

AN ACT

ENTITLED, An Act to allow the Cosmetology Commission to license nail technicians separately from other cosmetologists, to provide for a nail shop license, and to revise certain provisions concerning the Cosmetology Commission.

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

Section 1. That § 36-15-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Cosmetological establishment," or "establishment," any beauty shop, nail shop, or beauty school;

"Manager-nail technician," any person meeting the requirements of this chapter who manages a nail shop or establishment;

"Nail shop," any place, premise, or building or any part or portion thereof where nail care is practiced for compensation, but not a beauty shop or beauty school;

"Nail care," the care and beautification of the hands and feet, including filing, trimming, or buffing of the nails, and the application of polish, wrappings, nail extensions, and other materials or substances on the nails;

"Nail technician," any person who, for compensation, engages in the practice of nail care, but not in other practices of cosmetology.

Section 2. That § 36-15-11 be amended to read as follows:

36-15-11. The duties of the members of the commission include inspection of beauty shops, nail shops, beauty schools, nail technicians, and cosmetologists; conducting examinations for applicants for licenses under this chapter, investigating violations and enforcing provisions of this chapter and the rules established by the commission pursuant to this chapter; maintaining an office for the keeping of records; and doing all things necessary for the proper administration of this chapter.

Section 3. 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' instruction and work performed;
- (4) Minimum standards and requirements for beauty schools;
- (5) Minimum standards for plumbing, electrical, physical, and sanitary conditions for the health and safety of persons utilizing cosmetological establishments pursuant to § 36-15-13.1;
- (6) The professional conduct of licensees pursuant to § 36-15-13.1;
- (7) The reinstatement of lapsed licenses and lapsed renewal pursuant to § 36-15-20.1;
- (8) Establishing the fee for a lapsed license and lapsed renewal pursuant to § 36-15-20.1;
- (9) The course and instruction requirements received by transfer students pursuant to § 36-15-34;
- (10) The textbooks, instructional material, and the general course of study for beauty schools and for beauty shops and nail shops having apprentices pursuant to § 36-15-46;
- (11) The progress and instruction received by an apprentice pursuant to § 36-15-48; and
- (12) The fees for all licenses, permits, and renewals.

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

Any person desiring to practice nail care in this state as a nail technician shall apply to the commission to take the nail technician examination. The application shall contain the information required by § 36-15-15 and proof that the applicant has completed four hundred hours of training in an approved and licensed beauty school or, in lieu of such training, has successfully completed a course of apprenticeship in a licensed beauty shop or nail shop, as provided in section 17 of this Act. The application shall be accompanied with the fee required by this chapter.

Section 5. That § 36-15-19 be amended to read as follows:

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

Section 6. That chapter 36-15 be amended by adding thereto a NEW SECTION to read as follows:

Each applicant for a nail technician license who has complied with section 4 of this Act shall take an examination before the commission in the art and practice of nail care. The commission shall prescribe the examination. If the applicant satisfactorily passes the examination, as determined by the commission, the commission shall license the applicant as a nail technician. Any nail technician license issued by the commission expires on January thirty-first each year and is renewable annually.

Section 7. 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 or section 6 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 is of good moral character;
- (2) The applicant has passed an examination in cosmetology or nail care, as applicable, in the District of Columbia or any state or territory in the United States and is the holder of a currently valid license, certificate, or certificate of registration in cosmetology or nail care issued in that district, state, or territory;
- (3) The requirements of that district, state, or territory at the time of the examination were not less than those required by this state as a condition precedent to the issuance of the license, certificate, or certificate of registration;
- (4) The applicant comes before any member of the commission for a written or oral examination on South Dakota cosmetology laws and the examination is approved in writing by the commission member; and

- (5) The application is accompanied with the fee provided for in this chapter.

Section 8. 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) Operator examination fee, twenty dollars;
- (2) Operator license fee, fifteen dollars;
- (3) Operator license renewal fee, fifteen dollars;
- (4) Nail technician examination fee, twenty dollars;
- (5) Nail technician license fee, fifteen dollars;
- (6) Nail technician license renewal fee, fifteen dollars;
- (7) Temporary operator or nail technician license fee, six dollars;
- (8) Manager-operator license fee, fifteen dollars;
- (9) Manager-operator license renewal fee, fifteen dollars;
- (10) Manager-nail technician license fee, fifteen dollars;
- (11) Manager-nail technician license renewal fee, fifteen dollars;
- (12) Junior instructor license fee, fifteen dollars;
- (13) Junior instructor license renewal fee, fifteen dollars;
- (14) Senior instructor license fee, fifteen dollars;
- (15) Senior instructor license renewal fee, fifteen dollars;
- (16) Reciprocity and waiver of examination fee, fifty dollars;
- (17) Temporary permit based on reciprocal recognition of another state license, six dollars;
- (18) 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 therefor to another state, five dollars;

- (19) Apprentice license fee, twenty-five dollars;
- (20) Beauty school license fee, two hundred fifty dollars;
- (21) Beauty school license renewal fee, two hundred fifty dollars;
- (22) Student license fee, six dollars;
- (23) Beauty shop license fee, fifty dollars;
- (24) Beauty shop license renewal fee, twenty-five dollars;
- (25) Nail shop license fee, fifty dollars;
- (26) Nail shop license renewal fee, twenty-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 9. 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 manager-nail technician 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 fifty weeks, with an average of forty hours a week, as a licensed nail technician.

Section 10. That § 36-15-21.1 be amended to read as follows:

36-15-21.1. Any manager-operator or manager-nail technician license issued by the commission pursuant to this chapter expires on the thirty-first of January each year and is renewable annually. The application for renewal shall be accompanied with the fee required by this chapter.

Section 11. That § 36-15-22 be amended to read as follows:

36-15-22. Any person who holds a current valid license, certificate, or certificate of registration from another state or territory of the United States or from the District of Columbia as an operator or manager-operator in the practices of cosmetology or as a nail technician or manager-nail technician

in the practice of nail care may apply to the commission for a temporary permit to practice the art of cosmetology or nail care, as applicable, pursuant to the provisions of this chapter. The application shall be accompanied with evidence satisfactory to the commission that the applicant possesses those qualifications required pursuant to § 36-15-15 and that the requirements of that state, territory, or district for licensure are comparable to the requirements of this state for licensure. The application shall be accompanied with the fee required by this chapter. A temporary permit expires ninety days after issuance.

Section 12. That § 36-15-29 be amended to read as follows:

36-15-29. Any person desiring to conduct a beauty school for any of the practices or arts of cosmetology shall apply to the commission for a license. If the commission determines, based on evidence submitted with the application, that the beauty school requires of its students a course of training in the practices and arts of cosmetology of not less than twenty-one hundred hours equal to the requirements for examination for an operator license or a course of training in nail care of not less than four hundred hours equal to the requirements for examination for a nail technician license and the beauty school satisfies the requirements established by rules adopted pursuant to this chapter and chapter 1-26, the commission shall issue the license.

Section 13. That § 36-15-33 be amended to read as follows:

36-15-33. Any person entering or enrolling in a licensed beauty school for training in the practice or art of cosmetology or nail care 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 sixteen and one-half years of age. The application shall contain the information required pursuant to § 36-15-15 and the name and location of the beauty 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 training in which the student is enrolled without additional license fees. If the student withdraws from the beauty school or course in cosmetology or

nail care for which the fee was paid and later enrolls in the same or a different beauty school or course, the student shall pay the student license fee again.

Section 14. 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 beauty school in this state for the purpose of meeting the requirements of the state for commission examination in cosmetology or nail care 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 instruction received by such transfer students. Such transfer students shall be given South Dakota credit hours for their out-of-state training as determined and allowed by the commission.

Section 15. 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 beauty shop or nail shop and a beauty school, unless the shop is conducted separately from the beauty school so as not to be construed by the public as one enterprise.

Section 16. That § 36-15-42 be amended to read as follows:

36-15-42. Any person may apply to the commission to be licensed as an apprentice if the applicant submits evidence satisfactory to the commission that the applicant possesses those qualifications, except for age, required pursuant to § 36-15-15 and the beauty shop or nail shop in which the apprentice will serve and receive instruction is currently licensed and is adequately equipped to teach the profession of cosmetology or nail care, as applicable. Any applicant for an apprentice license shall be at least seventeen years of age. Any apprentice license issued pursuant to this chapter is good for the full period of the apprenticeship as defined in § 36-15-45 and is not renewable. The application shall be accompanied with the fee required by this chapter.

Section 17. That § 36-15-45 be amended to read as follows:

36-15-45. A licensed apprentice in cosmetology shall receive instruction in the practice of

cosmetology as required by this chapter in the same licensed beauty shop for eighteen consecutive months. A licensed apprentice in nail care shall receive instruction in the practice of nail care as required by this chapter for six consecutive months in the same licensed beauty shop or nail shop. The commission may permit an apprentice to transfer to another licensed beauty shop or nail shop, 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 18. That § 36-15-46 be amended to read as follows:

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

Section 19. That § 36-15-47 be amended to read as follows:

36-15-47. Any apprentice licensed pursuant to this chapter may practice any of the practices of cosmetology if the practice is performed only in a beauty shop or a nail shop 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 care at least forty hours a week.

Section 20. That § 36-15-50 be amended to read as follows:

36-15-50. Any person who completes the term of apprenticeship pursuant to this chapter more than ten days before the time set for a regular commission examination in cosmetology or nail care, as applicable to the apprenticeship, may apply to the commission for a temporary license which will authorize the applicant to perform all the practices of a regularly licensed cosmetology operator or

nail technician, as applicable. The application shall be accompanied with evidence satisfactory to the commission that the applicant possesses the qualifications required pursuant to § 36-15-15 and that the apprenticeship period has been completed. A temporary license issued by the commission is good until the date of the next regular commission examination in cosmetology or nail care, as applicable. If the holder of a temporary license takes the examination at that time, the commission shall extend the temporary license until the result of the examination is mailed to the person. The application for a temporary license shall be accompanied with the fee required by this chapter for the temporary license and by the examination fee.

Section 21. That § 36-15-50.1 be amended to read as follows:

36-15-50.1. Any person who successfully completes a course of training in an approved and licensed beauty school in this state, or in any other licensed beauty school not located within this state that is shown to the satisfaction of the commission to be equally comparable, more than ten days before the time set for a regular commission examination in cosmetology or nail care, as applicable to the training, may apply to the commission for a temporary license which will authorize the applicant to perform all the practices of a regularly licensed cosmetology operator or nail technician, as applicable. The application shall contain evidence satisfactory to the commission that the course of training has been successfully completed and shall be accompanied with the fee for a temporary license as provided by this chapter. The application shall also be accompanied with the application and fee for an operator or nail technician license. A temporary license issued by the commission is good until the date of the next regular commission examination in cosmetology or nail care, 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.

Section 22. That § 36-15-51 be amended to read as follows:

36-15-51. Any person who desires to operate a beauty shop where all of the arts of cosmetology

are practiced shall apply to the commission for a general beauty shop license. Any person who desires to operate a beauty shop where the practice of cosmetology is limited to one or a few of the arts specified in § 36-15-2 shall apply to the commission for a limited beauty shop license. The application for a limited license shall state the arts of cosmetology desired to be practiced. Any person who desires to operate a nail shop where only nail care is practiced shall apply to the commission for a nail shop license. The application fee set pursuant to § 36-15-20 shall accompany the application. All beauty shop and nail shop licenses expire on January thirty-first each year and are renewable annually. Operation of a beauty shop or a nail shop without a license is a petty offense. The practice of cosmetology beyond the limits specified in the license is a petty offense.

Section 23. That § 36-15-51.1 be amended to read as follows:

36-15-51.1. If a beauty shop or nail shop changes location or ownership, the owner or manager of the shop shall apply to the commission for a new license pursuant to § 36-15-51. The application shall be accompanied with the license fee provided for by 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 beauty shop or nail shop that changes location or ownership or is closed shall immediately notify the commission of that fact.

Section 24. That § 36-15-53.1 be amended to read as follows:

36-15-53.1. A beauty shop shall be at all times under the supervision of a person who holds a currently valid manager-operator license. A nail shop shall be at all times under the supervision of a person who holds a currently valid manager-operator or manager-nail technician license. It is a petty offense for a beauty shop or nail shop or its owner to offer or render any of the practices of cosmetology to the public unless the shop has a licensed manager-operator or manager-nail technician, as applicable, present in the shop.

Section 25. That § 36-15-54 be amended to read as follows:

36-15-54. Only demonstrators while demonstrating under the provisions of this chapter may

practice any of the arts of cosmetology for compensation, fee, or any other remuneration outside of the premises of a licensed beauty shop or a licensed nail shop unless the person desiring any or all of the cosmetological services is unable to come to the beauty shop or nail shop because of sickness or other disability.

Section 26. That subdivision (8) of § 36-15-60 be amended to read as follows:

- (8) Allowing the practice of cosmetology by an operator except under the immediate and constant supervision and direction of a licensed manager-operator or by a nail technician except under the immediate and constant supervision and direction of a licensed manager-operator or a licensed managing nail technician;

Section 27. That subdivision (9) of § 36-15-60 be amended to read as follows:

- (9) Operating a beauty shop, nail shop, or beauty school for any or all of the arts of cosmetology without having first obtained the applicable license as provided in this chapter; and

Section 28. That ARSD 20:42:01:02 be repealed.

An Act to allow the Cosmetology Commission to license nail technicians separately from other cosmetologists, to provide for a nail shop license, and to revise certain provisions concerning the Cosmetology Commission.

I certify that the attached Act
originated in the

SENATE as Bill No. 158

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 158
File No. _____
Chapter No. _____

Received at this Executive Office
this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 19__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State