

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1426

Introduced by

Representatives Nathe, O'Brien

Senator Meyer

1 A BILL for an Act to create and enact section 43-11-02.1 of the North Dakota Century Code,  
2 relating to certification of niche beauty services providers; and to amend and reenact sections  
3 43-11-01 and 43-11-02 of the North Dakota Century Code, relating to exemptions to regulation  
4 by the state board of cosmetology and definitions relating to the regulation of cosmetology.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 43-11-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **43-11-01. Definitions.**

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

- 10 1. "Board" means the state board of cosmetology.
- 11 2. "Booth space" means that part of a licensed salon operated independently by an  
12 individual licensed under this chapter.
- 13 3. "Cosmetic application" means the application of a cosmetic to enhance the  
14 appearance of the face or skin, including powder, foundation, rouge, eyeshadow,  
15 eyeliner, mascara, and lipstick. The term includes the application of makeup applied  
16 using an airbrush. The term does not include the application of permanent makeup or  
17 tattooing.
- 18 4. "Cosmetologist" means an individual licensed under this chapter to practice  
19 cosmetology.
- 20 ~~4.5.~~ "Cosmetology" means any one or a combination of practices generally and usually  
21 performed by and known as the occupation of beauty culturists or cosmeticians or  
22 cosmetologists or hairdressers, or of any other person holding out as practicing  
23 cosmetology by whatever designation and within the meaning of this chapter and in  
24 and upon whatever place or premises.

- 1           a.    The term includes the following or any one or a combination of these practices:  
2                 arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching,  
3                 coloring, or similar work, upon the hair of any individual by any means or with  
4                 hands or mechanical or electrical apparatus or appliances, or by the use of  
5                 cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise,  
6                 massaging, cleansing, stimulating, manipulating, exercising, performing  
7                 noninvasive hair removal, beautifying, or similar work on the body, manipulation  
8                 of eyelashes, or manicuring the nails of any individual.
- 9           b.    The term does not include natural hair braiding or threading.
- 10       ~~5-6.~~ "Cosmetology salon" includes that part of any building in which the occupation of a  
11                 cosmetologist is practiced.
- 12       ~~6-7.~~ "Esthetician" means an individual who is licensed by the board to engage in the  
13                 practice of skin care.
- 14       ~~7-8.~~ "Hairstyling" means the practice of shampooing, conditioning, drying, arranging,  
15                 curling, straightening, or styling hair using only mechanical devices, hair sprays, and  
16                 topical agents, such as balms, oils, and serums. The term includes the use and styling  
17                 of hair extensions, hair pieces, and wigs. The term does not include cutting hair or the  
18                 application of dyes, bleach, reactive chemicals, keratin treatments, or other  
19                 preparations to color or alter the structure of hair.
- 20       9. "Homebound" means an individual who is ill, disabled, or otherwise unable to travel to  
21                 a salon.
- 22       ~~8-10.~~ "Instructor" means an individual who is at least eighteen years old, who is a licensed  
23                 cosmetologist, who teaches cosmetology or any practices taught in a duly registered  
24                 school of cosmetology, and who has met the requirements of section 43-11-27 and  
25                 has applied for and received an instructor's license.
- 26       ~~9-11.~~ "Invasive care" means any procedure that invades the live tissue of the dermis,  
27                 including:  
28                 a.    Laser use; and  
29                 b.    Chemical peels using:  
30                         (1) Thirty percent or higher concentration of alpha hydroxy acid;  
31                         (2) Twenty percent or higher concentration of beta hydroxy acid;

1 (3) Two percent or higher concentration of resorcinol;

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

3 (5) Fifteen percent or higher concentration of phenol.

4 ~~10.12.~~ "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the  
5 hands, feet, or nails of any individual.

6 ~~11.13.~~ "Manicurist" means an individual who is licensed by the board to engage in the  
7 practice of manicuring.

8 ~~12.14.~~ "Master cosmetologist" means an individual who has met the requirements of section  
9 43-11-26 and has applied for and received a managing cosmetologist license.

10 ~~13.15.~~ "Mechanical device" means a brush, clip, comb, crochet hook, curler, curling iron, flat  
11 iron, hairpin, roller, scissors, blunt-tipped needle, thread, tweezers, and hair binder.

12 ~~14.16.~~ "Natural hair braiding" means the service of twisting, wrapping, weaving, extending,  
13 locking, or braiding hair by hand or with a mechanical device. Natural hair braiding is  
14 commonly known as "African-style hair braiding" but is not limited to any particular  
15 cultural, ethnic, racial, or religious forms of hairstyles.

16 a. The term includes:

17 (1) The use of natural or synthetic hair extensions, natural or synthetic hair and  
18 fibers, and decorative beads and other hair accessories;

19 (2) Minor trimming of natural hair or hair extensions incidental to twisting,  
20 wrapping, weaving, extending, locking, or braiding hair;

21 (3) The making of wigs from natural hair, natural fibers, synthetic fibers, and  
22 hair extensions; and

23 (4) The use of topical agents, such as conditioners, gels, moisturizers, oils,  
24 pomades, and shampoos, in conjunction with performing services under  
25 paragraph 1 or 2.

26 b. The term does not include:

27 (1) The application of dyes, reactive chemicals, or other preparations to alter  
28 the color of the hair or to straighten, curl, or alter the structure of the hair; or

29 (2) The use of chemical hair joining agents, such as synthetic tape, keratin  
30 bonds, or fusion bonds.

1 ~~15-17.~~ "School of cosmetology" means an establishment operated for the purpose of teaching  
2 cosmetology.

3 ~~16-18.~~ "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions,  
4 creams, or otherwise, massaging, cleansing, stimulating, manipulating, performing  
5 noninvasive hair removal, beautifying, or similar work on the body of any person. The  
6 term does not include invasive care or threading.

7 ~~17-19.~~ "Student" means any person who is engaged in the learning or acquiring of any or all  
8 the practices of cosmetology and while so learning, performs or assists in any of the  
9 practices of cosmetology in any school registered or licensed and under the immediate  
10 supervision of an instructor licensed as such under this chapter.

11 ~~18-20.~~ "Student instructor" means a cosmetologist who is receiving instruction in teacher's  
12 training in a duly registered school of cosmetology.

13 ~~19-21.~~ "Threading" means the method of removing hair from the eyebrows, upper lip, or other  
14 body part by using cotton thread to pull hair from follicles.

15 a. The term may include the use of an over-the-counter astringent, gel, and powder,  
16 tweezers, and scissors, incidental to the removal of hair by threading.

17 b. The term does not include the use of chemicals, heat, or any type of wax.

18 ~~20-22.~~ "Tuition" means the total cost of a person's cosmetology studies, and does not include  
19 books or demonstration kits.

20 **SECTION 2. AMENDMENT.** Section 43-11-02 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **43-11-02. Exemptions from provisions of chapter.**

23 This chapter does not apply to:

24 1. Services in case of emergency.

25 2. Services provided by persons practicing cosmetology upon members of their  
26 immediate families.

27 3. Services by a person licensed by the state and working within the standards and  
28 ethics of that person's profession, if that person does not represent to the public that  
29 the person is a cosmetologist or manicurist.

30 4. Services by nurses, undertakers, and morticians lawfully engaged in the performance  
31 of the usual and ordinary duties of their vocation.

- 1       5. Educational activities conducted in connection with any regularly scheduled meeting or  
2       any educational activities of any bona fide association of licensed cosmetologists, from  
3       which the general public is excluded. For purposes of this subsection a "bona fide  
4       association of cosmetologists" means any organization whose constitution, bylaws, or  
5       membership rules establish within said organization a class of membership consisting  
6       of licensed cosmetologists.
- 7       6. Services provided by retailers or ~~their~~ sales personnel trained in the demonstration of  
8       cosmetics application, beauty aid, or equipment, if the cosmetics are applied only with  
9       disposable applicators that are discarded after each customer demonstration. ~~The~~  
10      ~~board may adopt rules to ensure sanitary conditions for services provided under this~~  
11      ~~exemption.~~
- 12      7. Services provided in a licensed hospital or a nursing home by a person practicing  
13      cosmetology on a volunteer basis without compensation or by a nurse's assistant.
- 14      8. Skin care provided under the supervision, control, and responsibility of a physician  
15      practicing within the scope of the physician's license under chapter 43-17 or nurse  
16      practicing within the scope of the nurse's license under chapter 43-12.1.
- 17      9. Providing dry hairstyling.

18      **SECTION 3.** Section 43-11-02.1 of the North Dakota Century Code is created and enacted  
19 as follows:

20      **43-11-02.1. Certification for niche beauty services.**

21      The board shall certify an individual who performs only hairstyling and cosmetic application  
22 as a niche beauty services provider. The board may require a certificate holder to complete a  
23 board-approved four-hour course in health, safety, and infection control and state law. A  
24 certificate holder is not licensed under this chapter as a cosmetologist, esthetician, or  
25 manicurist. A facility at which a niche beauty services provider provides hairstyling and cosmetic  
26 services is not subject to regulation under this chapter.