipt for the same.

(d) The annual establishment fee shall include the issuance of certificates covering portrait and commercial photography when issued to the same person, provided he is qualified to hold the same. The annual employee fee shall cover issuance of both certificates if applicant is qualified to hold same.

(e) The secretary shall notify by mail every licensee, at his last known address, that his license fee is due on July first (1st) of each year after this act takes effect, and that his license will be revoked unless said fee is paid in full on or before October first (1st) of the same year, and thirty (30) days prior to said date shall send a second notice to all who have failed to make payment.

(f) A photographer whose license is revoked for non-payment of the annual fee may make application to the secretary for reinstatement, accompanied by a fee of ten dollars (\$10.00), and if the board shall find the applicant to be guilty of no violation of this act other than default in payment of annual dues, he may be immediately reinstated.

§ II. REVOCATION OF LICENSE.] The board shall have power to revoke the license of any photographer who, in the opinion of the board, is guilty of fraudulent practices, or of willful misrepresentations, or for professional inactivity within the State for a period of one (1) year, unless given further time by the board, or who is convicted of a crime involving moral turpitude. Before any license shall be so revoked, the licensee shall be given notice in writing, mailed to his last known address, advising him of the charges, and at a date and place specified in said notice, not less than ten (10) days after service thereof, he shall be given a public hearing, and shall have the right to be represented by counsel and to present testimony in his behalf. In the conduct of any such hearing the board shall be governed by the usual rules of evidence, and all testimony shall be taken and a record of the hearing made and filed with the secretary of the board. Any individual, co-partnership, association or corporation, whose license is revoked as the result of such hearing, or to whom a license shall be refused as result of the examination following original application for such license, may commence an action in the district court of the county of his or its residence against the board for the purpose of obtaining relief from such act of the board.

§ 12. PHOTOGRAPHERS PRACTICING AT TIME LAW TAKES EFFECT.] The board may, without examination, upon application in writing to the secretary, accompanied by the fee prescribed in Section 10, which fee shall be deemed to be payment in full to July 1, 1940, and such proof of the qualifications of the applicant as the board may require, issue a photographer's license certificate and identification card to every photographer who has been continuously engaged in the practice of professional photography in this State for a period of at least one (1) year prior to the passage of this act, provided such application is made within sixty (60) days after the effective date of this act.

§ 13. UNLAWFUL TO PRACTICE WITHOUT A LICENSE.] (a) From and after thirty (30) days following the organization of the board, and notification by the board of the requirements of this act with respect to the filing of application for license, it shall be unlawful for any person or firm not licensed as prescribed herein to practice photography, either directly or indirectly, or by agent or employee, or for any person representing himself to be qualified to practice photography in the State.

(b) A person shall be regarded as practicing photography who is a manager, proprietor or conductor of a place in which photographs are made and offered for sale or who is an employee therein within the meaning of the provisions of this act.

§ 14. MISDEMEANOR TO PRACTICE PHOTOGRAPHY WITHOUT LICENSE.] Any individual, co-partnership, association or corporation who or which shall engage or attempt to engage in the practice of professional photography or act in the capacity of a professional photographer in this State either as manager, proprietor or conductor of a photographic establishment, or as an employee therein within the meaning of the provisions of this act, without first having complied with the provisions of this act, or whose license shall have been revoked or suspended, or who shall violate any provisions of this act, or who shall obtain or attempt to obtain a license certificate and/or identification card for money other than the required fee, or any other thing of value or by fraudulent misrepresentations, shall be guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction shall be sentenced to pay a fine for each such offense of not less than fifty dollars nor more than three hundred dollars or any individual so convicted may be sentenced to imprisonment for not less than thirty days nor more than one year, or both fine and imprisonment may be imposed, and each day such violation continues shall be considered a separate offense.

§ 15. SAVING CLAUSE.] If any provision of this act shall be held to be unconstitutional or invalid or unenforcible, such unconstitutional, invalid or unenforcible provision shall be con-

sidered severally from the remainder of this act although contained in sections containing other provisions and shall be excluded from this act and the fact that such provision shall be held to be unconstitutional, invalid or unenforcible, shall in no wise affect any other provision of this act, although contained in the same section; the Legislative Assembly hereby declaring that all sections of this act or parts thereof are independent sections and parts of sections and that it would have passed the remaining sections of said act and each provision thereof notwithstanding the unconstitutionality, invalidity or unenforcibility of any other portion thereof.

Approved March 16, 1939.

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## PROCEDURE

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### CHAPTER 189

H. B. No. 337—(Bergesen)

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#### REGULATING ADOPTION PROCEEDINGS

An act amending and re-enacting Section 4444 of the 1925 Supplement to the Compiled Laws of North Dakota for 1913, relating to the consent of parents or guardians of children involved in adoption proceedings, relating to the giving of consent therein by the State Board of Administration, or its successor, providing service of notice of such adoption proceedings upon such parents, guardians and/or said Board of Administration, or its successor, and providing for exceptions thereto; providing for method by which decrees of adoption may be attacked and time when such proceedings therefor may be commenced; specifying the procedure by which custody of children involved in such proceedings may be changed; and declaring that an emergency exists.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ I. AMENDMENT.] Section 4444 of the 1925 Supplement to the Compiled Laws of North Dakota for 1913, is hereby amended and re-enacted to read as follows:

§ 4444. CONSENT OF PARENTS OR GUARDIANS OR STATE BOARD OF ADMINISTRATION, OR ITS SUCCESSOR; CUSTODY OF CHILDREN.] Except as herein provided no adoption of a minor child shall be permitted without the consent of its parent or parents, but the consent of a parent who has abandoned the child, or who cannot be found, or who is insane or otherwise incapacitated from giving consent, or who has lost custody of the child through divorce proceedings or the order of a juvenile court, may be dispensed with, and consent may be given by the guardian, if there be one, or if there be no