

AN ACT

ENTITLED, An Act to revise the regulation of cosmetologists and nail technicians and to provide for the licensure of estheticians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-15-1 be amended to read as follows:

36-15-1. Terms used in this chapter mean:

- (1) "Apprentice," any person licensed by the commission to receive education through an apprenticeship in a salon;
- (2) "Apprentice salon," any salon licensed by the commission to teach apprentices;
- (3) "Booth," any part within a licensed salon that is rented or leased for the purpose of rendering licensed cosmetology services as a separate, independent salon business;
- (4) "Commission," the Cosmetology Commission as established and created in § 36-15-3;
- (5) "Cosmetologist," any person who, for compensation, engages in any of the practices of cosmetology;
- (6) "Cosmetology," any one or any combination of the practices set forth in § 36-15-2;
- (7) "Demonstrator," any person licensed to practice cosmetology, nail technology, or esthetics in this state, in another state, or in another country, who demonstrates the various practices of cosmetology, as applicable, in order to inform or educate other licensees or the public;
- (8) "Esthetician," any person who, for compensation, engages in the practice of esthetics, but not in other practices of cosmetology;
- (9) "Esthetics," any one or any combination of the practices set forth in section 5 of this Act;
- (10) "Junior instructor," any person licensed by the commission to instruct in a school under the direct supervision of a senior instructor;

- (11) "Manager," any person licensed by the commission to practice without supervision or supervise a salon;
- (12) "Nail technology," any one or any combination of the practices set forth in section 4 of this Act;
- (13) "Nail technician," any person who, for compensation, engages in the practice of nail technology, but not in other practices of cosmetology;
- (14) "Salon," any place, premise, or building or any part of a building operated for the purpose of engaging in the practice of cosmetology, nail technology, or esthetics, or any combination of these practices;
- (15) "School," any place, premise, or building that is licensed by the commission to provide education to students in the practice of cosmetology, nail technology, or esthetics, or any combination of these practices;
- (16) "Senior instructor," any person licensed by the commission to instruct in a school;
- (17) "Student," any person who is licensed by the commission to receive education in a licensed school.

Section 2. That § 36-15-2 be amended to read as follows:

36-15-2. No person may engage in the practice of cosmetology unless the person is licensed by the commission. A person is engaged in the practice of cosmetology if that person, for compensation, a fee, or any valuable consideration, engages in any of the following practices with hands, chemicals, or any mechanical or electrical apparatus or appliance for beautifying or cosmetic purposes:

- (1) Hair care by styling, wrapping, arranging, braiding, twisting, weaving, extending, fusing, dressing, curling, waving, permanent waving, singeing, cleansing, shampooing, cutting, bleaching, setting, coloring, straightening, relaxing, fitting, massaging, or similar work upon the hair, scalp, wigs, or hairpieces of a person;

- (2) Nail technology;
- (3) Esthetics; or
- (4) Removal of superfluous hair by nonpermanent means.

Section 3. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

None of the following constitute the practice of cosmetology:

- (1) Any person practicing permanent removal of hair by the use of a galvanic or thermolytic needle known as electrolysis;
- (2) Any retailer at a retail establishment who in the ordinary course of business is engaged in the demonstration of make-up if:
 - (a) The make-up is applied only with disposable applicators that are discarded after each customer demonstration;
 - (b) The demonstration is without charge to the person to whom the demonstration is given; and
 - (c) The retailer does not advertise or provide a cosmetology service except the sale of make-up and fragrances.

Section 4. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

No person may engage in the practice of nail technology unless the person is licensed by the commission. A person is engaged in the practice of nail technology if that person, for compensation, a fee, or any valuable consideration, engages in any of the following practices with hands, chemicals, or any mechanical or electrical apparatus or appliance for beautifying or cosmetic purposes:

- (1) Cutting, filing, trimming, shaping, polishing, coloring, removing polish, tinting, air-brushing, decorating, cleansing, or otherwise beautifying a person's fingernails or toenails;

- (2) Applying and removing artificial nails; or
- (3) Massaging, cleansing, and exfoliating a person's hands, arms, feet, and legs.

Nail technology does not include hair removal, cutting nail beds, treating corns or calluses, or any medical treatment involving the feet, hands, or nails.

Section 5. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

No person may engage in the practice of esthetics unless the person is licensed by the commission. A person is engaged in the practice of esthetics if that person, for compensation, a fee, or any valuable consideration, engages in any of the following practices with hands, chemicals, or any mechanical or electrical apparatus or appliance for beautifying or cosmetic purposes:

- (1) Beautifying, massaging, cleansing, exfoliating, stimulating, or applying oils, creams, cosmetic preparations, make-up, facial treatments, body treatments, body wraps, antiseptics, scrubs, clays, lotions, masks, waxes, or other preparations for the noninvasive care of the skin. For purposes of this subdivision, noninvasive means confined to the nonliving cells of the stratum corneum of the epidermis. Such practices shall be in a superficial mode and not for the treatment of medical disorders, and living cells may never be altered, cut, or damaged;
- (2) Grooming or applying eyebrows or eyelashes, including arching and tinting; or
- (3) Removing superfluous hair by nonpermanent means, including tweezing and waxing.

Esthetics does not include scalp treatments or scalp massage.

Section 6. That § 36-15-4 be amended to read as follows:

36-15-4. All professional members of the commission shall be:

- (1) A resident of this state;
- (2) At least twenty-five years of age;

- (3) A high school graduate or its equivalent;
- (4) Actively engaged in the practice of cosmetology for the three years immediately preceding the appointment; and
- (5) Currently licensed as a cosmetologist in this state at the time of the appointment and while serving on the commission.

No member of the commission may be a member of or affiliated with or have an interest in any school while in office.

Section 7. That § 36-15-5 be amended to read as follows:

36-15-5. The commission shall organize at its first meeting after July first of each year by electing from its membership a president, a vice-president, and a secretary-treasurer. The commission shall meet at such times and places as shall be designated by the commission. Any three members of the commission constitute a quorum for the transaction of business.

Section 8. That § 36-15-6 be amended to read as follows:

36-15-6. The commission may, in conformity with chapter 3-6A, employ such personnel as it deems necessary to administer and enforce the provisions of this chapter. The commission may pay the travel and subsistence expenses of such employees pursuant to § 3-9-2. However, no employee of the commission may be connected or associated in any manner with any school.

Section 9. That § 36-15-11 be amended to read as follows:

36-15-11. The duties of the members of the commission include:

- (1) Inspecting salons, booths, schools, nail technicians, estheticians, and cosmetologists;
- (2) Conducting examinations for applicants for licenses under this chapter;
- (3) Approving continuing education courses;
- (4) Investigating violations and enforcing provisions of this chapter and the rules established by the commission pursuant to this chapter;

- (5) Maintaining an office for the keeping of records; and
- (6) Doing all things necessary for the proper administration of this chapter.

Section 10. That § 36-15-12 be repealed.

Section 11. That § 36-15-12.1 be repealed.

Section 12. That § 36-15-13 be amended to read as follows:

36-15-13. The commission may adopt rules pursuant to chapter 1-26 pertaining to the following:

- (1) Application requirements for any license or permit issued pursuant to this chapter;
- (2) Examinations;
- (3) Reports of students' education and work performed;
- (4) Minimum standards and requirements for cosmetology, nail technology, and esthetics salons and schools;
- (5) Minimum standards for plumbing, electrical, physical, and sanitary conditions for the health and safety of persons utilizing cosmetology, nail technology, or esthetics salons or schools;
- (6) The professional conduct of licensees;
- (7) The reinstatement of lapsed licenses and lapsed renewal pursuant to § 36-15-20.1;
- (8) The fee for a lapsed license and lapsed renewal pursuant to § 36-15-20.1;
- (9) The course and education requirements received by transfer students pursuant to § 36-15-34;
- (10) The textbooks, educational material, and the general course of study for schools and for cosmetology salons and nail salons having apprentices pursuant to § 36-15-46;
- (11) The progress and education received by an apprentice pursuant to § 36-15-48;
- (12) The fees for all licenses, permits, and renewals;
- (13) Minimum standards for the use of chemicals or any mechanical or electrical apparatus or

appliance;

- (14) Amount of work experience of an out-of-state licensed applicant that may be used as a substitute for the education requirement pursuant to §§ 36-15-17, 36-15-17.1, and section 22 of this Act;
- (15) Inspection and reinspection of individual licensees, salons, and schools; and
- (16) Administration and duties of the commission.

Section 13. That § 36-15-13.1 be repealed.

Section 14. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

The commission may adopt rules pursuant to chapter 1-26 pertaining to continuing education for licensees on health issues, safety issues, and services that require the use of chemicals or electrical or mechanical apparatus. The commission may provide, by rule promulgated pursuant to chapter 1-26, the kinds and subjects of education and the number of hours of education required. The commission may also substitute experience in addition to or in lieu of educational requirements. The commission may waive any of the education requirement in case of certified illness or undue hardship. The commission may establish a fee by rules adopted pursuant to chapter 1-26 to cover the cost of verifying the required continuing education. The commission may offer a course and charge a registration fee to cover the costs.

Section 15. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

Any license or permit issued under this Act or any license issued under prior law may be renewed for periods of one year, but in any event expiring on the renewal date as established by the commission. The commission shall, by rule promulgated pursuant to chapter 1-26, establish the renewal date for any licenses or permits issued under this Act.

Section 16. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

The commission may adopt rules pursuant to chapter 1-26 pertaining to educational requirements for instructor licenses and the renewal of instructor licenses including the kinds and subjects of education and the number of hours of education required. The commission may also substitute experience in addition to or in lieu of educational requirements. The commission may set a fee through rules adopted pursuant to chapter 1-26 to cover the cost of verifying the required continuing education. The commission may offer a course and charge a registration fee to cover the costs.

Section 17. That § 36-15-14 be amended to read as follows:

36-15-14. The commission, any state or local board of health, or any officer or employee thereof, may enter during the business hours, any salon or school licensed under the provisions of this chapter and any other place where the practice of cosmetology is followed, practiced, or taught for the purpose of inspection and enforcement of this chapter and the rules adopted pursuant to this chapter.

Section 18. That § 36-15-15 be amended to read as follows:

36-15-15. An applicant for any license or permit shall first submit evidence, satisfactory to the commission that the applicant:

- (1) Is at least eighteen years of age or older, except as otherwise provided in this chapter;
- (2) Possesses a high school education or its equivalent as determined by the commission; and
- (3) Has complied with all the rules adopted by the commission as to the qualifications, standards, and requirements required for such license and application.

Section 19. That § 36-15-16 be amended to read as follows:

36-15-16. This chapter does not apply to services rendered by regularly licensed physicians, physician assistants, nurses, podiatrists, chiropractors, physical therapists, occupational therapists, morticians, barbers, or licensed demonstrators when exclusively engaged in the practice of their

respective professions.

Section 20. That § 36-15-17 be amended to read as follows:

36-15-17. Any person desiring to practice cosmetology in this state as a cosmetologist shall make application to the commission to take the examination. The application shall:

- (1) Contain the information required pursuant to § 36-15-15;
- (2) Contain information satisfactory to the commission that the applicant has completed twenty-one hundred hours of education or equivalent credit hours in an approved and licensed cosmetology school, or in lieu of such education, has successfully completed a course of apprenticeship in a licensed cosmetology salon as provided for in this chapter; and
- (3) Be accompanied by the fee required in this chapter.

Section 21. That § 36-15-17.1 be amended to read as follows:

36-15-17.1. Any person desiring to practice nail technology in this state as a nail technician shall apply to the commission to take the nail technician examination. The application shall:

- (1) Contain the information required by § 36-15-15;
- (2) Contain proof that the applicant has completed four hundred hours of education or equivalent credit hours in an approved and licensed cosmetology or nail school or, in lieu of such education, has successfully completed a course of apprenticeship in a licensed cosmetology salon or nail salon, as provided in § 36-15-45; and
- (3) Be accompanied by the fee required in this chapter.

Section 22. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

Any person desiring to practice esthetics in this state as an esthetician shall apply to the commission to take the esthetics examination. The application shall:

- (1) Contain the information required by § 36-15-15;
- (2) Contain proof that the applicant has completed seven hundred fifty hours of education or equivalent credit hours in an approved and licensed cosmetology or esthetics school; and
- (3) Be accompanied by the fee required in this chapter.

Section 23. That § 36-15-19 be amended to read as follows:

36-15-19. The commission shall conduct at least six examinations in the practice of cosmetology, at least two examinations in the practice of nail technology, and at least two examinations in the practice of esthetics each year. The commission shall set the times and places for the conduct of the examination.

Section 24. That § 36-15-19.1 be amended to read as follows:

36-15-19.1. Each applicant for a cosmetologist license who has complied with § 36-15-17, shall take the prescribed examination in the practice of cosmetology. The commission shall determine the contents of the examination. Upon passing the examination to the satisfaction of the commission and the receipt of the fee required in this chapter, the applicant shall be licensed as a cosmetologist in the practice of cosmetology. Any cosmetologist license issued by the commission pursuant to this chapter expires annually on a date set by the commission in rules promulgated pursuant to chapter 1-26, and is renewable annually.

Section 25. That § 36-15-19.2 be amended to read as follows:

36-15-19.2. The commission may waive the examination required in § 36-15-19.1, 36-15-19.3, or in section 28 of this Act upon application made to the commission that the applicant possesses the qualifications required pursuant to § 36-15-15, and that:

- (1) The applicant holds a currently valid license issued by another state, district, or foreign country and the requirements of that state, district, or foreign country at the time of the examination were equal to or not less than those required by this state;

- (2) The applicant has passed an examination acceptable to the commission in cosmetology, nail technology, or esthetics, as applicable;
- (3) The applicant shall take the prescribed written examination on the provisions of this chapter and rules adopted pursuant to this chapter. The commission shall determine the contents of the examination; and
- (4) The application is accompanied by the fee provided for in this chapter.

Section 26. That § 36-15-19.3 be amended to read as follows:

36-15-19.3. Each applicant for a nail technician license who has complied with § 36-15-17.1 shall take the prescribed examination in the practice of nail technology. The commission shall determine the contents of the examination. Upon passing the examination to the satisfaction of the commission and the receipt of the fee required in this chapter, the applicant shall be licensed as a nail technician. Any nail technician license issued by the commission pursuant to this chapter expires annually on a date set by the commission in rules promulgated pursuant to chapter 1-26, and is renewable annually.

Section 27. That § 36-15-19.4 be repealed.

Section 28. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

Each applicant for an esthetician license who has complied with section 22 of this Act shall take the prescribed examination in the practice of esthetics. The commission shall determine the contents of the examination. Upon passing the examination to the satisfaction of the commission and the receipt of the fee required in this chapter, the applicant shall be licensed as an esthetician in the practice of esthetics. Any esthetician license issued by the commission pursuant to this chapter expires annually on a date set by the commission in rules promulgated pursuant to chapter 1-26, and is renewable annually.

Section 29. That § 36-15-20 be amended to read as follows:

36-15-20. The fees promulgated in rules by the commission pursuant to chapter 1-26 for all examinations, licenses, permits, and renewals required by this chapter may not exceed the following maximums:

- (1) Cosmetologist examination fee, sixty dollars;
- (2) Cosmetologist license fee, fifteen dollars;
- (3) Cosmetologist license renewal fee, fifteen dollars;
- (4) Cosmetologist-manager license fee, fifteen dollars;
- (5) Cosmetologist-manager license renewal fee, fifteen dollars;
- (6) Nail technician examination fee, sixty dollars;
- (7) Nail technician license fee, fifteen dollars;
- (8) Nail technician license renewal fee, fifteen dollars;
- (9) Nail technician-manager license fee, fifteen dollars;
- (10) Nail technician-manager license renewal fee, fifteen dollars;
- (11) Esthetician examination fee, eighty dollars;
- (12) Esthetician license fee, twenty-five dollars;
- (13) Esthetician license renewal fee, twenty-five dollars;
- (14) Esthetician-manager license fee, twenty-five dollars;
- (15) Esthetician-manager license renewal fee, twenty-five dollars;
- (16) Temporary cosmetologist, nail technician, or esthetician license fee, six dollars;
- (17) Junior instructor license fee, fifteen dollars;
- (18) Junior instructor license renewal fee, fifteen dollars;
- (19) Senior instructor license fee, fifteen dollars;
- (20) Senior instructor license renewal fee, fifteen dollars;
- (21) Reciprocity and waiver of examination fee, one hundred dollars;

- (22) Temporary permit based on reciprocal recognition of another state license, six dollars;
- (23) For endorsement of a certificate issued under this chapter, for a South Dakota licensee to obtain reciprocity in another state, or furnishing of other papers to another state or school, twenty dollars;
- (24) Apprentice license fee, twenty-five dollars;
- (25) Apprentice salon license fee, two hundred fifty dollars;
- (26) Apprentice salon license renewal fee, two hundred fifty dollars;
- (27) School license fee, two hundred fifty dollars;
- (28) School license renewal fee, two hundred fifty dollars;
- (29) Student license fee, six dollars;
- (30) Cosmetology salon or booth license fee, sixty dollars;
- (31) Cosmetology salon or booth license renewal fee, thirty dollars;
- (32) Nail salon or booth license fee, sixty dollars;
- (33) Nail salon or booth license renewal fee, thirty dollars;
- (34) Esthetics salon or booth license fee, eighty dollars;
- (35) Esthetics salon or booth license renewal fee, thirty dollars;
- (36) License duplicate or replacement fee, five dollars.

Any license, permit, or renewal fee which is collected by the commission shall be the same for each respective license, permit, or renewal regardless of the time remaining before the expiration date.

Section 30. That § 36-15-21 be amended to read as follows:

36-15-21. Any person licensed by the commission as a cosmetologist may qualify and be licensed by the commission as a cosmetologist-manager upon application made to the commission and submitting evidence satisfactory to the commission that such applicant possesses the qualifications required pursuant to § 36-15-15 and has had at least two thousand hours of experience as a licensed

cosmetologist, or has taught in a licensed and approved school for a period of two thousand hours, or a combination of both. The application for a manager's license shall be accompanied by the fee required in this chapter.

Section 31. That § 36-15-21.1 be amended to read as follows:

36-15-21.1. Any cosmetologist-manager, nail technician-manager, or esthetician-manager license issued by the commission pursuant to this chapter expires annually on a date set by the commission in rule promulgated pursuant to chapter 1-26, and is renewable annually. The application for renewal shall be accompanied by the fee required in this chapter.

Section 32. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

Any person licensed by the commission as a nail technician may qualify to be licensed as a nail technician-manager by applying to the commission and submitting evidence satisfactory to the commission that the applicant meets the requirements of § 36-15-15 and has worked at least two thousand hours as a licensed nail technician or has taught in a licensed and approved school for a period of two thousand hours, or a combination of both. The application for a manager's license shall be accompanied by the fee required in this chapter.

Section 33. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

Any person licensed by the commission as an esthetician may qualify to be licensed as a esthetician-manager by applying to the commission and submitting evidence satisfactory to the commission that the applicant meets the requirements of § 36-15-15 and has worked at least two thousand hours as a licensed esthetician or has taught in a licensed and approved school for a period of two thousand hours, or a combination of both. The application for a manager's license shall be accompanied by the fee required in this chapter.

Section 34. That § 36-15-22 be amended to read as follows:

36-15-22. Any person who holds a current valid license from another state or foreign country in the practices of cosmetology, nail technology, or esthetics may apply to the commission for a temporary permit to practice cosmetology, nail technology, or esthetics, as applicable. The application shall be accompanied with evidence satisfactory to the commission that the applicant possesses those qualifications required pursuant to §§ 36-15-15 and 36-15-19.2. The application shall be accompanied by the fee required in this chapter. A temporary permit is valid until the date of the next regular scheduled examination in cosmetology, nail technology, or esthetics, as applicable. If the holder of a temporary permit takes the examination at the scheduled time, the commission shall extend the temporary permit until the result of the examination is mailed to the applicant. If an applicant is not excused from the examination by the commission or fails the examination, the temporary permit is invalid and may not be extended or reissued.

Section 35. That § 36-15-25 be amended to read as follows:

36-15-25. No person may teach in a school unless that person is licensed by the commission as an instructor. Any person may qualify and be licensed by the commission as a senior instructor for cosmetology, nail technology, or esthetics, as applicable, upon application made to the commission. The application shall be accompanied by satisfactory evidence that the applicant:

- (1) Possesses the qualifications required by § 36-15-15;
- (2) Has had at least two thousand hours experience as a licensed cosmetologist, nail technician, or esthetician, as applicable, or as a junior instructor educating in cosmetology, nail technology, or esthetics, as applicable;
- (3) Has complied with any instructor education as prescribed by section 16 of this Act; and
- (4) Currently holds a valid cosmetologist-manager, nail technician-manager, or esthetician-manager license, as applicable.

However, the applicant may receive the license conditionally, dependent on completing instructor education as prescribed by the commission in rules adopted pursuant to chapter 1-26.

A senior instructor with a cosmetologist-manager license may instruct in any practice of cosmetology. A senior instructor with a nail technician-manager license may only instruct in the practice of nail technology. A senior instructor with an esthetician-manager license may only instruct in the practice of esthetics.

Section 36. That § 36-15-25.1 be amended to read as follows:

36-15-25.1. Any senior instructor license issued by the commission pursuant to this chapter expires annually on a date set by the commission in rule promulgated pursuant to chapter 1-26, and is renewable annually. The application shall be accompanied by the fee required in this chapter and proof of completion of any required commission-approved instructor education pursuant to section 16 of this Act.

Section 37. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

Any applicant for a senior instructor license pursuant to § 36-15-25 who plans to instruct an apprentice in a licensed salon shall submit proof of completion of thirty hours of commission-approved education in teacher training from a college or university. This education shall be completed before the senior instructor license is issued. The commission may provide, by rule promulgated pursuant to chapter 1-26, the kinds and subjects of education and the number of hours of education required. The commission may also substitute experience in addition to or in lieu of educational requirements. The commission may set a fee in rules adopted pursuant to chapter 1-26 to cover the cost of verifying the required continuing education.

Section 38. That § 36-15-26 be amended to read as follows:

36-15-26. Any person may qualify and be licensed by the commission as a junior instructor for

cosmetology, nail technology, or esthetics, as applicable, upon application made to the commission.

The application shall be accompanied by satisfactory evidence that such applicant:

- (1) Possesses the qualifications required by § 36-15-15;
- (2) Currently holds a valid cosmetologist, nail technician, or esthetician license, as applicable;
- (3) Has complied with any instructor education as required by section 16 of this Act; and
- (4) Will be working and providing education in a licensed school in this state under the direct and constant supervision of a senior instructor.

However, the applicant may receive the license conditionally, dependent on completing instructor education as prescribed by the commission in rules adopted pursuant to chapter 1-26.

A junior instructor with a cosmetologist license may instruct in any practice of cosmetology and shall be supervised by a senior cosmetologist instructor. A junior instructor with a nail technician license may only instruct in the practice of nail technology and shall be supervised by a senior cosmetologist instructor or a senior nail technician instructor. A junior instructor with an esthetician license may only instruct in the practice of esthetics and shall be supervised by a senior cosmetologist instructor or a senior esthetician instructor.

Section 39. That § 36-15-26.1 be amended to read as follows:

36-15-26.1. Any junior instructor license issued by the commission pursuant to this chapter expires annually on a date set by the commission in rule promulgated pursuant to chapter 1-26 and is renewable annually. The application shall be accompanied by the fee required in this chapter and proof of completing commission-approved instructor education pursuant to section 16 of this Act.

Section 40. That § 36-15-29 be amended to read as follows:

36-15-29. Any person desiring to conduct a cosmetology, nail technology, or esthetics school for any of the practices of cosmetology, as applicable, shall apply to the commission for a license. The commission shall issue the license if:

- (1) The applicant completes the application and provides any required documentation;
- (2) The application is accompanied by the fee required in this chapter;
- (3) The applicant has no violations with another cosmetology board;
- (4) The education offered is not less than twenty-one hundred hours for a cosmetology program or not less than four hundred hours for a nail technician program or not less than seven hundred fifty hours for an esthetician license or their respective equivalent credit hours; and
- (5) All requirements established by rules adopted pursuant to this chapter are met.

Section 41. That § 36-15-29.1 be amended to read as follows:

36-15-29.1. The license issued pursuant to § 36-15-29 authorizes the cosmetology, nail technology, or esthetics school holding a license to transact a school in this state only on the premises approved by the commission, subject to the rules of the commission. The license is not transferable to any other person. If the holder of the license proposes to conduct any portion of the school activity on premises other than those licensed by the commission, the licensee shall obtain an additional license for the newly proposed premises as a school pursuant to § 36-15-29. However, the commission may approve limited field trips supervised by instructors.

Section 42. That § 36-15-29.2 be amended to read as follows:

36-15-29.2. No school may employ more than one junior instructor for each senior instructor regularly employed by the school.

Section 43. That § 36-15-30 be amended to read as follows:

36-15-30. A school license issued pursuant to § 36-15-29 expires one year from date of issuance and is renewable annually. The renewal application must be accompanied by the fee required in this chapter.

Section 44. That § 36-15-33 be amended to read as follows:

36-15-33. Any person entering or enrolling in a licensed school for education in the practice of cosmetology, nail technology, or esthetics shall apply to the commission for a student license within ten days after the date of enrollment. The applicant for a student license shall be at least seventeen years of age. The application shall contain the information required pursuant to § 36-15-15 and the name and location of the school being attended. Upon receipt of the application and the fee provided for in this chapter, the commission shall issue to the applicant a student license which entitles the student to complete the course of education in which the student is enrolled without additional license fees. If the student withdraws from the school or course in cosmetology, nail technology, or esthetics for which the fee was paid and later enrolls in the same or a different school or course, the student shall pay the student license fee again.

Section 45. That § 36-15-34 be amended to read as follows:

36-15-34. Any person who wishes to transfer from an out-of-state school of cosmetology to a licensed school in this state for the purpose of meeting the requirements of the state for commission examination in cosmetology, nail technology, or esthetics shall apply for a student license pursuant to § 36-15-33. The commission may adopt rules pursuant to chapter 1-26, establishing requirements relating to courses and education received by such transfer students. Transfer students shall be given South Dakota credit hours for their out-of-state education as determined and allowed by the commission.

Section 46. That § 36-15-37 be amended to read as follows:

36-15-37. No owner, employer, manager, or any other person may conduct simultaneously a salon and a school, unless the salon is conducted separately from the school so as not to be construed by the public as one enterprise.

Section 47. That § 36-15-38 be amended to read as follows:

36-15-38. Any school shall use the word school or words indicating an institution of learning in

any advertisement, sign, display, or directory. Each school shall clearly indicate in a location conspicuous to the general public that cosmetological services and practices performed in the school and premises are by students.

Section 48. That § 36-15-42 be amended to read as follows:

36-15-42. A person may receive apprenticeship education in cosmetology and nail technology. However, no person may receive apprenticeship education unless that person is licensed as an apprentice. Any person may apply to the commission to be licensed as an apprentice if the applicant:

- (1) Submits evidence satisfactory to the commission that the applicant possesses those qualifications, except for age, required pursuant to § 36-15-15;
- (2) Is at least seventeen years of age or older; and
- (3) The cosmetology or nail salon in which the apprentice will receive education is currently licensed as an apprentice salon and is adequately equipped to teach the profession of cosmetology or nail technology, as applicable.

Any apprentice license issued pursuant to this chapter is valid for the full period of the apprenticeship as defined in § 36-15-45 and is not renewable. The application shall be accompanied by the fee required in this chapter.

Section 49. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

No salon may offer apprenticeship education without obtaining an apprentice salon license. The owner of the salon may apply to the commission to be licensed as an apprentice salon if:

- (1) The salon meets the applicable requirements of this chapter and rules promulgated pursuant to this chapter;
- (2) The salon has passed the annual inspection for the current year; and
- (3) The application is accompanied by the fee required in this chapter.

The apprentice salon license is valid for the length of the apprenticeship as stated in § 36-15-45. If the apprenticeship period extends longer than the length of hours in § 36-15-45, as applicable, then the apprentice salon license shall be renewed. The commission may grant an extension of the license for good cause. The commission shall define good cause by rule promulgated pursuant to chapter 1-26.

Section 50. That § 36-15-44 be amended to read as follows:

36-15-44. No apprentice salon may have more than two apprentices during any one period of time.

Section 51. That § 36-15-45 be amended to read as follows:

36-15-45. A licensed apprentice in cosmetology shall receive education in the practice of cosmetology as required by this chapter in the same cosmetology salon for three thousand consecutive hours. A licensed apprentice in nail technology shall receive education in the practice of nail technology as required by this chapter for nine hundred consecutive hours in the same cosmetology salon or nail salon. The commission may permit an apprentice to transfer to another cosmetology salon or nail salon, as applicable, for completion of the apprenticeship if the apprentice applies for the transfer in writing to the commission and shows good cause for the request. The commission may permit a break in the consecutive period of the apprenticeship if the apprentice applies for the break in writing to the commission and shows good cause for the request. The commission shall define good cause by rule promulgated pursuant to chapter 1-26.

Section 52. That § 36-15-46 be amended to read as follows:

36-15-46. The commission may prescribe textbooks, educational material, and the general course of study required for schools and for salons having one or more apprentices. Such textbooks and educational material shall be furnished without charge for use by apprentices.

Section 53. That § 36-15-47 be amended to read as follows:

36-15-47. Any apprentice licensed pursuant to this chapter may practice cosmetology if the practice is performed only in a cosmetology salon or nail salon, as applicable, licensed pursuant to this chapter; the apprentice is under the constant supervision, control, and direction of a licensed senior instructor at all times; and the apprentice is actually engaged in the study and practice of cosmetology or nail technology at least forty hours a week.

Section 54. That § 36-15-47.1 be amended to read as follows:

36-15-47.1. Only a senior instructor licensed under this chapter may teach an apprentice in any of the practices of cosmetology. The senior instructor, the salon, or anyone connected with the apprenticeship may not charge, receive, or accept any fee or anything of value except services for the education.

Section 55. That § 36-15-48 be amended to read as follows:

36-15-48. The commission may adopt reasonable rules pursuant to chapter 1-26 pertaining to a report on the progress and education received by any apprentice required of the licensed senior instructor under whom the apprentice is being supervised.

Section 56. That § 36-15-50 be amended to read as follows:

36-15-50. Any person who successfully completes the term of apprenticeship pursuant to this chapter may apply to the commission for a temporary license which will authorize the applicant to perform all the practices of a regularly licensed cosmetologist or nail technician, as applicable. The temporary license application shall be accompanied with:

- (1) Evidence satisfactory to the commission that the applicant possesses the qualifications required pursuant to § 36-15-15;
- (2) Evidence satisfactory to the commission that the apprenticeship period has been completed;
- (3) The fee for a temporary license as provided in this chapter; and

- (4) The application and fee for the cosmetologist or nail technician examination, as applicable.

A temporary license issued by the commission is valid until the date of the next scheduled examination in cosmetology or nail technology, as applicable. If the holder of a temporary license takes the applicable examination at that time, the commission shall extend the temporary license until the result of the examination is mailed to the person. If a person is not excused from the examination by the commission or fails the examination, the temporary license is invalid and may not be extended or reissued.

Section 57. That § 36-15-50.1 be amended to read as follows:

36-15-50.1. Any person who successfully completes a course of education in an approved and licensed school in this state, or in any other licensed cosmetology, nail technology, or esthetics school, as applicable, not located within this state that is shown to the satisfaction of the commission to be comparable, may apply to the commission for a temporary license which will authorize the applicant to perform all the practices of a regularly licensed cosmetologist, nail technician, or esthetician, as applicable. The application shall be accompanied by:

- (1) Evidence satisfactory to the commission that the course of education has been successfully completed;
- (2) The fee for a temporary license as provided in this chapter; and
- (3) The application and fee for a cosmetologist, nail technician, or esthetician examination, as applicable.

A temporary license issued by the commission is valid until the date of the next scheduled examination in cosmetology, nail technology, or esthetics, as applicable. If the holder of a temporary license takes the applicable examination at that time, the commission shall extend the temporary license until the result of the examination is mailed to the person. If a person is not excused from the examination by the commission or fails the examination, the temporary license is invalid and may not

be extended or reissued.

Section 58. That § 36-15-51 be amended to read as follows:

36-15-51. No person may operate a salon or booth without a license. Any person who desires to operate a salon or booth where:

- (1) All of the practices of cosmetology are provided shall apply to the commission for a cosmetology salon or booth license, as applicable;
- (2) Only nail technology is practiced, shall apply to the commission for a nail salon or booth license, as applicable;
- (3) Only esthetics is practiced, shall apply to the commission for an esthetics salon or booth license, as applicable;
- (4) Cosmetology is limited to one or a few of the practices specified in § 36-15-2, shall apply to the commission for a limited salon or booth license. The application for a limited license shall state the practices of cosmetology desired to be provided.

The application shall be accompanied by the license fee provided for in this chapter. Any salon or booth license expires annually on a date set by the commission in rule promulgated pursuant to chapter 1-26, and is renewable annually. No person may practice cosmetology, nail technology, or esthetics beyond the limits specified in the license. A violation of this section is a Class 2 misdemeanor.

Section 59. That § 36-15-51.1 be amended to read as follows:

36-15-51.1. If a salon or booth changes location or ownership, the owner or manager of the salon or booth shall apply to the commission for a new license pursuant to § 36-15-51. The application shall be accompanied by the license fee provided for in this chapter. The commission may issue a temporary permit to the applicant which is valid for ninety days. During that time, the commission shall inspect the premises. The owner or manager of a salon or booth that changes location or

ownership or is closed shall immediately notify the commission of that fact.

Section 60. That § 36-15-53.1 be amended to read as follows:

36-15-53.1. A cosmetology salon or booth shall be under the supervision of a person who holds a currently valid cosmetologist-manager license. A nail salon or booth shall be under the supervision of a person who holds a currently valid cosmetologist-manager or nail technician-manager license. An esthetics salon or booth shall be under the supervision of a person who holds a currently valid cosmetologist-manager or esthetician-manager license. A licensed cosmetologist-manager or nail technician-manager or esthetician-manager, as applicable, shall be present in the salon when any of the practices of cosmetology are offered or rendered to the public. A violation of this section is a Class 2 misdemeanor.

Section 61. That § 36-15-54 be amended to read as follows:

36-15-54. Cosmetology, nail technology, and esthetics may only be practiced in a licensed salon or booth, except as provided in this section. A demonstrator, while demonstrating under the provisions of this chapter may practice cosmetology for compensation, fee, or any other remuneration outside of the premises of a licensed salon. In addition, a licensee may practice cosmetology services on persons unable to come to the salon because of imprisonment, disabling sickness, or other disability as long as the licensee documents the service through a salon or booth. A licensed nursing facility that permits cosmetology services only to its residents and does not advertise as a salon is not required to have a salon license.

Section 62. That § 36-15-55.1 be repealed.

Section 63. That § 36-15-56 be amended to read as follows:

36-15-56. The grounds for disciplinary action are:

- (1) Fraud or deception in procuring a license required by this chapter;
- (2) Failure of any person to comply with any of the requirements of this chapter or rules

adopted pursuant to this chapter;

- (3) Publication or use of any untruthful or improper statement or representation, with a view of deceiving the public, or any patron or customer in connection with the practice or education in cosmetology;
- (4) Habitual drunkenness or drug addiction affecting the licensee's practice of the profession, or conviction of a violation of any federal or state law relating to narcotic drugs;
- (5) Failure to furnish to the commission, any report or information which is required by this chapter or rules adopted pursuant to this chapter;
- (6) The employment of any unlicensed person to perform work which under this chapter can lawfully be done only by licensed persons;
- (7) Failure to publicly display any license required by this chapter;
- (8) Willfully making any false oath or affirmation whenever any oath or affirmation is required in this chapter or by rules adopted pursuant to this chapter;
- (9) Conviction of a felony affecting the licensee's practice of the profession, as shown by a certified copy of the record of the court of conviction;
- (10) Continued practice by persons knowingly having an infectious or contagious disease; and
- (11) Practice of any cosmetology services for which the commission requires additional continuing education when the education has not been completed.

Section 64. That § 36-15-58.5 be amended to read as follows:

36-15-58.5. By majority vote, the commission may reinstate or reissue a suspended or revoked license upon:

- (1) Written application establishing compliance with existing licensing requirements; or
- (2) Testimony by witnesses.

The commission may impose conditions for the reinstatement of a license. One of the conditions

may provide for an automatic reinstatement of the license after a fixed period of time.

Section 65. That § 36-15-60 be amended to read as follows:

36-15-60. No person may:

- (1) Practice cosmetology without a license;
- (2) Intentionally make any false oath or affirmation whenever an oath or affirmation is required by this chapter or rules promulgated to this chapter;
- (3) Fail to display any license in a conspicuous place in the salon, booth, or school;
- (4) Fail to comply with the plumbing, electrical, physical, or sanitary requirements as stated in the rules promulgated by the commission;
- (5) Charge or receive compensation for teaching an apprentice any of the practices of cosmetology;
- (6) Operate a school without a license as provided for in this chapter;
- (7) Employ or allow any unlicensed person to perform work which under this chapter may lawfully be done only by licensed persons;
- (8) Allow the practice of:
 - (a) Cosmetology by a cosmetologist except under the immediate and constant supervision and direction of a licensed cosmetologist-manager; or
 - (b) Nail technology by a nail technician except under the immediate and constant supervision and direction of a licensed cosmetologist-manager or a licensed nail technician-manager; or
 - (c) Esthetics by an esthetician except under the immediate and constant supervision and direction of a licensed cosmetologist-manager or a licensed esthetician-manager;
- (9) Operate a salon, booth, or school for any of the practices of cosmetology without having first obtained the applicable license as provided in this chapter;

- (10) Practice any cosmetology services for which the commission requires additional continuing education in which the education has not been completed; and
- (11) Do any act prohibited by this chapter.

A violation of this section is a Class 2 misdemeanor.

Section 66. That § 36-15-61 be amended to read as follows:

36-15-61. The commission or any resident of this state may bring an action in circuit court for an injunction to:

- (1) Restrain any person or corporation from the practice of or education in cosmetology without a valid license;
- (2) Restrain the operation of any salon or school without a valid license;
- (3) Restrain the violation of any of the provisions or requirements of this chapter or rules adopted pursuant to this chapter.

The commission may employ counsel and expend moneys from its treasury for such purposes.

An Act to revise the regulation of cosmetologists and nail technicians and to provide for the licensure of estheticians.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1046

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1046
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State