

CHAPTER 43-11 COSMETOLOGISTS

43-11-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetologist" means an individual licensed under this chapter to practice cosmetology.
3. "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 hair, beautifying, or similar work on the body, or manicuring the nails of any person.
4. "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.
5. "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. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
7. "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. "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 alpha hydroxy acid, which includes glycolic acid with a pH of 3.0 or higher;
 - (2) Twenty percent beta hydroxy acid, which includes salicylic acid with a pH of 3.0 or higher; or
 - (3) Two percent resorcinol with a pH of 3.0 or higher.
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. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, waxing to remove hair, beautifying, or similar work on the body of any person. The term does not include invasive care.
14. "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. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
16. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

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.

43-11-03. State board of cosmetology - Appointment - Term - Removal.

The state board of cosmetology consists of five members appointed by the governor for three years each, with their terms of office so arranged that no more than two terms expire on June thirtieth of each year. Each member shall qualify by taking the oath required of civil officers and shall hold office until a successor is appointed and qualified. The governor may remove from office a member for misconduct, malfeasance, neglect of duty in office, crime in office, gross incompetency, or habitual drunkenness. A vacancy on the board must be filled by appointment by the governor for the unexpired term.

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 of the board must be citizen members, at least one of whom has professional experience as a secondary teacher or as a postsecondary educator.

43-11-05. Officers of board - Powers - Rulemaking.

The members of the board annually shall elect a president and a secretary from the members of the board. The president and the secretary may administer oaths. The board may adopt rules necessary to implement this chapter.

43-11-06. Compensation of members of board - How paid.

Each member of the board is entitled to receive compensation in the amount provided for members of the legislative management under section 54-35-10 for each day employed in the actual discharge of official duties, as determined by the board. Expenses incurred by a board member in the performance of an official function are payable by the board pursuant to sections 44-08-04 and 54-06-09. The compensation and expenses of all members of the board must be paid from the license fees and other sources of income of the board.

43-11-07. Bond of secretary.

Before entering upon the discharge of duties, the secretary of the board must be bonded for the faithful discharge of duties in the amount of five thousand dollars, and the premium for the bond must be paid out of the funds received by the board. The bond and oath of office must be deposited with the secretary of state.

43-11-08. Meetings of the board.

The board shall meet at least twice each year at times determined by the board. The board shall publish annually the time and place of its regularly scheduled meetings. A majority of the members constitutes a quorum.

43-11-09. Fees - Deposited with state treasurer - Expenses - How paid.

Repealed by S.L. 1971, ch. 510, § 15.

43-11-10. Records of board - Fees - Expenses - How paid.

The secretary of the board shall keep a record of the board's proceedings and a register of applicants for licensure showing the name of the applicant, the name and location of the applicant's place of occupation or business, and whether the applicant was granted or refused a license. The books and records of the board are prima facie evidence of matters therein contained and constitute public records. All fees and payments required to be paid by applicants for examinations or licenses must be deposited with the secretary of the board. The secretary shall pay all expenses incurred in the operation of maintaining an office for the purpose of carrying out this chapter from fees and other income.

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 may practice outside of the establishment under the direction and control of an owner or manager thereof under rules adopted by the board.

43-11-11.1. Use of brush rollers authorized.

A person licensed under this chapter may use brush rollers in the performance of cosmetology and hairdressing or hairsetting services if the rollers are cleaned and sanitized after each use in conformity with rules adopted by the board.

43-11-12. Persons to aid of board.

The board may employ a secretary, support staff, and other persons knowledgeable in cosmetology for conducting examinations, inspections, and investigations of persons regulated by this chapter. Any person employed by the board is entitled to receive expenses in the amounts payable under sections 44-08-04 and 54-06-09.

43-11-13. License required.

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

43-11-13.1. License - Master esthetician and master manicurist.

The board may issue annual licenses for a master esthetician and a master manicurist. The board shall determine the qualifications for licensure and annual license fees for the licenses.

43-11-13.2. Homebound license.

The board may issue annual homebound licenses. The board shall determine the qualifications for licensure and annual license fees for a homebound license.

43-11-14. Licenses - Board to issue - Form - Displayed.

The board may issue all licenses provided for in this chapter. Each license issued must be signed by the secretary of the board and attested by the seal of the board. A license is evidence that the person is entitled to follow all of the practices or occupations referred to in the license. A license must be displayed conspicuously in the principal office, place of business, or place of employment of the licenseholder.

43-11-15. Cosmetology 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.

43-11-16. Schools of cosmetology - Qualifications for licensure.

A license must be granted to a school of cosmetology upon an application to the board and the payment of the annual license fee, if the school:

1. Is operated and maintained in premises separate from any cosmetology salon;
2. Requires one thousand eight hundred hours of training and instruction in cosmetology, six hundred hours of training and instruction in esthetics, or three hundred fifty hours of training and instruction in manicure, not to exceed eight hours per day;
3. Employs at least two full-time licensed instructors and maintains a maximum student-to-instructor ratio of twenty-four-to-one based on current enrollment, except a school that provides training and instruction limited to esthetics or manicure shall maintain a maximum student-to-instructor ratio of twelve-to-one based on current enrollment;
4. Possesses apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum;
5. Maintains a record of the attendance and performance of each student;
6. Maintains regular class and instruction hours to include practical demonstrations and theoretical studies supplemented by audiovisual aids, and studies in sanitation, sterilization, and other safety measures and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to cosmetology;
7. Agrees not to:
 - a. Permit any student to practice on any person not an instructor or registered student of the school until the student has completed at least twenty percent of the total hours of instruction required by this chapter; or
 - b. Compensate any of its basic students in any way; and
8. At the time of application for licensure and upon the renewal of a license, furnishes to the board, and maintains in force at all times the license is in effect, a bond in the penal sum of ten thousand dollars. The bond must run in favor of the board, as agent of the state, and must be furnished by a surety company authorized to do business in this state. It must be conditioned upon the bonded school's providing its registered students with the full course of instruction required under this chapter and must provide for a refund of a proportionate amount of each student's tuition fee upon default.

Any school that enrolls student instructors shall set up an adequate course of training, with the approval of the board, and may not have at any one time more than two student instructors for each licensed instructor actively engaged in the school.

43-11-17. Licenses issued for schools of cosmetology and cosmetology salons - Fee for annual registration.

The board may issue an annual license for a school of cosmetology. The annual registration fee for a school must be determined by the board, as set forth in section 43-11-28. The board shall, after inspection and approval, issue a salon license, the annual fee for which must be determined by the board, as set forth in section 43-11-28.

43-11-18. School advertising must disclose work done by students - Violation - Cancellation of license.

No person, firm, corporation, or limited liability company operating or conducting a school of cosmetology may advertise to perform any of the practices of cosmetology without disclosing that the practice offered is to be performed by students under the supervision of a licensed instructor. If any school violates this section, the board, after notice and hearing and a determination of the violation, shall cancel the license granted to the school.

43-11-19. Students - Registration.

A student cosmetologist must:

1. Adhere to the laws and rules regarding the practice of cosmetology;
2. Have educational qualifications equivalent to completion of four years of high school; and
3. Have enrolled in a school of cosmetology and complied with the preliminary requirements thereof.

The names and qualifications of all students must be certified to the board by each school of cosmetology. The certification must be accompanied by a processing fee for each student in an amount as may be fixed by the board under section 43-11-28.

43-11-20. Student practice.

A student certified under this chapter, while attending a school of cosmetology, may assist in any of the practices of cosmetology if under the immediate direction and supervision of a licensed instructor.

43-11-20.1. Refund of student tuition fees upon cancellation of course.

Schools of cosmetology shall refund tuition and other charges paid by or on behalf of a student when written notice of cancellation is given by the student. Refunds must be made in accordance with the following schedule:

| Hours Enrolled | Tuition Retained By School |
|-------------------|----------------------------------|
| 0.0% - 4.9% | 20% |
| 5% - 9.9% | 30% |
| 10% - 14.9% | 40% |
| 15% - 24.9% | 45% |
| 25% - 49.9% | 70% |
| Over 50% | 100% |

Notice of this section, and of sections 43-11-20.2 and 43-11-20.3, must be posted in a conspicuous place in each school of cosmetology. The notice must be in a form and contain information as prescribed by the board. The board shall take action necessary to enforce this section and sections 43-11-20.2 and 43-11-20.3, including revocation of the license issued pursuant to section 43-11-17. This section does not prejudice the right of any student to commence a civil action against any school of cosmetology for breach of contract or fraud.

43-11-20.2. Negotiation of promissory instruments.

No school of cosmetology may negotiate any promissory instrument received as payment for tuition or other charges prior to the completion of one-half of the course of instruction offered by the school.

43-11-20.3. Cancellation of contract for instruction.

Any person has the unrestricted right to rescind, revoke, or cancel a contract for a course of instruction at any school of cosmetology after entering into the contract without incurring any tort or contract liability.

43-11-20.4. Exemption from postsecondary license requirement - Solicitor's permit required.

Schools of cosmetology are exempt from the license requirement of chapter 15-20.4. All persons who solicit business for a school of cosmetology, or who sell any course of instruction, shall secure a solicitor's permit and bond in an amount and under conditions as established by the board.

43-11-21. Cosmetologist license - Examination required - Application - Examination - Fees.

Each person who desires to secure a cosmetologist license shall file with the secretary of the board a written application under oath on a form supplied by the board. The application must be accompanied by all of the following:

1. Satisfactory proof of the educational qualifications required of a student.
2. An examination fee as may be fixed by the board pursuant to section 43-11-28.
3. Satisfactory proof that the applicant has completed the required training in a school of cosmetology.
4. A fee for original licensure as required by section 43-11-28.

43-11-22. Board to determine qualifications of applicants - Delegation of power.

The qualifications of applicants for admission to examination for registration, and for certification or licensure to practice under this chapter must be determined by the board. The board may delegate authority under this section to the secretary.

43-11-23. Examination.

The examination of applicants for license to practice under this chapter must be conducted under rules prescribed by the board and must include both practical demonstrations and written or oral tests in reference to the practices for which a license is desired and in reference to related studies or subjects as the board may determine necessary for the proper and efficient performance of a practice. The board may require the practical portion of the examination be conducted by schools of cosmetology as part of graduation requirements. The examination may not be confined to any specific system or method and must be consistent with the practical and theoretical requirements of cosmetology.

43-11-24. Cosmetologist license - When issued - Failure to pass examination - Reexamination - Retraining.

A cosmetologist license must be issued to any person who has met all the following requirements:

1. Complied with section 43-11-21.
2. Passed to the satisfaction of the board the examination of applicants for a license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee may not be returned. If an applicant fails to pass an examination, the applicant may be examined again with the payment of a reexamination fee as set forth in section 43-11-28. An applicant who fails to pass the practical examination twice must complete an additional one hundred sixty hours of training at a school of cosmetology before applying for a second reexamination.

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

43-11-26. Manager-operator - License - Qualifications.

An individual may obtain a manager-operator'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.

43-11-27. Instructor's license - Student instructor's license - Registration - Qualifications.

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.
2. Student instructors in cosmetology must be registered upon enrollment in a school of cosmetology and upon certification by the school to the board of the name, age, and qualifications of the student instructor which must be recorded in a register kept for that purpose. A student instructor shall, at the time of enrollment, possess a general education equivalent to the completion of four years in high school and hold a license as a cosmetologist. Upon completion of the course prescribed for student instructors, the student instructor shall make application on a form provided by the board and pay a fee as provided in section 43-11-28. The board shall thereupon cause the applicant to be examined for an instructor's license. The examination must be given by a special examining committee comprised of the board, assisted by one person designated by the board possessing the minimum qualifications entitling the person to instruct in an institution of higher learning and who shall examine the applicant in teaching procedures only. Upon successfully passing the examination the board shall issue an instructor's license to the applicant.

3. No person is entitled to renew an instructor's license unless the instructor has furnished to the board evidence of completion of the continuing education established by the board by rule.

43-11-27.1. Esthetician and manicurist licenses - Qualifications - Fees.

The board may issue annual licenses for estheticians and manicurists. The board shall determine the qualifications for licensure and annual license fees for estheticians and manicurists.

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, original license | \$15.00 |
| (6) Operator, annual renewal | \$15.00 |
| (7) Manager-operator, original license | \$25.00 |
| (8) Manager-operator, 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) Registration fee for student instructor | \$15.00 |
| (15) Duplicate license | \$10.00 |
| (16) Penalty fee for late renewal | \$15.00 |
| (17) Certification fee | \$20.00 |
 - b. Examinations:

| | |
|--|---------|
| (1) Operator 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 dollar penalty for license renewal applications 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, 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.

43-11-29. Failure to renew license at end of year - When it may be renewed.

A license issued by the board under this chapter, which has not been renewed prior to the thirty-first day of December in any year, expires on the thirty-first day of December in that year. The holder of an expired license, within one year from and after the date of its expiration, may obtain a license upon the payment of the required fee in addition to the current renewal fee and upon furnishing to the board satisfactory proof of the person's qualifications to resume practice. If a license is not renewed within one year from the date it expired, the applicant for reinstatement shall take and pass the examination that is required of new applicants.

43-11-30. Revocation or suspension of license.

The board may revoke and suspend a license upon proof of the violation of this chapter or rules adopted by the board.

43-11-31. License - Refusal to grant - Grounds.

The board may deny an application or discipline a licensee on any of the following grounds:

1. Fraud in passing the examination.
2. Conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public in a profession licensed by the board, or, following conviction of any offense, the board determines the person is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Grossly unprofessional or dishonest conduct.
4. Addiction to the use of intoxicating liquor or drugs to such an extent as to render the person unfit to practice cosmetology.
5. Advertising by means of knowingly false or deceptive statements.
6. Failure to display the license as provided in this chapter.
7. Violation of the provisions of this chapter or the rules adopted by the board.
8. Permitting an unlicensed person to practice cosmetology, manicuring, skin care, or teaching in a cosmetology salon or school of cosmetology.

43-11-32. Hearings.

All hearings must be conducted pursuant to chapter 28-32. For purposes of a hearing, section 28-32-21 applies only to the licensee.

43-11-33. Board may subpoena witnesses - Fees - How paid.

The board may require the attendance of witnesses and the production of books, records, and papers at any hearing or with reference to any matter which it has authority to investigate, and for that purpose may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers. The fees and mileage of witnesses must be the same as may be allowed in the court in criminal cases. Fees and mileage must be paid in the same manner as expenses of the board.

43-11-34. Appeal from actions of the board.

An appeal may be taken from an action of the board under this chapter in refusing to grant, or in suspending or revoking a license, to the district court of the county of residence of the person who has been refused a license or whose license has been suspended or revoked. The appeal must be taken in accordance with the provisions of chapter 28-32.

43-11-35. Penalty.

Any person who, without a license, willfully practices any of the occupations, maintains a school, or acts in any capacity, wherein a license is required by this chapter, is guilty of a class B misdemeanor.

43-11-36. Minimum fees may be established - Conditions - How.

Repealed by S.L. 1981, ch. 435, § 26.