Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2097
(Industry, Business and Labor Committee)
(At the request of the State Board of Cosmetology)

AN ACT to amend and reenact sections 43-11-01, 43-11-02, 43-11-04, 43-11-11, 43-11-13, 43-11-15, 43-11-25, 43-11-26, subsection 1 of section 43-11-27, and section 43-11-28 of the North Dakota Century Code, relating to the practice and licensing of cosmetology, manicuring, and esthetics.

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 that is operated independently by an individual licensed under this chapter.

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

~~3.~~4. "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~~performing noninvasive hair removal, beautifying, or similar work on the body, manipulation of eyelashes, or manicuring the nails of any person.

~~4.~~5. "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.

~~5.~~6. "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.~~

~~6.~~7. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.

~~7.~~8. "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.

~~8.~~9. "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 or higher concentration of alpha hydroxy acid~~, which includes glycolic acid with a pH of 3.0 or higher~~;

(2) Twenty percent or higher concentration of beta hydroxy acid~~, which includes salicylic acid with a pH of 3.0 or higher~~; ~~or~~

(3) Two percent or higher concentration of resorcinol ~~with a pH of 3.0 or higher~~;

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

(5) Fifteen percent or higher concentration of phenol.

~~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.~~

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

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

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

~~12.~~13. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.

~~13.~~14. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, ~~waxing to remove~~performing non-invasive hair removal, beautifying, or similar work on the body of any person. The term does not include invasive care.

~~14.~~15. "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.~~16. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

~~16.~~17. "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 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 in the hospital, clinic, or physician's office~~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.

SECTION 3. 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. 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~~One member of the board must ~~be citizen members, at least one of whom has~~have professional experience as a secondary teacher or as a postsecondary educator. One member of the board must be a licensed healthcare provider.

SECTION 4. AMENDMENT. Section 43-11-11 of the North Dakota Century Code is amended and reenacted as follows:

43-11-11. Sanitary rules - Practice outside salon.

The board with the approval of the state department of health shall adopt sanitary rules necessary to prevent the creating and spreading of infectious and contagious diseases. A cosmetology salon must be at a fixed location and may not be used for living or sleeping quarters. ~~An operator~~A cosmetologist or esthetician may practice outside of the establishment under the direction and control of ~~an owner or manager~~a master cosmetologist or master esthetician thereof under rules adopted by the board.

SECTION 5. AMENDMENT. Section 43-11-13 of the North Dakota Century Code is amended and reenacted as follows:

43-11-13. License required.

No person in this state may engage in or attempt to engage in the occupation of cosmetology, manicuring, or skin care, nor conduct a cosmetology salon or booth or school of cosmetology, unless having first obtained a license.

SECTION 6. AMENDMENT. Section 43-11-15 of the North Dakota Century Code is amended and reenacted as follows:

43-11-15. ~~Cosmetology salon~~Salon ownership and operation.

A ~~cosmetology~~ salon may be owned by any person authorized to do business in this state. A cosmetology salon must be operated and supervised by a ~~manager-operator~~master cosmetologist. A manicuring salon must be operated and supervised by a master cosmetologist or master manicurist. A salon providing only skin care must be operated and supervised by a master cosmetologist or master esthetician.

SECTION 7. 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 if all the following requirements are met:

1. The applicant has ~~complied~~:

   a. 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; or

   b. Provided satisfactory proof of completing the course curriculum hours required by the board and provided proof of successfully passing the theoretical and practical examinations substantially similar to those required in this state.

2. The applicant passes to the satisfaction of the board an examination on sanitary practices and cosmetology law in this state.

SECTION 8. AMENDMENT. Section 43-11-26 of the North Dakota Century Code is amended and reenacted as follows:

43-11-26. ~~Manager-operator~~Master cosmetologist - License - Qualifications.

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

1. Furnishing to the board evidence of having practiced as a cosmetologist for at least one thousand hours.

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

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

SECTION 9. AMENDMENT. Subsection 1 of section 43-11-27 of the North Dakota Century Code is amended and reenacted as follows:

1. No person may be licensed as an instructor of cosmetology unless the person furnishes the board the examination fee set forth in section 43-11-28 and evidence of having a general education equivalent to the completion of four years in high school. An applicant:

   a. Shall have at least nine hundred sixty hours instructor's training in cosmetology in a school of cosmetology. ~~In no event may more than two thousand sixty hours instructor's training be required for admission to examination.~~ Under this subdivision the practical portion of the examination may be waived if the written examination is supplemented with videotapes of the applicant's teaching procedures;

b. Shall possess a current North Dakota license as a cosmetologist and must have been actively engaged in the practice of cosmetology for at least one year before application for an instructor's license, supplemented by not less than four hundred eighty hours instructor's training in a school of cosmetology or course of training approved by the board; or

c. Shall possess a current North Dakota license as a cosmetologist and shall have been actively engaged in the practice of cosmetology for at least three years prior to application for an instructor's license supplemented by not less than one hundred sixty hours instructor's training in a school of cosmetology or course of training approved by the board. No instructor or student instructor may be permitted to practice cosmetology on a patron other than that part of practical work which pertains directly to the teaching of practical operations to students.

SECTION 10. AMENDMENT. Section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

43-11-28. Fees.

1. Fees to be paid by applicants for original registrations, original licenses, annual renewals, licenses issued upon reciprocity, and examinations as required under this chapter may not exceed the following amounts:

a. Original registrations, licenses, and annual renewals:	MAXIMUM FEE:
(1) Salons, original registration	$80.00
(2) Salons, annual renewal	$30.00
(3) School of cosmetology, original registration	$505.00
(4) School of cosmetology, annual renewal	$205.00
(5) ~~Operator~~Cosmetologist, original license	$15.00
(6) ~~Operator~~Cosmetologist, annual renewal	$15.00
(7) ~~Manager-operator~~Master cosmetologist, original license	$25.00
(8) ~~Manager-operator~~Master cosmetologist, annual renewal	$20.00
(9) Instructor, original license	$35.00
(10) Instructor, annual renewal	$20.00
(11) ~~Demonstrators, original license~~	~~$30.00~~
~~(12)~~ ~~Demonstrators, annual renewal~~	~~$20.00~~
~~(13)~~ Reciprocity license fee	$105.00
~~(14)~~(12) Registration fee for student instructor	$15.00
~~(15)~~(13) Duplicate license	$10.00
~~(16)~~ ~~Penalty fee for late renewal~~	~~$15.00~~
~~(17)~~(14) Certification fee	$20.00

b. Examinations:

(1) ~~Operator~~Cosmetology practical examination $25.00

(2) Instructors practical examination $55.00

(3) Written examination fees are set and collected by the administrator of the examination and payment is the responsibility of the applicant.

2. Fees are not prorated or returnable. The board may charge a ~~ten~~fifty dollar penalty for each license renewal ~~applications~~application received after December thirty-first. ~~The board may reduce a renewal fee from the maximum amount only if the board applies an equal percentage of reduction to all renewal fees.~~ The board shall sponsor an educational program for licenseholders to carry out the purposes of protecting the public health and safety and maintaining capable and skilled ~~operators, manager-operators~~cosmetologists, manicurists, estheticians, and instructors. The board shall use such portion of the renewal fees as the board may determine for the purpose of providing the educational program.

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-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2097.

Senate Vote:	Yeas 39	Nays 7	Absent 1
House Vote:	Yeas 83	Nays 8	Absent 3

Secretary of the Senate

Received by the Governor at 2:19 P. M. on April 16, 2015.

Approved at 10:32 A. M. on April 20, 2015.

Governor

Filed in this office this 20th day of April, 2015,

at 2:33 o'clock P. M.

Secretary of State